

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

SUBCOMMITTEE ON ZONING AND FRANCHISES

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October 6, 2009

Start: 9:30am

Recess: N/A

HELD AT: Committee Room
City Hall

B E F O R E: TONY AVELLA
Chairperson

COUNCIL MEMBERS:
Simcha Felder
Eric N. Gioia
Robert Jackson
Melinda R. Katz
Joel Rivera
Larry B. Seabrook
Helen Sears
Albert Vann
James Vacca
Alan J. Gerson

A P P E A R A N C E S (CONTINUED)

Vincent Rizzo
Member
Briarwood Organization

Joseph Morcelino
Attorney
MCM Realty Associates, LLC

Tony Morelli
Architect
MCM Realty Associates, LLC

Fabrizio Cavallacci
Owner
Café Reggio

Melanie Meyers
Attorney, Freid, Frank, Harris, Shriver and Jacobsen
City Island Estates, LLC

John Jenkins
Architect
Lessard Architectural Group
City Island Estates, LLC

Zachary Bernstein
Attorney, Freid, Frank, Harris, Shriver and Jacobsen
G&R 11th Avenue Associates, LLC

Adam Rothkrug
Parkway Properties, LLC.

Donovan Richards
Deputy Chief of Staff
Council Member Sanders

Derek Sanders
Owner
The Corner Deli

A P P E A R A N C E S (CONTINUED)

Georgette Fleischer
Concerned Citizen

Robin Goldberg
Concerned Citizen

Michael Sillerman
Land Use Counsel
Kramer Levin

Glenn Lowry
Director
Museum of Modern Art

David Pinnick
Hines Interests

Jean Nouvel
Architect

Renee Osgood
Coalition for Responsible Midtown Development

Al Butsell
Counsel, West 54-55 Street Block Association
Coalition for Responsible Midtown Development

Hugo Hoogenboom
Concerned Citizen

Justin Peyser
Coalition for Responsible Development

The Reverend Andrew Mead
Rector
St. Thomas Church

John Dorman
General Manager
The University Club

A P P E A R A N C E S (CONTINUED)

Maria Ann Conelli
Executive Director
American Folk Art Museum

Representative
State Senator Liz Krueger

Cori Green
Representative
Assembly Member Gottfried

Ruth Nordenbrook
Concerned Citizen

Vivian Schwimmer
Concerned Citizen

Myrna Izerssky
Concerned Citizen

Myra Heller
Concerned Citizen

Charles Isaacs
Concerned Citizen

David Schneiderman
Concerned Citizen

Daly Ravel
Concerned Citizen

Anita Rubin
Member
West 54th-55th Street Block Association

A P P E A R A N C E S (CONTINUED)

Lilah Sternglas
Concerned Citizen

Michael Reichman
Concerned Citizen

Marian Imperitor
American Institute of Architects, New York Chapter

Kathy Murray
Concerned Citizen

Rita Sue Siegel
Vice President
West 54-55th Street Block Association

John Harrison
Concerned Citizen

William Shea
Member
West 54-55th Street Block Association

Joan Stewart
Member
West 54th-55th Street Block Association

James Stewart
Concerned Citizen

Anne Morris
Director, Center for Logistics and Transportation
Baruch College

Peg Sarno
New York Landmarks Conservancy

A P P E A R A N C E S (CONTINUED)

Anthony Martone
The Warwick Hotel

John Hornick
Chief Engineer
The Warwick Hotel

David Achelis
Member
West 54th-55th Street Block Association

Jackie Thompson
Concerned Citizen

CHAIRPERSON AVELLA: -- Franchises to order. I do apologize for the delay in starting, but as I mentioned earlier, we do need quorum of Council Members before we can start, given the public hearing aspect of this committee. The first application is the Briarwood Plaza Rezoning, C060551ZMQ, an application to change within an existing R4 district a C2-2 district. We had the public hearing on this at my last meeting and there were some negotiations going on between then and now. And I'd like to call on the applicant to read the letter into the record as per the agreement, and introduce yourself.

VINCENT RIZZO: Thank you Council Member Avella. My name is Vincent Rizzo [phonetic]. I'm a member of the Briarwood Organization. The letter was sent on October 2nd, and it referred to the Bell Boulevard Rezoning, and in essence what we said is in response to the concern regarding the height of the proposed mixed-use commercial office community facility building. We agree that the proposed building will be no taller than three stories or 44 feet to the roofline.

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2 CHAIRPERSON AVELLA: Now just for
3 clarification, that would mean that the third
4 floor would still have the setback, correct?

5 VINCENT RIZZO: That's correct.

6 CHAIRPERSON AVELLA: As my
7 Committee Members know, this application is within
8 my district, and based upon the action that City
9 Planning took, which I would have taken if they
10 hadn't, to reduce the amount of the extension of
11 the commercial overlay and the agreement to reduce
12 the height of the building, I am now in favor of
13 the application. Any questions from Committee
14 Members? Seeing none, thank you.

15 VINCENT RIZZO: Thank you.

16 CHAIRPERSON AVELLA: And by the
17 way, let me introduce the members of my Committee.
18 Joining me are Council Members Robert Jackson,
19 Simcha Felder, Helen Sears and Al Vann, and we're
20 also joined by Council Member Jimmy Vacca, who has
21 an application before this Committee. Next
22 application is the Excelsior Residence
23 C0030129ZMQ, an amendment of the zoning map,
24 changing from an R3-2 district to an R6-A
25 district. Call up the representatives of the

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2 applicant. This application lies within Council
3 Member David Weprin's District. And he is in
4 favor of the application.

5 JOSEPH MORCELINO: Good morning.
6 My name is Joseph Morcelino [phonetic]. I'm the
7 attorney for the application. The application is
8 to rezone the subject area from an R3-2 to a
9 contextual R6-A zoning. This would serve two
10 purposes. One, it would allow the proposed
11 development on the vacant area, and it would also
12 bring the existing Monte Excelsior Development
13 adjacent into a zoning that would be compatible
14 with its density and its actual development. In
15 addition, this area is geographically separated
16 from the rest of the R3-2 district. It's about 22
17 feet elevated above the rest of the R3-2 district.
18 It's level with the Grand Central and with the
19 upper area of this kind of a plateau. So
20 geographically it's separated from the rest of the
21 R3-2 district, and the R3-2 has a lot of non-
22 conforming uses as well. The properties adjacent
23 to it is the side of the Creedmore [phonetic]
24 Facility, and you have another health facility
25 United Cerebral Palsy. The architect will present

1
2 different aspects of the proposal of the project
3 itself.

4 [Pause]

5 JOSEPH MORCELINO: I don't know if
6 it's on.

7 TONY MORELLI: Hello? Is it on?
8 Thank you. Hello Mr. Avella and Council. I'm
9 Tony Morelli [phonetic], the architect for the
10 project, and I'll just explain some of the
11 components very briefly. It's a 55,000 square
12 foot lot and what we're developing is a 3 FAR
13 building, which will create a building that has a
14 height limitation of 70 feet. So normally in an
15 R6--by creating the R6-A we have that height
16 limitation. It's not an R6 where you can go to
17 let's say 20 stories or anything like that. Also
18 there's a mandatory open space requirement of 65
19 to 70%. And what we're proposing here is a 45%
20 open space. So we have 25% percent more open
21 space than normally would be in an R6-A. Also,
22 all our off street loading, unloading, recycling
23 and all that is done off street, inside the
24 building, with a recycling center, a place for
25 bicycle storage; so it has many of the LEED

1 components that are not enacted in the zoning yet,
2 but LEED components that are, you know, would
3 create an environmentally better building. On top
4 of that, the roof, which is a flat roof, will be a
5 grass roof; will be an open recreation area. And
6 also we're looking at certain components of storm
7 water retention and recycling for purification,
8 waste to water systems and also maybe some thin
9 film or morpho-silica [phonetic] glass railings
10 and canopies. All part of let's say a LEED
11 program and all part of this new rezoning. The
12 total number of apartments is 142. We're
13 providing over 100% parking. There's about 160
14 spaces of parking, so we exceed one to one. The
15 zoning only requires 50%, but we know how people
16 live and things like that, so we know everybody
17 had, you know, a vehicle in this area at least.
18 So we're proposing 100% better parking. And
19 that's basically it.

21 CHAIRPERSON AVELLA: I think when
22 we had a meeting on this I had asked for an
23 elevation drawing. Do you have that that we could
24 see?

25 TONY MORELLI: It just shows this--

2 CHAIRPERSON AVELLA: [Interposing]
3 You've got to speak into the mic. Do we have a
4 handheld mic that's available?

5 TONY MORELLI: No, I'm all right.
6 I'm all right. So anyway, on that elevation Julio
7 [phonetic] will point out, that's the proposed
8 elevation and that's the existing building. And
9 it matches the heights contextually. We are in
10 the same height limitations as the adjoining
11 buildings, even though those buildings are in an
12 R3-2, which only allows a height of around 35
13 feet, the adjoining buildings are all six stories,
14 six and a half stories, around 65 feet, which
15 matches the elevation of our proposal.

16 CHAIRPERSON AVELLA: And for the
17 record, this was approved by the Community Board
18 35-0-1, with one abstention, and it was approved
19 by the Borough President's office. Any questions?
20 Council Member Jackson.

21 COUNCIL MEMBER JACKSON: Thank you,
22 Mr. Chair. Good morning. So this is how many
23 units of--

24 TONY MORELLI: [Interposing] 142.

25 COUNCIL MEMBER JACKSON: How many

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units of affordable housing?

TONY MORELLI: Right now we're looking still into it. It's market apartments right now. We did not put an affordable housing direct component into it.

COUNCIL MEMBER JACKSON: Okay is this rent--

JOSEPH MORCELINO: If this gets approved we are meeting with the Borough President's representatives to look into the possibility of affordable housing and also we have to make a decision whether it's going to be condos or rental, depending on the ability to finance.

COUNCIL MEMBER JACKSON: So the determination whether or it's condos or rentals has not been determined?

JOSEPH MORCELINO: No.

COUNCIL MEMBER JACKSON: So then my question as to what is the average price for an apartment; you don't even know what that is going to be.

JOSEPH MORCELINO: We don't know what the market could even bear at this point in time or what the cost of construction is.

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2 COUNCIL MEMBER JACKSON: So, and
3 you referred to you have to look into the
4 financing. I mean this project is not fully
5 financed at this point in time?

6 JOSEPH MORCELINO: It's not fully
7 financed at this point in time. We expect to get
8 financing in the spring of next year in 2010.

9 COUNCIL MEMBER JACKSON: But you're
10 asking for it to be, this area to be rezoned so
11 you can--in order to get the type of financing
12 that you need?

13 JOSEPH MORCELINO: The--if the
14 family wanted to go forward with this particular
15 project, this is the Monte family that owns the
16 Monte Excelsior next door, they could do so. But
17 they're waiting for a better financial climate
18 before they proceed with the financing for the
19 project.

20 COUNCIL MEMBER JACKSON: Okay. But
21 is there any guarantee that we're going to move
22 forward with this project? Based on what I'm
23 hearing there's no guarantee that it's moving
24 forward because the financial package is not in
25 place yet. Is that correct?

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2 JOSEPH MORCELINO: The financial
3 package could be in place, but they're waiting
4 for--

5 COUNCIL MEMBER JACKSON:
6 [Interposing] But it's not in place.

7 JOSEPH MORCELINO: It's not in
8 place, but they have no problem getting the
9 financing and they wouldn't have labored at this
10 application for seven years if they weren't
11 serious about it.

12 COUNCIL MEMBER JACKSON: Well I
13 know that there's good intentions for people that
14 labored on projects for longer than that and have
15 never come forward. I'm just trying to be
16 optimistic and realistic in questioning whether or
17 not the financing is in place to move forward on
18 this project.

19 JOSEPH MORCELINO: They--

20 COUNCIL MEMBER JACKSON:
21 [Interposing] Let me finish, sir. I'm sorry.
22 Because there are many projects that have been
23 started, as you know, where the bubble has burst
24 with the economic downturn, that are standing
25 there, skeletons in the sky. We all know that, in

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2 New York City, in Miami, all over the world. And
3 so you, on behalf of your clients, are asking for
4 a zoning change and there's no guarantee that
5 there's going to be financing for the project.

6 JOSEPH MORCELINO: There's no
7 guarantee for any project that's before you today.

8 COUNCIL MEMBER JACKSON: Okay. I
9 appreciate that. And with respects to there's no-
10 -has there been any discussion whatsoever, either
11 at the Community Board level or anywhere else
12 concerning affordable housing units, since the
13 average family in New York City earns less than
14 \$50,000 a year.

15 JOSEPH MORCELINO: There has not
16 been prior to this, but there was discussions off
17 the record with the Borough President's office and
18 we are--if it gets approved we're going to be
19 meeting with a representative for affordable
20 housing.

21 COUNCIL MEMBER JACKSON: But
22 there's been no discussions on the record.

23 JOSEPH MORCELINO: No.

24 COUNCIL MEMBER JACKSON: No. Okay.
25 Thank you.

2 TONY MORELLI: Can I say one more
3 thing?

4 CHAIRPERSON AVELLA: Council Member
5 Sears.

6 COUNCIL MEMBER SEARS: Okay. Thank
7 you, Mr. Chair. I just want to say that I'm
8 reading the recommendations from the Community
9 Board and the City Planning and I don't see
10 anything in there about affordable housing.

11 JOSEPH MORCELINO: It was not asked
12 or discussed.

13 COUNCIL MEMBER SEARS: Yeah. I'm
14 saying that apparently was not an issue that they
15 felt they had to bring up.

16 JOSEPH MORCELINO: It was not an
17 issue, no.

18 COUNCIL MEMBER SEARS: Just to
19 clarify that. And also, the only thing they
20 talked about was that overlay from the C2. So I
21 think that the fact that you've had all three
22 looking at it and affordable housing did not come
23 up in that area, and I'm familiar with Briarwood,
24 that seems to me they were pretty pleased with the
25 application.

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2 JOSEPH MORCELINO: They were. And
3 this is not, you know, billionaire's row, so
4 market housing is not what you might find in a
5 more, let's say--

6 COUNCIL MEMBER SEARS:

7 [Interposing] Well it would be good if you could
8 start the project, so I hope that you do that,
9 because it's one way of creating jobs, but it's
10 also a good way of getting additional housing,
11 which Queens needs.

12 JOSEPH MORCELINO: Thank you. And
13 we have every hope of starting this spring, as I
14 said.

15 COUNCIL MEMBER SEARS: Okay, thank
16 you.

17 CHAIRPERSON AVELLA: Seeing no
18 other questions, thank you gentlemen.

19 JOSEPH MORCELINO: Thank you.

20 CHAIRPERSON AVELLA: I see no one
21 signed up to speak on the public hearing of this
22 item. Is that correct? Seeing no one, the public
23 hearing on this matter is closed. We will now
24 move to a sidewalk café application, Café Reggio,
25 20085246TCM, application to maintain and operate

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2 an unenclosed sidewalk café at 119 Macdougall
3 Street. Call up the applicant.

4 FABRIZIO CAVALLACCI: Yes, good
5 morning. My name is Fabrizio Cavallacci. I own
6 the Café Reggio. Dear Council Speaker Quinn, this
7 letter should serve--

8 [Off Mic]

9 FABRIZIO CAVALLACCI: Okay, I'm
10 sorry. Dear Council Speaker Quinn, this letter
11 should serve you as agreement with our District
12 office and Community Board, two, that will commit
13 as per the Community Board's approval, resolution
14 of four tables and eight seats. And the following
15 conditions will be met; permanent removal of the
16 extra three tables and five seats; accommodation
17 of an eight foot pedestrian right of way;
18 placement of the DCA sign in the window, visible
19 from the street; unlocking the gate and open
20 access for a sidewalk café serving door at the
21 south end of the café. If there are any
22 questions?

23 CHAIRPERSON AVELLA: This
24 application lies within Speaker Quinn's District,
25 with the acceptance of this letter; she is now in

1 support of the application. Any questions from
2 Committee members? Seeing none, thank you.

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4 FABRIZIO CAVALLACCI: Thank you.

5 CHAIRPERSON AVELLA: I see no one
6 signed up to speak on this item at the public
7 hearing. Is that correct? Seeing none, I'll
8 close the public hearing on this item. We will
9 now move to applications from City Island Estates
10 for an amendment of the zoning map, C060288ZMX,
11 C060289ZXS and related application. This
12 application is within Council Member Jimmy Vacca's
13 district. And I'll call up the applicant. And
14 where is the applicant? Okay.

15 [Pause]

16 MELANIE MEYERS: Good morning. My
17 name is Melanie Meyers. I'm an attorney with
18 Fried, Frank, Harris, Shriver and Jacobsen. We're
19 representing City Island Estates, LLC, the
20 applicant before you. There are two actions
21 before the Council today. There is a zoning map
22 amendment and there is a special permit under
23 section 112-107 of the Special City Island Text.
24 The application pertains to a 43-unit residential
25 development that would be located on an

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2 approximately 5.2 acre parcel at the intersection
3 of Fordham Place and Fordham Street on City
4 Island. It's one of the larger undeveloped sites
5 in City Island, and the applications if approved
6 would do a number of things. They would reduce
7 the amount of floor area that would be permitted
8 on the site by about 40%. They would change the
9 permitted uses on the site from the current
10 commercial and manufacturing uses allowed today to
11 residential, and if the special permit is approved
12 it would limit the number of residential units to
13 43, which is less than the approximately 76
14 permitted as of right. John Jenkins [phonetic] is
15 the architect of the project, and he'll present
16 the design in a minute, but first I wanted to
17 spend a little bit of time talking about the
18 context, the actions and the review process to
19 date. From a context, and if you can see it
20 behind me, is an overview of the site.

21 [Off Mic]

22 MELANIE MEYERS: I'm sorry? Oh,
23 yeah, let me try.

24 [Pause]

25 MELANIE MEYERS: Just from a site

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2 standpoint, we're on the eastern side, which is
3 the quieter side of City Island and East is facing
4 to the south. This is the site, Fordham Street,
5 which is one of the more significant East-West
6 streets, though it's not a large street, and
7 Fordham Place, which is a very small, very quiet
8 street. To the south is a development called the
9 Boatyard Condominiums. It's one of the only
10 multi-family housing developments on City Island.
11 The units are multi-family, as I said, and the
12 buildings themselves rise to a height of about 50
13 feet. To the north, along the water, is a more
14 marina related and industrial area. To the west
15 and to the northwest is the more traditional City
16 Island single and two-family residential units.
17 The current zoning, which is shown on this map,
18 kind of reflects those uses. To the south of the
19 site it's currently a C3 zone. Again, that allows
20 for multi-family houses to an FAR of .6. To the
21 west and to the northwest is R3-A, which is one
22 and two-family house zoning, and it's the typical
23 and predominant zoning on City Island. To on the
24 site itself and to the north of the site there's
25 an M1-1 zone, it allows for 1 FAR of development,

1 manufacturing. One of the proposals is a
2 rezoning. And what that rezoning would do is take
3 our site and one small out parcel down here and
4 rezone it to R3-A. That's, again, the traditional
5 and typical predominant zoning on City Island.
6 The second action, and just so you know, the
7 second action is an action that's available only
8 in a limited portion of City Island. It's sub
9 area A, which is this area here. And that special
10 permit allows for a modification of the height
11 controls available in City Island. It allows for
12 the perimeter wall height to be increased from the
13 26 feet that zoning allows. It also allows for an
14 increase in the overall height of development from
15 35 feet up to a maximum of 50 feet. Again, it's
16 available in these areas. The one project that we
17 know that has taken advantage of that special
18 permit is immediately to the south of our site.
19 The reason why we need the height special permit
20 stems in large part because of this site. Much of
21 the sight is located in the flood plane zone. And
22 the effect--and these drawings are not the most
23 beautiful drawings, but I think they show the
24 issue--is that for much of the site the
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2 development would end up so that the third floor
3 would actually be affected by the perimeter height
4 limitations. The ground floor of these buildings
5 cannot be used because of their location, cannot
6 be used for livable area. So it's being used for
7 parking and it's being used for some back--you
8 know things like dens and things like that. But
9 the actual living areas are on the second and the
10 third floors. And so in order to allow for that
11 kind of development to occur, we will need to have
12 the waivers. They start about right here. The
13 actions have been approved by the City Planning
14 Commission, the Borough President and the Land Use
15 Committee of Community Board 10. The full Board
16 of Community Board 10 recommended approval of the
17 rezoning. It narrowly disapproved the special
18 permit. That vote was 11 in favor of the special
19 permit, 13 against, 3 abstaining and 3 not voting.
20 The approval of the rezoning was conditioned on
21 there being a 43-unit limitation on the amount of
22 development and the owner of the property is
23 willing to agree to that, provided that we do get
24 the special permit. John Jenkins can go through
25 some of the reasons for that, but again given the

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2 unique condition and location of the site itself,
3 we really do think that the waiver is necessary
4 and we also think it fits within the context of
5 the development around it. So thank you for your
6 time and I'll turn it over to John.

7 CHAIRPERSON AVELLA: If I can,
8 before you speak, you didn't sign a speaker slip.
9 So after you're done if you can sign one? We
10 don't have one for you. That's all right. You
11 can do it after. We just need it.

12 MELANIE MEYERS: Oh, he didn't turn
13 it in.

14 JOHN JENKINS: In the bag. I'm
15 sorry.

16 CHAIRPERSON AVELLA: Holding on to
17 it.

18 JOHN JENKINS: Good morning. My
19 name is John Jenkins. I'm with the Lessard
20 Architectural Group, and I'd like to walk you
21 through a couple of exhibits. The first exhibit
22 is the site plan for the development. As Melanie
23 stated, there are 21 two-family detached
24 residences and one single-family detached
25 residence, which is located here, closest to the

1 water. That's a single-family building due to
2 setbacks from the waterfront. You can see Fordham
3 Street here to the north, Fordham Place to the
4 west. There are five structures that are located
5 along Fordham Place that face directly to the
6 single-family residences across the street. The
7 remainder of the units face a private, internal
8 road network that we are developing with the
9 project. The two-family detached residences along
10 Fordham Place are actually being maintained at the
11 permitted height per the zoning code, so those are
12 35 feet in height, the sidewalls are 26 feet. So
13 we are doing that in deference to the neighbors
14 across the street and so that they feel a
15 continuity in the height along that street.

16 Within the property we're proposing to go to 41
17 and a half feet for the maximum height and a
18 sidewall of, I believe it's 29 feet. And I'll
19 show you in a cross-section of the site what that
20 means for both the neighbors across the street and
21 for our development. Each of these units has two
22 dedicated parking spaces. That is more than what
23 is currently required by code, which is 1.5. That
24 again was addressing a comment made by the local
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boards to try and get our parking off of the major street networks. We are preserving 11 parking spaces along Fordham Place for the neighbors across the street; that was also an issue for them, and by limiting curb cuts off of that street; we're able to provide those 11 spaces.

The remainder of the spaces are within the development, either two series of tandem spaces within the building--there are a couple of units that have one parking space for one of the units, but we have a remaining seven surface parking spaces here that make up the balance of the 86 parking spaces. We are indicating two potential locations for trash pickup, one of them out here on Fordham Street, which would allow for the City trash collection to come pick up and continue going through the site. We have an alternate site here that's internal to the project that we're required to, in all likelihood, to be wheeled out to the curb. That would be handled within the development itself. There is also a proposed publicly accessible esplanade along the north edge of the property, which would allow the public to come to this waterfront pavilion to enjoy views of

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2 Long Island Sound. The next graphic is a series
3 of cross sections which show what's happening
4 across the site from north to south, also from
5 east to west or west to east. You can see here is
6 a single-family residence across the street on
7 Fordham Place. Here is our first line of two-
8 family detached structures which maintains the 35-
9 foot height. As you move inward to the site we
10 increase the height of that to 41.5 feet, which
11 gives us an additional sort of lofted space in the
12 attic. But as you can see, because of the natural
13 topographies, it steps down. The ridgeline for
14 those structures is actually at the same height or
15 in some instances lower than the structures along
16 Fordham Place. So we're not disrupting any views
17 for the residents across the street; we're being
18 very sensitive to that. I think that's it.

19 Sorry.

20 [Pause]

21 JOHN JENKINS: This is a graphic
22 that shows the type of architecture we're
23 proposing for the development. We're looking at
24 more of a coastal architectural aesthetic. So
25 either a mix of shingles and siding, some stone

1 introduced along the base. You can see that while
2 these are two-family detached units, rather than
3 having the units stacked vertically, we're
4 proposing them side-by-side. But at the same time
5 we've designed these buildings so that they look
6 like a large single-family house. You have one
7 entrance that faces the front; the second unit
8 actually enters from the side. So aesthetically
9 it feels like you have less density on the site.
10 We have fewer structures than we could provide
11 based upon the rezoning, in order to increase
12 light and air between the units and preserve view
13 corridors for the neighbors across the street.
14

15 [Pause]

16 CHAIRPERSON AVELLA: I'd like to
17 call upon Council Member Vacca. This application
18 lies within his district. And then we'll take
19 questions.

20 COUNCIL MEMBER VACCA: Yes. Thank
21 you Chair Avella and thank you for your
22 presentation. I am aware of the many discussions
23 you've had with the residents on City Island and
24 with the community board. And some of the changes
25 that you have made have certainly been greeted

1 favorably. I too am concerned about some of the
2 height issues, but I am concerned about that in
3 context with the entire development. And I know
4 that the entire development was supported by the
5 community board with the exception of the
6 variances on the height. I do note that those
7 differentials are compatible with nearby Boatyard
8 Condominium, and that as they are set back, your
9 changing the height limit on Fordham Place was a
10 major concession. That will be the most
11 indicative--that will be the most reflective
12 height issue that the people of City Island would
13 be concerned about. I do want to note that you
14 sent my office a letter October 5th, 2009, which
15 summarizes issues that we've discussed and the
16 community board relative to increased street
17 parking, sanitation, view corridor improvements,
18 buildings heights and use and size regulations. I
19 have this letter and I do want you to know that we
20 will hold you to these commitments.

22 MELANIE MEYERS: We're happy to be
23 held.

24 COUNCIL MEMBER VACCA: City Island
25 is a very active community.

MELANIE MEYERS: Yes.

COUNCIL MEMBER VACCA: Every day we find that we have to be active. So when it comes to zoning and land use, this is a community that's very much engaged, and we expect that the zoning resolution and the variances that you receive will be upheld, I dotted T crossed. But on that basis, I do not object to the application, and I want my colleagues to note my position for the record.

CHAIRPERSON AVELLA: I have a couple questions. One, what is the width of the internal road? Is that built to legal standards at this point?

MELANIE MEYERS: It is built to legal standards. It's a private street from a zoning standpoint, which requires that it be built to legal standards.

CHAIRPERSON AVELLA: To standards. Okay. The promenade and the, I guess it's called the public accessible seating area.

MELANIE MEYERS: Yes.

CHAIRPERSON AVELLA: So you're building that?

MELANIE MEYERS: We are building it

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2 and the developer will be obligated to maintain
3 it. There would be a maintenance and operation
4 agreement with the Parks Department, assuring that
5 it will be maintained in a first class manner.

6 Questions from Committee Members? Well, Council
7 Member Vacca has a follow up.

8 COUNCIL MEMBER VACCA: I should
9 note for the record that we're getting a
10 restrictive declaration as well, and that should
11 be reflected.

12 CHAIRPERSON AVELLA: Council
13 Members, questions? Council Member Jackson?

14 COUNCIL MEMBER JACKSON: Good
15 morning.

16 MELANIE MEYERS: Good morning.

17 COUNCIL MEMBER JACKSON: Thank you
18 for your explanation. So with respects to the one
19 aspect that the community board was not in favor
20 of, has that issue been resolved did I hear?

21 MELANIE MEYERS: The community
22 board, again it was a narrow vote, but the
23 majority of the community board that voted did not
24 approve the height waivers. We worked with the
25 community board for several years before, reduced

1
2 the height as much as we could. But we really are
3 in a flood plane and there really are limitations
4 of going below the height that we are asking for
5 now. So there's a maximum height, would be 41 and
6 a half feet, for the buildings that are on the
7 interior of the site itself. Where they come up
8 against right across the street from the
9 traditional residential neighborhood we've
10 modified the buildings, we've actually reduced--
11 because where we're out of the flood plane we're
12 actually able to kind of push them below grade a
13 little bit, and we're able to meet the 35-foot
14 height limitation that exists on City Island.

15 COUNCIL MEMBER JACKSON: And were
16 those changes made after the vote of the community
17 board?

18 MELANIE MEYERS: They were not. We
19 spent again about two years talking to the
20 community board. So the changes went from our
21 first proposal, which had the buildings at a
22 uniform height of about 45 feet and we started
23 working on the height and then we started working
24 on Fordham Place, and that's where we got to
25 before certification.

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2 COUNCIL MEMBER JACKSON: And are
3 these one-family residences or two-family
4 residences?

5 MELANIE MEYERS: They're two-family
6 buildings, but there will be a single family in
7 each of the units, so there are 22 structures on
8 the site. 21 of them are two-family units.

9 COUNCIL MEMBER JACKSON: And from a
10 cost factor, what's going to be the market value
11 of these homes?

12 MELANIE MEYERS: We're hoping for
13 as much as we can get, but at I think what they're
14 looking at is something on the order of about
15 \$750,000 to \$800,000 a unit.

16 COUNCIL MEMBER JACKSON: Okay.
17 Thank you.

18 CHAIRPERSON AVELLA: Seeing no
19 other questions, thank you.

20 MELANIE MEYERS: Thank you.

21 CHAIRPERSON AVELLA: I see no one
22 signed up to speak on this item. Is that correct?
23 Seeing none, I will close the public hearing on
24 this item. And we will move to an applicant from
25 G&R 11th Avenue Associates, N 090243 ZRM for an

1
2 amendment of the zoning map.

3 [Pause]

4 CHAIRPERSON AVELLA: While he's
5 getting set up, this is within Speaker Quinn's
6 District.

7 [Pause]

8 ZACHARY BERNSTEIN: Good morning
9 Council Members. I am Zachary Bernstein, a Land
10 Use attorney at Fried, Frank, Harris, Shriver and
11 Jacobsen. We represent G&R 11th Avenue
12 Associates, applicant for an amendment to the
13 special West Chelsea Zoning Text. I apologize for
14 the technical nature of this testimony. The
15 proposed action is to fix a technical glitch in
16 the zoning resolution. The affected zoning lot
17 has frontage on 11th Avenue, West 26th Street and
18 West 27th Street. It's located partly in an M1-5
19 district and partly within a C6-3 district within
20 Sub Area C of the Special West Chelsea District.
21 It is also within the West Chelsea Historic
22 District. Within the M1-5 district the maximum
23 FAR is 5.0. In the C6-3, the base FAR is 5.0,
24 which may generally be increased to 7.5 through
25 transfer from the Highline Transfer Corridor, or

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2 the Inclusionary Housing Program. In the C6-3
3 portion of the site along 11th Avenue is the
4 seven-story Otis Elevator Building, which is a
5 contributing building in the West Chelsea Historic
6 District. In the M1-5 District along West 26th
7 Street, which you can see the back of in the
8 photos on the front of your packet, is a six-story
9 office building; and on West 27th Street is a
10 vacant lot of about 12,000 square feet on which
11 the owner wishes to build a contextual street wall
12 building. The existing FAR within the C6-3
13 district is 6.84. This is about 37,000 square
14 feet more than the permissible base FAR, but less
15 than the maximum FAR of 7.5. The provision in the
16 West Chelsea Zoning Text for increasing floor area
17 in this C6-3 district did not consider existing
18 buildings that are greater than the base FAR but
19 less than the maximum FAR. The unintended result
20 here is that the additional 37,000 square feet
21 within the C6-3 district is subtracted from
22 development rights available in the M1-5 district.
23 Here this would result in a two-story building of
24 approximately 17,000 square feet, which interrupts
25 the street wall on West 27th Street and is

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2 inconsistent with the goals of the Special West
3 Chelsea District. The proposed text amendment
4 would address this type of situation. It applies
5 only to zoning lots located partly within an M1-5
6 district and partly within a C6-3 district in sub
7 area C, where existing buildings in the C6-3
8 district are built to greater than 5.0 FAR, and
9 other portions of that same zoning lot in an M1-5
10 district are built to less than 5.0 FAR. The text
11 amendment would allow the permitted FAR in the C6-
12 3 to be increased to the FAR existing at the time
13 of the adoption of the Special West Chelsea Zoning
14 District, upon payment into the Highline
15 Improvement Fund, which is the same mechanism that
16 is used for all buildings or all developments in
17 the C6-3 that utilize the FAR increase. If
18 approved, this would allow for a six-story
19 contextual street wall building of approximately
20 54,000 square feet. Anticipated uses would be
21 commercial gallery space on the ground floor and
22 offices or gallery space on the upper stories.
23 Please note, the pictures you have before you are
24 design study only. Because this is an historic
25 district, any design would need to be approved by

1
2 the landmarks preservation commission. This
3 application was approved by Community Board 4,
4 with conditions; and approved by the City Planning
5 Commission with no conditions. We look forward to
6 the City Council's recommendation. I'm happy to
7 answer any questions.

8 CHAIRPERSON AVELLA: As I
9 mentioned, this is in Speaker Quinn's district and
10 she's in favor of the application. Any questions
11 from Committee Members? Seeing none, thank you.

12 ZACHARY BERNSTEIN: Thank you very
13 much.

14 CHAIRPERSON AVELLA: I see no one
15 signed up to speak in the public hearing on this
16 item. Is that correct? Seeing none, I'll close
17 the public hearing on this item and we will move
18 to the South Conduit Avenue Rezoning C 060419 ZMQ,
19 an amendment of the zoning map changing from--
20 establishing within an existing R3-1 district a
21 C1-3 District. This lies within Council Member
22 Sanders's district.

23 [Pause]

24 ADAM ROTHKRUG: Good morning,
25 Chairman Avella, members of the Committee. My

1 name is Adam Rothkrug [phonetic]. I'm here in
2 connection with an application to extend an
3 existing C1-3 commercial overlay within an R3-1
4 residential district. The proposed rezoning will
5 permit the redevelopment of an existing 20,600
6 square foot parcel that currently has legal auto-
7 related uses, to a lesser use group, six retail
8 store development. Available records indicate
9 that this property was used for gas station and
10 auto-related uses dating back to the 1930s and
11 currently operates under a zoning variance that
12 will expire in December 2010. The proposed
13 commercial overlay will extend commercial
14 development along South Conduit and permit
15 construction of approximately 7,800 square foot
16 building with accessory parking for 25 cars. As
17 part of the application process, we signed an
18 environmental restrictive declaration that will
19 ensure that the property is properly tested and
20 cleaned if necessary based on the 70 years of auto
21 related uses. We met with the Community Board as
22 well as the City Planning Commission as well as
23 Councilman Sanders's office, and all expressed
24 support for the application. We had discussions
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2 with the Community Board with respect to uses that
3 they would prefer not to see at this location, and
4 we had discussions with the Community Board and
5 the City Planning Commission with regard to
6 ensuring that we don't exacerbate any existing
7 traffic issues within the area. And as part of
8 our application we did submit a letter to the City
9 Planning Commission agreeing to certain conditions
10 with regard to circulation on the site, uses and
11 agreeing to the conditions imposed by the local
12 Community Board. I would respond to any
13 questions.

14 CHAIRPERSON AVELLA: Do we have a
15 copy of that letter to City Planning regarding the
16 uses and the circulation? Because it's not in the
17 package.

18 ADAM ROTHKRUG: If you don't I will
19 provide one today.

20 CHAIRPERSON AVELLA: Questions from
21 Committee Members? Council Member Sanders isn't
22 here but he has a representative who will speak
23 after we finish the presentation. Seeing none,
24 thank you. I'll call upon the representative from
25 Council Member Sanders's office.

DONOVAN RICHARDS: Good morning.

I'm Donovan Richards, I'm Councilman Sanders's Deputy Chief of Staff. Councilman Sanders is in support of this project with the following stipulations. I wanted to read some of the uses that the Community Board was opposed to into the record. Certain community adverse uses would be banned including fast food drive restaurants, check cashing stores, Laundromats, pawn shops, adult bookstores, adult entertainment establishments, bars, after hours clubs, or any establishments that attract disorderly conduct, illicit or pornographic activity; security lighting fences and gates and video cameras to be installed, lighting to be facing away from surrounding residences, establish safe and orderly traffic circulation patterns and cooperate with a traffic study to be conducted by the Department of Transportation, and continuing to work with the Community Board and local civic associations through planning and construction to avoid any uses or conditions that would be detrimental to the community. So Councilman Sanders is in support of this project as long as those are--

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2 CHAIRPERSON AVELLA: [Interposing]
3 Well my question for you is because you sort of
4 went through what the Community Board 13
5 recommendation was about, banning certain uses and
6 so did the applicant--the applicant referred to a
7 letter, which we don't have. Do you have that
8 letter and does it say what you're asking him to
9 do?

10 DONOVAN RICHARDS: Well the
11 Community Board did supply him with the letter. I
12 do have a copy of it. I can make a copy of it for
13 you.

14 CHAIRPERSON AVELLA: Well I think
15 it's important because the applicant mentioned it,
16 you mentioned it.

17 DONOVAN RICHARDS: Right.

18 CHAIRPERSON AVELLA: We don't see
19 it--

20 DONOVAN RICHARDS: [Interposing]
21 Okay, well--

22 CHAIRPERSON AVELLA: --and we're
23 going to be asked to vote on this. You know, and
24 you're both referring to Community Board 13's
25 recommendation but we don't have any evidence that

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you're actually going to follow it.

DONOVAN RICHARDS: Well.

CHAIRPERSON AVELLA: I mean I'm not saying to you--

DONOVAN RICHARDS: [Interposing] Right. That's more the applicant's job.

CHAIRPERSON AVELLA: We have to have it from the applicant.

DONOVAN RICHARDS: Right. So he should provide that. Okay.

CHAIRPERSON AVELLA: Yes. And if he wants the vote to go ahead today, it might be a good idea to get it right away.

DONOVAN RICHARDS: Okay. All right, thank you.

CHAIRPERSON AVELLA: But the Council Member is in support of the application, with the proviso that he is doing all the things that you mentioned.

DONOVAN RICHARDS: Exactly.

CHAIRPERSON AVELLA: Okay.

DONOVAN RICHARDS: All right, thank you.

CHAIRPERSON AVELLA: Council Member

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Sears and then Council Member Jackson.

COUNCIL MEMBER JACKSON: Don't go anywhere, young man.

COUNCIL MEMBER SEARS: Thank you. Just in reviewing the recommendations, is Councilman confident that not only are they willing but are they able to do all of these recommendations? Security lighting? Fences? Gates? Video cameras to be installed?

DONOVAN RICHARDS: Well these are all things that the applicant did agree--

COUNCIL MEMBER SEARS: [Interposing] Are they able to do that?

DONOVAN RICHARDS: --yeah, agreed to.

COUNCIL MEMBER SEARS: Establish safe and orderly traffic circulation patterns?

DONOVAN RICHARDS: Well that would be more the Department of Transportation--

COUNCIL MEMBER SEARS: [Interposing] Well that's why I'm asking that question.

DONOVAN RICHARDS: --of course, but they have agreed upon all of these stipulations.

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2 COUNCIL MEMBER SEARS: All right.
3 Okay. That's what I had. I mean, it's a little
4 ambiguous to me. But if they're agreeing I'll
5 certainly accept their word.

6 CHAIRPERSON AVELLA: Well I think
7 what we'll do is, let me take the next question
8 from Council Member Jackson and then we can call
9 the applicant back. Council Member Jackson?

10 COUNCIL MEMBER JACKSON: I was
11 listening to Council Member Sanders's
12 representative speak about all of the things that
13 Council Member Sanders and I assumed the Community
14 Board did not want, pornographic shops and pawn
15 shops and pizza, you know all of these McDonalds
16 and all of these other joints, businesses that
17 basically are very fast. But is there a
18 commitment, there's no commitment right now to do
19 all of that, correct?

20 DONOVAN RICHARDS: No. That's why
21 we're supporting the project. As long as--part of
22 the problem is--

23 COUNCIL MEMBER JACKSON:
24 [Interposing] I'm sorry. You're supporting the
25 project?

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DONOVAN RICHARDS: Yes.

COUNCIL MEMBER JACKSON: With all of these stipulations.

DONOVAN RICHARDS: As long as--

COUNCIL MEMBER JACKSON:
[Interposing] But you don't have these stipulations and the vote is going to occur today.

DONOVAN RICHARDS: Right.

COUNCIL MEMBER JACKSON: That doesn't sound right, does it?

DONOVAN RICHARDS: The applicant did commit that he would not have these sort of uses at this property.

COUNCIL MEMBER JACKSON: Do you have it in writing?

DONOVAN RICHARDS: Yes, we do.

COUNCIL MEMBER JACKSON: Where's it at?

DONOVAN RICHARDS: This is the Community Board's--

COUNCIL MEMBER JACKSON:
[Interposing] No, no. Do you have an agreement in writing from the applicant?

DONOVAN RICHARDS: From the

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developer? No.

COUNCIL MEMBER JACKSON: All right.

DONOVAN RICHARDS: So if he wants to supply that, that's--

COUNCIL MEMBER JACKSON:

[Interposing] Not if he wants to. I think you need to go back and renegotiate and come back to the Committee and say that you have an agreement.

DONOVAN RICHARDS: Well the Councilman did meet with the applicant and these are the things that the applicant said he would uphold, and this is the reason we are supporting this project.

COUNCIL MEMBER JACKSON: Is there any reason the Council Member's not here? I'm sorry; I know you're the Deputy Chief of Staff, but any reason the Council Member's not here on a major rezoning in his area?

DONOVAN RICHARDS: As a Councilman you would know well that there other community meetings going on at the time and he couldn't be here because of that reason.

COUNCIL MEMBER JACKSON: Okay.

CHAIRPERSON AVELLA: Council Member

Sanders? I'm sorry.

COUNCIL MEMBER FELDER: That's all right. I don't mind, I don't mind.

CHAIRPERSON AVELLA: Council Member Felder.

COUNCIL MEMBER JACKSON: He looks like James Sanders, you know?

COUNCIL MEMBER FELDER: I don't mind. They say you can't be in two places at the same time.

CHAIRPERSON AVELLA: Exactly.

COUNCIL MEMBER FELDER: I want to ask the Chair, I can't say it's the first time but certainly one of the first times that I've heard the stipulations of this sort. Even if it were in writing, right, if the developer develops the property, rezones the property, presumably maybe keeps it or maybe not, maybe sells the property-- even if there was something in writing is this the type of thing--

DONOVAN RICHARDS: [Interposing]
There's no--it's not a--

COUNCIL MEMBER FELDER:
[Interposing] I'm sorry?

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2 DONOVAN RICHARDS: It's not a
3 community benefits agreement in this plan, so.

4 COUNCIL MEMBER FELDER: No. I was
5 asking the Chair, I just want to know, I don't
6 understand how this works.

7 CHAIRPERSON AVELLA: You're
8 absolutely right. Other than the applicant making
9 a commitment, there is no way to force the
10 applicant to do this in the zoning code, however
11 the applicant could do a restrictive declaration
12 saying that there will not be these uses. I think
13 the issue for all of us, and if I can speak for
14 the members of the committee, is that we do have
15 the Community Board's recommendation. The
16 applicant mentioned the Community Board's
17 recommendation. The representative from Council
18 Member Sanders mentioned the recommendation, and
19 yet we don't have anything in writing. What I'm
20 going to suggest is, and Council Member Sanders
21 may not be too happy, but we are going to be
22 laying over a couple of votes today, that we lay
23 over the vote on this one to the next meeting and
24 that we, you know, ask Council Member Sanders and
25 the applicant to provide us with some, you know,

1 something in writing and to go back and look at
2 this. I mean, this is for Council Member
3 Sanders's protection. It's for the Community
4 Board's protection and it's for the Community's
5 protection. If we're all talking about these
6 issues, then we damn well better see something in
7 writing. And that's no fault of Councilman
8 Sanders, but we need some further clarification on
9 this. With that, seeing no other questions from
10 Committee Members, I see no one else signed up to
11 speak; we will close the public hearing. And the
12 vote on this matter will be laid over. Now what
13 I'd like to do, we have two other items, an
14 application for a sidewalk café in Council Member
15 Gerson's district, and obviously the big item of
16 the day, the MoMA application, both of which we
17 will have the public hearing but we will not be
18 voting on today. So I'm going to ask for the vote
19 on those items which we will vote on today. And
20 let me just go through it again. The following
21 applications chair recommends approval: The
22 Briarwood Plaza Rezoning, Café Reggìo, Excelsior
23 Residence, On the Sound on City Island
24 application, and 246 11th Avenue. Chair

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2 recommends approval of those items. Call on
3 Counsel to call the vote.

4 CHRISTIAN HYLTON: Christian
5 Hylton, Counsel to the Committee. Chair Avella?

6 CHAIRPERSON AVELLA: Aye.

7 CHRISTIAN HYLTON: Council Member
8 Felder?

9 COUNCIL MEMBER FELDER: Yes.

10 CHRISTIAN HYLTON: Council Member
11 Jackson?

12 COUNCIL MEMBER JACKSON: Mr. Chair,
13 may I be excused to explain my vote?

14 CHAIRPERSON AVELLA: Yes.

15 COUNCIL MEMBER JACKSON: I vote Aye
16 on all the matters that have been called. I want
17 to comment thought with respects to the project,
18 the rezoning in Council Member Weprin's district
19 in Community Board 13, the applicant indicated
20 that there were off the record conversations about
21 the possibility of affordable housing units in
22 that development. Currently as planned there are
23 no projected planned affordable housing units that
24 are projected. I would strongly recommend that
25 the Council Member along with the Borough

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2 President, Helen Marshall, explore in all due
3 strength some affordable units considering the
4 fact that the average income of the people of the
5 City New York is as such were affordable units are
6 extremely important in a major rezoning, even
7 though I know it's not part of an approval
8 process. But clearly affordable housing is one of
9 the most major issues facing New York City
10 residents today. So with that explanation and
11 request for exploring affordable housing units in
12 that development, I vote Aye.

13 CHRISTIAN HYLTON: Council Member
14 Katz?

15 COUNCIL MEMBER KATZ: Aye.

16 CHRISTIAN HYLTON: Council Member
17 Seabrook.

18 COUNCIL MEMBER SEABROOK: Aye.

19 CHRISTIAN HYLTON: Council Member
20 Sears?

21 COUNCIL MEMBER SEARS: Permission
22 to explain my vote?

23 CHAIRPERSON AVELLA: Yes.

24 COUNCIL MEMBER SEARS: I vote Aye,
25 but I raise the question that since Community

1
2 Boards are only advisory, I question just how
3 binding anything may come from the community board
4 in terms of holding the recommendations that way.
5 It seems to me that there should be something with
6 City Planning as to exactly what those
7 recommendations are. But I really question the
8 validity of holding somebody binding to that that
9 comes from the community board, since they
10 function in an advisory capacity. I vote Aye.

11 CHRISTIAN HYLTON: Council Member
12 Vann?

13 COUNCIL MEMBER VANN: Aye.

14 CHRISTIAN HYLTON: By a vote of
15 seven in the affirmative, none in the negative and
16 no abstentions, LU 1213, 1233, 1218, 1234, 1235
17 and 1237 are approved and referred to the full
18 Land Use Committee.

19 CHAIRPERSON AVELLA: Thank you.
20 And the next application is the Corner Deli
21 20095244 TCM, application for--to maintain and
22 operate an unenclosed sidewalk café at 106 Kenmare
23 Street, by Kenmare Associates. Call up the
24 applicant. This lies within Council Member
25 Gerson's District.

[Pause]

DEREK SANDERS: Hi, my name is Derek Sanders, I'm the owner of the restaurant, the Corner Deli. And really I just came today to sort of state that myself and my partner are very willing to work with the neighborhood to remedy any issues they may have. In the past we've always hoped that they would come and work with us directly if they had concerns about something, but they haven't always. And I would always continue to encourage that. And then to just take a note that we're a four-year-old restaurant, and in the past we have solved some of the concerns that they've had rather well. There was a time in the past where Georgette's [phonetic] main concern was noise and sound, so we spent upwards of \$7,000 to put in through the wall air conditioners for her because she seemed to be the one neighbor that truly had those concerns.

CHAIRPERSON AVELLA: You're mentioning a person's name who we have no idea who it is.

DEREK SANDERS: Oh, so she's going to be presenting. A neighbor.

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2 CHAIRPERSON AVELLA: I wouldn't
3 point to somebody in the audience. Just say the
4 community raised some issues.

5 DEREK SANDERS: Oh, sure.
6 Similarly there was an issue raised about the
7 trash. There was quite an issue on the side
8 street with us with trash because there are three
9 or four businesses that all put their trash out
10 there. We rented additional space in the
11 building. We built in a trash room that's fully
12 enclosed and currently I feel like we resolved
13 that issue very well with them. And so, like I
14 said, we are here and willing to sort of listen to
15 whatever concerns they have and hopefully work
16 with the neighborhood to resolve things.

17 CHAIRPERSON AVELLA: I would ask
18 you to sort of stand by, because we do have some
19 people giving public testimony and then Council
20 Member Gerson will speak. Just for the record,
21 the original application, the one you've made, is
22 for 12 tables and 36 chairs.

23 DEREK SANDERS: Correct.

24 CHAIRPERSON AVELLA: Thank you. So
25 stand by, sit by. And now I'd like to go on to

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2 the public hearing. And Georgette Fleischer
3 [phonetic] and Robin Goldberg [phonetic], who are
4 speaking in opposition to the application. And I
5 would ask everybody, and this is obviously for the
6 testimony that is going to occur on MoMA,
7 everybody has two minutes to speak. I ask you to
8 keep within the two minutes. If you go a little
9 bit over I won't necessarily cut you off, but I
10 ask for some consideration. And when you do
11 speak, especially obviously not for you but for
12 the MoMA people who are coming up to speak, if
13 somebody's already said your exact comments, it's
14 always helpful to talk about other issues. But
15 just to repeat what the previous people spoke
16 about sometimes isn't the best testimony.

17 GEORGETTE FLEISCHER: My name is
18 Georgette Fleischer. I'm a 30-year resident at 19
19 Cleveland Place, which is directly across the
20 middle of three buildings that get the direct
21 sound from Corner Deli or La Esquina Sidewalk
22 Café. Within days of their opening their sidewalk
23 café, they had installed illegal amplifiers on the
24 outside of their building, from which they were
25 blasting music. I had attempted to contact one of

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2 the other owners, Serge Becker [phonetic], about
3 my problems with this. And when negotiations
4 broke down he told me in an email that that's what
5 courtyard apartments are for. In other words that
6 I should move if I didn't like the noise that was
7 being created by his establishment. Shortly
8 thereafter they added to the amplifiers widescreen
9 televisions on the outside of the establishment in
10 order to have an outdoor sports bar where they
11 showed soccer matches that were advertised with
12 signage. I was woken up at 1:30 in the morning
13 the night after Cinco de Mayo with a crowd of 200
14 drunken and drugged out sports enthusiasts
15 enjoying the De la Hoya fight from the widescreen
16 televisions and the amplified sound. I will
17 provide photographs of all of this. It went on
18 from there. The Fifth Precinct came and told them
19 they were not allowed to have amplifiers on the
20 outside of the building or widescreen televisions.
21 They continued to put up signage. They continued
22 to have their sports bar on the outside of the
23 building. Last November 4th, 2008, they
24 sponsored, along with the storefront for Art and
25 Architecture and Café Select, also owned by one of

1
2 the owners, a quote unquote guerrilla viewing
3 party, which involved mounting a projector on a
4 ladder on a New York City sidewalk, surrounded by
5 crowds of citizens, projecting the election
6 results onto the seven-story side of the building,
7 while the storefront had huge amplifiers mounted
8 on tripods on the sidewalk from which the sound
9 was boomed out. And Café Select pulled two huge
10 barbecue pits out onto the sidewalk in order to
11 cook over open flame cooking with no permits on
12 the sidewalk. The police did come and shut that
13 down. I'm going to make every effort to get those
14 violations in addition to the nine other
15 violations that were produced from the first of
16 two March actions that shut the establishment down
17 for a couple of weeks in the first case, and I'm
18 not quite sure how long in the second--serious
19 violations like operating three years into their
20 operations with no valid certificate of occupancy,
21 no assembly permit, blocking fire exits,
22 department of health violations, state liquor
23 authority violations, and of course the DEP
24 violation that I got when I complained about the
25 loudspeakers on the outside of the building. I

1
2 cannot tell you how my quality of life has been
3 destroyed by this establishment and how much I
4 would be so grateful if this Council would turn
5 this application down. I think--should I keep
6 talking? No. Okay, all right.

7 [Pause]

8 ROBIN GOLDBERG: Hi, my name is
9 Robin Goldberg. I myself am also a resident of
10 this community for over 30 years. I've been
11 involved in community affairs for over five years,
12 as it specifically relates to Community Board 2.
13 And more specifically in terms of the impact and
14 enforcement of the proliferation of the restaurant
15 and entertainment industry in our community. The
16 impact has been enormous as far as the liquor
17 licenses that have been given to so many
18 restaurants, and especially within this Corner
19 Deli/La Esquina area, there's like a three-ring
20 circus. I think that it's a privilege, not a
21 right, for an establishment to not only have a
22 permit to operate an outdoor café, but more
23 importantly to have a liquor license, which can be
24 likened to a dangerous weapon if it's not upheld.
25 And I believe that this establishment has been in

1 violation of this community and of the resolutions
2 and agreements that they made since the 2007
3 permit was issued to them. They've had over two
4 years, plus over 13 311 complaints to correct
5 their violations and their behavior, which
6 directly involves pollution, noise pollution,
7 sanitation, traffic, increased crime. They have
8 done nothing to address those issues. They've
9 been brought before the Community Board on
10 numerous occasions. So therefore I strongly urge
11 this Committee to vote against the renewal of this
12 application. It is offensive that the community
13 has come out in full force on many, many
14 occasions, to the Community Board, to the City
15 Council Office, to the Borough President's office,
16 to State Assemblyman Silver, and other elected
17 officials, and have time and time again violated
18 any agreements that they have signed to--and also
19 upheld the issues, the agreements of what it is to
20 have a sidewalk café and to also have a liquor
21 license.

22
23 CHAIRPERSON AVELLA: At this point
24 I'd like to call upon Council Member Gerson.

25 COUNCIL MEMBER GERSON: Thank you

1
2 very much, Mr. Chair. First of all let me take
3 this opportunity, Mr. Chair, to thank you. Your
4 leadership in your capacity as Chair of the Sub
5 Committee has benefited our entire City, and very
6 specifically, upheld the quality of life of
7 countless New Yorkers. And I know I speak on
8 behalf of all in thanking you for your leadership
9 and for the standards of professionalism and
10 consideration which you have supplied throughout
11 your leadership and chair of this Committee.

12 [Applause]

13 COUNCIL MEMBER GERSON: Yes, well
14 we can give--it's against the rules, but he
15 deserves a round of applause. Sometimes rules are
16 meant to be broken. In any event--but not when it
17 comes to sidewalk cafés. And we all know that the
18 opportunity to operate an outdoor café on publicly
19 owned City sidewalks is not a right but a
20 privilege. And under both rule and policy it is a
21 privilege to be granted to private owners only if
22 such sidewalk café will be operated in a way which
23 enhances the community where it is operating in a
24 way which benefits not only the business, which of
25 course we seek to benefit, but also the lives of

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2 those who share the area with the business. That
3 is why we hold these hearings. And I think we've
4 heard from the community representatives, and you
5 hear that they are both longtime members,
6 residents, of the community as well as activities.
7 And I know that they reflect the viewpoints and
8 the concerns of the residential community. I
9 think we've heard very compelling testimony that
10 the practices followed by this establishment have
11 not only not enhanced the community, but have been
12 a detriment to the community, and I don't need to
13 repeat the testimony provided. So Mr. Chair, we
14 know that the Committee has agreed to postpone a
15 vote on this matter. And the community and I
16 appreciate that consideration, and over the next
17 several hours and a couple of days I know there
18 will be conversations where we will see if it is
19 possible to put in place a regime which will
20 fulfill the policy and the rule of ensuring that a
21 sidewalk café will enhance a community. But if
22 that is not possible, I echo the sentiments of the
23 community representatives and I would urge the
24 committee, the subcommittee, the full committee
25 and the entire council to turn down this

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2 application. So we will be getting back to you,
3 and I thank you very much Mr. Chair.

4 CHAIRPERSON AVELLA: I want to
5 thank you, Council Member. And, you know, be
6 willing to continue the discussions with this
7 application. I have to tell you, and your last
8 comment was very apropos, based upon the number of
9 violations that your office circulated to Council
10 Members here on the Committee, I think we would be
11 prepared to vote this application down. I mean
12 some of these violations are egregious, and as you
13 have already said and the witnesses have already
14 said, having a sidewalk café is a privilege, not a
15 right. And if you can't be a good neighbor, then
16 you're not entitled to the privilege. So whenever
17 you're read, you know, please come back to the
18 Committee. And I appreciate the fact that you're
19 willing to have the discussions with the owner.
20 But I've got to tell you, this is one of the worst
21 situations that have come before the Committee.
22 Council Member Sears?

23 COUNCIL MEMBER SEARS: I have a
24 question for Councilman Gerson. I would assume
25 that these discussions went on prior to its

1 reaching this level of today. So my question to
2 you is, what has not been discussed that is
3 encouraging you to think that these violations
4 would not happen again? Because I agree with the
5 chair, they're pretty horrendous. The police have
6 been called, they've had to take action and they
7 continue to do it. So I don't know--and the
8 Community Board, are they obligated to take a
9 position or did they just decide not to do
10 anything? I don't know the answer to that. And
11 it seems to me that in an issue like this, the
12 Community Board should have been obligated to have
13 a public hearing and I don't know why they didn't.
14 I mean that's a clinical question I'm asking. And
15 secondly my question to you is what has happened,
16 or what has not happened, that would lead all of
17 us to believe that this whole scene can be changed
18 in a few hours conversation? I happen to support
19 outdoor cafés and I always think that they do well
20 for communities, but there needs to be a meeting
21 of the minds and there needs to maintain an
22 integrity of communities, and I'm at a loss for
23 this one. And I understand you're set; you want
24 room to negotiate further, and I don't know why.
25

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2 I think that's my question to you.

3 COUNCIL MEMBER GERSON: Mr. Chair,
4 if I may? Thank you Council Member and thank you
5 for your constant vigilance and concern for the
6 wellbeing of communities. The Community Board did
7 hold a hearing and did adopt a resolution wherein
8 they set forth a series of very specific
9 conditions calling upon the owner, which they
10 called upon the owner to meet before they would
11 support extending this license. Between that time
12 and now there have been additional problems and
13 additional violations, both of those conditions
14 and of general operating procedures. And so that
15 is why we are taking all the time possible to see
16 if it is possible to reach an accord with real
17 teeth that will protect the community. I would
18 not say it's accurate to say that I am encouraged
19 that that will be the case. But I do want to make
20 sure that we have exhausted all possibilities
21 before I would ask the Committee to reject this or
22 any application.

23 COUNCIL MEMBER SEARS: I can accept
24 that but I'm not too hopeful, particularly that
25 you say that there are additional violations,

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2 which seems to me--but certainly I think it--

3 COUNCIL MEMBER GERSON:

4 [Interposing] Or problems that may not have
5 reached the level of a violation yet.

6 COUNCIL MEMBER SEARS: Okay. So
7 certainly I would agree that in order to keep
8 small businesses going you deserve that effort.
9 Okay. Thank you.

10 CHAIRPERSON AVELLA: Thank you.
11 For the sake of being fair, I would like to call
12 the applicant back, just if the applicant wants to
13 respond to some of the issues that have been
14 raised.

15 DEREK SANDERS: Hi. Thank you. I
16 just try to go through this fairly quickly. The
17 amplified music she mentioned I think happened in
18 '06. The time we had TVs outside it was the World
19 Cup. I think the World Cup was '06-'07. They
20 were all what we thought were something sort of
21 fun for the moment. We took it down immediately,
22 we never continued. What are the other ones that
23 she mentioned? Increased crime, we met with a
24 Community Board meeting. We had a license to stay
25 open until 4:00, we chose to close at 2:00 a.m.

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2 We agreed with the Community Board to close the
3 outdoor café at midnight, something they asked
4 for. The Community Board asked us to build an
5 enclosed trash, which we did, so that was for
6 sanitation. The complaints, I'd like to see where
7 the complaints come from, because from everyone
8 that I know in the community, there's only one
9 person that ever writes a complaints, and that was
10 inferred to me by the Fifth Precinct, because I
11 met with the Fifth Precinct three times to go
12 through whatever issues they may have. The Fifth
13 Precinct's only suggestions at that time were to
14 move the people along so that no one would pull a
15 car up out front and, I can't remember the second
16 issue that they had. But all in all, we've been
17 working really hard and most everything that they
18 ever mentioned are more than two years old, and
19 we've been functioning very well for the last
20 couple years.

21 CHAIRPERSON AVELLA: I mean the one
22 comment I would have is, regardless of whether one
23 person or a hundred people complain about
24 something, if the violation is upheld and you're
25 issued a violation, then you're doing something

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2 wrong. I mean I'm looking at the list here and
3 just--I'm looking at March of 2008 at this point.

4 DEREK SANDERS: Right.

5 CHAIRPERSON AVELLA: But you got a
6 violation from the Fire Department for blocking
7 the fire exit. That's a serious violation. You
8 got a violation for no C of O, that's a serious
9 violation. You got a violation for no public
10 assembly permit, and I assume that's related to
11 some of the incidents. I mean these are serious--
12 the Fire Department doesn't go around and just
13 issue violations for the heck of it. I mean so,
14 some of these things are extremely serious and I
15 mean, you know, to sort of make an excuse that
16 well, it's only one person. That doesn't go too
17 far with us.

18 DEREK SANDERS: No, no. Let's
19 separate the issues, sir. There are certain
20 issues for Georgette which are trash, noise,
21 things like that.

22 CHAIRPERSON AVELLA: Please don't
23 refer to a specific individual.

24 DEREK SANDERS: Fine, the
25 neighborhood, which I feel like we responded to

1
2 very well. The other issues, you're absolutely
3 right, they were part of the March, and quite
4 honestly we didn't know all those things were out
5 of order. At the time that that was discovered we
6 closed the restaurant for two months, paid our
7 staff, took that burden on because our staff is
8 terrific, and reopened once all those issues were
9 remedied. So we weren't clear about it. We took
10 responsibility for it. We closed, we fixed it
11 and, you know, those don't exist any more. So,
12 you know, it's my first restaurant--

13 CHAIRPERSON AVELLA: [Interposing]
14 That's all well and good, but they shouldn't have
15 existed in the first place.

16 DEREK SANDERS: Correct.

17 CHAIRPERSON AVELLA: You closed
18 probably because you had to close to fix those
19 things. I mean having no--blocking the fire exit,
20 having no C of O, that's...

21 DEREK SANDERS: Those have all been
22 remedied. The blocking the fire exit--

23 CHAIRPERSON AVELLA: [Interposing]
24 No, no. But it's your responsibility to operate,
25 you know, a business under the law.

2 DEREK SANDERS: Correct.

3 CHAIRPERSON AVELLA: You fixed them
4 but the violations were issued. Council Member
5 Sears and then Council Member Gerson.

6 COUNCIL MEMBER SEARS: Just one
7 question. When you said you made the
8 accommodation to close at midnight, I always think
9 that the outdoor cafés fall into a very funny
10 position, because closing is one thing. Do the
11 people still sit at the tables?

12 DEREK SANDERS: No, ma'am. The
13 tables have to be gone by 12:00.

14 COUNCIL MEMBER SEARS: They're gone
15 by 12:00.

16 DEREK SANDERS: So we stop serving
17 by 11:15.

18 COUNCIL MEMBER SEARS: Okay. That
19 was what I wanted to know. Thank you.

20 DEREK SANDERS: Correct.

21 COUNCIL MEMBER GERSON: Just so
22 we're clear you say, well, this past September, I
23 believe September 15th, was there not an event
24 involving a band which played outdoors, a mariachi
25 band specifically?

DEREK SANDERS: A mariachi band?

COUNCIL MEMBER GERSON: Right. As part of an event you had? I mean just as one example.

DEREK SANDERS: I'm not sure. But I can tell you I live upstairs from the restaurant. I live on the fourth floor--

COUNCIL MEMBER GERSON: [Interposing] I'm not asking where you live. I'm asking was there an event in September involving a--

DEREK SANDERS: [Interposing] Not to my knowledge.

COUNCIL MEMBER GERSON: --band? Not to your knowledge. Okay. Well I can tell you then we have had reports from the community that in fact this took place.

DEREK SANDERS: Okay.

COUNCIL MEMBER GERSON: And I think there's been--to say that there have been no events since--that's just one example. To say that there have been no events or no noise problems, outdoor noise problems, for the past couple of years, according to our reports, is just

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not true. So maybe you could find out for sure.

DEREK SANDERS: September 15th?

COUNCIL MEMBER GERSON: Yeah. And I believe that's just one of many, yes.

DEREK SANDERS: And it was a mariachi band playing outside?

COUNCIL MEMBER GERSON: Yes.

DEREK SANDERS: And for how long did they play?

COUNCIL MEMBER GERSON: More than an hour. But that doesn't matter.

DEREK SANDERS: An hour?

COUNCIL MEMBER GERSON: More than, during the evening.

DEREK SANDERS: September 15th. And they were where, in front of our restaurant?

COUNCIL MEMBER GERSON: At your sidewalk café site, yes.

DEREK SANDERS: At our site.

COUNCIL MEMBER GERSON: In front of--yes.

DEREK SANDERS: Okay.

COUNCIL MEMBER GERSON: Now don't you from time to time have large special events

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within?

DEREK SANDERS: No. I don't know what a large special--it's reservation only downstairs. It's a reservation only, because we have a fixed amount of seats.

COUNCIL MEMBER GERSON: You no longer have any parties or...?

DEREK SANDERS: Someone can--you can buy out the restaurant for a birthday party or something like that if you choose to.

COUNCIL MEMBER GERSON: Right. Or any other kind of party for that matter.

DEREK SANDERS: That happens occasionally.

COUNCIL MEMBER GERSON: And sometimes they use amplification in those events?

DEREK SANDERS: It's always the same downstairs.

COUNCIL MEMBER GERSON: But sometimes involving amplification?

DEREK SANDERS: There's amplified music every night.

COUNCIL MEMBER GERSON: Every night, that's right. And you also have windows

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which about the sidewalk café, correct?

DEREK SANDERS: Oh. Two different issues. No, I'm sorry. The main dining room has no windows. So which room are you in? There's a taqueria, there's a café--

COUNCIL MEMBER GERSON:

[Interposing] Why don't you answer my questions? I'm asking you at these special events, do you routinely have amplification?

DEREK SANDERS: There are no special events--I'm answering the question. There are no special events in the taqueria or the café which have windows on to the street, ever.

COUNCIL MEMBER GERSON: Okay. But where are you--but you do have events--

DEREK SANDERS: [Interposing] Our main dining room is in the cellar, with no windows.

COUNCIL MEMBER GERSON: And you do have events which do have amplification, correct?

DEREK SANDERS: We do have--it's too general of a question. Yes--

COUNCIL MEMBER GERSON:

[Interposing] Do you use amplification equipment?

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2 DEREK SANDERS: --in the main
3 dining room downstairs.

4 COUNCIL MEMBER GERSON: And have
5 you not received complaints that the amplification
6 equipment, the amplification irrespective of where
7 it's located because we all know that sound
8 travels throughout buildings and in the
9 neighborhoods in different ways, have you not
10 received complaints that the amplification is
11 audible to your neighbors in the immediate area?
12 Have you ever received those complaints?

13 DEREK SANDERS: Have I received
14 those complaints?

15 COUNCIL MEMBER GERSON: Well you,
16 the establishment.

17 DEREK SANDERS: Only by way of me
18 speaking to the Fifth Precinct. But not to my
19 knowledge--

20 COUNCIL MEMBER GERSON:
21 [Interposing] So the Precinct has received those
22 complaints.

23 DEREK SANDERS: To my knowledge--

24 COUNCIL MEMBER GERSON:
25 [Interposing] And what action have you taken?

DEREK SANDERS: I've reached out to them. To my knowledge I haven't seen any of those complaints for over two years in terms of noise.

COUNCIL MEMBER GERSON: But you just said the Precinct has received those complaints.

COUNCIL MEMBER SANDERS: The last time I met with the Fifth Precinct to try to remedy these issues was two years ago.

COUNCIL MEMBER GERSON: You personally.

DEREK SANDERS: Me, personally.

COUNCIL MEMBER GERSON: But do you know of anyone in the establishment who has met with anyone over the past couple of years? Because if not that would be a problem. There's a lack of communication. We're getting complaints and the police are getting complaints and you're not--

DEREK SANDERS: [Interposing] Yeah. Lack of communication is the major thing. I mean, I would very much appreciate it if the neighbors would just come over. Like for example I live--

COUNCIL MEMBER GERSON:

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[Interposing] Let me ask you, have you--

DEREK SANDERS: [Interposing] They should just come talk to us.

COUNCIL MEMBER GERSON: Have you met with--are you aware of any complaints about amplification within the past year?

DEREK SANDERS: Not to my knowledge. Personally I have not--

COUNCIL MEMBER GERSON:
[Interposing] Okay. Mr. Chair, why don't we--

DEREK SANDERS: [Interposing] Can I just clarify one other thing? There are two owners of the restaurant La Esquina, James Gersten [phonetic] and Derek Sanders.

COUNCIL MEMBER GERSON: Are they here by the way?

DEREK SANDERS: No. I'm the one owner, the other owner is not.

COUNCIL MEMBER GERSON: Maybe they should be here.

DEREK SANDERS: The second owner-- well, I did, quite honestly I didn't really realize what we were getting into today. The other thing with Georgette is that Georgette has--

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COUNCIL MEMBER GERSON:

[Interposing] You were asked by the Chair not to refer to specific--

DEREK SANDERS: [Interposing] I'm sorry. If any of the neighbors had trouble, because they had mentioned particular people that are employees of our restaurant, again, I wish they would just come speak to myself or to my other partner, James.

COUNCIL MEMBER GERSON: Okay. Well Mr. Chair, this is why we will speak with all of the owners, if they will make themselves available. If you're saying this may be part of the problem but that, you know, there's a little bit of finger pointing here. You're one of three owners, other owners--

DEREK SANDERS: [Interposing] There are two owners.

COUNCIL MEMBER GERSON: One of two owners.

DEREK SANDERS: James Gersten--and we've had other employees that help promote the place and things like that. But everyone else are employees, so if they want something resolved they

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2 need to talk to James about it.

3 COUNCIL MEMBER GERSON: All right.
4 We're going to continue these conversations. But
5 clearly there have been community board meetings
6 on this issue. There have been conversations on
7 this issue with the Police and with members of
8 your establishment. And if you have not been
9 personally involved in that, then probably one of
10 the other members who have been should have been
11 here today.

12 DEREK SANDERS: Listen--

13 COUNCIL MEMBER GERSON:
14 [Interposing] But we will take, excuse me, sir,
15 but we will take the next few hours--this is why
16 we're not having a vote today. We will take the
17 next few hours and day or so to speak with whoever
18 we have to speak with and see if it's possible to
19 come up with a situation. If you yourself could
20 tell me that you're unaware of what happened on
21 September 15th, which these people here witnessed
22 directly, then clearly you don't have all of the
23 information. And that's just one example. So we
24 need to sit down with the people who can address
25 these issues and endeavor to do so, and Mr. Chair,

get back to the Committee in the very near future.

CHAIRPERSON AVELLA: Thank you.

COUNCIL MEMBER GERSON: Thank you very much.

CHAIRPERSON AVELLA: I'm just going to call upon Council Member Katz for a brief comment and then we'll move on to the MoMA application.

COUNCIL MEMBER KATZ: I feel like I'm in a comedy routine right now. Can we answer one question? Did the Community Board approve the liquor license last time they went in front of the Community Board?

[Off Mic]

COUNCIL MEMBER KATZ: You got approved by the Community Board, not by SLA?

[Off Mic]

COUNCIL MEMBER KATZ: The Community Board, when you went in front of the Community Board for your liquor license, last time, was it approved?

DEREK SANDERS: I don't know the answer to that. I'm not sure.

COUNCIL MEMBER KATZ: Mr. Chair, as

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2 Chair of the Land Use Committee and I know that
3 you as Chair of the Sub Committee are having also
4 the same, probably, thoughts. If not, correct me.
5 But this is not something that should be taken
6 lightly. This is an application for a sidewalk
7 café, and with all due respect, if you don't know
8 the answers you shouldn't be testifying. And if
9 your owners cared that deeply about this
10 application, they should be here to answer the
11 questions. So my point to you is that we have a
12 lot of business in front of this Committee. You
13 have an unbelievable Council Member, who is
14 willing to continue discussions on this right now.
15 Because I would tell you, if this were my district
16 it would not be the same thing. And the fact that
17 he is willing to make these discussions I think is
18 good for his community because there are people in
19 the community that care about your establishment,
20 and I get that, and I think it's good for you.
21 But let me just say this, we are all on this
22 Committee listening to the testimony. You have
23 violations, as far as I can tell, complaints on
24 September 15th, 2009; April 30th, 2009; April
25 29th, 2009; April 26th, 2009; April 24th, 2009;

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2 April 15th, 2009; November 4th, 2008--apparently
3 there are block party amplifiers blasting out into
4 the street, which clearly is not within the
5 purview of what a bar should be doing. So my
6 point is--I'm stopping on November 4th, 2008. My
7 point is if you don't now about the violations,
8 you should.

9 DEREK SANDERS: No, no. I do.

10 COUNCIL MEMBER KATZ: The second
11 thing is that, and I'm not asking for discussion
12 here, because my point to you isn't that you're
13 wrong. My point to you is that this is a serious
14 process and affecting people's quality of life as
15 they are trying to raise a family, have an
16 apartment, all this kind of stuff is a very
17 serious issue. So my suggestion to you is that in
18 the next few days or next two days, you do
19 everything you can to bring the owners who do know
20 about all these violations or complaints, to sit
21 down with Council Member Gerson and the community
22 and figure it out. If it can't be figured out, on
23 Thursday this will probably be turned down. So
24 I'm just letting you know that you need to bring
25 people in who can take this application seriously.

2 CHAIRPERSON AVELLA: Thank you,
3 Council Member Katz. Thank you.

4 COUNCIL MEMBER GERSON: Thank you
5 Council Member Chair Katz.

6 CHAIRPERSON AVELLA: Thank you,
7 Council Member Gerson. And seeing no one else to
8 speak on this item, we'll close the public hearing
9 and we will move on to the big application of the
10 day, the MoMA application, C 090431 ZSM and C
11 090432 ZSM, and call up the applicant to give
12 their presentation.

13 [Pause]

14 CHAIRPERSON AVELLA: While they're
15 getting set up, I'd like to call on Council Member
16 Dan Garodnick, who would like to make an opening
17 statement prior to the application.

18 COUNCIL MEMBER GARODNICK: Thank
19 you, Mr. Chairman and I will be very brief in
20 making an opening statement. We went from the
21 Corner Deli to the Hines MoMA Tower. I don't
22 think we can make a more significant move than
23 that. But I wanted to note before we start this
24 is a proposal that is just outside of my Council
25 District, although it is directly across the

1 street from residents who I represent, who would
2 be seriously impacted by a tower that would be the
3 height of the Chrysler Building going up in the
4 mid-block on a narrow cross town street. These
5 are not residents, the folks I represent, they are
6 not residents of a high-rise that are fighting to
7 maintain their views, rather they live in a low-
8 rise area that is zoned by the City to preserve
9 the historic nature of this section of midtown.
10 And they are understandably concerned about how
11 this project could threaten the character of the
12 community in any number of ways, including the
13 creation of a canyon effect blocking out light and
14 air to a cross street in a way that challenges the
15 aims of the zoning laws, trivializing nearby
16 landmarks that would be dwarfed by the proposed
17 project, while of course recognizing that there
18 are some landmarks in this application that would
19 also be aided; increased traffic and pedestrian
20 impacts on what is already a congested through
21 street; adding to the feeling that 54th Street is
22 the backdoor for 53rd Street, a feeling that
23 already exists today due to the high density of
24 loading bays from the Museum of Modern Art, and by
25

1 imposing street wall with few points of
2 interaction for pedestrians. The developer we're
3 about to hear from proposes placing one of the
4 tallest buildings in New York City on to a mid
5 block lot, one that lies partially within the low-
6 rise Special Midtown Preservation Sub District.
7 And it is going to be there job today to explain
8 how that is appropriate. They also need to
9 explain how they intend to mitigate the impacts
10 that the project is likely to create. And the
11 burden is on the developer to explain to this body
12 why the transfer of bulk that is the result of
13 merged super lots is in keeping with responsible
14 planning principles. Under any scenario, whether
15 it is a building of 250 feet or a building of
16 1,050 feet, there can be development on this site
17 that gets the Museum of Modern Art the expanded
18 gallery space that it seeks. We welcome that
19 expansion and that possibility. But we need to
20 take great caution not to open the door to a
21 destructive precedent and not to place undue
22 burdens on a community that this City has gone
23 great lengths to protect. And I thank the
24 Chairman again for the opportunity to say a few
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1
2 words at the outset here, and I look forward to
3 the testimony from the Developer, from its
4 representatives and from MoMA of course. And thank
5 you very much, Mr. Chair.

6 CHAIRPERSON AVELLA: I should
7 mention, I didn't think I would have to, but there
8 will be no applause and no booing. If allow
9 applause, then I have to allow booing. And if I
10 allow booing, then I have to allow applause. So
11 if you want to speak, that's your place to do it,
12 at the table. All you have to do is sign up and
13 you get your two minutes. So I appreciate that
14 this is a very controversial issue for a lot of
15 people, but I would ask that you refrain from
16 applause or booing, no matter how you feel about
17 the application.

18 MICHAEL SILLERMAN: Mr. Chairman,
19 Michael Sillerman [phonetic] of Kramer Levin, Land
20 Use Counsel for the project. We're presenting the
21 53rd West 53rd Street project, an 82-story mixed
22 used building designed by 2008 Pritzker Prize-
23 winner Jean Nouvel, which will contain just over
24 50,000 square feet of new space for the Museum of
25 Modern Art, including just under 40,000 square

1 feet of new gallery space in the building on the
2 second through fifth floors, a hotel on floors
3 seven through 18 and a residential condominium on
4 the building's upper floors. The design is shown
5 on the board behind me to my right, and you will
6 be seeing some refinements to the top of the
7 building being presented by the project architect.
8 The development as shown on the board behind me is
9 on a zoning lot that includes the existing MoMA
10 complex, St. Thomas Church, the American Folk Art
11 Museum, and the Museum Tower Condominium. It's
12 located in four different zoning districts within
13 the Special Midtown District. The development
14 site itself is located very close to Sixth Avenue,
15 with approximately 43% of its total lot area
16 located in the C6-6 15 FAR district, and the bulk
17 of the site is located in 15 and 12 FAR districts.
18 So it's really not appropriate to consider this a
19 traditional mid-block site, and to the extent that
20 it's in the C5-P Preservation District, the
21 building very, very largely respects the envelope
22 for the lower density part of the site. The
23 project involves the utilization of floor area
24 from two designated and very fine landmarks,

136,000 square feet from The University Club, which would be transferred by means of a 7479 Special Permit, and approximately 275,000 square feet from St. Thomas Church, which would be utilized by a 74711 Special Permit to enable certain zoning modifications. The project also involves a utilization of just over 31,000 square feet from the Folk Art Museum, so therefore the project will provide substantial benefits to four important not-for-profit institutions, MoMA, St. Thomas Church, the Folk Art Museum and the University Club. The building, as proposed, would be 1,250 feet high. It is of course a tall building, but at the same time has relatively few units. Only 150 residential units and 120 hotel units, which is smaller than many of the residential and hotel buildings on this block and surrounding blocks. The building would contain just over 658,000 square feet of total floor area, which is comparable in size to many mid-sized buildings in midtown and roughly the same size as the building located just across the street from MoMA, to the south, at 31 W. 52nd St., which is a 30-story mid-block office building that was also

1 developed by Hines, the developer here. So that
2 on this dense midtown site there is an as of right
3 development scenario, which is shown on the board
4 behind me, of 1,089 square feet. Given the modest
5 number of units in the building, the project's
6 final environmental impact statement determined
7 that the building would have no significant
8 environmental impacts in terms of traffic, loading
9 activity or pedestrian trips generated by the
10 building. The project's environmental consultant,
11 however, is here to answer any questions about the
12 traffic flow on West 54th Street and West 53rd
13 Street, the operation of the loading docks, bus
14 drop off activities and visitor queuing. The
15 proposed building will continue the longstanding
16 approach to the development of this block, that is
17 concentrated development on the southern half of
18 the block and has under-built the portion of the
19 building in the preservation district along 54th
20 Street. The construction of Museum Tower in 1984,
21 the Museum's recent expansion in 2004 and now the
22 proposed building all involve the shifting of
23 floor area on the zoning lot to the south and to
24 west, away from the landmarked building, and the
25

1 way from the MoMA garden along West 54th Street,
2 which has been preserved and has been expanded
3 through the development of the MoMA complex. The
4 requested zoning waivers would facilitate the
5 movement of this bulk to the south and west and
6 would allow for the unique asymmetrical design of
7 the building. The project therefore meets the
8 findings of 7479 and 74711 regarding Land Use
9 impact because the building largely complies with
10 the height and setback regulations for the zoning
11 districts in which it's located, with waivers
12 necessary only to establish a functional floor
13 plate on the upper floors and distribute floor
14 area away from the landmarks in the Preservation
15 Sub District. The developer and MoMA have worked
16 hard to resolve issues raised by the community
17 board regarding loading docks, bus idling, visitor
18 queuing and the need for communication during
19 construction. Based on this feedback the
20 developer is committed to work as part of a
21 construction task force to respond to construction
22 impacts and to maintain a single point of contact
23 during construction. MoMA has continued to
24 explore solutions to pedestrian and traffic
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1 concerns, and has already taken measures to
2 encourage visitor arrivals at non-peak hours, to
3 dedicate staff to monitor deliveries and truck and
4 bus idling, and to engage with the Midtown North
5 Police Precinct on traffic related matters. In
6 recognition of these commitments, the Manhattan
7 Borough President recommended conditional approval
8 of the application. We were disappointed that the
9 City Planning Commission voted to reduce the
10 height of the building by 200 feet to 1,050 feet.
11 The height reduction is problematic on many
12 levels. It threatens the economic viability of
13 the project. It reduces benefit to the not-for-
14 profit institutions, and it undermines the
15 architectural integrity of the building.
16 Therefore we're respectfully requesting that the
17 City Council restore the height of the building to
18 1,250 feet as originally proposed. Thank you.

19
20 CHAIRPERSON AVELLA: Is that your
21 entire presentation or are there other speakers?

22 MICHAEL SILLERMAN: That's my
23 presentation. Now I'd like to turn it to the--

24 CHAIRPERSON AVELLA: [Interposing]
25 Yeah, absolutely.

2 MICHAEL SILLERMAN: To Glenn Lowry.

3 GLENN LOWRY: Good morning. I'm
4 Glenn Lowry and I'm the Director of the Museum of
5 Modern Art. Chairman Avella, City Council
6 Members, it's a pleasure to address you today and
7 to share with you our full support of what we
8 believe to be an exhilarating steel and glass
9 tower designed by Pritzker Prizewinning Architect,
10 Jean Nouvel, and to be developed as you've heard,
11 on the site to the west of the museum by an
12 affiliate of Hines Interests. The Museum of
13 Modern Art selected Hines as the developer for the
14 project because we strongly believe in the
15 integrity of the firm based upon their exemplary
16 history of development in New York City in
17 particular. We were delighted that Hines selected
18 Jean Nouvel in turn to create this stunning
19 design. He is one of the foremost architects
20 practicing anywhere in the world today. The
21 Museum of Modern Art has always embraced
22 outstanding architects throughout its history, and
23 in 1932 created the first museum with a curatorial
24 department devoted entirely to architecture and
25 design. In its last 80 years the museum has

1 organized dozens of groundbreaking exhibitions
2 about modern architecture. I can't think of a
3 more fitting architectural milestone in the
4 museum's evolution than to be a neighbor to one of
5 the world's most iconic and forward-looking new
6 buildings. And this building will be of enormous
7 benefit to our visitors. As part of the project,
8 the Museum of Modern Art's gallery space will
9 expand on the second, fourth and fifth floors,
10 connecting seamlessly to our existing permanent
11 collection galleries on these floors. In total
12 the museum will gain about 70,000 square feet, of
13 which approximately 40,000 square feet will be for
14 new gallery space. The balance will be for
15 mechanical and storage space. This gallery
16 expansion will enable us to show even more of our
17 magnificent collection to the public. Since the
18 added space on the second floor is a double height
19 space, this affords us an even greater opportunity
20 to display many of our monumental works of
21 contemporary arts, such as those sculptures by
22 Richard Serra and Martin Purrier that were last
23 seen in the museum a couple of years ago. In
24 fact, the contemporary galleries will double in
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1 size with this addition, allowing us to foreground
2 our commitment to living artists, especially those
3 here in New York. More gallery space will address
4 the crowding in our current galleries and provide
5 an improved experience for our current level of
6 attendance. With more room to show more works of
7 art, the Museum will continue to thrive and to
8 garner the attention and support of future
9 generations of museum-going public, reinforcing
10 the Museum's mission of being the foremost museum
11 of modern art in the world and our commitment to
12 reaching diverse audiences. Since we reopened in
13 2004, school group attendance alone has grown
14 substantially. And every year we serve over
15 30,000 public school students in groups from every
16 borough in New York City, free of charge. In
17 total, nearly 3 million people have visited the
18 Museum for free through our various free admission
19 programs, including Target Free Friday Night, Free
20 admission for children under 16 and free admission
21 for all CUNY and SUNY students. The proposed new
22 building also benefits the museum in other
23 critically important ways, both financially and
24 programmatically. The proceeds of the sale and
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1
2 transference of air rights will help the Museum
3 reduce its debt and increase the Museum's
4 endowment, which in turn supports Museum
5 operations, including all of our educational and
6 exhibition efforts. This is vital. Because the
7 Museum of Modern Art does not receive direct
8 support from either the City or the State for our
9 operations. We depend entirely on the proceeds of
10 our endowment, admissions and fundraising. I want
11 to take this opportunity to express our
12 commitment, deep and profound, to working with our
13 midtown neighbors on issues that affect all of us
14 including--I take very seriously Councilman
15 Garodnick's observations--including managing the
16 visitor entering process in the most effective and
17 least disruptive way possible, as visitors
18 sometimes use the neighborhood sidewalks as a
19 place to line up. We recognize that. We are
20 committed to doing all we can to mitigate that.
21 Improving the efficiency and lessening the impact
22 upon our neighbors of truck deliveries and school
23 bus drop offs and pickups by collaborating with
24 the NYPD to enforce traffic rules. Again, we
25 understand these are problems. We know that they

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2 may never be dealt with perfectly, but we are
3 absolutely determined to improve the situation to
4 its best. We are committed to responding to the
5 community's concerns regarding the wall of the
6 Abby Aldrich Rockefeller Sculpture Garden. To
7 that end, the Museum has begin to explore design
8 concepts with its architects to improve the
9 exterior appearance of the wall facing 54th
10 Street, to make it a more attractive and appealing
11 façade and to allow a greater sense of openness
12 into the garden from the sidewalk and street
13 through the existing two gates. I do want to call
14 attention to the fact that in the last expansion
15 at the request of the community we made a huge
16 effort to design a wall that would mitigate the
17 efforts of sidewalk vendors to use it as a place
18 of display. We've actually succeeded in that, but
19 perhaps we've created another issue, and we will
20 solve that problem just as we did the last one.
21 We are dedicated to being a good neighbor and we
22 stand ready to continue our dialogue with the
23 community and work together on reaching solutions.
24 In fact we've already put a task force together at
25 the Museum, several members of which are here

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2 today and can answer further questions should
3 there be any, to ensure that the conversation with
4 our neighbors is not only open, but one that
5 produces results. In closing, let me state again
6 how excited we are to be associated with an
7 architectural project of such significance to the
8 City and to the world. Jean Nouvel's magnificent
9 addition to the New York skyline and the
10 streetscape of Manhattan, should it be built, will
11 be a vibrant addition among the rich architectural
12 heritage of its neighbors. I hope the City
13 Council will join me and the Museum of Modern Art
14 in their support for this project. Thank you.

15 DAVID PINNICK: Good morning, I'm
16 David Pinnick [phonetic] with Hines Interests.
17 Hines is honored to be selected by MoMA to work on
18 this great project with them. We were selected in
19 part because of our track record of excellence in
20 design and project execution, exemplified by the
21 Lipstick Building and over 12 million square feet
22 of space successfully developed in New York City.
23 We have engaged one of the great architects to
24 design the building in Jean Nouvel. While this is
25 a very tall building, at 658,000 square feet, it

1
2 is only average in terms of density for a midtown
3 building; hence the environmental analysis shows
4 there are almost no impacts. In a May 2007 letter
5 from the 54th Street Block Association summarizing
6 their objections to the project they asked that we
7 make the building residential. We have done that.
8 Make the residential entrance on 54th Street; we
9 have done that, making 54th Street not the back of
10 our project, but in fact making it in large part
11 the front of our project as the majority of our
12 project is based on the viability of the
13 residential portion. Design the building to
14 minimize shadows, which we have done through the
15 specific design of the building, largely compliant
16 with the midtown zoning. And fourth, the minimize
17 the effect of noise, pollution and traffic as well
18 as sanitation, which we have done through limiting
19 the number of units in the building. In addition
20 we proposed other operating details for the
21 loading dock and traffic management. In fact,
22 54th Street is a good traffic street, 30% less
23 traffic on 54th than on 53rd. And we will have
24 every interest in keeping it that way. If the
25 building is not restored to its proposed 1,250

1 feet of height, we will lose the hotel and
2 endanger the economics of the entire project.
3 MoMA, The American Folk Art Museum, the University
4 Club, St. Thomas Church, are all major cultural
5 contributors to the wellbeing of the City. They
6 will be at risk of losing significant economic
7 benefit without your approval of the 1,250-foot
8 tall building. We recognize that there will be
9 inconveniences during construction and have agreed
10 to a liaison with the community to help minimize
11 those problems. Hines has a very positive
12 presence in New York, for over 25 years, and will
13 continue to have one here. Once construction is
14 complete, our interests are closely aligned with
15 the community. Good traffic flow, cleanliness and
16 quiet enjoyment of the neighborhood are our goals
17 as well as theirs. The construction of this
18 building will generate at its peak over 600 jobs.
19 Hines has an excellent labor track record. All of
20 our buildings have been constructed with union
21 labor. We are committed to a union workforce
22 here, respecting all of the best industry and
23 legal practices for rapid and safe construction of
24 the building, which will include the very
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2 successful union apprentice program, Construction
3 Skills 2000, through our general contracting
4 relationships. Total direct, indirect and induced
5 job creation as a result of this construction
6 project approaches 6,000--I believe I have the
7 term correct--job years across New York State. We
8 ask that the Committee consider our application
9 and vote in favor. Thank you. Jean Nouvel?

10 [Pause]

11 JEAN NOUVEL: Good morning. I am
12 Jean Nouvel. Chairman Avella, Council Members,
13 it's an honor to present this project in front of
14 you. I am a contextual architect. I try to find
15 the missing pieces in the existing surroundings.
16 My proposal is to reveal the beauty of the
17 buildable volume innovated from the urban rules of
18 New York City, and to build the - - volume with a
19 structure on the perimeter of the site. Like the
20 drawings of - - from the '20s, I propose a
21 contrast between a needle and cubic buildings.
22 The idea is to live inside the structure, like a
23 carpenter, to eliminate the mullions, the windows,
24 the details, to have the feeling to live in the
25 same time inside, outside. The structure creates

1 a random net. All these architectural elements
2 are clear. We are judged positively by the City
3 Planning and the Architectural Critique. The idea
4 is also to build a signal, a spire, to reveal the
5 situation and the existence of the MoMA in the
6 skyline of Manhattan, and to design the slenderest
7 skyscraper in Manhattan. The proportion is very
8 sensible. We cannot design a spire. We cannot
9 design a spire at the same height as the
10 neighbor's building. New York City is not
11 completed. New York City is always the most
12 important alive crossroad in the world. It's
13 crucial the most creative architecture are always
14 here. When an architect has to build a landmark
15 in midtown, he must have the strong ambition, not
16 for himself, but for New York, the MoMA and the
17 history of architecture. And to propose something
18 visible and feasible, to build a slender building
19 is more expensive than to build a fat building.
20 It's not possible to propose a complex structure
21 without the right density, the right square
22 footage inside. The City Planning proposed to cut
23 the spire of 200 feet because the design of the
24 top is not resolved. Consequence, the overall

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2 proportion changes and more than 100,000 square
3 feet disappears and the building becomes fatter
4 and more difficult to realize. We show today a
5 new proposal for the top, and I will comment to
6 you this evolution of the project. May I have the
7 main drawings, please? I propose we show the
8 perspective of the rejected by--not this one.

9 [Pause]

10 JEAN NOUVEL: That is the project
11 we've shown. And we've shown a lot of details.
12 We have the agreement of a lot of details, of the
13 structure, of the detail, of the base of the
14 project. I don't know if you saw during my speech
15 the drawings of the street, the interior of the
16 building. Can you show that please? You see when
17 you are inside you have the feeling of the
18 structure. When you are on the street you feel
19 the structure going in the ground. And you have a
20 reflective game with a part of the--with the
21 fourth floor with the MoMA, with the movement of
22 the cars inside. You see inside the passage
23 between the 53rd and 54th Street with a
24 restaurant. It's like a public passage. And the
25 entrance to the hotel. And the top of the

1 building, existing, last time. What you have to
2 understand, we designed 90% of this project in the
3 detail, but the top is a part where you have a lot
4 of constraints, technical constraints. We have to
5 integrate different elements we don't have
6 clearly. So that was just the profile of the
7 building and not the detail. And we showed this
8 project a little bit empty, a little bit on the--
9 the critique was that it was too much like a roof
10 on the tower, or too much like a tent on the
11 tower. And what we've shown is the first time,
12 that was the building, perhaps less symmetrical.
13 And we come back to that and that is the new
14 theory for the top. The top of a tower in New
15 York City is always very precious. You have
16 goldenness, you have copper, you have different
17 decorative elements. Here we proposed to have
18 also very new system of a precious top of a tower.
19 We put fins, reflective fins on the different
20 slopes. And we gave--we play with what we call--
21 can you show that? It's an adaptation of the
22 evolution of art during the 20th century. It's
23 optical art. Just when you are in front of the
24 building you cannot see the fins. When you are in
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1
2 an oblique view you begin to see the fins, because
3 they are in front of glass or reflective material
4 or so. And when you see on the tangent stairway
5 it's more intense. So you have variations of the
6 top when you turn in the City. The opposite side
7 now on 54th. [French] On this side you see it's
8 not like a tent now. We open completely. Each
9 top of every part of the building, it's like three
10 fingers like this. This volume, these lines are
11 to protect the technical areas. And you see this
12 three - - like completely matte in the opposite
13 way and we have matte colors at the top. So you
14 have also a difference, strong difference of the
15 vision of this top when you turn around the
16 building. Now we can see the building, yea, you
17 can see the building for example from the
18 Rockefeller Center. Now the colors are uniquely
19 an indication--it's not a definitive color. It's
20 just to show where are the fins and the intensity
21 of that. But the interest of that--the building
22 stays very pure. And when you see the little
23 lines for the technical part, it's like a width
24 also in the building, and you can read the
25 structure in continuity, from the base to the top.

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2 You can see also transparency in the apartments,
3 when you have glass on three parts of the same
4 volumes. So it's a very elegant building, it's a
5 meaning that is fragile. It's very slim, and the
6 structure seems to have no really windows or
7 different elements in transition between the
8 façade and the structure. Now of course this
9 proportion of the slender building is important
10 because it's an integration in the skyline of New
11 York City. We can see for example the integration
12 for Central Park.

13 [Pause]

14 JEAN NOUVEL: You see the building
15 in relationship with the neighboring buildings and
16 the width of this proportion. If you imagine that
17 the building, if you have those same eyes on this
18 one, it's not exactly the same effect, and not--
19 what is important is to create identity, is to
20 create a new landmark, link it to the evolution of
21 the City and to the symbolic presence of the MoMA
22 in this spot. And you see the integration of the
23 proportion would change also this part of the
24 building to have a better width here. And you see
25 in the general skyline the identity of the

1 building. And at the same time the building is
2 very light. When you see that on the model you
3 can understand that the building is not in
4 competition with the Empire State. It's a needle.
5 It's a spire. It's exciting, and you can read the
6 structure. And so it's really an architectural
7 element of the culture of the 21st century. So
8 when you are on the Empire State, you see the
9 building in front like this, so you cannot see the
10 colors of the fins. And you see the building is
11 printed in the sky. Because if the top is
12 reflective, you print the clouds or the color of
13 the sky in the top of the building. So this
14 building is something like a needle, very
15 reflective, very fragile, and it is contrast with
16 the rest of the city. Sorry, the contrast with
17 the rest of the City is so important. So what I
18 explain is I think really that all the historical
19 Cities have its problem. They have not to be
20 that--and only protected. Every city, if you like
21 the history, if you like the prestige of a city,
22 you have to keep the city alive. And every part
23 has to do its duty. We try to do that. It is my
24 duty to do that. And I try also to respect the
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2 neighborhood. If a building is so slim, if a
3 building is so shining, the shadow effect is quite
4 nothing. Because--and you change nothing--if you
5 cut the building then it's fatter 200 feet below,
6 because the sun arriving diagonal like this. So I
7 think the integration of the building is a respect
8 of the existing situation. Thank you very much.

9 CHAIRPERSON AVELLA: Thank you for
10 that presentation. I know you have a second
11 panel. But what I'd like to do is since the
12 second panel relates to the air rights and the
13 non-profits that will benefit from the air rights;
14 I'd like to call them after we've had a panel of
15 opposition first. But I'd like to--Council Member
16 Garodnick has a question and then questions--and
17 then Council Member Katz.

18 COUNCIL MEMBER GARODNICK: All
19 right, thank you Mr. Chairman. Welcome back,
20 Gentlemen. Let me just start off by acknowledging
21 the points which I think everybody appreciates
22 here, which is one, the potential alignments of
23 interests on 54th Street if you have a residential
24 entrance there. I think that everybody sees that
25 and acknowledges that and I think that's

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2 important. Also, the fact that we're talking
3 about residential units at all, and I think that
4 this is an important point for all of us to
5 remember, that at the end of the day if anything
6 is built on this lot putting that entrance on 54th
7 Street is important to the neighbors across
8 because it creates an alignment of interest
9 between you and them. That being said, and I
10 appreciate the presentation and the vision. But
11 I'm going to limit my questions specifically to
12 some of the nuts and bolts issues about impacts,
13 lot mergers, mid-block, etcetera. And you know,
14 sitting where I sit, the notion that there are
15 almost no impacts from a building of this size is-
16 -it's a little hard to follow. It's hard to
17 swallow, because we are looking at a significant
18 development, and it's hard to deny the impact that
19 it or any development on that site would have to
20 an already crowded block that deals with any
21 number of concerns from loading docks to crowding
22 from the ordinary effects of the daily grind and
23 traffic and congestion. So let me just start out
24 with a couple of questions about light and air
25 here. And I wanted to understand what findings

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2 that the EIS made about the impact of light and
3 air as a result of this proposal. For whoever is
4 appropriate to answer this question.

5 MICHAEL SILLERMAN: Okay. The only
6 adverse impact that was identified in the EIS,
7 because there were not shadow--because as the
8 architect explained, it's a tall, slender
9 building, and the shadow moves very fast. The
10 shadow analysis in the EIS, which was the impact
11 on public open spaces and landmarks and eligible
12 structures, the only impact was for I believe one
13 hour on the 5th Avenue Presbyterian Church, and
14 the church, incidentally, explained that they
15 consider themselves an Urban Church and were not
16 troubled by what happened there, because part of
17 their mission was to be in the center of the City,
18 but we explored mitigations of that. There was no
19 other negative impact on--in terms of shadows that
20 was identified here. The other analysis of what
21 you call light and air, I think are planning
22 impacts. And City Planning did not have an issue
23 with those. It made the findings and has been
24 explained, the completed strategy of this building
25 has been to try and respect the sky exposure

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2 planes and the massing of midtown zoning, except
3 where either the asymmetrical design of the floor
4 plates required a departure from those. So that
5 we don't think that there's any issue here of
6 adverse impacts of light and air because of the
7 way that the building is massed and because the
8 bulk has been moved away from 54th Street towards
9 53rd Street and into the higher density zones.

10 COUNCIL MEMBER GARODNICK: The idea
11 that bulk is being moved away from 54th Street in
12 such a small site--how do you explain that? I'm
13 looking at a building here which, for all intents
14 and purposes, at the base level, you have the bulk
15 at the bottom; it narrows at the top, but it's
16 such a small site that, you know, you have impacts
17 on both 54th and 53rd.

18 MICHAEL SILLERMAN: Because as
19 shown, because of the way zoning works and in
20 recognition that this is a dense midtown site, you
21 can get a 1,089-foot building, and actually the
22 way that MoMA lot doesn't comply with zoning is
23 primarily in having too little bulk on 54th St.
24 because the garden is supposed to have a mandatory
25 72-foot high street wall. So the history of the

1
2 development of this site is to under build the
3 garden. Remember in 2000 the museum eliminated
4 the Dorset Hotel, which was a 197-foot 19-story
5 building, which was massively out of fit with the
6 preservation zone. It replaced it with the
7 Taniguchi Wing that fully complies with zoning,
8 and at the moment this building is also a very
9 good neighbor along 54th Street because it only
10 has some minor encroachments, very high up, to
11 have a usable floor plate. But in terms of the
12 portion of the building that faces your
13 constituents directly, it either complies or it
14 under builds what is allowed by zoning. And we
15 have moved floor area from 54th to 53rd St. for
16 exactly that reason.

17 COUNCIL MEMBER GARODNICK: Let's
18 talk about that point about the expanded as of
19 right scenario. You have described 1,089 feet as
20 the expanded development scenario, expanded as of
21 right scenario. And it's described as being
22 possible through a zoning lot merger. But that
23 zoning lot merger is dependent upon getting
24 approvals from the City. So practically speaking,
25 that expanded scenario as of right isn't really an

2 as of right scenario. Right? You do need
3 approvals to get to your 1,089 feet. Isn't that
4 right?

5 MICHAEL SILLERMAN: No. It was
6 directed to say zoning lot mergers don't need City
7 approvals. It's just it's an administrative
8 process like getting a building permit. So what
9 you couldn't do is you couldn't transfer the
10 136,000 square feet from the University Club,
11 because obviously that's across the street so that
12 landmark uses the benefit, and there is floor area
13 from St. Thomas on 5th Avenue that requires
14 transfers across district boundaries that couldn't
15 happen, and there's also some 54th Street density
16 that couldn't be used. So otherwise it's--

17 COUNCIL MEMBER GARODNICK:

18 [Interposing] So are those elements included in
19 your expanded...?

20 MICHAEL SILLERMAN: No. That's why
21 the building has less floor area, but the amount
22 of height that's achievable is only slightly less
23 than the height of this building.

24 COUNCIL MEMBER GARODNICK: Okay.

25 So let's talk about the waivers that would be

2 necessary here to build the expanded as of right.

3 Explain that to us. What waivers do you need to

4 be able to build the expanded development

5 scenario, the one that's right smack in the middle

6 over here?

7 MICHAEL SILLERMAN: Okay. The

8 waivers are of course a special permit to transfer

9 across 54th Street--

10 DAVID PINNICK: [Interposing]

11 Michael, that's not the question. I believe the

12 question was are there any waivers for the

13 expanded development scenario.

14 COUNCIL MEMBER GARODNICK: No, I

15 think you had it, which was, what do you need to

16 get you to 1,089?

17 MICHAEL SILLERMAN: Nothing.

18 COUNCIL MEMBER GARODNICK: Okay.

19 So then I guess that answers--now what question

20 were you going to answer? I was interested in

21 that too.

22 MICHAEL SILLERMAN: Oh, I was

23 answering what are the waivers that we are seeking

24 now.

25 COUNCIL MEMBER GARODNICK: Okay.

2 And either way you're saying you don't need the
3 waivers for that height.

4 MICHAEL SILLERMAN: Correct.

5 COUNCIL MEMBER GARODNICK: Okay.

6 So let's talk about FAR for a moment. You noted,
7 Michael, in your opening the FARs of the various
8 zones, an FAR of 12, I think an FAR of 15. You
9 noted and we all are aware of the fact that this
10 is a complicated site. It's in multiple zones
11 here, even separate districts. Explain to us--do
12 I have that right? It's either 12 or 15, the FARs
13 that would be allowed under those various zones?

14 MICHAEL SILLERMAN: Except along
15 54th Street, where it's 8.

16 COUNCIL MEMBER GARODNICK: Okay.
17 So it's either 12, 15 or 8. Now, the ultimate FAR
18 of your proposed project on that 17,000 square
19 foot parcel, what does it end up being?

20 MICHAEL SILLERMAN: The amount of
21 floor area that's developed is 658,000 square
22 feet.

23 COUNCIL MEMBER GARODNICK: What's
24 the FAR?

25 MICHAEL SILLERMAN: On the

1 footprint, you know of course that the whole
2 purpose of zoning lot mergers is to compute it on
3 a zoning lot basis subject to envelope controls,
4 but--

6 COUNCIL MEMBER GARODNICK:

7 [Interposing] I think the answer is 38.4, right?

8 MICHAEL SILLERMAN: I haven't done
9 the math. It's--

10 COUNCIL MEMBER GARODNICK:

11 [Interposing] I'll tell you the answer. I just--

12 MICHAEL SILLERMAN: [Interposing] I
13 recall 19,000 square feet.

14 COUNCIL MEMBER GARODNICK: I think
15 the answer comes out to 38.4. And I just make the
16 point only because when we sit here and try to
17 struggle through what is appropriate, putting
18 aside the vision and putting aside what MoMA needs
19 and everything like that, when we try to
20 understand what is appropriate for a mid-block
21 development in this turf in New York City we just
22 need to understand that we're using a variety of
23 different legal procedures here to get this
24 development to an FAR which otherwise would not be
25 allowed in any of the individual zones.

2 MICHAEL SILLERMAN: Zoning doesn't
3 regulate footprint; it regulates a zoning lot and
4 it has controls of floor area, of use and of the
5 envelope. And as long as you comply with the
6 envelope controls, obviously you can move--you can
7 get a very tall building on a smaller footprint.

8 COUNCIL MEMBER GARODNICK: I
9 understand. We're talking about highly technical
10 issues here and of course we're also trying to
11 step back and understand what the impact is on a
12 development that is on the fringe of a Special
13 District, even partially in a Special District.
14 But let me then, if you don't mind Mr. Chairman
15 for a few more, does this project in either the
16 expanded development scenario or the proposed
17 scenario, does that max out the FAR for the block?

18 MICHAEL SILLERMAN: No, it doesn't.
19 Because as you may recall in 2000, there was
20 86,000 square feet of MoMA floor area, which was
21 permanently retired by restrictive declaration.
22 So that is yet another way in which MoMA has been
23 under building this zoning lot.

24 COUNCIL MEMBER GARODNICK: So there
25 is more opportunity, even with--

2 MICHAEL SILLERMAN: [Interposing]

3 No, that's permanently retired.

4 COUNCIL MEMBER GARODNICK: Okay.

5 So then, so is the answer to the question, it
6 exists but you can't use it? Is that what you're
7 saying?

8 MICHAEL SILLERMAN: Yes.

9 COUNCIL MEMBER GARODNICK: So there
10 is no more opportunity.

11 MICHAEL SILLERMAN: The only other
12 thing is there may be a small amount of floor area
13 that St. Thomas retained, but other than that I
14 believe--and I think that's built into the zoning
15 calculations--but there is not an opportunity for
16 future development, and there is less than all of
17 the floor area utilized here because of that
18 86,000 retired.

19 COUNCIL MEMBER GARODNICK: And has
20 the zoning lot merger between St. Thomas and MoMA
21 occurred yet?

22 MICHAEL SILLERMAN: No. Typically
23 that happens after.

24 COUNCIL MEMBER GARODNICK: If you
25 achieve what you seek to achieve here, then that

would happen after the fact.

MICHAEL SILLERMAN: Yes.

COUNCIL MEMBER GARODNICK: Okay.

Let's talk about the CBS building for a second, landmark building right across the street. How far away is that from this proposed site over here?

MICHAEL SILLERMAN: I can't answer that off the--we'll have to get you that.

COUNCIL MEMBER GARODNICK: It's right across; it's the extent of 53rd Street, right? It's the width, the distance of MoMA to the other side of 53rd Street, right? I don't know how many feet that is but...

DAVID PINNICK: The street is 60 feet wide, plus--

COUNCIL MEMBER GARODNICK: [Interposing] 60 feet wide, so 70 feet, something like that. Did the EIS--

CHAIRPERSON AVELLA: [Interposing] Hold on one second. If you're going to respond, you have to talk into the mic, because nobody is going to be able to pick this up in the transcript. So if you're going to respond, please

1
2 talk into the mic.

3 COUNCIL MEMBER GARODNICK: And I
4 can help out a little bit here. The answer was
5 that an ordinary street is about 60 feet. We
6 hypothesized together that maybe this was around
7 75 feet away from MoMA to the building line on the
8 other side of 53rd Street.

9 DAVID PINNICK: Yes. The only
10 other small point I was making is the CBS building
11 is set back from the property line, so there's
12 some dimension there. But it's probably in that
13 range of 75 to 100 feet away.

14 COUNCIL MEMBER GARODNICK: To 100?
15 Okay. Did the EIS explore any impacts on the CBS
16 building either in terms of its perception from
17 the street or for any other impacts on that
18 building?

19 MICHAEL SILLERMAN: I don't believe
20 that EIS or Landmarks considers constructing a new
21 building that has a visual impact on another
22 building as an environmental impact.

23 COUNCIL MEMBER GARODNICK: Okay.
24 So the answer is no on that. I mean we have had
25 discussions about impact on existing landmark

1
2 buildings for other development that is going up
3 in the past in the City Council, which is why I
4 asked the question. Obviously at that proximity
5 it's not an unreasonable question for residents or
6 those who are sympathetic to protecting the
7 existing landmark there to be asking. But the
8 answer is, no, perhaps it was not required, but
9 the answer is no.

10 MICHAEL SILLERMAN: Right.

11 COUNCIL MEMBER GARODNICK: Let me
12 ask a question of Glenn of MoMA. I understand
13 that after the gallery expansion in 2005
14 attendance at MoMA went up considerably. Is that
15 right?

16 GLENN LOWRY: Correct.

17 COUNCIL MEMBER GARODNICK: Can you
18 give us a sense of what it went from and to?

19 GLENN LOWRY: Sure. I'm glad you
20 asked that question.

21 COUNCIL MEMBER GARODNICK: Okay.

22 GLENN LOWRY: We have with us here
23 today as well Diana Simpson, who for those of us
24 who like statistics is one of the great
25 calculators of daily attendance. We live and

1 breathe by daily attendance so we take this very
2 seriously. Our attendance prior to the last
3 expansion was approximately 1.6 million people a
4 year. It would go up and down sometimes on
5 special exhibitions. When we began looking at the
6 last expansion and understood the amount of
7 gallery space we were going to be adding and the
8 amount of public space we were going to be adding,
9 we actually did a whole series of studies as to
10 what we thought our attendance would grow to as a
11 result of the expansion. And we calculated and
12 testified before this committee in fact, several
13 years ago, that our attendance was going to grow
14 to about 2.5 million people a year, and that is
15 almost exactly what it has grown to. It
16 fluctuates, of course, on a yearly basis, but our
17 baseline over the last five years of operation has
18 been just about 2.5 million. If I might, working
19 with Diana and her team we've also looked at what
20 we thought our potential growth would be because
21 of this expansion, because I have a feeling you
22 might be going in that direction.

24 COUNCIL MEMBER GARODNICK: That's
25 the next question. Go ahead.

1
2 GLENN LOWRY: And we don't really
3 see a lot of growth, and I'll tell you why. I
4 would love to say that the audience for modern art
5 is unlimited, it would make my life much easier,
6 but in actual fact it isn't. And we believe that
7 we are very close to what the maximum audience for
8 what we do is, even if we doubled the size of the
9 museum. More space at this point doesn't increase
10 our attendance. We live in a universe, if you
11 wish, of visitors to New York City who go to
12 museums. And that universe can largely be
13 described as the universe of the Metropolitan
14 Museum of Art, the Museum of Modern Art and to a
15 lesser degree several of the other museums in
16 Manhattan, but to a much lesser degree in terms of
17 absolute numbers. That universe actually hasn't
18 changed very much in the last decade. The total
19 number of people going to museums has stayed
20 pretty much flat. What's happened is a shift in
21 the proportion of who goes to which museums. And
22 our best guess at this point is that adding 40,000
23 square feet of gallery space is not going to alter
24 that shift. The big impact came when we went from
25 80,000 square feet of gallery space pre 2004 to

125,000 square feet.

COUNCIL MEMBER GARODNICK: Okay.

But frequently MoMA has great lines outside.

There are people who are eager to get in who have to wait hours to get in. Presumably, it just would seem to me that if you could either accommodate more people in the building or you could have more to show them at any given moment, that you could get more of them in, accommodate more people, and perhaps because of eliminating lines or getting more people in at once, that you might actually see those numbers pick up. You don't agree?

GLENN LOWRY: I wish that were the case, because I love when many people visit the museum. I make no bones about that; we exist for our public. We get a lot of lines early in the morning, when people queue to get in. Those lines are often completely gone within an hour. We actually open the doors for our public an hour before we open the galleries to help alleviate traffic on the street. We do get considerable lines on Friday afternoons, when we have Target Free Friday, open to the public for free in the

1
2 afternoon. People start queuing for that often
3 two hours before free admission begins. But
4 typically, and I've asked Diana to study this for
5 us, but typically within two hours of 4:30, which
6 is when we start free admission, those queues are
7 completely gone. So the traffic to the museum--if
8 I'm boring you, stop me.

9 COUNCIL MEMBER GARODNICK: No, I
10 think I understand your point.

11 GLENN LOWRY: If the traffic to the
12 museum actually--leaving aside Friday afternoons--
13 comes early in the morning and then decreases hour
14 by hour so that by midday the flow is essentially
15 invisible--and that's even true when we have a
16 major exhibition like we did last summer.

17 COUNCIL MEMBER GARODNICK: Okay, so
18 let me just understand MoMA's interest in the size
19 and scale of this building. Because you mentioned
20 something in your testimony about how important it
21 was to the endowment of MoMA. We certainly wish
22 to support your efforts, you're a critically
23 important institution to the City of New York, but
24 it seems to me that if MoMA is able to achieve the
25 connection between floors 2, 4 and 5, it has

2 achieved its goals here, unless there is something
3 that connects the size and scale of this building
4 to the interests of MoMA, which you should explain
5 to us.

6 GLENN LOWRY: Thank you again. So
7 the answer is certainly from the point of view of
8 the quality of our gallery space and what I
9 believe will be the quality of the experience for
10 our public is directly related to the increase on
11 2, 4 and 5. The financial benefit to the museum
12 however is tied to the sale of air rights that
13 would move from the University Club over to this
14 site to grow it from its existing as of right
15 condition to a larger condition. We stand to
16 benefit financially from the sale of those air
17 rights to Hines Development in conjunction with
18 the University Club. So that sale benefits our
19 endowment directly and helps us reduce debt.

20 COUNCIL MEMBER GARODNICK: And this
21 is my--I don't want to take advantage. I know
22 that the Chair has questions and that there are
23 many people who wish to testify and I also have to
24 chair a hearing myself at 1:00, but I wanted to
25 understand--the last question from me for now--is

1
2 on the economic viability here. Putting aside
3 MoMA's interests for a second, I heard a number of
4 different points that moving from 1,250 as City
5 Planning did to 1,050 threatened the economic
6 viability, that presumably any further reductions
7 would ruin the economic viability. We hear that a
8 lot, frankly, here in the Land Use Committee and
9 Zoning Committee, and frequently it is without a
10 clear picture of how or why it would do that.

11 There's a wide turf between the previously
12 approved project and the proposed project. Help
13 us understand the economic viability here, of the
14 project, with as much specifics as you can give us
15 other than--we've heard frankly--I don't want to
16 waste your time if you cannot give it--but we hear
17 that frequently. Put some meat on the bones for
18 us as to what that all means.

19 DAVID PINNICK: I can respond with
20 two specific areas. One is that the air rights
21 that come from the other donor sites, St. Thomas
22 Church and the Folk Art Museum, are, like in most
23 real estate deals, transferred from another
24 location, and as a result they are somewhat less
25 expensive for us. So those air rights blend down

2 the cost of the project, it's an important
3 economic component. So to the extent that the
4 building is made smaller and we lose 100,000
5 square feet as a number that's been discussed,
6 that 100,000 square feet would in fact come from
7 St. Thomas. Those air rights are less expensive
8 than the rest of the land and so the average cost
9 of the land for us is decreased.

10 COUNCIL MEMBER GARODNICK: I'm
11 sorry. You made a comment about 100,000 square
12 feet.

13 DAVID PINNICK: We estimate--

14 COUNCIL MEMBER GARODNICK:
15 [Interposing] You're talking about the loss from
16 1,250 down to 1,050?

17 DAVID PINNICK: Yes.

18 COUNCIL MEMBER GARODNICK: Okay.
19 Sorry. Go ahead.

20 DAVID PINNICK: So that's one
21 factor, the total cost basis. The other factor
22 that's probably much more dramatic is that those
23 floors, that 200-foot reduction, represents about
24 16 floors of very high value residential sales for
25 us. The fact of the matter is that of course the

1
2 museum does not generate any revenue. We're not
3 sure that the hotel generates positive revenue.
4 The fundamental economics of hotels are very
5 difficult. And the lower floors of the
6 residential probably break even. And so to
7 actually make an economic return on this project,
8 we need to sell the residences in the upper part
9 of the building at a high economic price, at a
10 high market price. And the reduction, that top
11 200 feet, is the real economic juice for this
12 building.

13 COUNCIL MEMBER GARODNICK: Okay, so
14 then let me understand it. Can this building not
15 be built at 1,050?

16 DAVID PINNICK: It's very hard to
17 say. It would be a factor of the market and the
18 cost of construction and what other factors we
19 could bring to add value to the building in its
20 reduced height. It certainly has a very negative
21 impact.

22 COUNCIL MEMBER GARODNICK: Well,
23 you know, I would ask and I would take you through
24 the whole exercise of asking you the impact at 850
25 or 650 or 450, but I won't subject you to that.

1
2 But I guess the point that I'm trying to make,
3 which is that I understand it's less profitable.
4 But I'm really asking about the viability. I mean
5 this is prime real estate. We're talking about
6 residential and hotel development. And I frankly
7 don't have a clear picture as to what the point is
8 between 250 feet and 1,250 feet at which the
9 economic viability does not any longer make sense
10 for this venture. If there is an answer for that,
11 I mean that's important to know.

12 DAVID PINNICK: There is no
13 absolute answer. It's really a function of the
14 cost side and the revenue side, which are always
15 varying with the marketplace. Clearly today this
16 is an extremely challenging economic venture.

17 COUNCIL MEMBER GARODNICK: Thank
18 you. You have been more than generous, Mr.
19 Chairman. I really do appreciate it, and thank
20 you, gentleman.

21 CHAIRPERSON AVELLA: Council Member
22 Katz.

23 COUNCIL MEMBER KATZ: Thank you
24 very much, Mr. Chairman. I thank you all for your
25 testimony. I'd like to, just for the record, and

2 I know we've had discussions and meetings on this,
3 but I think it's important just into this meeting
4 to get a more of a context. You were talking
5 about, and I apologize--

6 [Off Mic]

7 COUNCIL MEMBER KATZ: --your name?

8 DAVID PINNICK: David Pinnick.

9 COUNCIL MEMBER KATZ: David?

10 DAVID PINNICK: Yes.

11 COUNCIL MEMBER KATZ: You were
12 talking before about building this union and
13 discussions you've had with the unions in the City
14 of New York. Can you go through that with me a
15 little bit, which unions? I assume it's mostly
16 trades. And also, what about the permanent
17 employees?

18 DAVID PINNICK: Sure. The
19 residential portion of the building would be
20 operated by 32BJ and we have had discussions with
21 the hotel union about operating the hotel and we
22 hope that those discussions will continue. We
23 were working on it over the weekend; it's not
24 finalized, but it's something that we will
25 continue to work on.

2 COUNCIL MEMBER KATZ: And--

3 DAVID PINNICK: [Interposing] If I
4 could add--

5 COUNCIL MEMBER KATZ: [Interposing]
6 And the building?

7 DAVID PINNICK: If I could just add
8 then that all of the construction that Hines has
9 done in New York over the last 25 years has been
10 union construction. We believe that the union
11 trades deliver the highest quality and best value
12 and we would continue to be constructing this
13 building in that fashion.

14 COUNCIL MEMBER KATZ: So it's
15 basically only the hotel issue that's still at
16 stake.

17 DAVID PINNICK: Correct.

18 COUNCIL MEMBER KATZ: So let's talk
19 about the hotel for a second. Council Member
20 Garodnick was talking about the 200 feet that was
21 taken off by the City Planning Commission and sent
22 to us, and I know that it would be the desire of
23 the applicants to put the 200 feet back, and M.
24 Nouvel did a very formidable presentation on the
25 designing and the architecture. But quick

1 question, you were talking about the 200 feet
2 having to come from the residential units. And I
3 just would like some sort of a breakdown as to why
4 it would have to come from residential, why it
5 couldn't come from the hotel. And in today's
6 market for high-end hotels, do you believe that
7 the economy really calls for a high-end hotel in
8 midtown still?
9

10 DAVID PINNICK: I'm glad you asked
11 that question.

12 COUNCIL MEMBER KATZ: I try to be
13 helpful.

14 DAVID PINNICK: Thank you. In fact
15 our current thinking is that if the building were
16 reduced 200 feet, we probably would eliminate the
17 hotel. The chances of a hotel making economic
18 sense in the near term on this site, when you
19 consider costs of construction and costs of
20 operation, are fairly low; it's probably sort of a
21 break-even proposition. And we think that the
22 hotel--yet we think that the hotel adds value to
23 the overall project. We like the idea of the
24 hotel in this location, approximate to one of the
25 major tourist attractions in the city, as well as

2 adding services and value to the residential
3 above. So the hotel itself--kind of break even--
4 but it probably would be the first element to go
5 in the event that the building is reduced in
6 height. It still applies to my previous comment
7 about the residential at the top though. Because
8 as the building moves down, the number of floors
9 which have broad views to central park and
10 elsewhere are reduced and so those floors that
11 remain, even though they would be residential at
12 the top of the building, are less valuable.

13 COUNCIL MEMBER KATZ: My
14 understanding, when you were talking to Council
15 Member Garodnick--and I was over there having
16 lunch, so I apologize, but I was trying to listen
17 at the same time--you were talking about losing
18 100,000 square feet. Is that what it was?

19 DAVID PINNICK: That's what we
20 estimate, yes.

21 COUNCIL MEMBER KATZ: But isn't the
22 hotel only supposed to be about 120,000 square
23 feet?

24 DAVID PINNICK: I think it's
25 147,000 square feet.

2 COUNCIL MEMBER KATZ: 147,000.

3 DAVID PINNICK: Above grade.

4 COUNCIL MEMBER KATZ: So if you
5 lost the 100,000, if you got rid of the hotel,
6 then you'd have another 40,000 square feet to deal
7 with.

8 DAVID PINNICK: Which is too small
9 to be hotel, so that would be come residential.

10 COUNCIL MEMBER KATZ: And you'll
11 excuse me, I'm a litigator by trade, so what
12 Council Member Garodnick was talking about when--
13 you said that you had to take off the residential
14 units first, when he talked about the 200 feet,
15 was that the residential would come first, I
16 thought.

17 DAVID PINNICK: I'm sorry, was that
18 my answer or his question? That was my answer?
19 Well as I just tried to explain, that if the
20 building became 200 feet shorter, the likely
21 element that would be removed would be the hotel,
22 but the top of the building obviously is 200 feet
23 shorter--

24 COUNCIL MEMBER KATZ: [Interposing]
25 It becomes less profitable for the residential.

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That's the point.

DAVID PINNICK: --and so there's less residential up high in the sky.

COUNCIL MEMBER KATZ: Okay. All right. I thank you.

CHAIRPERSON AVELLA: Thank you, Gentlemen. We will now move to a panel in opposition. Renee Osgood [phonetic], Justin Peyser, Albert Butsell [phonetic] and Hugo--I can't pronounce the last name. Hoogenboom.

[Pause]

RECORDED VOICE: I'm David Achelis [phonetic] from the Coalition for Responsible Midtown Development. Our neighborhood is facing a colossal disruption to our quality of life. Over the next five years, from 2010 to 2015, the Museum of Modern Art, MoMA, is planning to build a skyscraper 1,250 feet tall. That's as tall as the empire state building. They plan--

[Pause]

RENEE OSGOOD: Hi. Good afternoon. My name is Renee Osgood and I work at 17 West 54th St. And we'd like to present this short video to the Committee and to everyone else attending to

1
2 show what our statement is about the environmental
3 impact of the MoMA Hines Development.

4 [Pause]

5 RECORDED VOICE: I'm David Achelis
6 from the Coalition for Responsible Midtown
7 Development. Our neighborhood is facing a
8 colossal disruption to our quality of life. Over
9 the next five years, from 2010 to 2015, the Museum
10 of Modern Art, MoMA, is planning to build a
11 skyscraper 1,250 feet tall. That's as tall as the
12 Empire State building. They plan on building it
13 right here, on this empty lot, a lot no bigger
14 than a McDonald's Drive Thru. We are united in
15 opposition to MoMA's unconscionable proposal for
16 the tallest building on the smallest lot in the
17 world, casting shadows over an area from 5th
18 Avenue to 7th Avenue and West 53rd Street into
19 Central Park. MoMA gets no added benefit from the
20 new proposal, and the neighborhood gets stuck with
21 a quality of life catastrophe that goes far beyond
22 five years of construction disruption. In
23 addition to our quality of life, we have a lot of
24 history to protect in our neighborhood. On West
25 54th and 53rd Streets alone, there are 12

2 landmarked buildings and another two-dozen on the
3 adjacent blocks. The undulating Rock Floor
4 Apartments is a modern masterpiece in apartment
5 design, facing the MoMA sculpture court. Light
6 and reflection distinguish this architectural
7 marvel.

8 RECORDED VOICE 2: I think
9 something that's twice as high as that financial
10 tower building, I wouldn't even been able to see
11 the top of it.

12 RECORDED VOICE: MoMA's Empire
13 State size skyscraper will block the light forever
14 from reaching the Rockefeller façade. No more
15 light.

16 RECORDED VOICE 3: The face of the
17 Empire State building is on Fifth Avenue, it's a
18 whole block wide. That is not overpowering
19 because of the extent of the floor of the
20 building. In this one it's on the - - from space,
21 the floor area is too small.

22 RECORDED VOICE: MoMA celebrates
23 what's inside its walls and degrades it on the
24 outside.

25 RECORDED VOICE 4: - - is a

1
2 contextual architect, and it removed completely
3 the context of our neighborhood.

4 RECORDED VOICE: What we've got is
5 a kind of apartheid here, a conflict pitting human
6 needs of a living neighborhood against the
7 encroaching commercial interests of a major
8 cultural institution.

9 RECORDED VOICE 5: As far as the
10 Museum of Modern Art being a good neighbor is
11 concerned, this is how they treat the
12 neighborhood.

13 RECORDED VOICE 6: That garden,
14 which is beautiful, can't be seen from the
15 sidewalk. And in fact what you do see from the
16 sidewalk is a solid and rather plain, corrugated
17 wall.

18 RECORDED VOICE 5: Beautiful
19 gardens cut off from the neighborhood.

20 RECORDED VOICE 6: This museum has
21 turned its back on its lovely neighborhood, when
22 they could have a wonderful impact on the
23 neighborhood.

24 RECORDED VOICE: How did this
25 building get so darn tall? Transfer variance; the

1
2 equivalent of ten churches and six university
3 clubs stacked on top of each other. St. Thomas
4 Church and the University Club intend to sell the
5 unused air above their buildings to enable MoMA's
6 skyscraper. We revere our landmarks. We are all
7 for landmarks preservation, but not one over the
8 other and not at the expense of mortgaging our
9 quality of life.

10 RECORDED VOICE 7: WE have this
11 gorgeous townhouse right here, and we're putting
12 an 80-story building right next to it.

13 RECORDED VOICE: Zoning law states
14 that all modifications under these transfers of
15 air rights cannot be approved if they adversely
16 affect existing open spaces, structures in the
17 vicinity in terms of scale, location and access to
18 light and air.

19 RECORDED VOICE 8: Part of the
20 argument with this skyscraper the size of the
21 Empire State Building is actually going to add to
22 the real estate values on our block. They've
23 already been approved to do a 25-story building
24 that makes sense with the zoning, but to go above
25 that is a marginal return to your real estate

2 values because they're going to take away all of
3 your light.

4 RECORDED VOICE: If MoMA gets this
5 zoning variance, we face five years of gridlock,
6 more noise, more pollution, more lane closures and
7 weekend construction.

8 RECORDED VOICE 9: The impact of
9 the museum is unfortunately a very negative one,
10 from the street itself.

11 RECORDED VOICE: There are
12 bountiful examples of all kinds of responsible
13 architectural choices, both old and new, that
14 respect the residential context of the middle of
15 the block. MoMA appears to consider 54th Street
16 its private delivery alley. A monument to greed
17 and folly at over \$2,000 a foot in this financial
18 climate, MoMA's project is not financeable.

19 RECORDED VOICE 10: They're
20 partnering up with a commercial real estate
21 developer to build a monstrosity in a space that
22 does not want it, does not need it and will not be
23 able to sustain it.

24 RECORDED VOICE: Any new building
25 should relieve that blank wall with an open plaza

2 or arcade that can absorb the enormous number of
3 museumgoers on our sidewalks and offer a free
4 place to sit and socialize.

5 RECORDED VOICE 11: I love my
6 neighborhood, and this structure is going to
7 destroy it, destroy the quality of life here that
8 we have.

9 RECORDED VOICE: Such great damage
10 to our quality of life is an unacceptable burden.
11 The City Planning Commission already approved a
12 25-story building that best fits this lot. Choose
13 the plan that fits.

14 [Pause]

15 CHAIRPERSON AVELLA: Can we have
16 the lights back on? I understand somebody may
17 have lost their cell phone in the room. Security
18 has it. Okay, I think we found the person right
19 off the bat. Whoever has the cell phone, could
20 they raise their hand so she could pick it up?

21 [Pause]

22 CHAIRPERSON AVELLA: Check to see
23 that nobody made long-distance phone calls.

24 [Pause]

25 AL BUTSELL: Is it on now? Yeah,

1
2 I'm going to leave it off. I'm Al Butsell; I'm
3 Counsel for the West 54-55 Street Block
4 Association, the Committee for Responsible Midtown
5 Development. We oppose this now 1,050-foot high
6 tower. We have suggested and offered an
7 alternative which would limit the height of the
8 building to 490 feet, which is the height of the
9 landmarked CBS building across the way. We're
10 asking the Council to turn this application down
11 and force Hines to come back with a much more
12 contextual building. Now I've included in the
13 testimony I gave you a legal analysis of the
14 authority and the responsibilities of the Council
15 in this case. And just to sum up, clearly you
16 have the authority, just as you would in the
17 landmarks case to override, the City Council. And
18 given the impacts that are involved here, I think
19 it is--we believe that you ought to override that
20 decision and require Hines to come back. I just
21 emphasize that, you know, to put the elephant in
22 the room in context, you can have a beautiful
23 design but the reality is that this building is
24 twice as high as anything else in the neighborhood
25 and there are relatively high buildings. And all

1
2 you have to do is go outside here of City Hall and
3 look at that monstrosity that's going up behind
4 these absolutely great looking buildings that used
5 to be Park Row, to get a sense of what we're
6 talking about here, to make real--you know, that's
7 fine architecture too in theory, but it destroys
8 in a very real way City Hall Park and the
9 environment around it. And all for what? You
10 know, for money in a sense? You can have a
11 smaller building here. It may not be as beautiful
12 a building as Mr. Nouvel has designed, but you can
13 have a smaller building here that allows a
14 transfer of air rights, allows the institutions,
15 the historic St. Thomas, University Club to
16 achieve some value for their air rights, and the
17 neighborhood would end up with a more contextual
18 building. And I just want to--I don't want to way
19 overstay my time--I just want to say that over the
20 last eight years we've see one massive project
21 over another in this City, of which that across
22 the street is an example, and there are plenty
23 more. That is what this administration is about,
24 and in my view the Council has gone along too
25 often. And this is the time to call a halt. This

1
2 is the time to say stop, you can still make a
3 profit. You can still have air rights that will
4 benefit the historic institutions. It's time to
5 really respect the interests of the neighborhood.
6 And so I urge you to turn this proposal down and
7 make them come back with something much better for
8 us and for the City. Thank you.

9 HUGO HOOGENBOOM: My name is Hugo
10 Hoogenboom. I live at 45 West 54th Street,
11 directly across from the proposed development.
12 I'm president of the board of my building. I'm
13 here to urge you as our Counsel did, to turn this
14 project down and to just ask Hines to come back
15 with a much more reasonable proposal. We don't
16 need a building the height of the Chrysler
17 Building. And the size should be limited to less
18 than 38 stories. A powerful array of interests
19 including MoMA, Hines, St. Thomas Church and the
20 University Club is behind this development. These
21 interests stand to gain hundreds of millions of
22 dollars and have vastly more influence and
23 financial strength than the citizens of the
24 neighborhood that will be severely impacted by
25 this development. An indication of this

1
2 disproportionate strength is that the developers
3 seemed determined to squeeze the maximum gain out
4 of this development and have offered the community
5 no concessions ameliorations or benefits until
6 this morning, when they said they might do
7 something about that curtain wall that hides the
8 garden. As ordinary citizens, we have to rely on
9 government to protect us against this exploitation
10 of the preservation provisions of the zoning
11 resolution by this alliance of developers and non-
12 profit organizations. We look to the City Council
13 to protect us from a project that is designed to
14 extract every last possible dollar out of the site
15 at an enormous cost to the neighborhood and the
16 spirit of the zoning resolution. The first of
17 these costs will be four years of noise, traffic,
18 dirt and danger from construction. After that
19 will come the long-term deleterious effect of this
20 development on community facilities, services,
21 historic resources, the streetscape, neighborhood
22 character, infrastructure and everything else.
23 The grounds for drastically scaling back this
24 project are clear; it is grossly out of scale and
25 out of character. Thank you.

2 JUSTIN PEYSER: Thank you, Chair
3 Avella. I'm Justin Peyser. I'm the resident of
4 West 54th Street and a member of the Coalition for
5 Responsible Midtown Development. I hope the
6 committee will turn down these permits. I think
7 this is just simply lousy planning dressed in fine
8 clothes. Was it not a Texan who said you can't
9 fit a square peg into a round hole? Well that
10 Texan didn't have these lawyers. With all those
11 waivers and modifications eventually you can make
12 something fit here. I just don't see why we have
13 to support and subsidize a bad purchase that was
14 made at the height of the bubble. And as Mr.
15 Pinnick explained very well, he needs to sell
16 apartments way up in the sky, and the rest of us
17 live from floor 2 to about 12, and if he's made a
18 bad purchase, I don't think the City Council has
19 an obligation to give him additional air rights at
20 the expense of our light and air. This building
21 as has been pointed by Councilman Garodnick, would
22 be a 38 FAR. Our zoning laws were created in 1916
23 in part to prevent a repeat of the Equitable
24 Building, which was a 30 FAR. I don't have a list
25 of the top FAR buildings in the City, but I would

2 probably guess it to be in the top ten. There's
3 something I don't understand about MoMA. And
4 Director Lowry told us that it seems the deal is
5 now contingent upon the air rights. We were told
6 that when MoMA announced the transaction with the
7 developer in 2007 that there would be a 25-story
8 building based on a 250,000 square-foot
9 development. MoMA got the \$125 million in
10 consideration, it's in their income. And only six
11 months later they came back with the 1,050 foot
12 scenario and then thereafter the Empire State
13 Building. So I don't understand that change of
14 events. If 25-stories was good enough for them
15 then, I don't know why MoMA has to return the
16 money now. In conclusion I would like to say that
17 you have seen in our environmental statement here,
18 the video, what life is like on this block. We
19 need to mitigate existing conditions. This new
20 proposal does not do that. We seriously ask you
21 to consider some of the compromise positions we
22 have offered. Thank you.

23 CHAIRPERSON AVELLA: Council Member
24 Garodnick.

25 COUNCIL MEMBER GARODNICK: Thank

1
2 you. Before you go, Justin, let me just ask one
3 question of you folks, which is, obviously there
4 are a variety of different scenarios up on the
5 board. You all have proposed a compromise
6 solution. Some of the impacts for the compromise
7 would be present in the full build scenario.
8 Explain to the Committee, if you don't mind, why
9 you believe that to be a size which will have
10 impacts that are appropriate for the block or no
11 impacts at all or whatever it is, just so that we
12 understand.

13 AL BUTSELL: Well I think that
14 clearly the building that we are proposing is 490
15 feet high and the reason for that is because
16 that's the same height as the CBS building across
17 the street and therefore it will not over tower
18 that building and it provides a reasonable context
19 in which another building of that height would fit
20 and would not be a total outlier like this one
21 would be. It would certainly probably be a
22 bulkier building, which is something that the
23 community--I mean no one is enthusiastic about a
24 490-foot building in this community, but we are
25 trying to be realistic. We are trying to provide

1
2 an opportunity for some of the transfer of air
3 rights. The original proposal that was as of
4 right was 285 feet. This is 490 feet, that's an
5 additional 200 feet of height, which should
6 contribute significantly to the commercial
7 viability of the building. And I just want to,
8 you know, reemphasize what Justin said. These are
9 real estate people, they speculate. They bought a
10 building; they bought a lot for \$125 million.
11 They got hit with a recession. Now we're
12 basically--the community is being asked to pay for
13 it. There's no law that requires this council--
14 although very often administration seems to treat
15 it that way--as giving a developer an excessive
16 return or even a reasonable return under these
17 circumstances. Real Estate people lose money all
18 the time; it's a risky business. That's one of
19 the realities. I've done development. I know
20 what it's like to lose. I don't see why because
21 we have huge real estate companies in this city,
22 that they're too large that we can't afford for
23 them to lose a little bit of money.

24 COUNCIL MEMBER GARODNICK: And you
25 think that 490 protects the light and the air?

2 AL BUTSELL: I think it does. I
3 think it's not as tall as Museum Tower, but it's
4 right there with CBS.

5 COUNCIL MEMBER GARODNICK: Thank
6 you, Mr. Chairman.

7 CHAIRPERSON AVELLA: I want to
8 thank the panel. And you know, I think--okay,
9 just after I finish. You know, the sentiments
10 that you've expressed are mine, and I've said it
11 for a long time that the real estate industry
12 should not be guaranteed a return. But let's face
13 it, what the reality is. And any developer in
14 this city can go to the Board of Standards and
15 Appeals and ask for a variance based upon the fact
16 that they're losing money on a particular site.
17 It isn't right, but that's the way it is. But I
18 agree with you, it shouldn't be allowed. But, you
19 know, the real estate industry does control the
20 agenda in this City. Council Member Felder.

21 COUNCIL MEMBER FELDER: Thank you.
22 I just would like to ask the three of you, it's
23 the same question for the three of you just to
24 have a better idea. I'd like to know how tall the
25 building you live in presently is? And when you

1
2 moved there and how did that compare to the homes
3 that were there before you moved in?

4 JUSTIN PEYSER: I moved in, in 2000
5 to a 14-story building which was built--

6 COUNCIL MEMBER FELDER:
7 [Interposing] How many feet?

8 JUSTIN PEYSER: --which was built
9 in 1948.

10 COUNCIL MEMBER FELDER: How many
11 feet is that about?

12 JUSTIN PEYSER: I'm guessing it's
13 about 1,500-feet tall.

14 COUNCIL MEMBER FELDER: Okay. And
15 the houses near that when that was built?

16 JUSTIN PEYSER: On one side is the
17 Warwick Hotel and in the mid-block are
18 brownstones.

19 COUNCIL MEMBER FELDER: So would
20 you say that when your building--I'm not in favor
21 or against it at this point, I'm just curious.

22 JUSTIN PEYSER: And across the
23 street, on this empty lot was the City Athletic
24 Club, which was about 12 stories.

25 COUNCIL MEMBER FELDER: Right. But

2 would you say that most of the homes on the block
3 weren't as tall as the building that was built
4 that you lived in? Is that true or not?

5 JUSTIN PEYSER: The tallest
6 building in the area was Museum Tower, 53-stories.

7 AL BUTSELL: No--

8 COUNCIL MEMBER FELDER:
9 [Interposing] I'm going to ask you again, one
10 minute. I'm just curious, in other words most of
11 the block was brownstones. Is that true?

12 JUSTIN PEYSER: The residential
13 preservation sub district consists of brownstones
14 and mid-rise apartment buildings from about 10 to
15 15 stories.

16 COUNCIL MEMBER FELDER: Would that
17 apply to the other, say--

18 AL BUTSELL: [Interposing] I live
19 on the Upper East Side, so.

20 COUNCIL MEMBER FELDER: So you
21 don't live there?

22 AL BUTSELL: No. I'm representing
23 the group.

24 HUGO HOOGENBOOM: And I live in the
25 same building as Mr. Peyser.

2 COUNCIL MEMBER FELDER: Okay. Very
3 good.

4 HUGO HOOGENBOOM: Although I should
5 say there are two other apartment buildings of the
6 same or higher size that have been there longer
7 than our building has been there.

8 COUNCIL MEMBER FELDER: Very good.
9 Thank you.

10 CHAIRPERSON AVELLA: Next panel is
11 the panel from--representing the non-profits and
12 the discussion of the air rights, but I will limit
13 them to two-minutes each, just like everybody
14 else. Father Andrew Mead from St. Thomas, Melanie
15 Meyers, John Dorman and Maria Ann Conelli, that's
16 the American Folk Art Museum, St. Thomas and
17 University Club.

18 [Pause]

19 ANDREW MEAD: Good afternoon,
20 Council Members. I'm Andrew Mead, Rector of St.
21 Thomas Church Fifth Avenue, and I'm here today to
22 speak on behalf of John Nouvel's Tour Verre. A
23 little more than two years ago we were approached
24 by Hines Interests and asked if we would consider
25 selling up to 275,000 square feet of our air

rights to build Nouvel's tower, adjacent to the Museum of Modern Art, our neighbor on 53rd Street. At the time this was an unexpected joy. Now, in light of today's economy, the offer represents nothing less than a vital lifeline for the future of the parish. In the century since it was built, our landmarked church has become part of the cultural and spiritual patrimony of New York City. The Holy Communion is celebrated three times every day of the year. Thousands of people, parishioners, neighbors and tourists alike visit St. Thomas every week for spiritual sustenance, to enjoy the services sung by our world renown choir of men and boys, to take advantage of our social services or simply to be amazed by the magnificent architecture. We embrace the venerable position the Church holds in the City, but routine annual maintenance of our aging physical plant is nearing \$1 million, a number that will only grow. This is an enormous cost for any church. While our congregants give generously, parish giving covers less than 15% of our annual operating budget. In addition to routine maintenance, capital improvements central to the Church's core

1 functions are essential, including the renovation
2 of the Church's stained glass windows, now
3 underway, and the replacement of our pipe organ.
4 If we realize the full potential of Hines's offer
5 to buy our air rights and built a 1,250-foot tower
6 as Mr. Nouvel designed it, both of these vital
7 projects could be accomplished. The offer comes
8 down to a quite simple equation, the more of our
9 air rights we sell, the better we will be able to
10 maintain our beautiful church. We have never
11 before had an offer like Hines's and we dare not
12 assume there will ever be another. Do please keep
13 in mind that we are a church. Our core income is
14 the freely offered contributions of our
15 congregants. Most of all, building Tour Verre as
16 Mr. Nouvel designed it would be of enormous value
17 to St. Thomas and the other landmark institutions
18 in this venture, assuring their continued
19 existence for New York City well into the future,
20 so we ask you consider our plea in your
21 deliberations for this important project. Thank
22 you for your consideration.

24 COUNCIL MEMBER KATZ: Thank you.

25 MELANIE MEYERS: Good afternoon.

1
2 Melanie Meyers from Fried, Frank, Harris, Shriver
3 and Jacobsen, representing St. Thomas Church. I'm
4 here to talk about the Consequences of the City
5 Planning Commission's modifications to the Tour
6 Verre project. As you know, CPC modified the
7 project to reduce the height of Tour Verre from
8 the height of 1,250 to 1,050 feet. According the
9 report this reflected the Commission's concern
10 that a building of Tour Verre's height contribute
11 to and create an iconic presence on the New York
12 City skyline. What the report didn't consider is
13 the consequences of the change to the landmarks
14 and the institutions benefiting from the project.
15 While the modification didn't expressly limit the
16 amount of floor area in the building, we've been
17 told by representatives of Hines that with the
18 reduction, if the building is at all viable it
19 would be a loss of about 100,000 square feet. If
20 this is the case, the large majority of that
21 reduction would come from the St. Thomas's air
22 rights. And because the sale price is based upon
23 the amount of floor area being transferred, the
24 typical situation in an air rights deal, the
25 consideration received by the Church would be

1 reduced by approximately 27 to 30%--this is
2 enormous for the Church. As Father Mead
3 indicated, the capital and operational expenses
4 are staggering, they are ongoing and they will
5 only increase over time. On the other hand, the
6 Church's resources are finite. They cannot charge
7 for services; it is not a profit-making venture
8 and it has no expectation of a new influx of
9 funding. One of the only assets that the church
10 has and that it considered selling is its air
11 rights. With the CPC modification, unless
12 corrected, even that asset would be taken away
13 from the Church. Given the location and the
14 development surrounding it, this is a once in a
15 lifetime opportunity for the Church, and otherwise
16 an air rights sale will be nonexistent. As you
17 have heard from the architects and from the Hines
18 organization, the top of Tour Verre can be refined
19 to address the legitimate concern that a building
20 be a positive and compelling contribution to the
21 skyline. We also agree that refinements to the
22 street level could and should be made to improve
23 the relationship between the project and the
24 neighborhood street. We support these changes and
25

1
2 would ask the council to consider both the
3 proposed refinements and the critical needs of St.
4 Thomas Church in its deliberations.

5 JOHN DORMAN: Good afternoon. I'm
6 John Dorman, the General Manager of The University
7 Club. The University Club is an 1899 construction
8 considered a very important landmark, and we
9 respect the responsibility to maintain it. We've
10 worked hard to keep the building and its façade in
11 first class condition. In the past few years
12 we've completed a very complex façade restoration
13 project. That project is well documented with the
14 Landmarks Preservation Commission, as well as with
15 the Buildings Department. The cost of the project
16 was in the neighborhood of \$7 million. In fact,
17 during the past 12 years that I've managed the
18 club, our annual capital expenses have run more
19 than \$2 million annually, however there is more to
20 do. We're enthusiastic about the transfer and
21 happy that the monies gained in the sale of our
22 development rights will help us maintain and
23 preserve our landmarked building. In fact we've
24 agreed to a continuing maintenance declaration
25 with the Landmarks Preservation Commission as well

1
2 as agreed to restorative work as a contingency to
3 the transfer. One of the items of restoration is
4 the entrance door and foyer to be more in kind to
5 the original construction as planned by Charles
6 McKinn of the renowned architectural firm, McKinn,
7 Mead and White. We will be relocating the door
8 under the direction of the Landmarks Preservation
9 Commission to allow for better visibility of our
10 historic landmark and foyer. Additionally, we are
11 planning sidewalk vault repair, roofing and other
12 restoration projects as well as setting up a fund
13 that will be used solely for the preservation of
14 the landmark. The resources derived from this
15 transfer will help us continue to fund the
16 reoccurring need in a complicated building that is
17 more than 100 years old. The Clubhouse is in
18 constant need of repair and restoration. Being a
19 landmark only raises the standard of care and the
20 level of cost. It is for that very reason that I
21 believe that the allowance of a special permit to
22 transfer the development rights from the landmark
23 was created. At a landmark, simple construction
24 costs set up significantly more hurdles to pass
25 with much more scrutiny and expense. We recognize

2 our responsibilities as well as the individual
3 cost and the very unique opportunity the transfer
4 allows. This transfer will help us make the best
5 decisions for the building now and into the
6 future. We hope you agree and that you approve
7 the transfer of our development rights. Thank
8 you.

9 [Pause]

10 MARIA ANN CONELLI: Good afternoon.
11 I'm Maria Ann Conelli, I'm the Executive Director
12 of the American Folk Art Museum and we're located
13 directly between MoMA and the proposed building.
14 Our museum was designed by the architectural firm
15 Todd Williams and Billie Tsien, and they've won
16 several awards both nationally and internationally
17 for astounding architectural projects. It is our
18 opinion that Hines cares about the quality of what
19 they're going to build. They have selected a
20 world renown architect to ensure that they
21 building that they are constructing is
22 architecturally significant. It is our position
23 that commitment to excellence should be encouraged
24 and supported for all commercial construction in
25 New York City. In full disclosure, our museum is

2 currently in negotiation with Hines to sell our
3 air and easement rights. As I am sure you are
4 aware it has become increasingly challenging for
5 cultural institutions to remain financially
6 healthy so that they can carry out their mission.
7 We feel especially fortunate to have these assets
8 to assure our financial health. The Museum has
9 found Hines to be cooperative and understanding of
10 our interests and we have every reason to believe
11 that they will continue to act with honesty and
12 integrity in their dealings with us. They impress
13 us as a developer who is concerned not only about
14 their reputation but the long-term interests of
15 both the City and our museum. Thank you.

16 CHAIRPERSON AVELLA: We obviously
17 have some questions. If the building is lowered,
18 let's start with the premise first that the City
19 Planning recommendation goes forward and the
20 application is approved--and I'm not saying that's
21 going to happen, but let's start with that
22 scenario. How does that affect your individual
23 air rights? Does that reduce the amount that
24 you're going to be paid for your air rights?

25 MELANIE MEYERS: In the case of the

2 church, which is what I can respond to--

3 CHAIRPERSON AVELLA: [Interposing]
4 Introduce yourself again for the record, since we
5 have different people.

6 MELANIE MEYERS: Sure. Melanie
7 Meyers, Fried, Frank--on behalf of the Church. It
8 would reduce the amount of air rights that we are
9 able to convey. The price is established on a
10 price per square foot, and it's as simple as that.
11 Again, our estimate is that the consideration that
12 we would receive would be reduced by at least 27%.
13 Again, a big number for a church.

14 CHAIRPERSON AVELLA: And obviously
15 it's contingent upon the final approval and
16 whatever the height of the building--

17 MELANIE MEYERS: [Interposing]
18 Absolutely. If the building were smaller I would
19 expect that there would be a concern about, you
20 know, how much floor area we'd be able to convey
21 and it may be even less.

22 CHAIRPERSON AVELLA: Right.
23 Council Member Katz?

24 COUNCIL MEMBER KATZ: You'll
25 forgive me, I just want to be clear on this.

2 There's about 100,000 square feet being said, you
3 know, taken off the--20 stories or 200 feet,
4 right?

5 MELANIE MEYERS: Correct.

6 COUNCIL MEMBER KATZ: So St.
7 Thomas, to my understanding, has about 275,000--

8 MELANIE MEYERS: [Interposing]
9 Correct.

10 COUNCIL MEMBER KATZ: --square
11 feet. University Club has about 137,000? 130-
12 something.

13 JOHN DORMAN: 136.

14 COUNCIL MEMBER KATZ: 136,000
15 square feet. So the question is what's the
16 mechanism by which you determine who gives it up?

17 MELANIE MEYERS: I think we all
18 have different deals with the developer. I don't
19 think any of us know the deal that the other ones
20 at this table have with the developer. And I
21 don't think any of us are going to talk about our
22 particular deal. But I can tell you from the
23 Church's standpoint, we believe that the large
24 majority, based on the deal we have, the large
25 majority can be taken from the Church under our

2 contracts. And that's the situation that we have
3 to--

4 COUNCIL MEMBER KATZ: [Interposing]
5 But it doesn't have to be. So in other words, you
6 don't know, you know, you don't know the deals of
7 everyone else.

8 MELANIE MEYERS: We don't.

9 COUNCIL MEMBER KATZ: So my
10 question is that worst-case scenario it would be,
11 you know, 100,000 square feet from you and
12 everybody else stays whole or 100,000 out of The
13 University and everybody else stays whole. But my
14 question is, there's really no way of knowing
15 unless I get Hines into a room somewhere.

16 MELANIE MEYERS: And Hines actually
17 when he spoke before talked about the fact that
18 most of the air rights would come from the Church.
19 So from our perspective we do believe that, again,
20 the large majority is coming--

21 COUNCIL MEMBER KATZ: [Interposing]
22 Where did you hear that?

23 MELANIE MEYERS: I believe that
24 David mentioned--

25 COUNCIL MEMBER KATZ: [Interposing]

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But you know your deal with Hines.

MELANIE MEYERS: I do.

COUNCIL MEMBER KATZ: So you're testifying that if we lose the 200 feet you will lose 25 to 30%.

MELANIE MEYERS: Of our consideration, correct.

COUNCIL MEMBER KATZ: So that's-- you're doing that based on what you know to be true.

MELANIE MEYERS: Correct. And also, again, I do believe that I heard David say that he expected that most of the air rights would be coming from the Church's deal.

COUNCIL MEMBER KATZ: All right. To be continued.

MELANIE MEYERS: That's what I heard.

CHAIRPERSON AVELLA: I want to, you know, thank you for your testimony. The one thing that concerns me is that you're all wonderful institutions, that we have to help you through this type of mechanism. There's got to be a better way to do this. There absolutely has to be

2 a better way to do this. Thank you for your
3 testimony. We're going to take a little, rather
4 extraordinary, recess at this point. I apologize.
5 But because we have a number of Committee meetings
6 going on, everybody should remain where they are.
7 We're going to take a temporary recess to allow
8 Dan Garodnick's Committee to meet, and then as
9 soon as that's quickly done, and we hope it will
10 be quickly done, we will go back to my Committee
11 meeting. But we have too many meetings going on
12 at the same time and we didn't anticipate that my
13 hearing would go as long as it did. So all hang
14 out unless you want to take a little break. But
15 we're taking a short recess for Dan Garodnick's
16 Committee.

17 [END TAPE 1]

18 [START TAPE 2]

19 CHAIRPERSON AVELLA: I know there
20 are people still finding their way back, but the
21 next panel will be a panel in opposition. And we
22 have representatives of two elected officials
23 here, from State Senator Liz Krueger's Office and
24 Assemblyman Gottfried's office. Are they here?
25 Come on up. And I do want to recognize that State

2 Senator Liz Krueger was here at the very beginning
3 but unfortunately couldn't stay. And I do
4 appreciate everybody's consideration--a rather
5 unique circumstance.

6 [Pause]

7 REPRESENTATIVE OF LIZ KRUEGER: My
8 name is Liz Krueger and I am the State Senator
9 representing the 26th State Senate District, which
10 includes the MoMA Hines West 53rd realty property,
11 located at 53 West 53rd Street. I appreciate this
12 opportunity to comment on the applications for the
13 special permits for the property, a project known
14 as Tower Verre, planned as a mixed-use building.
15 Tower Verre, which has been described as an 85-
16 story asymmetrical, twisting glass needle, rising
17 over 1,000 feet in the air, is to be situated mid-
18 block in an already densely populated area. Tower
19 Verre would be grossly out of scale with the other
20 buildings in the area, including the landmarked
21 Rockefeller Apartments on West 54th Street, as
22 well as the landmarked Eero Saarinen designed CBS
23 building on 53rd Street. As currently designed
24 Tower Verre would also overwhelm the areas
25 infrastructure and services. On March 13th, 2008

1
2 and more recently on June 11th, 2009, Manhattan
3 Community Board 5 overwhelmingly passed a
4 resolution urging both the Landmarks preservation
5 Commission and the Department of City Planning to
6 deny the transfer of 275,000 square feet of
7 development rights from St. Thomas Church, under
8 section 74711 of the zoning resolution, as well as
9 136,000 square feet of development rights from The
10 University Club under section 7479 of the zoning
11 resolution to the proposed Tower Verre. I
12 continue to support Community Board 5's
13 resolution. It is my belief that neither of the
14 preservation plans for the landmarked properties
15 as described in the applications alleviates the
16 public burden of the proposed development. The
17 Land Use and Landmarks Committees as well as the
18 full Board of Community Board 5 have given this
19 project considerable and thorough review. I have
20 been very impressed with the careful consideration
21 of the Board and its deliberative process during
22 the hearings about this project. Both Committees
23 unanimously and the full Board overwhelmingly
24 recommend a denial of the application. As
25 neighbors of MoMA and Tower Verre project, the

1
2 West 54-55th Street Association has tirelessly
3 researched and documented inconsistencies in the
4 application for the two special permits and the
5 draft Environmental Impact Statement. Their
6 dedication to protecting one of New York City's
7 most historically significant blocks is to be
8 applauded. I would like to reiterate comments I
9 made regarding Tower Verre in testimony delivered
10 to the Landmarks Preservation Commission on April
11 8th, 2008 and more recently to the City Planning
12 Commission on July 22nd, 2008. I am not opposed
13 to well-planned, functional urban development, and
14 I appreciate the desire of MoMA and Hines Realty
15 to proceed with reasonable plans for the
16 development site. MoMA and Hines Realty together
17 have an opportunity in Tower Verre to forge a
18 partnership to design a superb, well-planned urban
19 development if they are willing to take into
20 consideration the legitimate concerns of the
21 surrounding community and the comments of
22 Community Board 5. However, if not planned
23 carefully, this project will overwhelm the scale
24 and services of the surrounding neighborhood. The
25 construction of such a large tower mid-block would

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2 also establish a dangerous zoning precedent for
3 the entire community. While many people think of
4 midtown simply as a commercial central business
5 district, the area also has numerous thriving
6 residential communities that must be protected. I
7 understand that on September 9th, 2009, the City
8 Planning Commission issued its approval of the
9 application, with the condition that to minimize
10 the adverse affects on the character of the
11 surrounding area, the Commission is modifying the
12 application to reduce the height of the building
13 to 1,050 feet, or as of right, according to
14 existing zoning. While this reduction of 200 feet
15 is an improvement, Tower Verre's design would
16 still not relate harmoniously with the
17 neighborhood, nor will the materials, design,
18 scale and location and bulk of the building relate
19 to the adjacent landmarked buildings. Following
20 are comments on several aspects of the Tower Verre
21 project that still are of particular concern and
22 importance to my constituents. Traffic and
23 parking; 53rd and 54th Streets, which encompass
24 the Tower Verre project, are designated as midtown
25 through streets due to their high-traffic volumes

by New York City Department of Transportation.

The capacity of both streets is already severely stretched by existing development and

institutions. West 54th St. already has six loading docks with a seventh anticipated to accommodate the hotel in the new building.

Although every proposed design alternative for the seventh loading dock has been met with reasons why

they are not feasible, I am still concerned about another loading dock being added on a block

already heavily taxed with delivery and through traffic. The existing loading docks are not

currently used by MoMA, with the Museum insisting that a full complement of security is needed each

time a loading dock is used. Trucks are usually parked on the street while they are loaded or

unloaded. The six existing loading docks need to be used more efficiently and a sharing agreement with

Tower Verre should be explored. Transit and

pedestrians; after MoMA's last expansion of 40,000 square feet, attendance grew from 1.8 million to

2.5 million visitors. The proposed expansion

would be of a similar size. The City Planning

Commission's statement that this expansion of MoMA

1 is not likely to increase attendance is simply
2 inconceivable. While I am a strong supporter of
3 MoMA and fully understand its desire to display
4 more of its collection, I am concerned about the
5 ability of the surrounding streets to handle the
6 increased pedestrian traffic. Tower Verre will
7 also have a steady stream of hotel and restaurant
8 patrons, residents and tourists coming and going.
9 In accordance with the Borough President's
10 recommendations, MoMA should be prepared to
11 explore ways to help alleviate visitor traffic.
12 There is a lot of concern that 54th Street is
13 turning into a back of operations street for the
14 Museum and Tower Verre, thereby changing the
15 nature of a once residential block. Residents of
16 both 53rd and 54th Streets have recommended that
17 Tower Verre create a public pass through, as has
18 been created in a number of buildings on 57th
19 Street and which will help enliven the block. The
20 New York City Council should consider these issues
21 as well as the other concerns and proposals of my
22 constituents, Community Board 5, affected
23 neighborhood organizations and advocacy groups,
24 and my fellow elected officials. I strongly
25

1
2 encourage the City Council to ensure that any and
3 all development at 53 West 53rd Street reflects
4 the areas character and positively contributes to
5 the community. Thank you for your consideration
6 of the Senator's views.

7 CORI GREEN: My name is Cori Green,
8 and I'm here representing Assembly Member
9 Gottfried, who couldn't be here today. I am
10 Assembly Member Richard Gottfried. I represent
11 the 75th Assembly District in Manhattan, which
12 includes Chelsea, Hell's Kitchen, Murray Hill and
13 parts of the Upper West Side and Midtown,
14 including the area where the MoMA Hines Building
15 at 53 West 53rd Street is proposed. A building of
16 this magnitude on a mid-block location immediately
17 adjacent to an historic residential neighborhood
18 violates the basic principals of New York City
19 zoning and good urban planning. It should not be
20 allowed. In order to permit the transfer of
21 development rights to 53 West 53rd Street from the
22 two landmarks, the University Club and St. Thomas
23 Church, City Planning Commission has approved
24 special permits under section 74711 and 7479. St.
25 Thomas Church, an individual landmark in good

1
2 condition, applied for a special permit under
3 74711 to sell all 270,000 square feet of its air
4 rights, arguing the preservation plan it is
5 currently undertaking satisfies the findings
6 required by the zoning code. If St. Thomas Church
7 wants to upgrade the building, it should do what
8 congregations do and turn to its members. The
9 University Club applied for a special permit under
10 7479 to sell all 136,000 square feet of its air
11 rights, presenting a preservation plan which also
12 falls short of demonstrating financial need.
13 Neither landmark is in danger of deterioration or
14 has a stated lack of resources. It is wrong for
15 the Church and the University Club to finance
16 their operations by imposing the burden of the
17 MoMA Hines building on its neighbors. Community
18 Board 5 reports that both are currently in good
19 condition with ongoing maintenance plans. There
20 is no burden that needs to be relieved and no
21 landmark preservation purpose to be served by the
22 air rights sale, however there is substantial
23 public burden resulting from the excessive height
24 and density, shadow, traffic and other impacts the
25 proposed tower will impose on the community.

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2 While the environmental impact study asserts no
3 significant adverse effect of shadows from the
4 MoMA Hines Tower, that is preposterous. The
5 building as originally proposed would have been
6 1,250 feet high. The City Planning Commission has
7 required that the height be reduced by 200 feet to
8 1,050 feet. However, the proposed tower remains
9 far too tall, indeed as tall as the Chrysler
10 Building, making it one of the tallest buildings
11 in New York City. Unlike other skyscrapers, the
12 MoMA Hines site is not on a wide avenue or a wide
13 cross-town street. It is mid-block on a mixed-use
14 side street with its back on a residential street.
15 A 74711 permit also required a finding that the
16 building will relate harmoniously to the
17 transferring landmark. Some might claim that
18 because of the distance between the development
19 site and the landmark, the harmoniousness standard
20 was met. The harmful impact the Tower will have
21 on St. Thomas Church and the surrounding area is
22 substantial, despite the distance between the
23 Tower and the landmark. It is shocking to think
24 that a building of this size can be put up near
25 this landmark church, simply because when standing

1 next to the church you cannot see the top of the
2 tower without craning your neck. That is not the
3 limit of the adverse impacts. The proposed tower
4 would dwarf the landmarked CBS building and would
5 loom above the eight individually landmarked
6 historic buildings on 54th Street. With respect
7 to the University Club, the zoning text is clear.
8 There must be a preservation plan that benefits
9 the landmark without adding burden on the
10 community. 53rd Street is characterized by low-
11 rise mixed-use development. The MoMA Hines plan
12 is inconsistent with this and degrades this
13 character. Traffic and pedestrian impacts are
14 important and relevant to the weighing of
15 advantages and disadvantages under section 74711
16 and they should be taken into account under the
17 State Environmental Quality and Review Act and the
18 City regulations implementing that statute. A
19 building of this magnitude will dramatically
20 increase vehicular and pedestrian traffic. If the
21 permits are approved, MoMA Hines must present a
22 substantial plan for significant mitigation for
23 this increased traffic. Currently, the MoMA foot
24 patrol and line regulators cannot do enough to
25

1 moderate the throng of pedestrians that clog the
2 sidewalk, thus preventing residents from easily
3 accessing their homes and others from using the
4 street. With an increase in tourist traffic at
5 MoMA, especially on Friday evenings when the
6 Museum offers free admission, more queuing should
7 take place inside the building. The adverse
8 impact need not be so traumatic. The Community
9 has indicated that it would be willing to live
10 with a tower up to the height of the CBS building,
11 490 feet. This would provide the developer with
12 much of the FAR it is seeking, while also allowing
13 significant financial benefits to flow to St.
14 Thomas and the University Club through the
15 transfers of a portion of their air rights. The
16 return would be a more contextual building, still
17 massive, but no longer overhanging and
18 overwhelming the adjacent neighborhoods. Not for
19 profit organizations and cultural institutions are
20 increasingly trying to make use of their air
21 rights to build residential or commercial towers
22 that undermine landmark, historic district, and
23 zoning regulations. This trend is detrimental to
24 communities and should be resisted by community
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2 boards, City agencies and the City Council. I
3 urge the Council to reject the proposed 1,050-foot
4 tower. Thank you.

5 CHAIRPERSON AVELLA: Thank you for
6 your testimony. We'll now do a panel in
7 opposition--I'm sorry, in favor and then in
8 opposition again. During the recess I had a
9 conversation with one or two people out there. If
10 somebody wants to indicate their presence here in
11 favor or in opposition but doesn't want to
12 actually testify, when I call their name they can
13 just stand up and say I'm in favor or in
14 opposition. That is an option. Next panel in
15 favor is Ruth Nordenbrook [phonetic], Gail Cornell
16 [phonetic], Vivian Swimmer [phonetic], and Myrna
17 Izassky [phonetic]. Am I pronouncing that right?
18 I only see three people up there, so I'm assuming
19 one of those people isn't here. We'll go to the
20 next one, Myra Heller [phonetic]. Is she here?
21 Well you obviously had a chance to get your
22 coffee, I see.

23 [Pause]

24 RUTH NORDENBROOK: My name is Ruth
25 Nordenbrook. A retired attorney, I am a volunteer

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2 at MoMA and for Big Apple Greeter. I show
3 visitors my New York. I recommend to you Nicolai
4 Ouroussoff's piece in the New York Times last
5 month on this subject, because I, like Ouroussoff,
6 believe that a City's greatness lies in part in
7 its architecture and I'm deeply saddened that New
8 York has lost its place as a world leader
9 architecturally. Putting aside the spires built
10 in the early 20th Century, we have become a city
11 of boxes, sometimes with a fancy hat, but
12 basically boxes. Even our missing friends, the
13 Twin Towers, were boxes raised to an extraordinary
14 level, but at least they had the advantage in
15 their time of being the tallest buildings in the
16 world. Their successors will be mundane, as
17 Libeskind's fanciful towers have undergone
18 modifications that have destroyed their aesthetic
19 majesty. A building is going to be built on that
20 spot west of MoMA. Jean Nouvel has designed a
21 lyrical spire that will draw the admiration of
22 visitors from all over the world, reminding them
23 that New York still is a contender in the 21st
24 Century. Moreover, apropos of Councilman
25 Garodnick's comments earlier, the Nouvel Tower,

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2 unlike others approved by both the City Planning
3 Commission and the City Council, the Gehry
4 Building for instance, will demonstrate the City's
5 excellence without obscuring or detracting from
6 the current skyline. I live in Fulton Ferry
7 Landing, I have brought two pictures. One shows
8 what the view across the river looked like before
9 the Gehry Building went up, the second shows what
10 I see from outside my front door. I walked here
11 this morning over the Brooklyn Bridge. You cannot
12 see the Woolworth Building until you are well on
13 this side. It has completely obstructed it. In
14 the case of the Nouvel Tower, however, the
15 landmarks that would be jeopardized by this all
16 favor the construction of this tower for whatever
17 reasons. New York City doesn't need another
18 little box. And as Ouroussoff pointed out, this
19 is a critically positive potential addition to
20 this city's skyline.

21 [Pause]

22 VIVIAN SCHWIMMER: My name is
23 Vivian Schwimmer [phonetic]. I'm a born and bred
24 New Yorker and I've lived here all my life. I
25 currently live in Councilwoman Lappin's district

1
2 and I am a longtime volunteer at MoMA. I've seen
3 the fortunes of New York City rise and fall
4 through the years. And now that the City has
5 risen so greatly and become a premiere city to
6 visit, I strongly believe that in order to
7 continue the excitement necessary to maintain this
8 status, it's very important to encourage
9 worthwhile projects like the Nouvel Tower to be
10 built. The Nouvel Tower is architecturally a
11 spectacular work of art. It will contribute to
12 New York's wonderful skyline and create a
13 continuation of all the other esteemed
14 architectural works along 53rd Street--these are
15 tourist destinations. Another reason this project
16 should be approved is that MoMA needs more space.
17 Every visitor should be able to experience more of
18 their superb artworks. In addition, their
19 educational programs will be enhanced, reaching
20 children, families, teens, special needs,
21 communities and so on because more works will be
22 on view. These programs contribute to our City by
23 making it a warmer, more livable and welcoming
24 place, and welcoming place--and not the least, job
25 creation. Surely a projected initial 6,000 jobs,

2 \$600 million in wages and the resulting tax
3 revenues can't be ignored. And this would be just
4 the beginning. New York will benefit greatly
5 through the increased activity brought about by
6 this beautiful work. Thank you.

7 CHAIRPERSON AVELLA: Thank you for
8 getting in under the two minutes. I appreciate
9 that.

10 MYRNA IZERSSKY: Good afternoon.
11 My Myrna Izerssky [phonetic], a retired guidance
12 counselor, a retired camp director and a present
13 volunteer, very joyfully, at the MoMA. The French
14 philosopher Henri Bergson said, To live is to
15 grow; to grow is to change, and to change is to
16 create oneself endlessly. These prophetic words
17 exemplify the philosophy of MoMA. An outstanding
18 collection of art is not enough to make a museum.
19 A devoted group of professionals is not enough
20 either. A vision for the present, extending into
21 the future, is of primary importance.
22 Accommodations for growth and change are
23 paramount. These are the areas in which MoMA
24 excels. Attuned to the here and now they have the
25 foresight to anticipate the future. MoMA and

1
2 recognizes and anticipates the need for not
3 accepting the status quo. It has the ability to
4 predict directions for the future, which serve to
5 enhance the present. The Jean Nouvel Tower
6 represents the link between today and tomorrow.
7 Albeit the last reconstruction of the Museum was
8 very successful, MoMA has the foresight to
9 recognize that you cannot deny the future. This
10 tower, in addition to accommodating the many
11 additional needs of the Museum, will serve as an
12 exciting addition to the City's skyline. British
13 architectural critic Edwin Heathcote says it will
14 arguably be the most radical skyscraper in New
15 York City since the Chrysler Building. The
16 construction and operation of the new building
17 promises hundreds more permanent jobs. Jean
18 Nouvel's tower promises to be an exciting addition
19 to the cultural world of our city. How fortunate
20 for us to have this wonderful opportunity.

21 [Pause]

22 MYRA HELLER: Thank you New York
23 City Council for the opportunity to speak to you
24 today in support of an exciting addition to our
25 City. My name is Myra Heller [phonetic]. I am

1 speaking to you today as a former art teacher, an
2 interior designer, a lover of architecture and as
3 a volunteer at the Museum of Modern Art, and most
4 importantly now, as a neighbor. I live on 56th
5 Street and 6th Avenue. How lucky I am to be near
6 one of the greatest museums in the world, MoMA,
7 and I have the opportunity to live near what will
8 be one of the greatest buildings in the whole
9 world. It is such a joy to live in Manhattan in
10 the midst of all this wonderful architecture. As
11 my grandchildren were growing up, my husband and I
12 took them on architectural tours. We showed them
13 the Chrysler Building, the Seagram Building, many
14 others. And I hope that when my great
15 grandchildren are old enough I will be able to
16 show them this new tower, designed by Jean Nouvel,
17 as a wonderful addition to the tour. It is a
18 spectacular building, and I will be very proud to
19 live just a few blocks away from it. New York
20 should be honored to embrace such an inspiring
21 building by one of the world's greatest
22 architects. It has gotten rave reviews by the
23 architecture critics; it will also be wonderful
24 for MoMA. At the Museum of Modern Art, I
25

1
2 volunteer as an education greeter. It is my job
3 to welcome the thousands of school students who
4 come to the museum. It is thrilling for me to
5 watch these children discover modern art, to see
6 their first Picasso or Cézanne. This elegant
7 building that we propose is a bold and ambitious
8 project that will be a perfect addition to the
9 world's greatest skyline. As an architecture
10 lover and a neighbor, I say, hooray.

11 CHAIRPERSON AVELLA: Thank you.

12 Next panel is a panel in opposition. Charles
13 Isaacs [phonetic], David Schneiderman [phonetic].
14 Is it Daly Ravel [phonetic]? Reveal? Anita Rubin
15 [phonetic]. And while they're being seated I want
16 to take a personal privilege and recognize a
17 former staffer of mine, Esther Spindler
18 [phonetic]. Esther, stand up. Who not only did
19 she do a good job for me when she worked in my
20 office, but I've got to tell you, she went from my
21 office to volunteer in the Peace Corps in
22 Guatemala. And she's actually just up here to
23 visit family, and having lunch with me if I ever
24 get through this hearing.

25 CHARLES ISAACS: Hello. My name is

1 Charles Isaacs. I live across from the Museum at
2 25 West 54th St. I think everybody here
3 appreciates what the museum does. That's not what
4 this is about. I think we've learned this morning
5 that it's really about money, huge gobs of money,
6 who gets them and who pays the consequences for
7 that transfer of assets. Approval of this project
8 requires that the laws this Council enacted to
9 protect existing neighborhoods from harmful
10 overdevelopment be ignored. The midtown community
11 asks the Council to enforce the zoning laws for
12 this property. It is possible to build smaller,
13 distinguished buildings that are profitable and
14 yet fit within the community. The expansion of
15 the museum can easily be accommodated in its
16 original as of right building, a much smaller one
17 than anything that's proposed in these walls. One
18 also questions the wisdom of the museum building
19 the tallest target in the City next to one of the
20 world's most valuable collections of artworks.
21 Surely the Museum, Hines and M. Nouvel can design
22 and construct a smaller but still exemplary
23 building. The only reasons to build a huge
24 building here are avarice and ego. As they
25

2 currently exist, the intent of the special midtown
3 zoning laws is to require new projects to, quote,
4 conform with the existing scale and character of
5 the preservation sub district, and to, quote,
6 continue the historic patterns of relatively low
7 building bulk in mid-block locations, end quote.
8 It further specifies that new projects must be
9 sensitive to the continuity and ambiance of
10 midtown and must have minimal adverse affects on
11 nearby structures, open space and access to light
12 and air. Approval of this project, which runs so
13 obviously counter to the state planning vision for
14 this neighborhood would send a clear message that
15 zoning and other land use regulations are
16 groundless and that waivers from these laws can be
17 bought by the most powerful moneyed interests, a
18 message with dire implications for neighborhoods
19 throughout New York City. Thank you.

20 COUNCIL MEMBER GARODNICK: Thank
21 you. You may go.

22 [Pause]

23 DAVID SCHNEIDERMAN: Good morning.
24 Actually I mean good afternoon. My name is David
25 Schneiderman and I'm a resident of West 55th

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2 Street for over 34 years and I reside just north
3 of the proposed 82-story tower. Historically the
4 area has housed a significantly sized residential
5 community, though over the years there has been
6 commercial growth, there has never been a proposal
7 to erect a monster skyscraper, which would dwarf
8 all the nearby buildings, limit light as well as
9 cast serious shadows in the neighborhood and in
10 central park. I am particularly concerned that
11 the enormous size of this edifice will create
12 major safety and health problems and consequences.
13 This will occur when emergency vehicles such as
14 ambulances, fire trucks or police vehicles will
15 have difficulty to transverse the West 53rd and
16 54th Street corridor. The response time will be
17 greatly impeded and delayed for routine and crisis
18 situations. Moreover, the current sewer system is
19 inadequate for the neighborhood's population. The
20 arrival of another multi-story behemoth would
21 further complicate and overtax our infrastructure.
22 We should expect stopped up sewers, overflows and
23 health and sanitation hazards. Furthermore, the
24 design of the building is totally out of scale for
25 this mid-block location. West 53rd and 54th

1
2 Street are cross-town streets. They are not major
3 avenues with only commercial tenants, which might
4 be a better fit for a tower. In addition, our
5 public transportation system would suffer.

6 Currently the subways and buses that serve the
7 area are overcrowded and slow moving. The
8 population increase from this immense structure
9 will further impact, complicate and delay our
10 transportation network. No public transportation
11 provisions are being made for the influx of the
12 many thousands who would inhabit or visit this
13 gigantic edifice. Additionally, all decisions
14 concerning this tower should include something
15 that has not been calculated in the final
16 equation, and that is the impact and interaction
17 of the current and ill founded plan to tear down
18 the Donnell Library, which is located across the
19 street from MoMA, and to erect a multi-story hotel
20 on the Donnell site. The prospect of having two
21 major construction projects at the same time and
22 the implications of having two new skyscrapers on
23 the exact same block is dangerous and a major
24 blunder for the neighborhood. I ask the City
25 Council to carefully review the dangerous

2 environmental impact of this project on the
3 midtown area and the City of New York, and deny
4 the special permits for zoning lot mergers and air
5 rights transfers. Thank you.

6 COUNCIL MEMBER JACKSON: Thank you.
7 Next please?

8 DALY RAVEL: Yes. I'm Daly Ravel
9 and I also live on West 54th Street. And I'd like
10 to begin by thanking Councilman Dan Garodnick for
11 his very thoughtful words about the historic
12 character of West 54th St., the north side of
13 which still represents much of the development of
14 the 19th and 20th century and has on its two
15 corners the University Club and Warwick Hotel,
16 which have tremendous history and beauty for the
17 City of New York. The south side of 54th St.
18 between Fifth Avenue and Sixth Avenue is an
19 atrocity brought to us by the Museum of Modern
20 Art. And I would say to Mr. Lowry, who said here
21 that perhaps that would be reconsidered, Mr.
22 Lowry, take down that wall. I am sorry that it
23 has taken the Museum this long to consider this
24 approach. The Museum needs to consider itself in
25 its role in the community, not only its being a

2 real estate developer. Thank you very much for
3 your time.

4 COUNCIL MEMBER JACKSON: Thank you.

5 ANITA RUBIN: Good afternoon,
6 Members of the Council. My name is Anita Rubin.
7 I'm a 34-year resident on West 55th St., and a
8 member of the West 54th-55th Street Block
9 Association. If we were to take the comments made
10 this morning by MoMA Hines and allow them to
11 reinstate the 200 feet that the City Planning
12 Commission removed from them, I think that we will
13 have to rename this state, instead of New York the
14 Empire State, we will have to rename it New York
15 the MoMA Hines State, because the MoMA Hines
16 building will exceed the height of the Empire
17 State Building. At its lesser height of 1,050
18 feet it is equivalent and even higher in elevation
19 than the Chrysler Building. Undoubtedly the
20 developer and MoMA is interested in displacing the
21 status of both of these iconic buildings. Please
22 do not approve the MoMA Hines special permit
23 requests, which would allow the developer to erect
24 an inappropriately high skyscraper on a narrow
25 city block in a sliver-based footprint. The MoMA

1
2 Hines Project has asked this committee not for one
3 but for several special permits, all of which, if
4 granted, will negate and override existing laws
5 which have been put into effect to protect the
6 integrity of neighborhoods, limit congestion
7 levels and preserve the precious remaining light
8 and sky of midtown Manhattan. Ostensibly,
9 granting these permits would support a legal
10 fiction, allowing 411,000 square feet of air
11 rights to be transferred from the University Club
12 and St. Thomas Church, situated on Fifth Avenue,
13 to a site, which although close to Sixth Avenue,
14 is still located close to mid-block 53rd to 54th
15 Street, would be unconscionable. In reality this
16 project is a mid-block location and this is a
17 legal fiction to call it anything else. At the
18 very least the City Council Sub Committee should
19 insist that the project be cut back so that it is
20 no taller than any other building in the area,
21 which would be approximately 38 or 40 stories,
22 have considerable open to the public park-like
23 setbacks on both West 53rd and West 55th Street.
24 Many of the other buildings in midtown Manhattan
25 have provided public space both internally and

1
2 externally and it has greatly improved the
3 cityscape as a result. Please don't allow MoMA
4 Hines to disregard the interest of the public. I
5 appeal to the common sense and integrity of this
6 Committee. Please vote to protect the interests
7 of those of us who live, work and visit midtown
8 Manhattan. Vote no to MoMA Hines project and ask
9 Mr. Nouvel to please take his building to Paris.
10 Thank you.

11 COUNCIL MEMBER JACKSON: Thank you.
12 Christian?

13 [Pause]

14 CHRISTIAN HYLTON: The next panel
15 is a panel in favor, Michael Reichman [phonetic].

16 [Pause]

17 CHRISTIAN HYLTON: Liz Sterngrass
18 [phonetic].

19 [Pause]

20 CHRISTIAN HYLTON: Wendy Wells.

21 [Pause]

22 CHRISTIAN HYLTON: John Dorman.

23 [Pause]

24 CHRISTIAN HYLTON: Marian
25 Imperitori [phonetic].

2 [Pause]

3 CHRISTIAN HYLTON: And one more.

4 We have four? Oh, John Dorman? He already
5 testified. Kathleen Murray [phonetic].

6 COUNCIL MEMBER JACKSON: Okay. The
7 first panelist that was called, you may begin.
8 Identify yourself and you may begin your
9 testimony, please.

10 LILAH STERNGLAS: My name is Lilah
11 Sternglas [phonetic], and I was born--

12 COUNCIL MEMBER JACKSON:
13 [Interposing] Push the mic down towards your
14 mouth. There you go. Go ahead.

15 LILAH STERNGLAS: My name is Lilah
16 Sternglas and I was born and raised in New York
17 City and I attended the Art School and graduated
18 from the Art School here at Cooper Union in New
19 York City. And in our founding year of art school
20 we had to study architecture. It became very
21 important in my life. Our class went to MoMA to
22 see the Mies Van Der Rohe proposed building of the
23 Seagram's Building where I eventually worked for
24 eight years, so it was a privilege to be there.
25 It was exciting, awe inspiring and it was a

1
2 seminal work which effected architects for
3 generations. I'm not going to talk about the
4 Woolworth Building or the Chrysler Building or the
5 Empire State Building because many people before
6 me have talked about that. They haven't talked
7 about the fact that you could moor a dirigible on
8 the Empire State Building, but that was only
9 important to me. I considered the 30s one of the
10 greatest eras of American Architecture because of
11 these great buildings. These buildings were
12 audacious, and it all ended with Rockefeller
13 Center and Radio City Music Hall and the skating
14 rink and all the gardens. In 1939 22 acres were
15 devoted to this building. These buildings raised
16 our hopes and elated us, and when is the last time
17 you felt elated about a building in New York City.
18 The last time I felt elated about a building was
19 the Seagram's Building. Now I would like to just
20 direct my talk to neighborhood objections to
21 important architecture. I lived on 94th Street in
22 a beat up old apartment building on the East Side
23 when Mr. Wright's Guggenheim Museum was built.
24 The critics were polarized, the neighborhood was
25 polarized and as a matter of fact, very polite

1
2 people were picketing and booing every time they
3 saw Mr. Frank Lloyd Wright, who visited the site
4 very frequently. The Museum was the last project
5 of America's greatest architect, after 17 years of
6 planning. Now it is beloved by the neighborhood,
7 beloved by the City, beloved by the State, beloved
8 by the Country and beloved by the world. And you
9 have to think in those terms, what will these
10 buildings eventually become? Now, I lived here,
11 in this neighborhood--I mean in the neighborhood
12 of the MoMA for eight years. I moved recently
13 this past June. I lived at Sixth Avenue and 55th
14 Street. And I want to say; it's solidly except
15 for the buildings on 54th Street, a solidly
16 commercial neighborhood. Office buildings, office
17 buildings, office buildings. And starting where I
18 lived, white brick apartment buildings,
19 restaurants on either side--on 56th Street and
20 55th Street, you didn't have to leave the
21 neighborhood to eat a good meal--

22 COUNCIL MEMBER JACKSON:

23 [Interposing] Excuse me, Miss? You need to come
24 to closure if you don't mind. Thank you.

25 LILAH STERNGLAS: Okay. Anyway.

1
2 The Nouvel Building enhances the neighborhood, it
3 doesn't detract from it. The narrow footprint
4 enhances the street and 40,000 more feet for MoMA.
5 There is--much opposition comes from the owners of
6 the apartments on 54th Street who have been living
7 across the street from MoMA and its gardens for
8 many years. The value of these apartments has
9 benefited from this proximity. Yes their quality
10 of life has benefited as well. And I do feel
11 sorry for them. Yes, the Empire--

12 COUNCIL MEMBER JACKSON:

13 [Interposing] Miss. Thank you. We thank you for
14 your testimony.

15 LILAH STERNGLAS: Thank you.

16 COUNCIL MEMBER JACKSON: And I
17 don't mean to cut you off, but we failed to start
18 the clock in a timely manner, so you had about 20,
19 25 seconds before we even started the clock.

20 LILAH STERNGLAS: Okay. That's
21 fine, sir.

22 COUNCIL MEMBER JACKSON: And I'm
23 going to ask all other people that testify to
24 please keep your comments to two minutes, because
25 I really don't want to have to ask you to close,

1
2 if you don't mind. Thank you very much. Yes,
3 please?

4 MICHAEL REICHMAN: Yes. Good
5 afternoon. My name is Michael Reichman. I'm
6 speaking on behalf of MoMA and the Nouvel Tower.
7 We heard about Excelsior earlier today and I'm
8 going to use the word again because it's the motto
9 of our State and it means higher or ever upward.
10 Has New York ever looked downward or backward?
11 Well most of the time, no. It's been not just
12 higher but also greater. Well what happened? Did
13 the City powers bellow their disapproval when they
14 allowed the World Trade Center Twin Towers to be
15 erected back in the 60s? The Twin Towers now
16 canonized because of September 11th, but also
17 everlasting symbols of architecture as it should
18 never have been, monuments to mediocrity. We
19 rejoice that we had not one, but two highest
20 buildings, however briefly. What of the other
21 look-alike cornflakes boxes that have been erected
22 since, buildings that have made us an
23 architecturally second-rate town? All those banal
24 monsters could never compare to the Chrysler or
25 Empire State or the proposed Nouvel Tower. The

2 world's tallest building is in Dubai, people. The
3 Empire State Building is now the 14th tallest
4 building in the world. It's not about height;
5 size doesn't matter. It's aesthetics. Don't
6 bother to look for the Empire State building from
7 any point on upper Fifth Avenue. It's been
8 blocked by another towering mediocrity, as if the
9 former Republic Bank Building wasn't enough of an
10 indignity. The Empire State and Chrysler
11 buildings are notable because they're great
12 buildings. We use adjectives such as striking,
13 elegant and imposing, not tallest. What folly to
14 lop off a few hundred feet of the Nouvel Tower, a
15 potentially wonderful addition to our iconic
16 skyline so it won't compete with our tallest
17 building or any of its grossly inferior peers?
18 This is absurd. Who made this decision?

19 COUNCIL MEMBER JACKSON: Thank you.

20 Next please?

21 MARIAN IMPERITOR: Good afternoon.

22 My name is Marian Imperitor [phonetic], and I'm
23 here today on behalf of the New York Chapter of
24 the American Institute of Architects.

25 COUNCIL MEMBER JACKSON: Mary, can

2 you pull your mic closer to you if you don't mind?

3 Thank you.

4 MARIAN IMPERITOR: Sure. And our
5 4,300 architect and public members to express our
6 support of the tower designed by Atelier Jean
7 Nouvel for the Museum of Modern Art on 53rd
8 Street. Through the maintenance agreement of the
9 two landmarked buildings in exchange for
10 development rights, the developer and MoMA will
11 enter into a beneficial partnership unique in this
12 City. The Museum will gain an amount of new
13 gallery space and revenue while the landmarked
14 buildings will be assured funding for their
15 restoration and repairs. New York gains
16 architecturally in two ways, by more extensive
17 landmark restoration than might have been
18 undertaken in this challenging climate and from
19 having an example of Jean Nouvel's work so
20 prominently displayed on our skyline. The law
21 allows transfers of development rights because
22 every square foot of space in New York is
23 immensely valuable. The fact that the two
24 buildings that are transferring rights are on the
25 avenue is significant. If not landmarks, there

1 would be pressure on them to be rebuilt much
2 higher than their current form. The air space not
3 utilized by these buildings makes that part of the
4 block relatively low-rise and therefore the
5 remainder of the block can theoretically sustain
6 more mass. Despite this fact, the tower is mid-
7 block and concerns have been expressed about the
8 proposed height of the building. We feel that the
9 design and materials are light enough and that the
10 height is not oppressive and that the tower
11 culminates in an elegantly shaped spire and does
12 relate harmoniously to the landmarked buildings at
13 the end of the block. Since AIA New York last
14 reviewed this project and asked for more
15 information about how the building addresses the
16 street, the design has been further developed.
17 The ground floor now has more transparency, and
18 formerly blank facades of the lower floors are
19 enlivened with faceted surfaces that reflects back
20 the activity of the street. In addition, the
21 entry of the residential tower has been moved to
22 54th Street as a gesture to engage the street and
23 provide more pedestrian activity and give 54th a
24 more comparable stature to that of 53rd. We urge
25

2 the Council to approve this application. Thank
3 you.

4 COUNCIL MEMBER JACKSON: Thank you.

5 KATHY MURRAY: Members of the New
6 York City Council Sub Committee, thank you for
7 giving me the opportunity to speak in favor of the
8 Jean Nouvel Building being completed. My name is
9 Kathy Murray. Okay. My name is Kathy Murray. My
10 husband, Al, and I, we do live in Westchester,
11 however for nine years we've had one apartment in
12 New York and just bought the second one for
13 expansion to live there full time when we fully
14 retire. Our apartments are at the Rockefeller
15 Building at 24 West 55th Street. I spend several
16 days a week in the City for my work. We are also
17 members of MoMA, the Modern Art, and I am a member
18 of the University Club. We believe the proposed
19 tower at 53 West 53rd Street and the related
20 expansion of MoMA would serve as a dynamic
21 addition to the New York landscape. We believe it
22 is worthy of your full support. In this critical
23 juncture in the City's history, as you've heard so
24 much about, we think it will make a valuable
25 contribution to midtown's rich architectural

2 heritage and our skyline. I have to tell you from
3 several vantage points, University Club and
4 elsewhere, since I testified in July, I can
5 actually envision the street view and the skyline
6 view as if the building were already built. I
7 view it as a lovely spire among the many boxes
8 that are the skyline now. MoMA has made good use
9 of the current vacant lot and maintained it well,
10 however the building and the planned ground level
11 usage will be an added addition to the
12 neighborhood. I ask you to please approve the
13 special permits and please, do not give us another
14 box.

15 COUNCIL MEMBER JACKSON: Thank you.

16 I want to thank you all for coming in and giving
17 testimony. Thank you. The next panel please?

18 CHRISTIAN HYLTON: Rita Sue Siegel
19 [phonetic]. A. John Harrison [phonetic]. Bill
20 Shea [phonetic]. Craig Shlay [phonetic]. Joan
21 Stewart [phonetic].

22 [Pause]

23 COUNCIL MEMBER JACKSON: Okay. And
24 the first panelist that was called, you may
25 identify yourself and you may begin your

1
2 testimony.

3 RITA SUE SIEGEL: I'm Rita Sue
4 Siegel, the Vice President of the West 54-55th
5 Street Block Association and the Coalition for
6 Responsible Midtown Development. Commissioner
7 Burden opened the City Planning hearing with, I am
8 in love with this project. This was hardly an
9 auspicious beginning for what we assumed was
10 intended to be an impartial hearing of the
11 arguments for and against the project. As the
12 hearing progressed, she described the Hines Tower
13 as, invisible. She chose not to consider the
14 balance of the building's benefits and burdens on
15 the neighbors because the developer's EIS found
16 that Nouvel's design would have no adverse effects
17 in the neighborhood. This is a fantasy. We
18 expected something more profound from City
19 planning considering the project's scale. They
20 cut 200 feet off the top of it, perhaps because
21 New York is the Empire State, although Nouvel, by
22 challenging the Empire State Building for height
23 had in mind that New York might become the Nouvel
24 State. In 1916, New York City adopted the first
25 zoning regulations to apply citywide as a reaction

1
2 to the equitable building. It towered over
3 neighborhood residences, completely covering all
4 available land area within the property boundary,
5 blocking windows of neighboring buildings and
6 diminishing the availability of sunshine for
7 people in the affected area. Does this sound
8 familiar? The US Supreme Court upheld the zoning
9 ordinances from challenges, and they will again.
10 Zoning defenders argued that zoning provided
11 advanced notice that certain types of uses were
12 incompatible with other uses in a particular
13 district and that zoning was a necessary City
14 planning instrument. City Planning ignored the
15 zoning ordinances. Why is MoMA trying so hard to
16 convince you to ignore them? Does MoMA want to
17 establish a precedent to use to their advantage in
18 their next expansion? Hines Hired Kramer Levin to
19 convince you to allow these zoning abuses so they
20 can build a 1,050-foot tower. If the special
21 permits are approved, one day, each of you might
22 find a tower on your block. Nouvel said he was
23 inspired by Hugh Ferriss, who drew buildings that
24 dwarf any modern skyscrapers and bridge dwellings
25 to house thousands, that boggle the minds of

1
2 modern day futurists and science fiction writers.
3 During the ULURP process, no city or elected
4 official has asked MoMA's representatives why
5 they're trying so hard to persuade them that a
6 person of Nouvel's stature should be allowed to
7 build his completely inappropriate design in the
8 middle of a block on a narrow side street. Isn't
9 MoMA misusing its influence? Isn't this like film
10 buffs and French intellectuals asking US lawmakers
11 not to punish Roman Polanski for raping a 13-year
12 old because he's a person of some stature? The
13 City Council should say no to fantasy and
14 supporting the delusions of grandeur of some of
15 the players here.

16 JOHN HARRISON: I'm John Harrison
17 of 27 West 55th Street, just around the corner
18 from MoMA. I want to comment on the irony of the
19 tribute that this new building would pay to
20 creative lawyering and the power of money. It
21 seems to me to be completely out of scale for the
22 neighborhood. And if you look at the law
23 governing the transfer of air rights from
24 landmarked buildings and see how they're supposed
25 to be transferred to a neighboring, adjacent,

1
2 building. And you've got 500 feet or more,
3 basically the whole of the block, between St.
4 Thomas Church at one end and the proposed Nouvel
5 Tower at the other end, only one building in.
6 There's an irony to this because the closest
7 landmarked building is the Eero Saarinen Black
8 Rock CBS building on the avenue at 53rd Street,
9 and that is going to be directly across from the
10 proposed Nouvel Tower. So you have it, it's the
11 power of money, it's the creative lawyering that
12 is impacting this and going to upset the
13 neighborhood tremendously because it's completely
14 out of scale. What would come into scale is
15 something that's close to the FT Tower on the
16 avenue--and this is not on the avenue--or the
17 Black Rock Building, CBS, which is just across the
18 street. Thank you.

19 COUNCIL MEMBER JACKSON: Thank you,
20 sir. Next?

21 WILLIAM SHEA: Looks like it's me.
22 Member of the Block Association, name, William
23 Shea. Simple points. You had eight people here
24 who oppose what we think about--

25 COUNCIL MEMBER JACKSON:

[Interposing] What block association? 54th?

WILLIAM SHEA: 54th-55th Street.

Yes, sir. I apologize.

COUNCIL MEMBER JACKSON: Okay.

WILLIAM SHEA: And these oppositions seem to come from people who don't live there. I suggest they sell their apartments, buy apartments on 54th Street and then tell me how much you like it. It's as simple as that. Number two, I think maybe this rock star kind of approach for these architects really shouldn't be allowed. We don't allow rock stars to commit, let's say, harm to people. Why do we allow this rock star, purported rock star, whatever you want to call him, architect, to contribute harm to our neighbors? I don't get that one. The third point I'd like to make, I think that there's a question of who is local. Our local community board is against it. Our local assembly person is against it, our local senator person is against it. I'll let Dan speak for himself. We're against it. The locals are against it. And last time I looked, maybe the locals should have something to say in the process because everybody else doesn't seem to

1
2 be local. Last, I'm not sure how to do this in
3 between you and the honorable Mr. Avella. I'd
4 like to be able to explore something. Back about
5 100 years ago, and some of you may be aware of
6 this, there was a law that was passed that in
7 essence said that if 20% of the people or the
8 square footage that is in the neighborhood of a
9 big building is against zoning changes, then the
10 zoning changes require that the City Council do
11 75%, not 51%. Now to help you guys, because I
12 couldn't remember this, it's New York City Charter
13 2000 A3. It is also up before here regarding
14 Harlem. I understand that we ask for permission.
15 I understand we invoke the right, and I understand
16 that we then have 30 or 60 days depending upon
17 your learned interpretation to find 20% of the
18 square footage that says no. And I've got them
19 right over there, it's called the Warwick, which
20 has got 20% of the square footage, just in the
21 hotel. Now, is this phony or did I go back and
22 look at something from before? It was part of the
23 City revision in 2004. And I thank you for your
24 attention to the matter, and will be in touch.
25 Thank you, sir.

2 COUNCIL MEMBER JACKSON: Thank you.

3 WILLIAM SHEA: And I don't know
4 anything else. I'm going to put you here. Can I
5 put her here?

6 COUNCIL MEMBER JACKSON: Sure,
7 absolutely. Just one factual thing that you
8 missed out, that there is the local Council Member
9 whose district that it actually sits is Christine
10 Quinn's District so that's a huge difference.

11 WILLIAM SHEA: I apologize.

12 COUNCIL MEMBER JACKSON: That's
13 okay. Just FYI.

14 COUNCIL MEMBER JACKSON: Just FYI.
15 I mean Dan Garodnick is across the street and his
16 constituents are impacted, but the Council Member
17 whose district its in is Council Member Christine
18 Quinn, who is the Speaker of the City Council. No
19 apologies necessary, sir. I just wanted to give
20 you an FYI. Go ahead, Miss. You may begin.

21 JOAN STEWART: Yes. My name is
22 Joan Stewart. I'm a member of the Block
23 Association and a resident of New York City.
24 Today you are considering whether to accept a gift
25 from a renowned French architect. Although it is

referred to as a mixed-use building, there would be no access for the public to appreciate the views from its lofty heights as they can in the Empire State Building. In other words, we could potentially have a major New York City landmark to which the people are not welcome, or more plainly put, the public be damned. How different from the gift we received from the French in 1886.

Officially named Liberty Enlightening the World, the Statue of Liberty was designed by a French sculptor and funded completely through donations made by the French people. Here are the words of Emma Lazarus, which are inscribed within the Statue: Not like the brazen giant of Greek fame
With conquering limbs astride from land to land;
Here at our sea-washed, sunset gates shall stand A
mighty woman with a torch, whose flame Is the
imprisoned lightning, and her name Mother of
Exiles. From her beacon-hand Glows world-wide
welcome; her mild eyes command The air-bridged
harbor that twin cities frame. "Keep ancient
lands, your storied pomp!" cries she With silent
lips. "Give me your tired, your poor, Your huddled
masses yearning to breathe free, The wretched

2 refuse of your teeming shore. Send these, the
3 homeless, tempest-tost to me, I lift my lamp
4 beside the golden door!" How far we've come from
5 these principles.

6 COUNCIL MEMBER JACKSON: Well I
7 want to thank you all for coming in and giving
8 testimony. Obviously this is a very contentious
9 issue and we will be deliberating and listening to
10 all of the comments that have come in. And I'm
11 sure that whatever arguments are going to be made
12 one way or the other, they will be made and will
13 be heard. Next panel, please?

14 CHRISTIAN HYLTON: Is Michael
15 Slattery here?

16 [Pause]

17 CHRISTIAN HYLTON: Okay, the next
18 panel is in opposition, James Stewart [phonetic],
19 Leah Gordon [phonetic]. Edra Hoogenboom
20 [phonetic], she testified already? Right. Anne
21 Morris.

22 COUNCIL MEMBER JACKSON: Up,
23 please.

24 CHRISTIAN HYLTON: Neil
25 Rockefeller. Anthony Martuk [phonetic]. Peg

Sarno [phonetic].

COUNCIL MEMBER JACKSON: The first panelist, you may identify yourself and you may begin your testimony.

JAMES STEWART: My name is James Stewart. John Adams once said, Facts are stubborn things. In a vain attempt to quote the founding father, Ronald Reagan, the Great Communicator, publicly declared, Facts are stupid things. And indeed, if one cannot appreciate the clear factual evidence that MoMA Hines project is a recipe for disaster, one may just be in agreement with Mr. Regan's regard for facts. But we who respect facts still have eyes that can see. And we reserve the right to do what is necessary to reclaim our neighborhoods, our City. New York City is not just a playground for tourists, nor a monopoly game for rapacious developers. The abdication of the power of the people is a slippery slope to a plutocracy. We must not be conned and cowed by powerful institutions, experts, titles, ribbons, lies and nonsense. Under the guise of cultural enrichment but actually serving the interests of tourism and

1
2 financial enrichment, MoMA and the developers of
3 this project perpetrate that fraud. Does MoMA
4 need to be the wet nurse to real estate
5 developers? On the very block that this
6 monstrosity of a tower is to be erected, an
7 important branch of the New York Public Library,
8 the Donnell, has been shut down and sold to a
9 luxury hotel chain called Orient Express. And
10 across the street, not a peep from the Museum of
11 Modern Art, a bastion of culture. Undesignated
12 but true landmark buildings are continually torn
13 down in this City, even Carnegie Hall was once on
14 the chopping block. Even a church like St. Thomas
15 can sell their air or heaven rights to the likes
16 of MoMA Hines. From the boardrooms of important
17 cultural institutions like MoMA and the New York
18 Public Library, in the name of almighty Dollar,
19 culture itself is being sacrificed. But this city
20 belongs to the people, and there are still
21 reasoned but passionate voices that say to this
22 civic disregard and malpractice on an aesthetic
23 level: Enough.

24 ANNE MORRIS: I'm next?

25 COUNCIL MEMBER JACKSON: Thank you.

2 ANNE MORRIS: Good afternoon, I'm
3 Anne Morris. I'm the Director of the Center for
4 Logistics and Transportation at Baruch College,
5 and I'm going to get down to the streets, because
6 buildings are located on streets.

7 COUNCIL MEMBER JACKSON: Okay.
8 Just pull your mic a little closer, Anne, if you
9 don't mind.

10 ANNE MORRIS: Okay.

11 COUNCIL MEMBER JACKSON: Thank you.

12 ANNE MORRIS: In 1996 at the
13 request of the late Senator Moynihan, the Center
14 began the Urban Goods Movement Study, because he
15 was concerned with the cost involved in moving
16 goods into and through New York City.

17 [Pause]

18 ANNE MORRIS: The impact of urban
19 congestion in the last mile, the pickup and drop
20 off point in commercial buildings caused by
21 inadequate offloading facilities are significant
22 for auto drivers, truckers and the public, and
23 ultimately the economy due to the lost
24 productivity. Data we gathered from 59th Street
25 down to the tip of Manhattan consistently

2 identified inadequate offloading facilities, that
3 is freight elevators and loading bays, as a major
4 contributor to congestion that decreased
5 productivity and increased the cost of doing
6 business in the City. The proposed Hines tower
7 would heighten and expand congestion in adjacent
8 areas from river to river.

9 COUNCIL MEMBER JACKSON: Thank you.
10 Next please?

11 PEG SARNO: The New York Landmark
12 Conservancy is very concerned about the height of
13 the new tower proposed at the Museum of Modern
14 Art.

15 COUNCIL MEMBER JACKSON: Can you
16 please identify yourself, if you don't mind?

17 PEG SARNO: Peg Sarno, but I'm
18 reading a letter.

19 COUNCIL MEMBER JACKSON: Who are
20 you reading a letter on behalf of?

21 PEG SARNO: Peg Breen, who is the
22 president of the New York Landmarks Conservancy.

23 COUNCIL MEMBER JACKSON: Okay,
24 that's fine. I just wanted--because this is all
25 being recorded, so we have to have--identification

purposes.

PEG SARNO: Oh, okay. I know. I'm an imposter. As we testified to the Landmarks Commission in April 2008, we believe the tower will certainly have an impact, not only on the buildings which are transferring their development rights, the University Club and the St. Thomas Church, but on all of the surrounding blocks. We are troubled by the plan to build this tower within the Special Midtown Preservation Sub District, which was created especially to restrict over development on the side streets near MoMA. Approval could set an unfortunate precedent for other mid-block sites within the sub district. The Conservancy joins with many of our preservation colleagues, local elected officials and Community Board 5 in speaking against the height of the proposed tower and request the Zoning and Franchises Committee at least agree with the City Planning Commission's stipulation that the tower height be reduced by 200 feet and then further reduce the building's height. The Conservancy appreciates innovative design and wants to see the City grow and flourish, but we

2 also hope that the council will follow the
3 guidelines of the Special Midtown Preservation
4 District and limit the height of this new
5 building.

6 COUNCIL MEMBER JACKSON: Thank you.
7 I want to thank you--I'm sorry, sir. You may
8 begin.

9 ANTHONY MARTONE: Anthony Martone
10 [phonetic], representing the Warwick Hotel at 65
11 West 54th Street. Along with several other
12 issues, I'm speaking in opposition to this
13 project, because we do not believe the impact on
14 increased traffic has been adequately addressed.
15 54th Street is a river-to-river street. It's an
16 exit on the West Side Highway and a designated
17 through street. The City has purposely funneled
18 and encouraged drivers to use 54th Street to go
19 cross town. The MoMA Hines traffic study does not
20 adequately address the newly created Times Square
21 pedestrian mall, which forces more and more cars
22 to go cross-town above 47th Street. Presently on
23 47th Street, within 150 feet of the intersection
24 of Sixth Avenue, there already exists two loading
25 docks, one for 1330 Avenue of the Americas and one

1
2 for 1350 Avenue of the Americas, one loading zone
3 and two parking garages with constant in and out
4 traffic. There are also four other loading docks
5 further east on the same block between Fifth and
6 Sixth Avenues. For example, it takes a truck
7 between 50 and 90 seconds to back into a loading
8 dock. The interval of the light at the
9 intersection of 54th Street and Sixth Avenue is 45
10 seconds. So 30 or 40 times a day when a truck
11 backs into a loading dock, the traffic spills back
12 across 54th Street and it causes rippling traffic
13 delays throughout the entire area. Emergency
14 vehicles routinely avoid 54th Street because of
15 backups. And our frequent guests who are going to
16 the airports and need to go to the East Side
17 routinely go to Sixth Avenue to go north so then
18 they can go across down on 57th Street because
19 54th Street is just backed up all the time. This
20 observation is based on 17 years of personal
21 observation of 54th Street, and prior to that 23
22 years as a New York City Police Officer, who is
23 familiar with traffic patterns. Thank you.

24 COUNCIL MEMBER JACKSON: I want to
25 thank you all for coming in and weighing in on

2 this very important subject. Thank you. Our next
3 panel, please?

4 CHRISTIAN HYLTON: John Hornick
5 [phonetic], Simeon Bankoff.

6 [Pause]

7 CHRISTIAN HYLTON: Jacqueline
8 Thompson [phonetic], David Achelis [phonetic].

9 [Pause]

10 CHRISTIAN HYLTON: Is there anyone
11 else who had signed up who hasn't been called?

12 [Pause]

13 COUNCIL MEMBER JACKSON: Is there
14 anyone else that wishes to testify that has not
15 had the opportunity to testify? Okay. Last but
16 not least, please. You may begin, sir.

17 JOHN HORNICK: My name is John
18 Hornick. I'm the Chief Engineer of the Warwick
19 Hotel. I'd like to go over some of the areas of
20 concerns that we have. First would be noise and
21 air concerns. What provisions are being made to
22 prevent construction activity from disturbing
23 nearby properties? What provisions are going to
24 be made to control dust made by construction
25 activities? Are there any provisions for offsite

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2 staging area construction vehicles to limit noise
3 and disruptions to nearby properties? The
4 geotechnical and structural concerns are was there
5 a geotechnical survey of the site and the
6 surrounding area? Is Hines aware of any
7 underground streams or any other areas of concern
8 in the vicinity of the project, more specifically,
9 along 54th Street? What considerations have been
10 made regarding potential impact to nearby
11 properties while the project is being built,
12 particularly relating to de-watering, chipping,
13 blasting or other construction activities which
14 may anticipate to cause damage? Whether it's a
15 75-story or a 25-story building, what type of
16 monitoring is going to be taking place to protect
17 the buildings that exist in that area? Thank you.

18 COUNCIL MEMBER JACKSON: Thank you.
19 Next please.

20 DAVID ACHELIS: Good afternoon,
21 Council Members. My name is David Achelis. I'm a
22 member of the 54th Street Block Association. I've
23 lived at 56th Street for over 30 years and I see
24 this as a very simple problem. It's not about
25 whether you like the Museum of Modern Art or

1
2 whether you like the architect or the
3 architecture, but for example have a look around
4 this room. Look at the size of this room. Now
5 double it; that's roughly the square footage of
6 the lot that they want to build the tallest
7 building in New York State. It's roughly around
8 double the size of this room. That is just crazy.
9 In closing I would like to read a quote taken out
10 of the written testimony of Kate Wood, she's the
11 Executive Director of Landmarks West, a
12 preservation society on the Upper West Side. The
13 quote is from Ada Louise Huxtable; I am so weary
14 of these stupid alliances between developers and
15 cultural institutions in which the cultural
16 institution is given a block of space and the
17 developers overbuild the rest. I can't help but
18 view MoMA's new Nouvel tower as the last
19 destructive nail. Thank you very much.

20 COUNCIL MEMBER JACKSON: Thank you.
21 Last but not least, Miss.

22 JACKIE THOMPSON: My name is Jackie
23 Thompson [phonetic]. I am a registered architect
24 in the State of New York and I am practicing
25 architecture in New York City for the past 40

1
2 some-odd years. We have been repeatedly warned by
3 the developer, some architects, the New York Times
4 Architecture Critic and MoMA Gentry that if we do
5 not approve Nouvel's totally inappropriate for the
6 site building we will end up with a short, fat,
7 nondescript building. This is a slur against the
8 buildings lower than 1,050 feet and the architects
9 who design them. It is not based in fact. The
10 best recent architecture and building in New York
11 City has been distinctly low-rise and mid-rise.
12 Here are a few: The Hudson River Park's bike lane
13 and Battery Park City Esplanades; the LVMH
14 Christian Dior Building on East 57th Street by
15 Christian de Portzamparc; the American Folk Art
16 Museum by Todd Williams and Billie Tsien; the
17 Morgan Library addition by Renzo Piano;
18 Scandinavia House by Polshek Partners; Whitehall
19 Street Staten Island Ferry Building; Shake Shack
20 in Madison Square Park; Chelsea Piers; The
21 Austrian Cultural Center by Raymond Abraham;
22 Richard Meier's Apartment Buildings in West
23 Village, 173 and 176 Perry Street at Charles; The
24 Scholastic Books Building on Broadway by Aldo
25 Rossi; the Highline and some of the buildings

1
2 surrounding it; the Brooklyn Bridge Park; the
3 floating pool; the New Museum; 40 Mercer--which is
4 by Nouvel; the IAC Building by Frank Gehry; the
5 Apple Store at the GM Building; 40 Bond by Herzog
6 & de Meuron. The New York Times architecture
7 critic, Nicolai Ouroussoff said that New York City
8 will become an urban mausoleum if we don't allow
9 the Nouvel Building to be built. He is engaging
10 in the kind of abstract rhetoric that were we in
11 the field of statecraft would be dangerous. The
12 1,050-foot Nouvel tower will certainly cause
13 vertigo and make the northern side of West 54th
14 Street feel buried under it. Perhaps that's where
15 he got his mausoleum imagery from. In any event,
16 if Nouvel can't or won't design a building that
17 takes into account the common realm, there are
18 lots of other great architects who've shown that
19 it can be done. Thank you.

20 [Pause]

21 COUNCIL MEMBER JACKSON: Well let
22 me thank this last panel for coming in and giving
23 testimony. I'm just holding the chair temporarily
24 for our Chair of the Zoning and Franchises
25 Committee, Tony Avella. My name is Robert

2 Jackson; I'm a member of the Committee. I want to
3 thank you all for coming in. I appreciate it. My
4 colleague, Simcha Felder, I want to thank him for
5 always being here. He's always here to listen to
6 the testimony on this particular--don't approach
7 the bench, sir. Sergeant-at-Arms, please?

8 Thanks. The Zoning and Franchise Committee will
9 be recessed until Thursday morning at 9:45 a.m.,
10 where consideration of this matter will be
11 continued. Meaning that--excuse me one second.

12 [Pause]

13 COUNCIL MEMBER JACKSON: Okay.

14 We'll be laying this matter over until Thursday
15 morning, when the subcommittee will be meeting
16 again and we will continue the discussion on this
17 matter and or possibly voting it out. I'm not
18 sure at this point in time. So please stay in
19 contact, the various parties, with our Land Use
20 Committee and follow the City Council calendar.
21 So Thursday morning we will continue the Zoning
22 and Franchises Committee. With that, this
23 meeting--this hearing of Today's date of November
24 6th, 2009 of the Zoning--October, I'm sorry.
25 October the 6th, 2009, of the Zoning and

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Franchises Committee, this hearing is hereby

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adjourned--closed--and the meeting is recessed

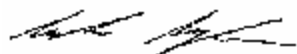
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until Thursday morning. Thank you.

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C E R T I F I C A T E

I, Erika Swyler, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature _____

Date _____ October 11, 2009 _____