

LONGFELLOW UNION



HPD AFFORDABLE NEIGHBORHOOD COOPERATIVES

DEVELOPER/SPONSOR

Long Union Developers LLC is a joint venture between Avante Development & Bronx Pro Group.



Avante Contracting Corporation is a full-service general contracting and development firm. Avante is comprised of 14 full and part time professional employees as well as construction field staff with annual revenues of \$16 million in 2018. Owner Robert Lepre is a construction, financial, and business management professional with more than 37 years of experience, having successfully completed over six million square feet of new construction and rehabilitation projects. The Avante team continually strives to maintain the company's ongoing commitment to obtaining the highest caliber of professional workmanship in the construction industry.

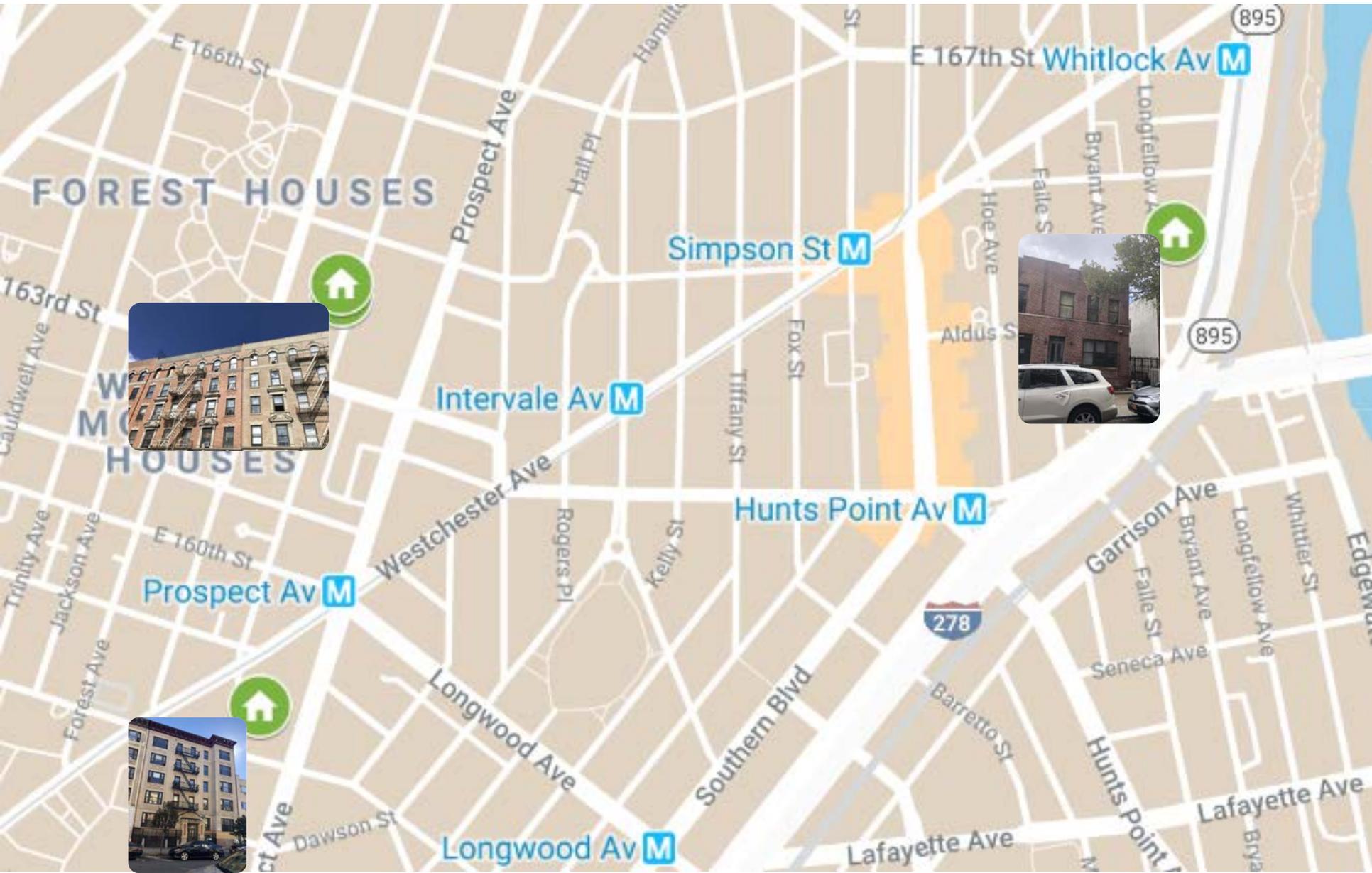


Bronx Pro Group LLC is a neighborhood-based firm dedicated to community development through affordable housing investments since 1988. Bronx Pro's mission is to develop quality housing that is both affordable and sustainable with an increasing focus towards community building. The company and affiliates employ 98 full time professionals and support staff engaged in Real Estate Development, Construction, Building Management, and Residential Services. Since 1998, Bronx Pro has completed the development of over 2,200 affordable housing units, these projects total over \$450 million in development costs.

PROJECT ADDRESSES

ADDRESS	NEIGHBORHOOD	COMMUNITY BOARD	COUNCIL DISTRICT	BLOCK	LOT	EXISTING RESIDENTIAL UNITS	PROPOSED RESIDENTIAL UNITS
774 UNION AVENUE	Woodstock	BX-1	17	2676	36	27	26
993 UNION AVENUE	Morrisania	BX-3	17	2669	41	21	21
995 UNION AVENUE	Morrisania	BX-3	17	2669	40	21	20
1042 LONGFELLOW AVENUE	Foxhurst	BX-2	17	2756	71	4	4

PROJECT SITE MAP



PROJECT FINANCING

- CPC Loan
- HPD Capital
- AHC Grant

Project Uses	
Hard Costs	\$20,862,960
Soft Costs	\$9,288,233
Total Development Cost	\$33,084,602

AFFORDABILITY

- Existing tenants to pay \$2,500 to buy in
- Monthly maintenance to be structured at 40%-50% AMI
- Vacant unit sales prices to be set at 75% AMI

(Union Avenue Buildings)		(1042 Longfellow Only)	
1 – Bedroom	\$150,783	1 – Bedroom	\$107,731
2 – Bedroom	\$180,939	2 – Bedroom	\$129,277
3 – Bedroom	\$208,942	3 – Bedroom	\$149,256
4 - Bedroom	\$233,224	4 - Bedroom	N/A

- Marketing band of 75% - 90% AMI

AFFORDABILITY (con't)

Insiders

- 31 units
- Sale price of \$2,500
 - Unit Purchase Savings Plan
- No income restriction

Outsiders

- 38 units – Sale price of 75% AMI
- Income restriction 90% AMI
- 10% down payment
- 2 Units – Super's Units will not be sold

Sales Price Calculation Method								
BRs	HH Size	HUD Household Factor	Monthly Maint. Charges	Annual Maint. (includes utilities)	33% towards Annual Housing Costs	Mortgage Amt*	Vacant Sale Price at 75% AMI	Market Sale Comps**
1-BR	1.5	0.75	\$804	\$10,560	\$19,806	\$135,705	\$150,783	\$208,500
2-BR	3	0.9	\$979	\$12,672	\$23,767	\$162,845	\$180,939	\$278,000
3-BR	4.5	1.04	\$1,127	\$14,652	\$27,465	\$188,048	\$208,942	\$347,500
4-BR	6	1.16	\$1,262	\$16,332	\$30,634	\$209,901	\$233,224	\$417,000

* Including estimated utility costs

** Provided by February 2019 HPD Appraisal Unit

SCOPE OF WORK

- Gut rehabilitation of all 4 buildings
- Includes new kitchens & bathrooms, new electrical, plumbing and mechanical systems to ensure long-term longevity
- Improved air sealing/thermal insulation to increase comfort and reduce operating expenses
- Improved accessibility to building entrances by providing ramps/lifts and ADA compliant first floor apartments

The Department Of Housing Preservation
And Development

L.U. 661 and Pre-Considered L.U. Item

266 West 96th Street Project
Mixed Income Program: M²

May 7, 2020

(Rosenthal) **L. U. No. 661** (C 200140 PPM) and Pre-Considered item No. 20205412 HAM are related to the Urban Land Use Review Process (ULURP) application seeking disposition approval under Section 197-c and sale to a developer selected by HPD under Section 576-a(2) of the Private Housing Finance Law for a City-owned lot located at 266 West 96th Street (Block 1243, Lot 57) in Manhattan Council District 6.

The Sponsor of the project, Fetner Properties, proposes to develop the disposition site under HPD's Mixed Middle Income Program, M2, along with privately owned property at Block 1243, Lots 59 and 60. Under the M2 program guidelines, sponsors purchase City-owned and/or privately-owned land and construct multifamily buildings in order to create rental housing units with a range of affordability.

The Department Of Housing Preservation
And Development

L.U. 661 and Pre-Considered L.U. Item

266 West 96th Street Project
Mixed Income Program: M²

May 7, 2020

The disposition site currently contains a former MTA substation that will be demolished along with two privately-owned buildings on the adjacent lots. The new building constructed in their place will be 23 stories and will contain approximately 171 residential units, inclusive of a superintendent's unit. There will be a mixture of unit types within the new building including 80 micro units, 36 one-bedroom, 47 two-bedroom, and 8 three-bedroom apartments.

Of the total unit count, the proposal for 266 West 96 Street includes 68 permanently affordable dwelling units will be marketed to households with incomes ranging from 27% to 130% of AMI, including 11 units (approximately 16% of affordable units) set aside for formerly homeless households. The project is also participating in the Voluntary Inclusionary Housing Program. Of the permanently affordable units, it is anticipated that Thirty-five (35) will be are micro units with rents ranging from \$215 - \$1,642; Fourteen (14) will be one

The Department Of Housing Preservation
And Development

L.U. 661 and Pre-Considered L.U. Item

266 West 96th Street Project
Mixed Income Program: M²

May 7, 2020

bedroom units with rents ranging from \$283 - \$2,487 and Nineteen (19) will be two-bedroom apartments with rent ranging from \$425 - \$2,977. The balance of the unit count will be market-rate apartments.

The building at 226 West 96 Street will also include community facility space on the ground floor that will house the Salvation Army, as well as amenities for the building's residents such as a health club, lounge areas, club house space, and outdoor open space for residents on the second floor. Amenities will be available free of charge for tenants of the permanently affordable units.

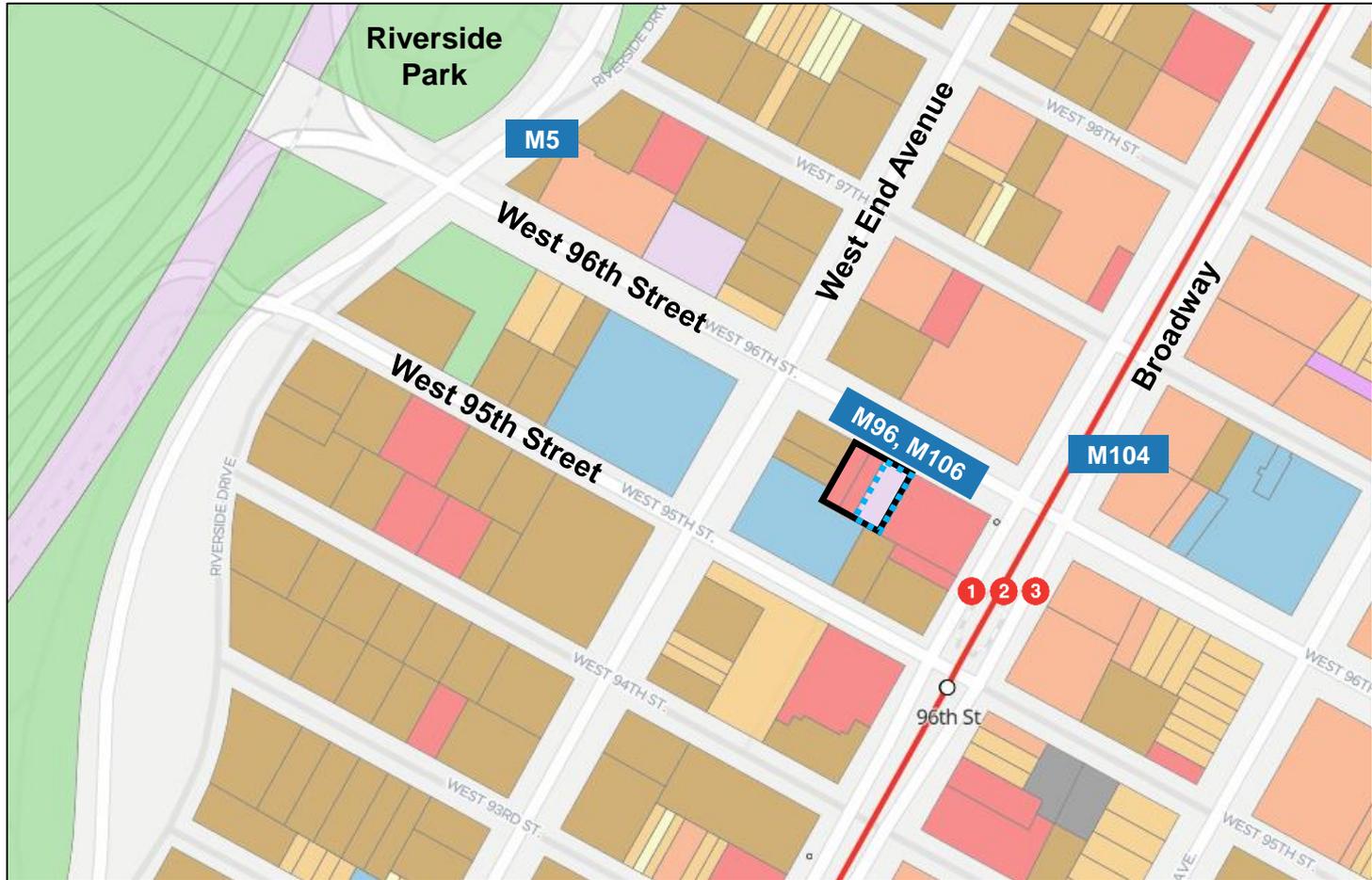
In order to development the project at 226 West 96 Street, HPD is before the Subcommittee seeking approval for L.U. No. 661 and the accompanying pre-considered item No. 20205412 HAM.

266 West 96th Street, Manhattan
(C 200140 PPM / LU 0661-2020)

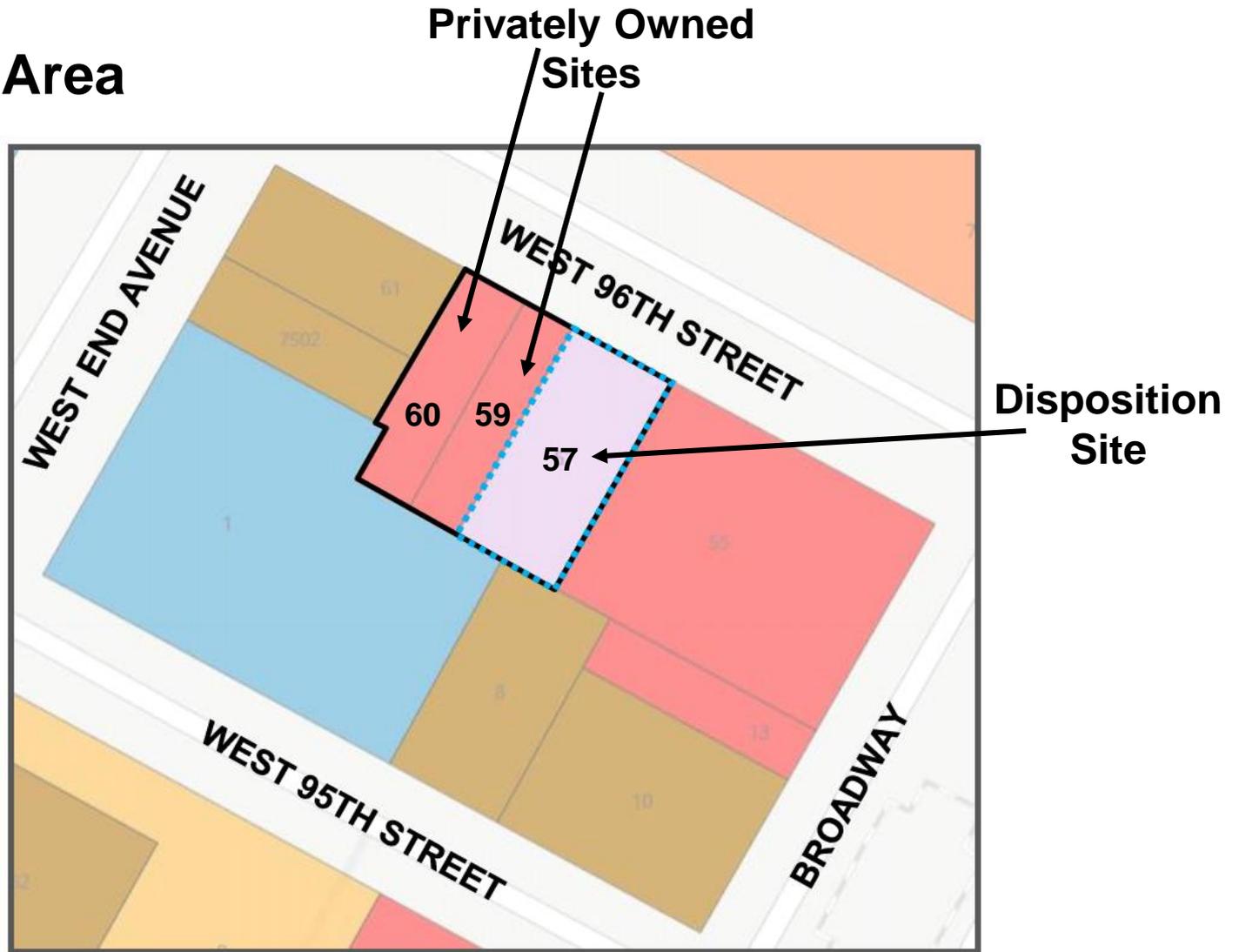
**City Council Subcommittee on Landmarks, Public
Sittings and Dispositions**
May 7, 2020

- If you are a member of the public who wishes to testify please register at <https://council.nyc.gov/testify/>
- All City Council Meetings can be viewed on live on the City Council website at <https://council.nyc.gov/livestream/>
- A recording will be posted to the City Council website at <https://council.nyc.gov/>

Project Area

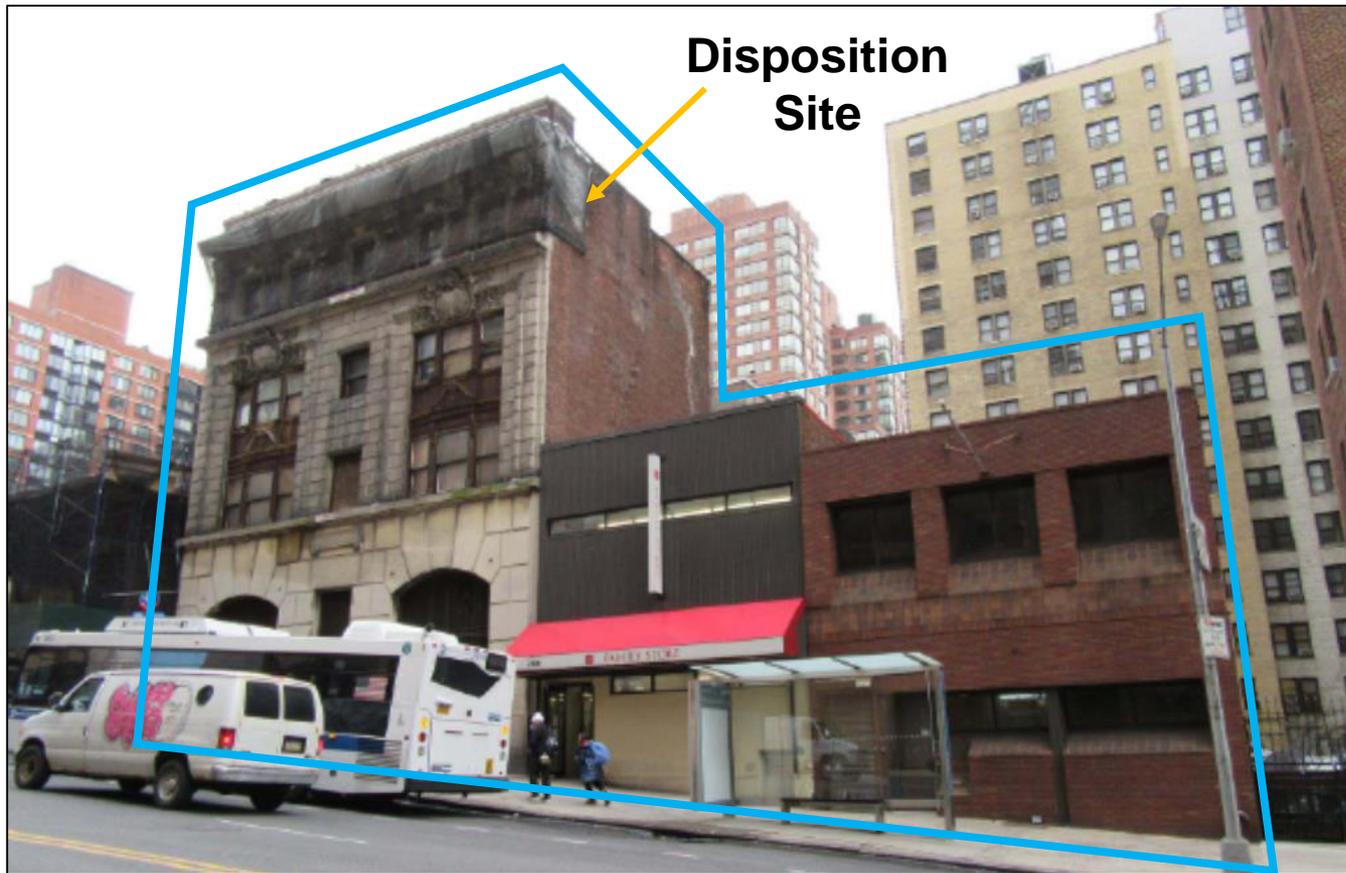


Project Area



Land Use Action

- Disposition of City-owned property



Development Program

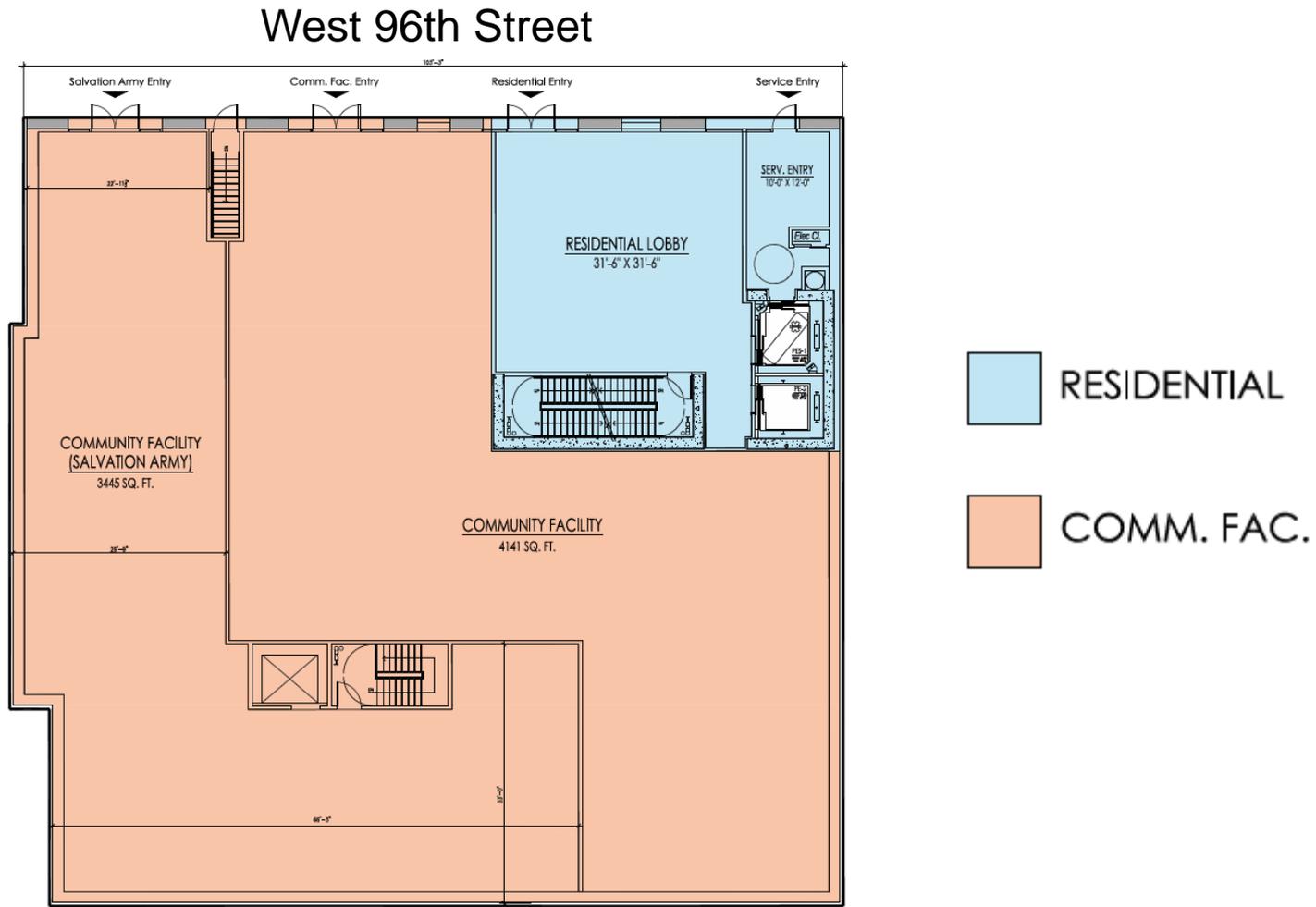
- 171 residential units
 - 68 (40%) units permanently affordable
 - 15% of those set aside for formerly homeless people
- R10A contextual zoning: 23 stories (235 feet)
- Ground-floor and below-grade community facility space (10,500 SF)
 - Salvation Army: 6,500 SF



Building Design

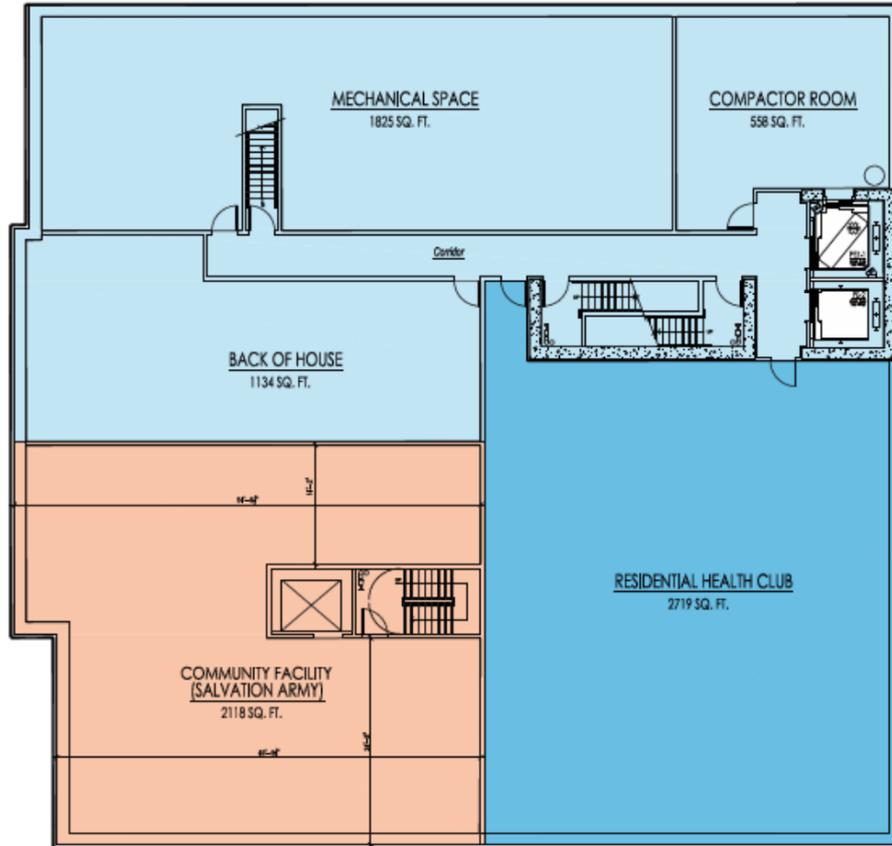


Development Program: Ground Floor



Development Program: Cellar

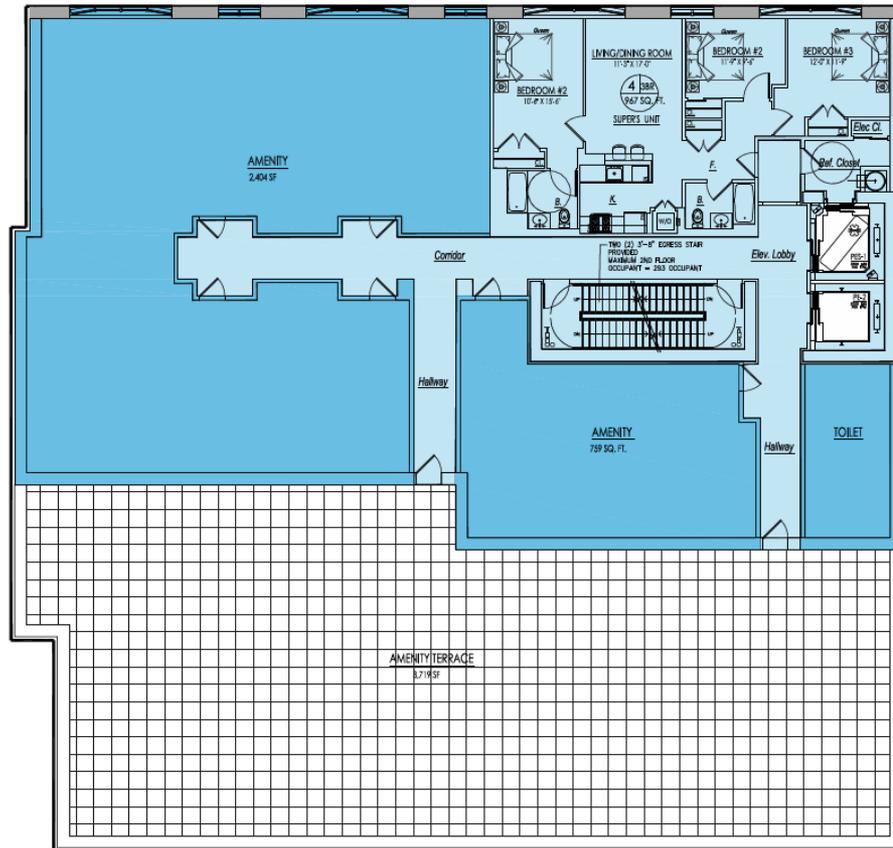
West 96th Street



-  RESIDENTIAL
-  COMM. FAC.
-  TENANT AMENITY

Development Program: Second Floor

West 96th Street



RESIDENTIAL



TENANT AMENITY

Project Commitments

- Permanent affordability
- Work with community-based organizations and Community Board 7 to inform local residents, including seniors, about applying for affordable apartments in the new building
- No health club/amenity fee for residents of affordable units
- Same finishes for market-rate and affordable units
- At tenant's request, micro-unit will not include built-in furniture
- Consider becoming a maintenance partner for a DOT sidewalk extension at West 96th/West End Avenue
- Participate in a local construction advisory committee

Development Program: Affordable Housing

AMI	Total	Percentage of All Units
Original Proposal		
50%	10	5.8%
70%	29	17.0%
130%	29	17.0%
Total	68	39.8%
Current Proposal Under Consideration		
27%	11*	6.4%
67%	7	4.1%
77%	15	8.8%
120%	35	20.5%
Total	68	39.8%

* All 11 units are homeless set-aside units

Environmental Review

- An environmental impact statement (EIS) was prepared
- EIS disclosed that demolition of the substation on the disposition site would be a significant adverse impact
 - Historic resource because it is considered eligible to be a New York City and State/National Register landmark
 - Substation is not landmarked or calendared
- As mitigation, the project sponsor will prepare Historic American Buildings Survey (HABS) Level II documentation, including archival photography of the exterior and interior of the substation
 - Separately, the proposed development will include elements of the substation façade

Brownfield Cleanup Program

- The project was accepted to the N.Y.S. Brownfield Cleanup Program in August 2019.
- Fetner Properties will be required to investigate and remediate the development site under the oversight of the N.Y.S. Department of Environmental Conservation and the N.Y.S. Department of Health.

266 West 96th Street, Manhattan (C 200140 PPM / LU 0661-2020)
City Council Subcommittee on Landmarks, Public Sitings and Dispositions
May 7, 2020



FETNER

NYC

Housing Preservation & Development

ROBERT BORNSTEIN
736 WEST END AVENUE, 10D
NEW YORK, NY 10025

May 8, 2020

RE: LU 0661-2020/ APPLICATION NO. 20200140 PPM

Adrienne E. Adams, Chairperson
City Council Subcommittee on Landmarks, Public Sitings, and Dispositions
City Hall
New York, NY 10271

In regard to the two minute opportunity I had to be heard at the hearing conducted on May 7, 2020, over the internet and telephone, concerning the disposition of City owned Block 1243, Lot 57 at 266 West 96th Street, formerly operated as an MTA subway substation, I request that your Subcommittee designate review, and consider, as exhibits to that proceeding, this letter and all of the documents and materials that I had previously submitted to the City Planning Commission, during its proceedings upon precisely the same application made by then same proponents to your subcommittee. The City Planning Commission commenced its hearing on January 22, 2020, as Application No. C 200140PPM, and continued its hearing to February 5, 2020. These documents and materials include, a letter to the Mayor, the Chairman of City Council, the City Planning Commission, and others, dated December 12, 2019, a letter to the City Planning Commission, dated January 27, 2020, and a handwritten submission along with other printed materials on February 5, 2020. Please note that, although I will not try to summarize all of the information included in those letters and submissions in this correspondence, many other legal and policy grounds, as well as foreseeable subsurface hazards that could endanger persons and property, are stated in those documents, which I strongly urge you and the Subcommittee review.

As the record of the proceedings of the May 7 Subcommittee hearing will reflect, I opposed a sale of the property as a violation of City Charter, Chapter 15, Section 384, which would result in a fraudulent transfer, insofar as such a sale would be a failure to comply with Charter Section 384 requirements of Mayoral approval, sealed competitive bidding, and sale of the property for the value. City Charter, Section 197-c set forth in the proponents' application, merely provides review procedures, which include review of city owned property, but that section does not provide exemption from compliance with Chapter 15, section 384. In this respect, each of the proponents of the applications before the City Planning Commission and the Subcommittee failed to address their activities with respect to either compliance or noncompliance with City Charter, Chapter 15, Section 384. In further respect, it should be noted, that I had several times brought up that violation of the City Charter, specifically citing Section 384, in my brief opportunities to speak at District 7 Community Board meetings, and the City Planning Commission hearing, during which, all of the proponents of sale of the City the owned property were present. As is apparent from my letters, dated December 12, 2019 and January 27, 2020, as well as my handwritten submissions on February 5, 2020, there is not a scintilla of evidence of Mayoral approval,

and sealed competitive bidding. Certainly none of the proponents have claimed that they have complied with these Charter requirements. It is obvious that these Charter requirements have not been complied with. Clearly, it is now undeniably established that the Charter requirement of sale for value of the property has not been complied with. As apparent from the Borough President's statement at the Subcommittee hearing, the sale of the City owned property is only for a nominal value of the property. Under each of these circumstances, any sale of the property would clearly violate City Charter requirements, and amount to a scheme to defraud by transferring property to the private developer, Fetner Properties, which the proponents, including the New York City Department of Housing and Development and the developer, have no lawful basis to transfer, and the developer has no right to obtain. The proponents' failure to disclose these Charter violations to the Subcommittee, the City Planning Commission, and Community Board 7, notwithstanding my having pointed out those violations to those forums, amounts to a further commission of fraud, as a fraud committed against those forums. The conduct of the proponents with respect to the city owned property clearly violated the False Claims Act, Article 13, sections 187- 189, and General Business Law, Section 349, titled "Deceptive acts and practices unlawful", and may be within the ambit of proscribed criminal conduct defined by Penal Law, Sections 190.60 and 190.65, titled "Scheme to defraud" in the second and first degrees respectively. Additionally, the conduct of the proponents, who happen to be attorneys, before any of those tribunals, violated New York Rules of Professional Conduct, Rule 3.3 (b).

Please note that my review of the City Planning Commission's website on the day of your hearing clearly stated that it had not reached a decision in the matter. It therefore appears that the Subcommittee's hearing was premature, insofar as it has not had an opportunity to review any decision and/or findings of the Planning Commission. Moreover, if there is any law, protocol, or policy which would first require a decision of the City Planning Commission, the entire subcommittee proceeding may have been unauthorized, and the Subcommittee's findings and decision may be of dubious validity.

Moreover, if I correctly understood the syntax of Borough President Gale Brewer, when she spoke at the Subcommittee hearing, when I heard her say that, "The developer was able to purchase the site at a nominal amount", it would appear that the completed sale of the city-owned property had already been transacted. If so, this circumvents any approval process by the City Planning Commission and the City Council's Subcommittee, as well as their authority over this matter concerning the main point of the hearing, disposition of the property. All the more egregious, since "Disposition" is in the very name of the Subcommittee.

Further, the Borough President, as a qualified supporter of the application, and as an insider in-the-know, disclosing a purchase of the property at a "nominal amount", is information that, has previously not been disclosed by the proponents of record, and additionally demonstrates a violation of City Charter, Chapter 15, Section 384. As I noted in my previous letter to the Mayor, et al, the press, The Real Deal 5/31/17, had reported that the property, adjacent to the City owned property on its eastern side, had sold for one hundred million dollars (\$100,000,000). Since that adjacent property is about three times the size of the City owned property, the value of the City owned property would be fairly valued at one third that amount, thirty three million three hundred thirty three thousand, three hundred thirty three dollars (\$33,333,333).

Further still, when the Borough President spoke at the May 7 Subcommittee hearing, she stated that she got the MTA (a NY State agency) to sell the property to the City for one dollar (\$1). Although this statement is inconsistent with my recollection concerning a community meeting, several years ago, when I recall her or a colleague of hers claim that a sale of the property had been arranged as a sale to a nonprofit organization, it does change the legal perspective. Whether or not such a sale took place, but has never been recorded as a deed, the current certificate of title clearly states that the City owns the property. Assuming the accuracy of the Borough President's present statement at the May 7 Subcommittee hearing, there should be a consideration by the Subcommittee of whether or not there had been compliance with New York State law, as specifically expressed in the MTA Charter, as review authority, for the sale of such NY State owned property to the City. As previously stated in my letter, dated December 12, 2019, such a review, which would have included the future potential use of the property, should have been made. It would therefore appear that, in addition to any present transfer of the property without at least consulting the MTA being improper, a prior transfer of the property, without an MTA review in order to consider the future potential use of the property, would clearly have been an unlawful breach of the MTA Charter. As I pointed out at Community Board meetings and at the Planning Commission hearing, and my prior letter, dated December 12, 2019, the location of the property, its electrical connection to the subway system, and the substation building itself, could be uniquely utilized in clean inexpensive electric power generation for the subway system from the tidal currents of the proximately located Hudson River. Accordingly, a prior transfer from the MTA to the City, without such a review of potential future use, may amount to a nullity, and could be voidable as such.

Additionally, the footprint of the planned construction of a 23 story building on the combined 3 lots at the proposed building site, the City owned subway substation and two other lots, would violate the New York City Zoning law, Zoning Resolution 23-632 (b)(1), titled "Required side and rear setbacks". According to the artist's rendering of the proposed building, it would have a 10 foot separation from its western side to other buildings located on adjacent lots, at 736 and 734 West End Avenue. Although subsection (b)(2) of that zoning law requires at least a 10 foot separation between the side of a nearby building, it must be noted that the nearby 736 West End Avenue building has an entrance on 96th Street as well as West End Avenue (it also has a 96th Street address), so that it in fact has a side nearby the proposed building. In this respect, a 10 foot separation has existed for many decades between the nearby two story building (less than 30 feet tall) still standing and the building at 736 West End Avenue. Subsection (b) requires a larger setback distance for buildings exceeding 30 or 33 feet in height depending upon which "R" zone the building is located in. The length of the larger setback is determined by a formula in that subsection utilizing the height of the newly constructed building, and according to the formula, the distance of the setback increases according to the length of the height of a newly constructed building above 30 or 33 feet. As a result, the disclosed footprint of the proposed building to be constructed violates the provisions of subsection (b), unless otherwise exempted by subsection (2) which does not require a setback greater than 10 feet for "buildings containing affordable residences for seniors". As currently proposed, according to the testimony of the proponents at the May 7 Subcommittee hearing, the intended mixed market rate and affordable housing, with emphasis on housing low income tenants, and the homeless in some of the affordable apartments, falls far short of the meaning of the subsection (2) exclusion.

While the proposed building was initially touted as providing apartments only for seniors when the concept for its construction was first stated by the current Borough President or her colleague at a community meeting several years ago, that concept has morphed over time to diminish accessibility to seniors, to a point where there is no guarantee that any seniors would ever inhabit the building. At a December 3, 2019 Community Board 7 meeting, it was stated by one of the proponents that providing the affordable apartments reserved only for occupancy by seniors would violate age discrimination laws, but that outreach to seniors would be possible. Although the "Resolutions" of the Community Board proposed a requirement of outreach by the developer through community based organizations to make seniors aware of apartment availability, notwithstanding seniors being mentioned as prospective tenants at the May 7 Subcommittee hearing, no formal plan for senior outreach was presented to the Subcommittee. There is no bona fide realistic plan for providing affordable residences to seniors. Therefore, the subsection (2) exclusion from setback requirements is inapplicable.

Accordingly, given the limitations of the size of all of the lots comprising the entire proposed building site, it would appear that geometry dictates that the size of footprint of the building currently proposed must be significantly reduced in order to provide an appropriate and resultantly longer setback to the building at 736 West End Avenue. Given the formula stated in subsection (b)(2), a 23 story building must be reduced with respect to the size of its footprint and its and very likely its height in order to comply with that subsection. Only a much smaller building, with an appropriately distanced setback from the 736 West End Avenue building would be in conformity with the City zoning law. Therefore the nonconforming design of the proposed building, as currently included in the application, dictates an additional reason for requiring rejection of the proposal unless a conforming redesign is presented to the Subcommittee.

However, even if a conforming proposed building design could be provided to the Subcommittee, the application should be rejected with prejudice, due to the fraudulent attempt to acquire and/or the acquisition of the City owned property in violation of the New York City Charter, and due to fraudulent conduct of proponents of the application, in failing to disclose such violations to the Subcommittee and other tribunals. If the City owned property has already actually been transferred to the developer, it is further requested that the Subcommittee undertake all legal measures to void the sale.

Respectfully,

Robert Bornstein

**Transcript of Relevant Handwritten Submission to the City Planning Commission Hearing
on February 5, 2020**

To: The City Planning Commission

From: Robert Bornstein

2/5/2020

I have been informed by Sr. Director Ryan Singer that I would not be allowed to speak since I spoke at the initial Hearing. I request that this letter be made an Exhibit to the Hearing. I, therefore, submit the included attachments re:

N.Y. General Business Law Sec. 349 “Deceptive Acts and Practices Unlawful”

and, Definitions of “Fraud”

Please be further informed that in addition to my letters, dated Dec. 12, 2019, and Jan 27, 2020, my additional comments and testimony are as follows:

City Charter, Chapter 15 Sec 384 additionally requires that a sale of City property be for the “highest marketable retail price”.

In City Board 7 meetings, although the Board had inquiry before it concerning the price that the Subway building and property was to be sold for, no response was forthcoming as to any amount by the Dept. of Housing and Urban Development or by Fetner’s Lawyer. The proponents have not demonstrated price compliance with the Charter.

The proponents have only disclosed that they are in direct negotiation with the City. They have not claimed that they have the approval of the Mayor as required by the City Charter. The proponents by statement of the representative of the Department of Housing and Urban Development have made a “formal admission” that they have violated the City Charter requirement of competitive bidding, by stating that direct negotiation was made, and by prior refusal to answer my inquiry at prior Board 7 meetings asking if competitive bidding was made.

Clearly, none of the prior activities of the proponents, the Department of Housing and Urban Development, and Fetner, were disclosed to this tribunal, the City Planning Commission.

Robert Bornstein

Transcript of Relevant Attachments

New York Consolidated Laws, General Business Law-GBS Sec. Deceptive acts and practices unlawful

- (a) Deceptive acts and practices in the conduct of any business, trade or commerce or in the furnishing of any service in this State are hereby declared unlawful.**

Sec. 190.60 Scheme to defraud in the second degree.

- 1. A person is guilty of a scheme to defraud in the second degree when he engages in a scheme constituting a systemic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property from one or more such persons.**

Sec. 190.65 Scheme to defraud in the first degree.

- 1. A person is guilty of a scheme to defraud in the first degree when he or she: (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more persons; or (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of \$1000 from one or more such persons;...**

ROBERT BORNSTEIN
736 WEST END AVENUE, APT. 10D
NEW YORK, NY 10025

January 27, 2020

**Re: C 200140PPM
CD 7, Block 1243, Lot 57
Manhattan No. 25, 1/22/2020**

Commissioners,
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

It appears that, at the January 22 Planning Commission hearing, the conduct of each of the speakers, in support of the proposal for the sale of the City owned West 96th Street subway power generating station property by the City to a private developer, Fetner, intentionally failed to inform the Planning Commission of their conduct in violation of the New York City Charter, Chapter 15, Section 384. That provision of the Charter requires approval of the Mayor, notice to the public of the sale, and competitive bidding. It is the controlling dispositive law concerning a sale of City owned property. Moreover, the City Charter is not just any municipal regulation, but is the constitutional set of rules that provides the essential governing principles of the municipality. It should be axiomatic that those constitutional rules should be scrupulously applied by the City's commissions, agencies, and boards. It certainly appears that many of the speakers who presented information in support of the proposal, had previously engaged in fraud against the City by acting in concert to violate the City Charter, and are currently engaged in fraud against the Planning Commission by not fully disclosing their previous conduct and taking remedial measures.

The operative terms of Section 384 provide:

“Disposal of property of the city. No real property of the city may be sold, leased, exchanged or otherwise disposed of except with the approval of the mayor and as may be provided by law unless such power is vested in another agency.
Except as otherwise specifically provided by law: The mayor may authorize the sale or lease only for the highest marketable price or rental, at public auction or by sealed bids and after advertisement for at least thirty days in the City Record, of any real property belonging to the city or any interest therein...” [emphasis supplied].

During the prior Community Board 7 hearings of November 20, and December 3, 2019, it was disclosed and repeated at each hearing, by Board selected speakers, that the Department of Housing Preservation and Development was bargaining with the City for the sale of the City owned power station property to a private developer, the Fetner organization. During those November 20 and December 3 hearings, I informed all present, which included the speakers for the proposed developer, Fetner's attorney, a representative of the Department of Housing Preservation and Development, and Community Board 7 members, all of whom were the main proponents of approving development of the proposed Fetner 23 story building at a site that included the City owned subway power station, that their conduct involved in trying to acquire this property was in violation of City Charter, Section 384. During the November 20th hearing I also presented the Board with a copy of the text of that provision of the City Charter, stating that the Charter was then being violated by negotiations for a direct sale to the proposed developer, without even notice to the Mayor, and without competitive bidding. I further requested that the text be included as an exhibit to the Board's proceeding. During the December 3rd hearing, I additionally provided a written opposition statement that included reference to this City charter violation, and also requested that the document be made an exhibit to the proceedings.

The very same speakers, who were proponents of the sale of the City owned property at the previous Community Board hearings, Fetner's attorney, the Department of Housing Preservation and Development representative, and the Chairman of Community Board 7, spoke as proponents for the sale at January 22 Planning Commission hearing. There can be no doubt that these speakers who were proponents of the proposed sale of the City property were actually informed that the nature of their conduct was in violation of City Charter requirements for the sale of City property, insofar as it concerned the manner in which they were attempting to complete the sale, i.e. without Mayoral approval, and without competitive bidding. There can be no doubt that, after being placed on specific notice that such a sale would violate Charter provision, Section 384, that any further conduct in attempting to transfer this City property to the proposed developer would be intentionally fraudulent. There is no doubt that proponent speakers failed to mention anything to the Planning Commission concerning the applicability of City Charter, Section 384, or that they were placed on notice concerning violation of that Charter provision.

In this respect, the conduct of those proponents who spoke at the January 22 Planning Commission hearing engaged in conduct, if measured by the New York Rules of Professional Conduct, which regulates attorney behavior before tribunals, may certainly be viewed as fraudulent and as an impermissible cover-up. New York Rules of Professional Conduct, Rule 3.3 (b) provides:

"A lawyer who represents a client before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures including if necessary disclosure to the tribunal." [emphasis supplied].

It must be further considered that the speaker for the chief beneficiary of the proposed sale at that January 22nd hearing was a lawyer, the attorney for the Fetner organization. There is no doubt that Fetner's attorney failed to make necessary disclosures to the Planning commission during her

presentation, or take any remedial action, such as requesting that the Department of Housing Preservation and Development withdraw its application for the sale of the City owned property to the Fetner organization.

Although a speaker for the Department of Housing Preservation and Development informed the Planning Commission that the agency was in negotiation with the City for the sale of the property, that statement fell far short of providing all of the information that needed to be disclosed. Absolutely no mention was made by that speaker, or any of the proponent speakers, of the applicability of City Charter, Section 384, and their activities in violation of its terms. With respect to the proposed sale, two measures needed to be taken by Fetner's lawyer, in order to comply with the City Charter and her obligations to your tribunal, first, coming clean with all of the information concerning Fetner's conduct, and her knowledge of the applicability of City Charter, Section 384, in attempting to purchase the City owned property, and second, a withdrawal of the proposal to purchase the property.

Moreover, as a public tribunal, the Planning Commission should expect no less of a candid assessment of such relevant fact from other advocates appearing before it, and no less than appropriate remedial action, especially from representatives of City agencies and boards. It is submitted that such representatives should be held to the same standard of advocacy required of attorneys. In this respect, attorneys representing the Department of Housing Preservation and Development should similarly disclose its agents' activities in negotiating for the sale of the property in violation of City Charter, Section 384, and withdraw the application that the agency submitted to the Planning Commission for the disposition of the city owned property.

On the basis of the aforementioned conduct of the proponents for the sale of the city owned subway power station, the Planning Commission must disallow the sale of that property. The Commission has no other alternative. To approve the sale would be a continued violation of City Charter, Section 384, and would be arbitrary and capricious.

In addition to the abovementioned mandated reason to deny approval of the sale of the city owned property, other compelling reasons for denial exist, as extensively set forth in my letter, dated December 12, 2019. As stated in that letter, relevant Metropolitan Transit Authority policy regulations concerning approval of sale of property in which the MTA has an interest have not been complied with, as well as New York City Board of Estimate restriction concerning the future development of the property to entirely social service purposes, would additionally be violated by a sale to the Fetner organization for a project only partially and questionably allocated to such purpose. As further stated in that letter, local soil liquidity conditions may present foreseeable endangerments to adjacent property and to personal safety.

Accordingly, I request that the Planning Commission deny the current proposal to allow the sale of the West 96th Street subway power generating station property to the Fetner organization, or to any other entity.

I further request that this letter be included as an exhibit in the proceedings concerning any decision by the Planning Commission in this matter.

Additionally, your confirmation of receipt of this letter, and any comments or questions you wish to provide would be appreciated.

Respectfully submitted,

Robert Bornstein

ROBERT BORNSTEIN
736 WEST END AVENUE, APT. 10D
NEW YORK, NY 10025

December 12, 2019

Bill DeBlasio
Office of the Mayor of New York City
City Hall
New York, NY 10007

Corey Johnson,
Speaker, City Council
City Hall
New York, NY 10007

Commissioners,
City Planning Commission
120 Broadway
New York, NY 10271

Patric J. Foye
Chairman and CEO
Metropolitan Transit Authority
2 Broadway
New York, NY 10004

and

Andrew Byford
President
New York City Transit Authority
2 Broadway
New York, NY 10004

Sirs:

I call your attention to a matter of serious public concern.

A valuable New York City (City) and Metropolitan Transit Authority (MTA) transportation asset is targeted to be squandered by public officials. Currently, public officials, members of the Department of Housing & Development, Community Board 7, and others, are fast tracking approval of a sale of City owned real estate, an MTA electric power substation, from City ownership and MTA interest, to a private developer, Fetner Properties, for the proposed construction of a 23 story high rise building upon the site. The sale would be counterproductive to future establishment of a non-polluting, renewable, lower cost, power generation future use of the site, which is ideally located as a functional component of a system that could be developed for that purpose. On the other hand, the proposed high-rise building for that site would unrealistically increase the population density of the neighborhood, and would overburden neighborhood public resources. The proposed building, subsidized with public funds, would mostly benefit the wealthy and merely offers a limited amount of “affordable” rentals to a yet to be determined deserving class of future tenants. These “affordable” rentals would include cramped “micro-apartments”. The sale, as currently structured, would violate City Charter provision requiring Mayoral approval and competitive bidding, as well as improperly circumventing MTA review provisions. Construction activities at the site could amount to a dangerous condition that may amount to a reckless endangerment, and may be criminally prosecutable.

The asset is the decommissioned subway power generating substation building, on a site located on West 96th Street, between Broadway and West End Avenue.

This location is approximately 2 blocks from the Hudson River. According to an Upper West Side Newsletter website post, dated November 15, 2019, it appears that tunnels going from substation site to the subway, located less than one half block away from the building in the opposite direction, were created during construction of the substation. It further appears that the tunnels contained electric power cables from the substation that connect to the subway. Those cables very likely still exist.

This substation site is a valuable City and MTA asset because it would only require a 2 block length of cable to connect the subway, via this site, to underwater turbine electric power generators, which could be constructed in order to harness the tidal power of the Hudson River. Future construction of such tidal power generation would cleanly and cheaply supply electric power to the subway system. There are numerous systems in existence for the generation of electricity from tidal energy. One such example, the Roosevelt Island Tidal Energy Project, has already demonstrated the feasibility of such power generation in the East River next to Roosevelt Island (For technical specifications, see websites, CBS News, dated August & 2013; turbinegenerator.org, dated January 28, 2012; and Tethys, undated). As stated by ANSI blog, dated January 8, 2016, the Roosevelt Island project, when fully established as a completed system, is said to generate enough electricity to power 75,000 homes. That amount of electric power translates to more than a lot of subway train rides, at what should be reduced rates for the power use of those rides, and potentially free up more money available to cover ever increasing subway operating costs. Given the width of the Hudson, such a system could be greatly scaled up to

generate many more times such an amount of electric power. Ultimately, if underwater electric power generators of sufficiently larger size and amount are constructed and operated in conjunction with this site, it would be a source of green energy, a reduction of fossil fuel consumption, and it would produce renewable non-polluting power, resulting in improved air quality and a decrease in global warming emissions. The existing building at the site should be large enough to house necessary equipment, control panels, and operating personnel.

The substation building at the site, although decommissioned as a power generating station and in disrepair, has historical and architectural significance, and is worthy of restoration. The substation building is on a site adjacent to the Riverside-West End Historic District Extension II (LP-2464). According to the Upper Westside Newsletter, website, dated November 11, 2019, at the turn of the 20th Century, architects Van Vleck and Hunter were commissioned to design a substation that would fit the aesthetic of the neighborhood, and some of the details of the building, such as carved ornamentation, a dormered mansard roof, and two-story metal framed bays, compare to civic buildings like firehouses and libraries.

A Department of Housing Preservation & Development proposal, titled “Positive Declaration”, dated May 1, 2019, stated that it was “seeking disposition authority for one city-owned property within the project area block 1243 lot 57”, a decommissioned electric power generating facility. The proposal also stated that Fetner Properties was the “plan sponsor”, but did not indicate any mention of the value of the proposed site or any proposed amount for the sale of the property, or the sale values of westerly adjacent properties needed to complete the “project area”. Similarly, no development cost was stated in the proposal. Although the proposal described the project as allocating 60% of the apartments for market rate tenants, and 40% for “area medium income tenants”, Fetner’s website exclusively describes the developer as an operator of luxury buildings. In comparison, according to the Real Deal website, dated May 31, 2017, the developer of the easterly adjacent property, Extel Development Corporation, may have paid as much as \$100 million for the property.

An artist conception of the proposed building, depicting a windowless wall facing the Hudson River, along with a sketch of the building basement floor plan, was displayed at a Community Board 7 hearing on November 20, 2019.

If carried out, as described, in the proposal and artist renderings, development would be violative of several laws and public policies.

The New York City Charter, Section 384 requires that the Mayor is the public official who must authorize the sale of city owned real estate, unless such authority is expressly vested in another agency. Section 384 also provides that the sale itself requires a public hearing, with a review of the land use, and impact of the proposed sale, and that a public auction or sealed bids must be utilized. It is not believed that the Department of Housing Preservation & Development has vested authority to sell the City owned substation property. As contemplated, a sale authorized by a City agency that transfers title of the real estate from City ownership to the proposal’s predetermined sponsor, and sole prospective purchaser, would unlawfully circumvent Sec. 384 Mayoral approval and competitive bidding requirements.

Currently, efforts by the developer and any City agency to have the title transferred already amount to an unlawful circumvention of these City Charter requirements. If such a transfer otherwise resulted from a previously unrecorded deed or undisclosed contract of sale, it may amount to fraudulent circumvention of Sec. 384.

Additionally, an MTA exercise of review authority exists concerning the disposition of real estate used in its operation. According to the MTA Charter, the MTA Finance Committee is responsible for any recommendation concerning real estate matters, and the MTA Capital Oversight Committee is responsible for monitoring contract awards, requiring that such awards are subject to competitive bidding requirements for sole contracts. According to MTA Real Estate Department policy, the sale of real property includes its interests in real property, and any sale can only be undertaken after public advertising for bids and for not less than fair market value. With respect to such sales, MTA policy requires that an evaluation of "MTA controlled property" must be made which includes whether the property is expected to be needed for MTA operational purposes in the future. As contemplated, a transfer of the site directly to the proposal's sponsor, without an MTA review, appears to unlawfully circumvent the MTA's legitimate interest in retaining the property for its legitimate future operating use, as well as the MTA's bidding policy, and any agency authority it has to have a say in the transfer.

Additionally, a New York City Department of Housing Preservation & Development "Notice of Completion of the Targeted Draft Environmental Impact Statement" dated October 16, 2019, discloses that on June 11, 1990 the New York City Planning Commission approved disposition of the substation site, restricted to social service purposes, and that on July 19, 1990 the New York City Board of Estimate approved disposition on its further resolution that new development of the substation property as well as the adjacent property it is combined with, be devoted to not-for-profit or social service uses. The proposed building project of mixed income, based affordable apartments with market rate apartments, would not be a devoted use, since it is not entirely restricted to required purposes, and so, violates the existing City development mandate.

Additionally, due to "project area" site conditions and site conditions of the adjacent 732 and 736 West End Avenue buildings, it is foreseeable that construction activity upon the "project area" site may amount to criminal activity in violation of New York Penal Code Section 145.25, Reckless Endangerment of Property, and potentially in violation of Sections 120.20 and 120.25, Reckless Endangerment in the Second and First degree, with respect to risks of serious physical injury or death to a person. Section 145.25 is violated when a person recklessly engages in conduct which creates a substantial risk of damage to the property of another person in an amount exceeding \$250. In this respect, there would have to be subsurface excavation of most of the entire "project area" site for constructing a basement that is coextensive with the floor plan footprint of the proposed building. The extensive area of the basement has been disclosed by the proposed developer in a floor plan diagram. Such excavation presents a foreseeable risk that could destabilize and damage the adjacent 732 and 736 West End Avenue buildings. It is public knowledge that a retaining wall collapse and exposure of the foundation of a building adjacent to a construction site undergoing excavation had, occurred in the neighborhood, in 2007, at Columbus Avenue and 97th Street, several blocks away from the "project area" site, according to reports from the Associated Press, dated July 26, 2007, the New York Times, dated July 27, 2007, and

WNBC, dated July 26, 2007. The foreseeable subsurface instability risk is aggravated by an underground stream that flows under the “project area” site and these adjacent buildings. Subsurface liquidity should foreseeably inform the developer of the further risk of subsurface instability. This underground stream is indicated in the public record of a New York City survey map of the vicinity. Insofar as it was disclosed by the syllabus for the December 3, 2019 Community Board 7 hearing, the developer, Fetner, has entered the Brownfield cleanup program, the developer should be aware of subsurface conditions, including underground water runoff. The developer has (although perhaps unintentionally) demonstrated his foreseeability of such risks to adjacent buildings by disclosing an artist conception sketch of the proposed building, that does not provide windows in an upper floor portion of a wall that would otherwise have a Hudson River view. This configuration only makes sense if the existing adjacent West End Avenue buildings are expected to be replaced by taller buildings equivalent in height to the proposed high rise building. Given the fact that occupants of 732 West End Avenue own their apartments, and the fact that most of the occupants of 736 West End Avenue are market rate tenants, whose rents handsomely reward the landlord, it is next to impossible that the title holders of those buildings, adjacent to the “project area” site, would ever voluntarily demolish those buildings. That leaves only the consequence of adjacent “area site” construction damage as a reason for the discontinued existence of these close proximity West End Avenue buildings.

The New York State’s standard judge’s charge to a jury concerning when Reckless Endangerment of Property occurs, states that a defendant may be found guilty:

“when a person engages in conduct which creates a substantial and unjustifiable risk that such damage will occur, and when he or she is aware of and consciously disregards that risk, and when such risk is of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.”.

Clearly, the developer, Fetner, must be aware of conditions that would create risk. Even assuming that the developer could somehow be unaware of these risks, the unintended consequences leading to property damage, serious physical injury, and/or death, is sufficient for conviction. See, People v. O’Conner 953 NYS 2d 552 (2012). Moreover, where a substantial risk of property damage or such injuries could be found to exist, it is not necessary that any such results must actually occur. See, People v. Williams 886 NYS 2d 72 (2009). In these respects, where there is any realistic possibility of even a partial building collapse, the grave risk of serious physical injury or death of an occupant would arise, and where a builder recklessly disregards known risks, such conduct should amount to the felony of Reckless Endangerment in the First Degree. It would be insightful to note, that it is public knowledge that a building under construction collapsed at 100th Street and Broadway collapsed, injuring four people, according to an NBC report, dated July 14, 2005. Although the circumstances that could foreseeably create such risks have not yet been acted upon by the developer, and no reckless endangerment crime has presently been committed, that status may change if excavation activities commence upon the “project area” site.

The further question, that most likely has not been sufficiently addressed by any City agency, is whether or not any City agency has investigated the suitability of the combined “project area” site below ground subsurface strata for extensive excavation, followed by construction of a massively heavy building, and whether or not consequential reaction to such activity would cause irreparable damage to the adjacent West End Avenue buildings.

It seems that public officials who have exercised approval authority in this matter have, so far, kept other public officials who have controlling authority out of the decisional loop.

It does not appear that the New York City Department of Housing Preservation & Development wanted the essential parties necessary for ultimate approval of the proposal to know about it. That agency’s proposal, titled “Positive Declaration”, dated May 1, 2019, specified 23 c: [sic] enclosures, which included numerous public officials and agencies, but there was no enclosure notifying the Mayor, or the MTA. Given City Charter and MTA regulations concerning any past, present, or future sale of the substation site, the Mayor and the MTA should have been notified. Similarly, the “Notice of Completion of the Targeted Draft Environmental Impact Statement, dated October 16, 2019, specified the same Cc: enclosures, and again did not notify the Mayor or MTA. Although it appears that the City Law Department was notified by that agency’s Cc:s, it does not seem that the Law Department has weighed in on the matter, or has yet realized the illegality of any City real estate transfer by city agency alone to a private developer, the illegality of doing so without competitive bidding, the unlawfulness of nonconformity with required purpose restricted to not-for-profit social service use, and MTA review. Nor does it appear that the Law Department is aware of conditions that could lead to the commission of crimes, due to reckless endangerments.

It further appeared that deals, unnoticed to Mayor or MTA, were already in progress for the developer, Fetner to acquire the substation along with all of the privately held properties at the entire “project area” site. According to the “Notice of Completion of the Targeted Draft Environmental Impact Statement”, dated October 16, 2019, Fetner was already in contract to purchase the Salvation Army and NAACP sites within the “project area”. According to a West Side Rag website post, dated 10/18/19, Fetner, already has plans to relocate the current Salvation Army storefront, currently located on one of the properties westerly adjacent to the subway substation site, to the proposed building upon completion, as stated by Fetner’s lawyer. Although there is no specific mention of the other westerly adjacent property, the NAACP building, this website indicates that the completed building “will house community service organizations” [plural].

An elected public official had previously claimed to have engaged in conduct that amounts to a misuse of public authority, by arranging, the sale of the City MTA property to a non-governmental organization.

Several years ago, I attended a public meeting that was conducted by Gale Brewer, (the current Borough President) and Helen Rosenthal (the current City Councilwoman), at the Salvation Army, Williams Residence, located around the corner from the 96th Street substation site. My recollection is that, at the Williams Residence meeting, it was either Helen Rosenthal, or Gale Brewer, who stated that she had arranged for the sale of the 96th street substation site to a non-governmental community organization for the sum of one dollar (\$1), for the purpose of constructing affordable apartments in a high rise building, especially to house senior citizens (I had previously thought that Rosenthal made the claim, but a neighbor who attended that meeting and recalled the claimed transfer of the site for \$1, believed that it was Brewer who made the claim). The organization that the Councilwoman claimed had received this transfer was certainly not the current proposal sponsor, Fetner Properties. Unfortunately, I do not recall the name of the community organization that the claimed transfer was supposedly made to. Years later, a Notice circulated in my building a few days before a scheduled November 20, 2019 Community Board 7 hearing. The Notice contradicted that claim by indicating that the subject of the hearing was an “Application to the Department of City Planning by NYC Housing & Preservation for the disposition of one city-owned property (Block 1243, Lot 57, the former MTA site) to allow the construction of a 23-story mixed income building as well as community facilities”.

This contradictory information concerning ownership of the substation site, called to my attention by the Notice of the November 20 Community hearing, the issue of ownership of the property with respect to any disposition of the substation site. After an internet search, I discovered the May 1 Department of Housing Preservation & Development proposal, Absolutely no mention of any prior transfer of the property to any organization is stated anywhere in that proposal. In considering this information, the question of the lawfulness of any transfer of the substation site property glaringly arose. How could real property be stated by the Notice and the proposal to be “city owned”, when a public official elected to a high City office previously claimed to have arranged for the transfer of that property to a community organization? Both of these contradictory assertions indicate that something may not be genuine.

According to my search of City real estate records, title to the property is recorded as vested in the City, and no deed has been recorded concerning the alleged prior sale of the property. However, it is possible that a previous transfer could have been made and not filed, or that a prior undisclosed contract to sell the property exists. If so, the current hearings may merely amount to a whitewash of such an irregularity. In another search, I could not find any public hearings or any other actions taken upon the Councilwoman’s claimed sale of the property during the years prior to the November 20, 2019 hearing Notice.

On November 20, 2019, Community Board 7 conducted a publically attended meeting, which was a joint hearing with another community board.

During the hearing, when I asked whether there was any competitive bidding for the proposed substation site, there was no reply from anyone in the room, including all board members and Fetner’s attorney. On a related note, one board member, during subsequent board discussion much later,

blurted out a comment, unresponsive to the joint-boards' discussion of the moment, that "We don't have a clue as to what the City is selling the property for."

The architectural drawing of the proposed 23 story building was shown, and it depicted a continuous windowless wall above the roofline of the westerly adjacent 736 West End Avenue building (although not visible from the perspective of the drawing, very likely adjacent to the 732 West End Avenue building as well). When I asked about this wall facing the 736 West End Avenue building, the architect of the proposed building stated that the wall would contain no windows. I realized that this design would deprive the top 10 or so floors of the proposed building, which would ordinarily have a Hudson River view, from having any river view from that wall. Such construction would certainly diminish the desirability and rental value of proposed building apartments along the wall. This depiction presented the ominous possibility that, in the foreseeable future, the adjacent 732 and 736 West End Avenue buildings are expected by Fetner to be demolished, and replaced with yet another 23 story building on the 732 and 736 West End Avenue sites that would block any potential river view from the proposed building.

A cleanup of the toxic waste runoff at the proposed site was discussed by the joint-boards and the public, and an engineer, working on the proposal, stated that the site was already entered into the "Brownfield" cleanup program run by the New York Department of Environmental Conservation and the Department of Health, and that Fetner Properties will be required to "remediate" the development of the site. It would appear that Fetner must have been aware of the subsurface flow of water at the proposed "project area" site. It would also appear that Fetner was one step closer to assuming control of the site, and is contemplated to be the eventual title holder of the site.

One negative impact upon the neighborhood, raised by public commentary, would be the further burden to the already overcrowded 96th Street subway station and nearby bus routes. Another issue discussed was the negative impact of the market rate apartments, to be occupied by wealthier tenants, who will most likely own an automobile, upon increasing the automobile density of the neighborhood, and resulting competition for ever decreasing street parking spots, as well as resulting demand pressure that would raise rates for local parking lots. However, while displaying a drawing of floor plan of the basement, which depicted the area of the basement as coextensive with the area of the proposed building, the architect stated that there would be no underground parking facilities.

Discussion also included the issue of the small size of micro-apartments (which would be equipped with Murphy beds that folded up against the wall) being unsuitable for contemplated elderly tenants. It was, however, conceded by one board member that the amount of elderly tenants was not predictable, because any preference for senior citizen tenant applications would be discriminatory. Consequently, the targeted affordable tenant population base was discussed as a matter of speculation. No agreement could be reached concerning the makeup of the expected tenant population. As one person responding to the West Side Rag website post, dated November 21, 2019, concerning the November 20th board hearing stated:

“I highly doubt many seniors will be moving into a 350 square foot apartment. Most seniors already in the neighborhood likely either own their own place or live in some kind of rent-regulated apartment. As such, they will not give up their apartments for such a tiny space.”.

During the hearing, the board members opened the hearing for public commentary, passing a microphone to neighborhood persons in attendance. My commentary remarked upon the past claim of a Councilwoman, that she arranged for the transfer of City owned and MTA controlled property to private citizens without a hearing, and the comparison of that claim to the contradictory proposal statement that the property is currently City owned but may be sold to a single developer. I further pointed out that in both versions a sale was or is contemplated to be without competitive bidding. I further commented that any sale of the property would be in violation of the City Charter and MTA regulations. After a few minutes, I was set upon by a board member who placed himself squarely in front of me, repeatedly demanded that I stop talking, and demanded that I give him the microphone. Notwithstanding that continued harassment, I hurriedly and minimally completed commentary, concerning the substation as an MTA asset, and the green alternative use of the substation site in the future development of Hudson River under water electric power generation for subway operations. Upon passing the microphone, my request to hold the hearing in abeyance until these issues could be investigated was entirely ignored, and my additional request to include, as an exhibit to the hearing, documents, that contained relevant sections of the City charter and MTA regulations, was acted upon only to the extent that the harassing board member took them and placed the documents on a table around which the board members sat. These documents remained there, unread by any member of the joint-board, throughout the proceedings.

During their deliberation before voting upon the proposal, it was agreed by board members to include revising the ratio of affordable apartments from 40% to 75%. Although this should seriously decrease profits that could have originally expected by the sponsor, Fetner, in any future management of the proposed building, there was no objection or comment interposed by Fetner’s lawyer.

With the exception of one abstention, the vote was to approve the proposal, and include the recommendation for increased affordable apartments to 75%.

Afterwards, the proposal was scheduled to go before the full community board on December, 3, 2019, a mere 13 days later. Afterwards, the proposal was set to go before the full community board on December, 3, 2019, a mere 13 days later.

On December 3rd Community Board 7 conducted another hearing, which according to a summary titled “Community Board 7/ Manhattan December 2019 Resolutions”, was held jointly with Community Board 7, the Land Use Committee, and the Housing Committee.

The conclusion strongly follows that Fetner is not simply contemplated to be a contractor to just build the apartment complex, and/or manage the property, but that Fetner intends to be the owner of it. The

summary stated that, subject to conditions and strong recommendations Community Board 7 Approves the proposed disposition of the substation property to Fetner Properties. Additionally, as reported by the Patch website, dated December 5, 2019, concerning the December 3rd hearing, a representative of the Department of Housing Preservation and Development spoke about giving the site to Fetner. The summary additionally states that Fetner has formally assumed responsibility for the substation site by filing under the Brownfield cleanup program to clean the site. The summary also resolved any further question concerning Fetner's acquisition of the privately owned properties in the "area site", stating that Fetner currently owns those properties.

During the Board discussion, inquiry was made, asking what was the purchase price of the substation property, and a reply was made that the City Housing Preservation and Development was negotiating with the City concerning the price. Several possibilities, all improper, arise from that reply. A City agency is negotiating with the City on behalf of a private developer, Fetner, to transfer title of City property to that private developer. The City has not yet taken any official action to deed the substation to the private developer, and the contemplated sale price by the City is so undervalued that the person making the reply was embarrassed to disclose the price in a public hearing. Alternatively, a cover-up, that whitewashes a previous transfer of title for one dollar, by the subterfuge of title transfer through the use of an unrecorded deed or by an assignment of a prior undisclosed contract of sale to a third party, has or is about to be used to transfer title to Fetner.

The summary, stated that 39.8% of the apartments would be allocated to affordable housing, but continued the recommendation that 75% of the apartments be set aside for affordable housing. However, since the vote upon the proposal did not include the 75% recommendation, it appears that Fetner had, behind closed doors, persuaded the Boards to drop the recommendation of a 75% set aside for affordable housing. The summary also indicates that prospective tenants of the "affordable" 39.8% of the apartments may range from 10% of those apartments rented to the homeless, to persons or families earning 130% of Area Median Income, up to \$138,710 annually. Although the summary included a condition of outreach by community organizations to ensure that local residents, particularly seniors, be informed of the availability of affordable apartments in the proposed building, none of the discussion concerning any potential for senior citizen demand for such apartments yielded any expectation of such a demand. It therefore appears that there is no clearly formulated public purpose for what would necessitate the spending of public funds in support of a subsidized portion of the proposed building.

Because Community Board 7 had informed some of my neighbors that public commentary would be limited to one minute for each person to speak, I prepared a brief 3 page written statement of my opposition to the 23 story building proposal, and my request to postpone the hearing pending further investigation of the circumstances. When it was my turn to speak I handed the written statement to a board member, orally stated that one minute limit was not sufficient to state its contents, and orally followed up with a few sentences concerning the green alternate subway Hudson River underwater electric power generator use of the site, as well as the number if violations of law that would be involved in the transfer of the substation property. As in the joint-board meeting before, the written statement remained on a table, unread throughout the proceedings, including the vote upon the

proposal. As nycissues.org stated in response to the West Side Rag website post, dated November 21, 2019, concerning the previous Community Board 7 joint hearing:

“Unelected and politically appointed by the Borough President and City Council, Community Boards wield a lot of power in decisions made on our behalf. As an organization representing a community, they make it appear that their resolutions represent the majority of their district.”

As a private individual with a previously articulated, but partially suppressed, opposing view, it was apparent that Board 7 members intended that my voice, as well as other nonconforming voices, be so constricted at the hearing, as to be insignificant.

With the exception of one vote against, the vote was to approve the proposal.

Community Board 7 scheduled a hearing to follow the vote, for January 17, 2020, seven weeks later, because a sooner date was not practical, possibly as a follow up upon unresolved issues unrelated to the proposed transfer of title to Fetner. The proposal, awaiting agreement upon price, in order to immanently transfer the substation property, appears to be fixed as to that remaining detail. Additionally, according to the Patch website, Manhattan Borough President Gale Brewer will be the next to weigh in on Fetner’s planned development in the City Uniform Land Use Procedure, and after that, the project will be voted upon by the City Planning Commission and the City Council.

It certainly seems that Mayoral and MTA investigation, involvement, and action, is both necessitated, and timely. It further appears that the City Council and the Planning Commission may also need to take such measures. The existing information presents a veritable “What’s wrong with this picture?” jumble of proposed misuse of a public asset, foreseeable negative neighborhood impact, serious improprieties, outright violations of law, and usurpation of government authority. This information also presents the future possibility of endangerment of property and persons in the vicinity of the proposed construction site. It appears to me that several unresolved questions arising from all of the circumstances, require further investigation. These issues strongly suggest that appropriate Mayoral and MTA authority be exercised to direct that all hearings and proceedings concerning the proposal be held in abeyance until appropriate City and State authorities look into these circumstances. Accordingly, I request that all appropriate legal measures be immediately be undertaken for that purpose.

Respectfully,

Robert Bornstein

Cc:

Jumaane D. Williams, Public Advocate
Scott Stringer, Comptroller
James E. Johnson, Corporation Counsel, Law Department
Cyrus R. Vance, Jr., District Attorney, New York County
Leticia James, New York State Attorney General
New York Times
Daily News
New York Post
CBS News
NBC News
ABC News
Spectrum News NY 1



RESOLUTION

Date: December 17, 2019

Committee of Origin: Land Use Committee, Page Cowley and Seema Reddy, Co-Chairpersons

Joint with Housing Committee, Louisa Craddock and Melissa Rosenberg, Co-Chairpersons

Re: 266-270 West 96th Street (Broadway-West End Avenue.) Application #C200140PPM to the Department of City Planning by NYC Department of Housing Preservation & Development for the disposition of one city-owned property (Block 1243, Lot 57, the former MTA site) to allow the construction of a 23-story mixed use, mixed income building, as well as community facilities.

Full Board Vote: 36 In Favor 0 Against 3 Abstentions 1 Present

Committee Vote (Land Use and Housing): 11-0-0-1. Non-Committee Board Members: 4-0-0-0.

Summary of Application:

The City of New York through the Department of Housing Preservation & Development has filed ULURP application No. #C200140PPM to enable the disposition of City-owned property at 266 West 96th Street. Block 1243. Lot 57. The property would be acquired by Fetner Properties, a private developer. The City-owned site consists of a long unused IRT subway substation. Adjacent to and west of the substation are two lots previously occupied by the Salvation Army and the NAACP Roy Wilkins Center, Inc.; Fetner currently controls these two sites.

Fetner proposes to build a single residential building on the three lots. The proposed building would rise 235 feet excluding a bulkhead with a setback from the building line at 155 feet. The building would contain 171 rental housing units ranging from "compact" studios to three-bedroom apartments. Sixty-eight (68) of the units (39.8%) would be permanently allocated for affordable housing. Ten percent (10%) of the affordable units (approximately seven units) would be set aside for rental to homeless individuals or families. The ground floor would contain community facility space and would rehouse the Salvation Army, along with other tenants. The second floor and cellar would contain tenant amenities, including a fitness center for tenant use. The developer has committed to provide affordable-rate tenants access without additional charge.

The proposed building would retain the lower stone portion of the façade of the existing IRT substation building at the ground floor and replicate that effect across the full width of the new building, and would incorporate two cartouches attached to the brick portion of the original façade. The bulk of the façade above the lower floors would be common red brick with various stone accents.

The proposed development conforms in all respects to applicable zoning for the combined sites (R10A – Contextual Zoning with the "Inclusionary Housing" program).

The project site is on the south side of West 96th Street between Broadway and West End Avenue. The corridor along West 95th, 96th and 97th Streets between Central Park West and the Henry Hudson Parkway has consistently been identified as among the most dangerous thoroughfares in CB7's District. It is also less than one block away from a public elementary and middle school at the corner of West 96 Street and West End Avenue.

Because the subject property was used as a subway substation, it was examined preliminarily for soil and air contaminants which were found to be present. The developer has entered the New York State Brownfield Cleanup Program which provides for the submission of a protocol to assure the safe cleanup of any contaminants. Prior to the issuance of a building permit, the site would be required to be certified as successfully remediated by the New York State Department of Environmental Conservation, and the hazardous materials removed from the site; would be required to be disposed of in a manner consistent with the State mandates. The developer's filings under the

Brownfield Program, including its remediation work plans, will be publicly available with postings at the Community Board 7's District Office and the NYPL St. Agnes branch library, as well as online.

The allocation of apartments as between affordable and market rate is set forth on Schedule A attached to this resolution. The allocation of apartments within the affordable housing portion is set forth in Schedule B. Of note is that 29 of the 68 affordable units are to be reserved for individuals or families whose income is up to 130% of area median income (AMI) for the New York City region. A family of four earning 130% of AMI currently could earn up to \$138,710 annually.

The proposed building features several compact studios ranging in size from 265 to 380 square feet. The developer proposes to furnish these compact units with built-ins designed to maximize space in the units. Approximately 12 larger studios would be rented unfurnished.

At this time, 39.8% of the planned compact and larger studios and of the one- and two-bedroom apartments will be reserved for affordable-rate tenants.

Resolution approving application:

Subject to the Conditions and Strong Recommendations set forth below, Community Board 7 Manhattan ("CB7") APPROVES the proposed disposition of 266 West 96th Street to Fetner Properties.

Conditions:

CB7's approval of the disposition is subject to inclusion in a restrictive declaration recorded prior to the issuance of a Temporary or permanent Certificate of Occupancy of the following:

1. A requirement that the developer, through a recognized community-based organization, reach out to local non-profit agencies, including agencies serving senior citizens, to ensure that local residents, in particular seniors, are made aware of the availability of the affordable housing units and their eligibility to apply through a lottery to occupy those units; and that the developer provide support and/or assistance for those filling out applications for said affordable housing lottery.

2. That the developer, in cooperation with CB7, form a community construction coordination committee to include neighbors of the project and one or more members of CB7 for the purpose of ensuring that construction proceeds at the project site with minimal disruption to neighbors and to address any issues (including without limitation transportation and traffic issues) that may arise during construction; said community coordinating committee to convene no less frequently than once a month, under the auspices of the Community Board.

Strong Recommendations:

1. CB7 understands that the final mix of affordable housing units has not as yet been settled between the developer and the City. CB7 is concerned that a high percentage of the "affordable units" will be leased to individuals or families with annual incomes in excess of \$130,000. CB7 is unaware of the terms of the disposition agreed upon between the developer and the City and cannot specifically condition its approval on any particular mix of income levels for the affordable units. However, CB7 believes that it is reasonable, under all circumstances, to reserve at least 75% of the affordable units of each size (i.e., studio, one bedroom and two bedrooms) for individuals and families earning less than 100% of the AMI (\$74,700 for an individual and \$106,700 for a family of four).

2. CB7 understands that the NYC Department of Transportation is willing to provide for a curb extension at the southwest corner of 96th Street and West End Avenue, approximately one-half block from the subject property. The curb extension, however, cannot be built unless a "partner" is found willing to maintain the extension. CB7 urges the developer to consider becoming that partner. The curb extension will benefit the entire community, including tenants at the subject property.



32BJ SEIU Testimony
Testifying in Support 266 West 96th St.
May 7th, 2020
City Council Hearing

Good Afternoon, my name is Richard Iorio and I have been member of SEIU 32BJ for 10 years. As an essential residential worker, I am speaking today on behalf of my union to express our support for the proposed project at 266 West 96 St.

32BJ supports responsible development that creates good property service jobs that pay the prevailing wage. We are happy to report that Fetner Properties has made a credible commitment that the jobs created by this project will be good jobs that pay the prevailing wage. Additionally, throughout this crisis, Fetner has acted as a responsible employer and continues to put the needs of their essential workers first. The jobs created by this development will give workers from diverse backgrounds access to upward mobility and security. We need jobs like this more than ever.

In addition, we strongly support the much-needed permanently affordable housing this project will bring to the Upper West Side. This is housing that workers like me stand to benefit from greatly.

On behalf of the more than 6,000 32BJ members that live or work Community District 7, and our larger NYC membership, we respectfully urge you to approve this project.

Thank you.

L.U. 661 and a Pre L.U., the 266 West 96th Street Project Testimony

Good Afternoon Members of the New York City Council,

My name is Kishani Moreno and I am a unit owner at the Bromley Condominium located at [225 West 83rd Street](#) where I live with my husband and 8-year-old son. Our son is a third grader at a PS 9 elementary school where we are actively involved. I moved to the Bromley in 1998 and have owned 3 units there over the past 22 years.

My career has been focused in New York City nonprofits, over the past 23 years, and I am currently the proud Chief Operating Officer for Gay Men's Health Crisis (GMHC). While working in nonprofits the core of my work has centered in New York City supportive housing.

I am testifying in support of the proposal for [266 West 96th St](#) will deliver much-needed affordable housing to the Upper West Side and is an example of smart housing policy that targets a mix of incomes. It thrills me to see this site, which has been empty for as long as I have lived here, turn into something productive for our community. Especially during this uncertain economic time, this project is critical as it will bring investment, jobs, and affordable housing to our neighborhood. I support this project because affordable housing opportunities for low and moderate income New Yorkers are live saving. Finding affordable rent is close to impossible for folks that desperately need a safe place to live especially those who are formerly homeless. This project contains 15% of the units for formerly homeless New Yorkers. 40% of this project will remain permanently affordable. We need more projects just like this one in our community. I feel confident in this project especially with my colleagues at Salvation Army's taking residence on the ground floor.

As a long term advocate of supportive housing, I strongly urge the City Council to approve this project and help my community.

Thank you very much for the opportunity to testify.

Sincerely,
Kishani Moreno
<kishanicmoreno@gmail.com>