

**Testimony of Robert K. Steel  
Deputy Mayor for Economic Development**

**Before the New York City Council  
Sub-Committee on Zoning**

**October 22, 2013**

Good morning Speaker Quinn, Chairmen Comrie and Weprin, Councilman Garodnick and members of the sub-committee. My name is Robert K. Steel, Deputy Mayor for Economic Development. On behalf of Mayor Bloomberg, it is a privilege to be here this morning to provide introductory comments about the Mayor's holistic proposal to refresh and renew East Midtown, which we believe is critical not only to the future of this neighborhood but to the entire City's economy.

One of the key elements of Mayor Bloomberg's economic development strategy has been to prepare all of New York City for the economy of the 21<sup>st</sup> Century and beyond, which is why Mayor Bloomberg created the Applied Sciences competition to double the number of engineering graduate students and faculty in our City.

But to succeed in the 21<sup>st</sup> Century and beyond, New York will not only need the talent that companies demand, it will need the infrastructure they demand as well. New York's commercial stock is aging, with greater than 65% of the Class A space more than 50 years old.

This is particularly true in East Midtown, where in the last two decades, just one new major building has been built. Today, companies seeking headquarter space with open floor plans, high ceilings and other modern amenities simply cannot find it in East Midtown.

The challenge we have identified is not new, and the Bloomberg Administration is not the first to attempt to address it. This area was rezoned two decades ago, and even then there was the hope that it would spur redevelopment of the buildings and area around Grand Central.

But it did not happen.

And so in 2010, the Department of City Planning began work on a study of East Midtown, a study grounded in three key principles:

- 1) Transit-oriented development,
- 2) Contextually-appropriate development, and
- 3) Pairing private development with new investment in mass transit infrastructure and the public realm.

The Administration's proposal for East Midtown will make adjustments to the neighborhood's zoning that would encourage the development of a handful of new buildings over the next decade – and then another handful in the decade thereafter. Participation in the rezoning is limited to "Qualifying," full-avenue frontage sites that will produce cutting edge, architecturally-significant new buildings. The largest of the potential buildings, which would require additional public review, is comparable in height to the Bank of America building on Bryant Park.

Over this 20 year period, new development would add only 5% more density to the neighborhood, and that modest additional density would generate an estimated \$500 million or more for new investment in the area's infrastructure and public realm. This investment would be made possible by the proposal's "earned as of right" framework. Projected development is expected to generate nearly \$1 billion in net new tax revenue to the City and create more than 65,000 construction jobs.

Let me repeat: a handful of new buildings, qualifying sites-only, 5% more density, \$500 million for new investment, \$1 billion of tax revenue, 65,000 jobs.

Our proposal has undoubtedly been improved by stakeholder input in the last two-and-a-half years, and we have made a number of key adjustments in response to feedback and suggestions since ULURP began in April, and we would like to thank Speaker Quinn, Councilman Garodnick, Borough President Stringer, the Community Boards, preservation advocates, the real estate community, and labor for their input and suggestions.

A northern landmarks sub-district has been added to facilitate the preservation of some of Midtown's most important historic resources, as was an allowance for residential space in response to feedback about the importance of encouraging a vibrant mix of uses in the neighborhood.

The City has committed to prefunding a portion of the infrastructure and public realm investment before new development takes place, and as will be described in greater detail shortly by Budget Director Page, the City will discuss potential financing mechanisms to ensure that development proceeds remain in East Midtown.

And finally, last Thursday the Administration released a comprehensive plan to make East Midtown a great 21<sup>st</sup> Century neighborhood by reclaiming, reimagining, and rebuilding public spaces. Put simply, to improve the quality of civic life, this Administration believes you must improve the quality of public space.

We hope you will see in this morning's presentations, thanks to important public input, that a plan that began with an ambition to modernize a business district has been broadened to become a vision to re-imagine East Midtown as a 21<sup>st</sup> Century neighborhood in every sense.

This proposal has been significantly improved by Council and stakeholder input and we are committed to working with the Council to finalize it in the coming weeks.

But we believe that this proposal is the best way to ensure that East Midtown's best days are still ahead of it.

Thank you for the opportunity to appear before you this morning. I will now turn the microphone over to City Planning Commission Chairwoman Amanda Burden and her team, who can answer any of your questions on the Mayor's proposal.

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The effects of this rezoning will be  
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take adequate time to evaluate the in  
I note that the Multi-Board Task Fo  
Boards One, Four, Five & Six, cont  
that eight out of 12 of Manhattan's  
my years in government, I do not b  
urge the City Council to consider the

Here are just a few of the unr

**1. Plan for Infrastructure/Public**  
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something that stakeholders have be  
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explicitly laid out now, before t  
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what the timetable for construction s  
improvements up front, without wait  
something that is doable.

In summation, I feel this proposal is too important and too complex to be approved with such haste. I propose that the plan for rezoning be postponed until all of the above-mentioned concerns can be addressed with great specificity and with greater respect for all those who will be affected by this dramatic change to the character of midtown.

Thank you in advance for your consideration.



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**TESTIMONY BY NEW YORK STATE SENATOR BRAD HOYLMAN**  
**BEFORE THE NEW YORK CITY PLANNING COMMISSION**  
**ON EAST MIDTOWN REZONING**  
**(ULURP NOs. N 130247 ZRM and C 130248 ZMM)**

August 7, 2013

My name is Brad Hoylman and I represent New York State's 27th Senate District, which includes much of the East Midtown Rezoning study area. Thank you for the opportunity to submit testimony regarding the proposal before the New York City Planning Commission (CPC) today.

I understand and appreciate the importance of securing East Midtown's position as a premiere business district to the economic health of our city, but I have serious reservations about the proposal. I am deeply concerned that it was drafted with limited community consultation and rushed into the Uniform Land Use Review Procedure so that it could be approved during Mayor Bloomberg's tenure. Given the plan's Sunrise Provision, which does not allow new development to receive building permits until July 2017, I question the City's haste. A plan this wide-ranging and consequential warrants broad input and serious deliberation. We should not forsake the opportunity to revitalize the area through inclusive planning that integrates commercial and residential development, infrastructure, public spaces and historic preservation, in order to facilitate construction of new office towers – starting four years from now. As Michael Kimmelman noted in his recent *New York Times* critique of this rezoning, modern cities are judged not just by the height of their towers but by the sophistication of their transportation networks and the liveliness of their streets and public spaces.

Manhattan Community Boards 5 and 6 and the Multi-Board Task Force on East Midtown are to be heartily commended for their careful deliberation and thoughtful,



well-supported recommendation and in my testimony today, I will support your proposal.

I believe it is critical that any plan to finance the much-needed transit infrastructure in a timely manner support the city's economy, culture and global stature as a top priority. Indeed, we must not be deterred from funding transit infrastructure improvements that are needed. Any improvements must be made without putting pressure on Grand Central Terminal to stop or reduce sustain existing ridership let alone the East Side Access and the

I greatly appreciate Manhattan's efforts to secure a commitment from the City to fund the Lexington Avenue subway line extension to improve the area's wider mass transit system for workers and residents. In addition, I appreciate the City's commitment, notably how much of the funding for those improvements go into effective

Also essential to any large scale transit project is the protection of potential landmarks. It is my hope that the City Landmarks Preservation Commission will identify "potentially eligible" for landmark status buildings to act in the near future. Many of these buildings among them—are not on LPC's list but are historically and architecturally important but are under development pressure.

I recognize the intent behind the recommendations from the Department of City Planning to create an appropriate mix of opportunities and flexibility for development on 'adjacent' sites -- thus facilitating transit-oriented development ensuring that the District Improvement Program subway and pedestrian network at 390 Park Avenue, the owner can use the proceeds from the sale of the development building. As such, it is under no obligation to invest the proceeds from the sale

is yet another example of a hurried rezoning proposal that would have benefited from greater deliberation. To close this loophole and to ensure the Northern Landmark Transfer Area meets its intent, I urge DCP to establish a mechanism to mandate that property owners who take advantage of it use the proceeds, after their DIF contribution, for the preservation of their properties' historic structures.

I am pleased that in response to requests from City Councilmember Dan Garodnick and the Multi-Board Task Force on East Midtown, this past May the City Department of Transportation and DCP selected a team to lead the City's public planning and design process for the rezoning's public realm improvements. The team has been leading public workshops to identify local stakeholders' priorities and preferred approaches to enhance the public realm in this area, however, these conversations should have happened sooner and been integrated with the rest of the proposal. I am also concerned that as envisioned, the contributions to the DIF, which is to fund transit and public realm improvements, will be too low for significant improvements to the area.

Finally, I have reservations about this proposal because of the potential negative impact on other emergent business districts also competing for tenants seeking Class "A" office space. This includes Hudson Yards, in my own district, as well as Lower Manhattan, downtown Brooklyn and Long Island City. Having said that, I also believe that DCP is underestimating the economic impact of Class "B" office space in New York City. In my Senate district, startup companies and technology firms are increasingly choosing space in neighborhoods like Chelsea and Flatiron. These companies are the future of our city's economy, and they need affordable Class "B" office space. More established companies like Google aren't seeking Park Avenue addresses, either. Google's decision to establish its New York headquarters in the old Port Authority building in Chelsea suggests that the idea of modern glass-enclosed towers housing corporate world headquarters may be an outmoded way of thinking.

I am disappointed that DCP refused to slow this process down and work with affected communities, preservationists and advocates for a more livable city to develop a more thoughtful, bolder rezoning that would truly revitalize East Midtown. As such, I cannot support the current iteration of this proposal and urge disapproval. The concerns raised over the last several months by community boards, planning organizations, my fellow elected officials and I must be fully addressed, even if this means delaying any rezoning. This rezoning is a once-in-a-generation opportunity. The stakes for public benefits, infrastructure improvements, historic preservation and economic development are too high not to take the appropriate amount of time to get this proposal right.

Thank you for your consideration of my comments.

**STATE SENATOR LIZ KRUEGER**

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October 22, 2013

**RE: East Midtown Rezoning (ULURP Nos. N 1**

Dear Colleagues and Members of the City Council,

We thank you for the opportunity to comment on the rezoning of East Midtown. The 73-block area surrounded by the rezoning falls within both of our Senate Districts today and our previous submissions to the City Planning Commission. I write herein to summarize several key points we feel about this proposal.

These observations are drawn from our thorough study of the process in which it has been considered and meetings with city officials from the many relevant government entities.

We must stress that we support the stated goals of the East Midtown as a world-class business district and the community, however, that in its current form, it fails to meet that goal and is rushed. We can and must do dramatically better than this with a new administration.

**Fearmongering on Transit Capital Improvements:** This plan continues to be marketed by the Bloomberg administration as needed capital funding for improvements in East Midtown, particularly the already over-capacity Lexington Avenue subway line. We urge you to tell us that the proposed District Improvement Fund (DIF) is not a revenue source for the needed projects. This argument was a

Receipts from the DIF may enable an acceleration of transit improvements necessary: as state elected officials, we are both confident that transit construction priorities in this area, that the lion's share of the DIF is needed to fund would nonetheless be included in the budget for two decades.

This shell game violates important principles of respect for the DIF concept. Money raised through the one-shot crea

should be used for new and transformational projects that cannot otherwise be budgeted, not for what are essential subway station upgrades that, notwithstanding the administration's fearmongering, we are certain would be budgeted in normal capital plans.

Moreover, the administration's private suggestions to us and other elected officials that somewhere in the neighborhood of \$100 million for transit and public realm improvements could be bonded up-front, backed by future DIF receipts, does little to address our concerns. In the context of MTA capital budgeting this is a drop in the bucket, and at least \$500 million worth of work in East Midtown has already been identified as necessary in the coming years – even without any increase in buildings or area population due to rezoning.

### **A Flawed Process**

This plan is the product of a flawed process. It has been rushed, it has not meaningfully incorporated public input, and it has not been appropriately vetted.

*Rushed and Unvetted* – This sweeping proposal to rezone the beating heart of Midtown Manhattan, perhaps the most iconic and recognizable central business district in the world, has hurtled through the review process with unprecedented speed so that it could be approved during Mayor Bloomberg's tenure. The Department of City Planning ignored repeated requests by all the elected officials and community boards representing the rezoning area to delay the certification to provide time for sufficient community input, and the plan was certified barely a year after it was first mentioned in the mayor's 2012 State of the City address. As a result, essential details that should have been known to all before the rezoning application was certified – such as the possibility of bonding for infrastructure, or the creation of a virtually unprecedented air rights transfer sub-district for landmarks – instead surfaced only as revelations in the press in the middle of the formal environmental review process. In particular, this new air rights transfer proposal is a radical departure from existing practice, with the potential to open up a Pandora's box of unintended consequences. Perhaps it is a worthy idea, and perhaps it is not – but clumsily throwing this kind of massive shift into the mix this late in the game, without time for study or review, is simply not how land-use policy should be done in New York City.

*Incorporation of Input from the Community and Public* – Both of our offices have monitored the many public sessions, community meetings, and communications between members of the community, the Department of City Planning, and the mayor's office. We have also had our own correspondence and discussions with officials of the mayor's office and City Planning. After a thorough review and discussion of how this process was conducted from beginning to end, we are forced to conclude that the administration was entirely unserious about engaging with the community, and that the failure to leverage feedback to improve the plan directly resulted in the perpetuation of the flaws that now gravely threaten its success.

Time was wasted on repetitive presentations, and question-and-answer sessions devolved into shouting matches, as administration officials unwilling to answer questions or address alternative proposals from community members chose to raise their voices when flustered.

Public review and community participation should have improved the plan by exposing flaws and posing questions, leading to study, revision, and improvement. Instead, the administration

pursued its plan with little to no consideration of major modifications, going through the motions of public participation without doing the substantive work.

**3. We Can Easily Accomplish These Goals Next Year, With Far Less Controversy**

As members of the state legislature we will not be sitting at the negotiating table that produces whatever final proposal comes before you, and we acknowledge and respect that approval or disapproval of any final plan is entirely the Council's prerogative.

However, we are confident that neither we, nor the overwhelming majority of the opponents of this plan in its current form that we have spoken to, are opposed to a judicious rezoning of these areas of East Midtown. This is the great tragedy of the Bloomberg administration's pursuit of this plan – it did not need to be this controversial, and had it been pursued with more deliberation and more respect for the affected communities, it may have sailed through with broad consensus.

Should the Council decide not to approve this particular East Midtown rezoning plan, we see no reason why a more thoroughly vetted proposal that addresses community concerns in good faith and is more financially responsible could not more easily be approved within the next two years.

Sincerely,



Liz Krueger  
State Senator



Brad Hoylman  
State Senator

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Good Morning Council  
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Decades-old zoning lie

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will remain untouched by this rezoning.

At the same time as the building stock is refreshed, it is critical that improvements to both the pedestrian realm and transit network are made.

The plan therefore requires that any new development on these select sites must first make an upfront payment into a fund to pay for new public investment in transit and pedestrian improvements, thereby coupling any development with public realm improvements .

Further, in order to implement critical infrastructure improvements **before development takes place**, the Mayor has worked with OMB over the past year to enable the City to be able to advance a significant portion of the anticipated funds. This commitment provides an extraordinary opportunity for priority capital improvements, focusing on the Lexington Line at Grand Central Subway station, to be implemented immediately upon adoption of the rezoning, thereby setting the stage for future development and bringing the benefits of the plan to the public in the near term.

Over the past 3 years, our deliberations on this proposal have been informed by a consistently high level of engagement from a wide array of stakeholders.

Our approach here is the same as it has been for the 122 rezonings that we have together passed over the past 12 years: carefully targeting zoning changes to create limited opportunities for growth while preserving neighborhood character, ensuring that new development is tied to improvements to the public realm and always, always working with a community to listen and improve the plan.

Significant refinements have been made to the East Midtown proposal as a result of this process, incorporating changes requested by community boards, elected officials, and other stakeholders.

These changes include: Encouraging a better mix of uses, Requiring groundbreaking sustainability standards that keep pace with advances in green building; providing the area's most famous iconic landmarks a wider selection of sites to transfer and sell their unused development rights and requiring a hotel special permit on qualifying sites.

We also heard from many participants, and particularly from Council Member Dan Garodnick, about the need for a comprehensive framework for greening this district and for improvements to its public realm. Therefore, since June, a team of urban design consultants has been working with community stakeholders through a series of workshops to develop an area-wide plan for pedestrian improvements. This Public Realm Vision Plan, which was released last week, includes opportunities for dramatic new public spaces, greening and beautifying streets, and providing targeted improvements at subway entrances. This is a giant step forward in reimagining East Midtown public spaces for the 21<sup>st</sup> Century.

The plan for East Midtown is a long-term plan. If we are to unlock a necessary but limited



amount of new top tier office development in the next decade - which will also provide funding for much needed improvements to the area's pedestrian and transit related networks, it is essential to put the zoning in place now. If we are to set the stage for jobs and investment in this area for the next generation and take advantage of the Mayor's extraordinary commitment to advance a significant portion of the anticipated funds so that capital improvement to the Grand Central subway station can begin soon, this plan needs your support. It will allow East Midtown to usher in the next generation of state-of-the-art and competitive office space and ensure that the district maintains its vital role in support of the City's economy.

## **East Elmhurst Rezoning – Summary Introduction**

On September 23<sup>rd</sup>, 2013 the City of Elmhurst, a neighborhood located in Queens, New York, is updating its zoning to commercial overlays and the Land Use Committees of the Queens Borough President.

### **Study Area**

The East Elmhurst Rezoning area is bounded by Grand Central Avenue to the south and to the west, by a local street where it meets the Grand Central Avenue located on the south side of Roosevelt Community District 4 seeks to modify zoning that were implemented as part of the rezoning.

The existing development in East Elmhurst is primarily of one- and two-family detached and attached residentially developed by mostly attached residentially developed by Astoria Boulevard, a major west-to-east street with clusters of local commercial uses. The zoning of East Elmhurst are commercial uses included in the rezoning.

### **Project Goals & Objectives**

Residential zoning in East Elmhurst has an unpredictably wide range of building heights and residential building character. In general, the zoning more closely reflect the established residential character of this study area as follows:

- Protect neighborhood character
- Strengthen the character of residentially developed areas
- Prevent commercial encroachment into residential commercial overlays and mixed-use areas

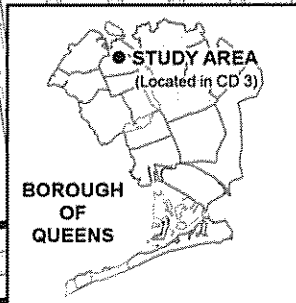
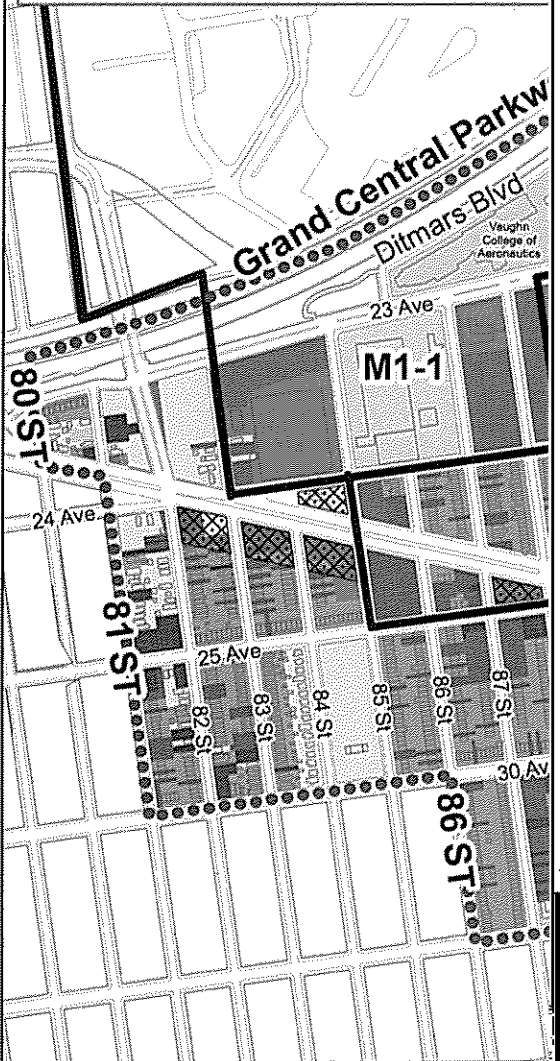
### **Status**

On June 3<sup>rd</sup>, 2013 the rezoning was approved by Community Boards 3 and 4 voted in favor of the rezoning. The Queens Borough President rec and on August 6<sup>th</sup>, 2013 the Borough President voted in favor of the proposal. The City Planning Commission and issued a favorable report on September 23<sup>rd</sup>, 2013.



# East Elmhurst Rezoning A

## Existing Zoning and Land Use



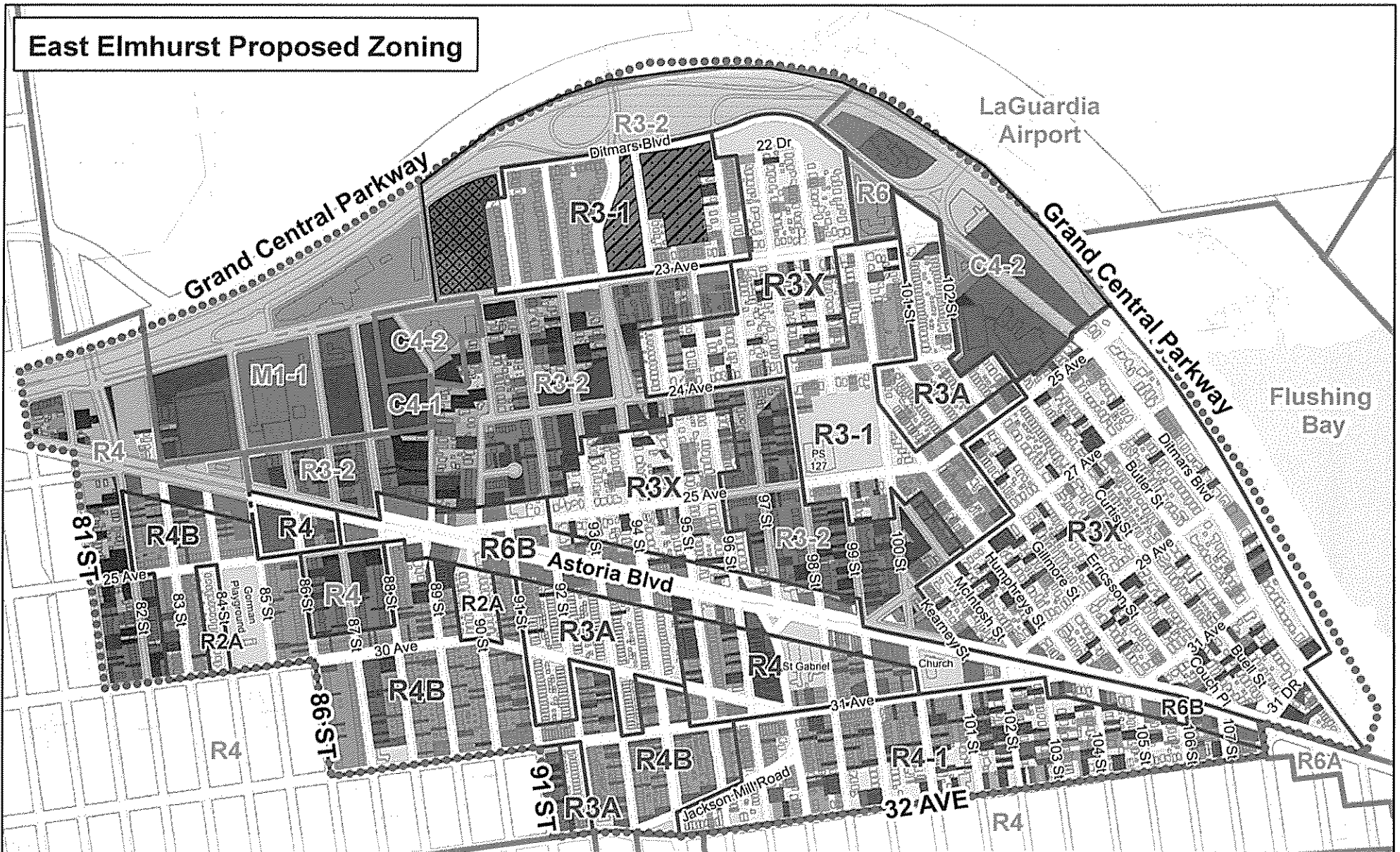
**Legend**

- Study Boundary
- EXISTING ZONING

**Commercial Over**

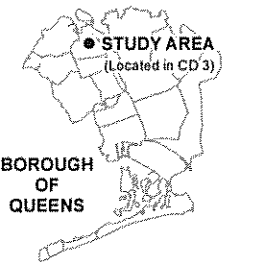
- C1-2
- C2-2
- C2-3

# East Elmhurst Proposed Zoning



LaGuardia Airport

Flushing Bay



## LEGEND

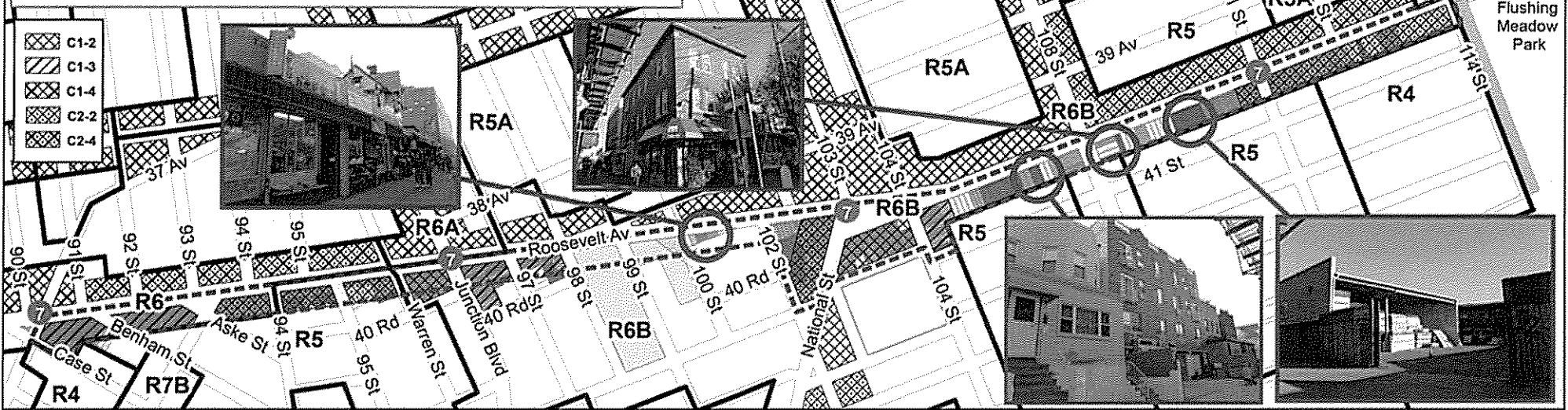
- Study Area
- Proposed Zoning Boundary
- Existing Zoning Boundary
- ▨ C1-3 Proposed
- ▩ C2-3 Proposed

- One Family Detached
- ▨ Two Family Detached
- ▩ One and Two Family Semi Detached
- ▧ One Family Attached
- ▦ Two Family Attached

- Multi Family Buildings
- ▨ Mixed Commercial/Residential
- ▩ Commercial Office
- ▧ Industrial/Manufacturing
- ▦ Transportation/Auto-related

- Public Facilities
- ▨ Open Space
- ▩ Parking Facilities
- ▧ Vacant Land

### ROOSEVELT AVE EXISTING ZONING AND LAND USE

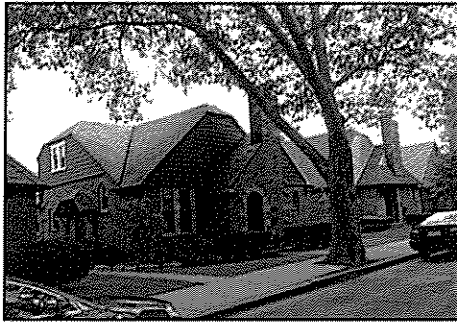


### ROOSEVELT AVE OVERLAY REZONING





## R2A



Existing: R4  
**Proposed on 3 Blocks**

1 family detached  
 0.5 residential FAR  
 40' minimum lot width  
 21' wall height, 35' maximum height  
 Minimum 15' front yard with lineup

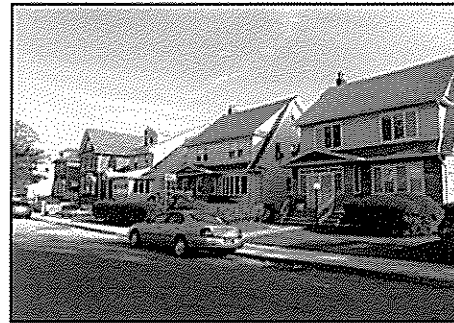
## R3A



Existing: R3-2, R4  
**Proposed on 11 Blocks**

1-2 family detached  
 0.6 residential FAR\*  
 25' minimum lot width  
 21' wall height, 35' maximum height  
 Minimum 10' front yard with lineup

## R3X



Existing: R3-2, R4  
**Proposed on 44 Blocks**

1-2 family detached  
 0.6 residential FAR\*  
 35' minimum lot width  
 21' wall height, 35' maximum height  
 Minimum 10' front yard with lineup

## R3-1



Existing: R3-2  
**Proposed on 19 Blocks**

1-2 family detached and semi-detached  
 0.6 residential FAR\*  
 21' wall height, 35' maximum height  
 Minimum 15' front yard

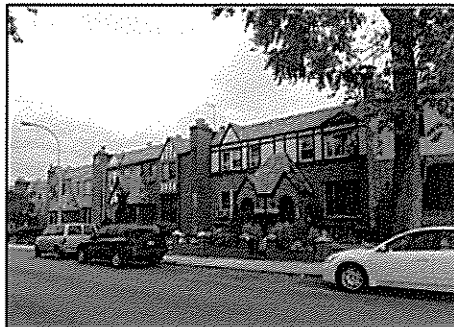
## R4-1



Existing: R3-2  
**Proposed on 16 Blocks**

1-2 family detached and semi-detached  
 0.9 residential FAR\*  
 25' wall height, 35' maximum height  
 Minimum 10' front yard with lineup

## R4B



Existing: R3-2, R4  
**Proposed on 26 Blocks**

1-2 family detached, semi-detached & attached  
 0.9 residential FAR  
 24' maximum height  
 Minimum 5' front yard with lineup

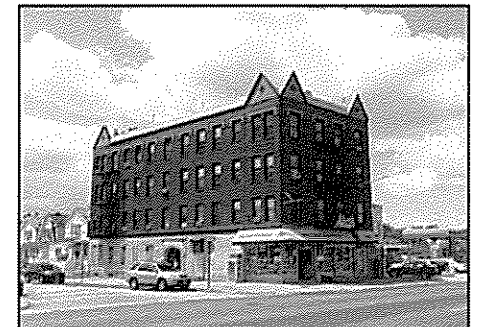
## R4



Existing: R3-2  
**Proposed on 10 Blocks**

All housing types  
 0.9 residential FAR\*  
 25' wall height, 35' maximum height  
 Minimum 10' front yard with lineup

## R6B



Existing: R3-2, R4  
**Proposed on 32 Blockfronts**

All housing types  
 2.0 residential or community facility FAR  
 30'-40' base height  
 50' maximum height

\* Includes 20% increase in FAR for attic allowance

## EAST ELMHURST ZONING COMPARISON CHART

	EXISTING ZONING		PROPOSED ZONING							
Zoning	R3-2	R4	R2A	R3-1	R3A	R3X	R4-1	R4B	R4	R6B
Residential Building Type	All Residence Types	All Residence Types	Detached 1 Family	Detached & Semi-Detached 1 & 2 Family	Detached 1 & 2 Family	Detached 1 & 2 Family	Detached & Semi-Detached 1 & 2 Family	Detached, Semi-Detached & Attached 1 & 2 Family	All Residence Types	All Residence Types
Maximum Residential FAR	0.6*	0.9* (1:35)**	0.5	0.6*	0.6*	0.6*	0.9*	0.9	0.9*	2.0
Maximum Community Facility FAR	1.0	2.0	0.5	1.0	1.0	1.0	2.0	2.0	2.0	2.0
Minimum Lot Area in sq.ft.	3,800 D 1,700 S or A	3,800 D 1,700 S or A	3,800	3,800 D 1,700 S	2,375	3,325	2,375 D 1,700 S	2,375 D 1,700 S or A	3,800 D 1,700 S or A	n.a.
Minimum Lot Width	40' D 18' S or A	40' D 18' S or A	40'	40' D 18' S	25'	35'	25' D 18' S	40' D 18' S or A	40' D 18' S or A	n.a.
Maximum Streetwall Height	21'	25'	21'	21'	21'	21'	25'	24'	25'	30' to 40'
Maximum Building Height	35'	35'	35'	35'	35'	35'	35'	24'	35'	50'
Minimum Front Yard	15'	10' or 18'	15' and must line up with adj. yard up to 20' max.	15'	10' and must line up with adj. yard up to 20' max.	10' and must line up with adj. yard up to 20' max.	10' and must line up with adj. yard up to 20' max.	5' and not less than depth of adj. yard up to 20' max.	10' or 18'	n.a.
Minimum Side Yard(s)	D = 2 with 13' total, 5' min. S = 1 @ 8' min.	D = 2 with 13' total, 5' min. S = 1 @ 8' min.	2 with 13' total, and 5' min.	D = 2 with 13' total, 5' min. S = 1 @ 8' min.	8' minimum between buildings	2 required 10' total, 2' minimum	D = 2 with 8' total, S = 1 @ 4' min.	D = 2 with 8' total, S = 1 @ 4' min.	D = 2 with 13' total, 5' min. S = 1 @ 8' min.	n.a.
Required Parking	1 per Dwelling Unit	1 per Dwelling Unit	1 per Dwelling Unit	1 per Dwelling Unit	1 per Dwelling Unit	1 per Dwelling Unit	1 per Dwelling Unit	1 per Dwelling Unit	1 per Dwelling Unit	50% of DU's

\*with 20% attic allowance \*\* with infill provision n.a. = not applicable

D= Detached S=Semi-Detached A=Attached



**EAST ELMHURST REZONING – COMPARISON OF EXISTING AND PROPOSED COMMERCIAL OVERLAYS**

**EXISTING**

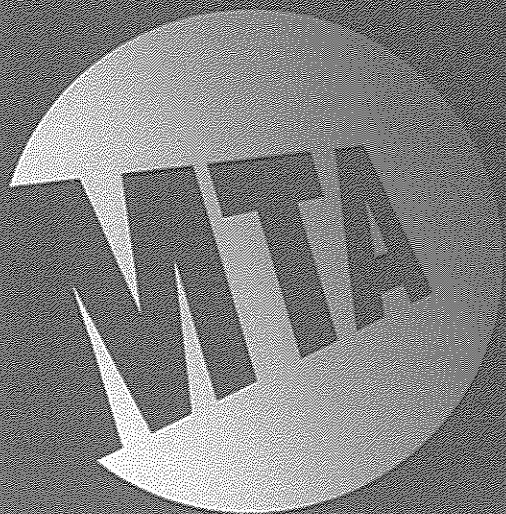
**PROPOSED**

	<b>C1-2</b>	<b>C1-3</b>	<b>C2-2</b>	<b>C1-3</b>	<b>C2-3</b>	<b>C1-4</b>	<b>C2-4</b>
Maximum Commercial FAR (R3-2, R4 & R5)	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Maximum Commercial FAR (R6 & R6B)	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Uses Allowed	Use Groups 1 thru 6	Use Groups 1 thru 6	Use Groups 1 thru 9 & 14	Use Groups 1 thru 6	Use Groups 1 thru 9 & 14	Use Groups 1 thru 6	Use Groups 1 thru 9 & 14
Parking Requirement (Most Retail Uses)*	1 space per 300 sq. ft. of floor area	1 space per 400 sq. ft. of floor area	1 space per 300 sq. ft. of floor area	1 space per 400 sq. ft. of floor area	1 space per 400 sq. ft. of floor area	1 space per 1,000 sq. ft. of floor area	1 space per 1,000 sq. ft. of floor area

\* Requirements may vary with use.

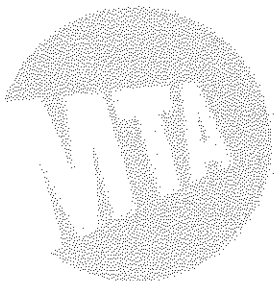
# Transit in East Midtown

City Council  
October 22, 2013



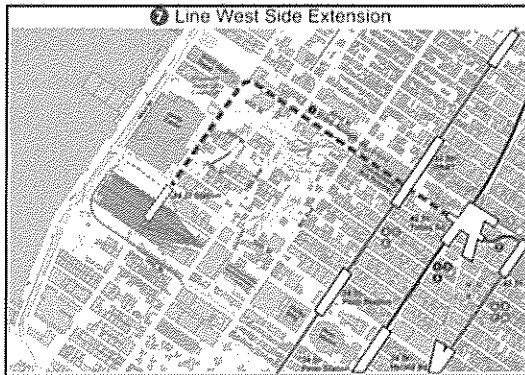
# Transit is the life blood of East Midtown

- Area has rich transit infrastructure handling 700,000 trips a day
- 80% of East Midtown's workers arrive by transit
- In the busiest hour of the AM rush
  - 29,000 City residents exit Grand Central Station
  - 15,500 City residents exit at 53<sup>rd</sup> /51<sup>st</sup> and Lex

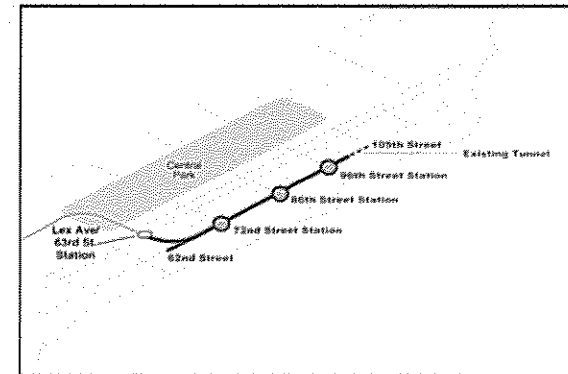


# The MTA network is expanding for the first time in a generation

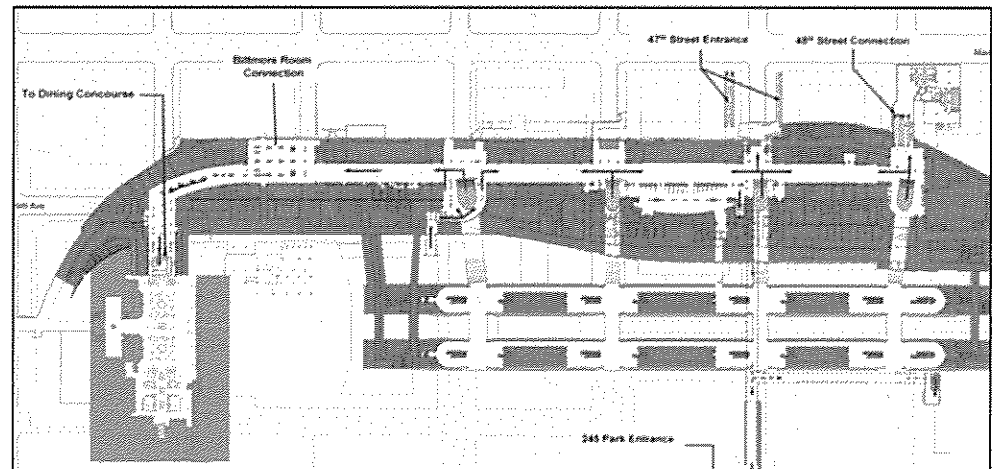
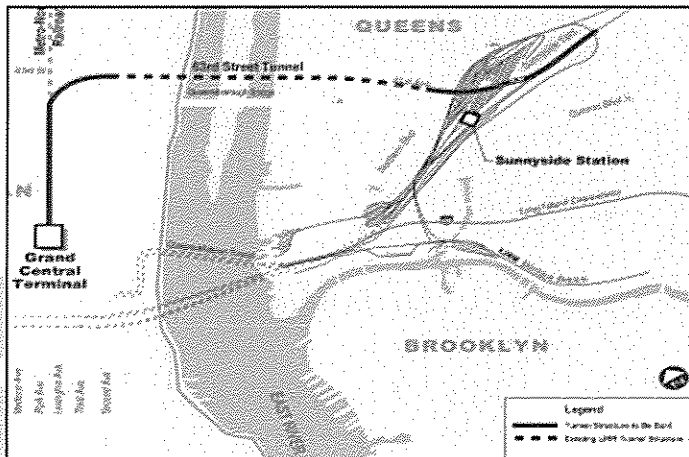
## 7 Line West Side Extension



## Second Avenue Subway – Phase 1



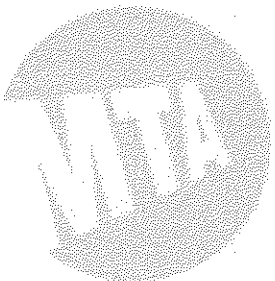
## LIRR East Side Access





**We can do more**

Improving Station Capacity



# Grand Central Station's existing problems

- Stairs/escalators very crowded
- Station is hard to navigate
- Lexington platform congestion delays trains



# Lexington Av Line Platform Stair Footprint

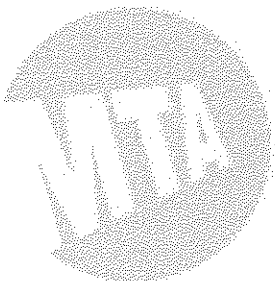
4 5 6



People use every open space to keep moving

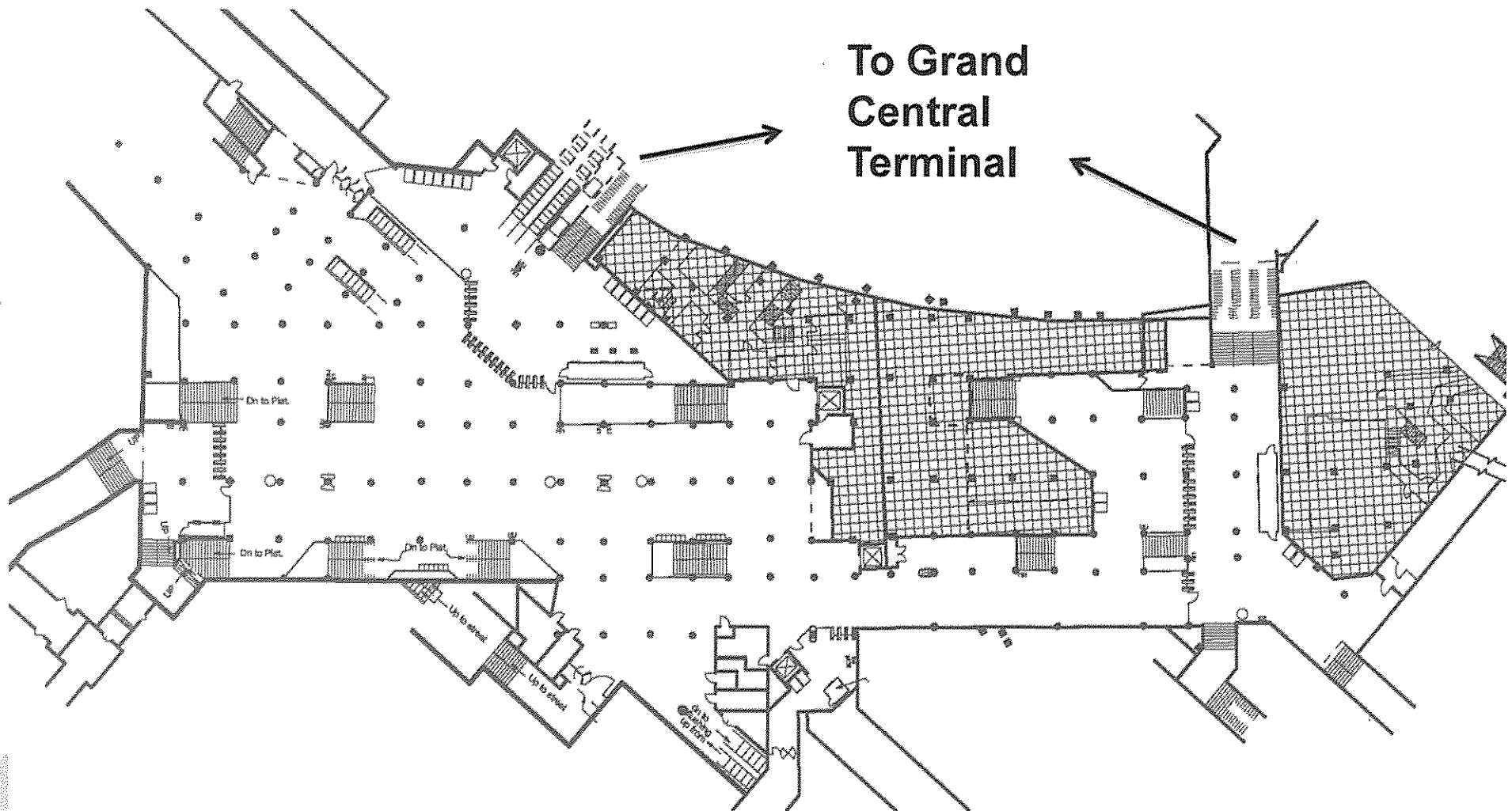


Columns limit pedestrian flow



# Lexington Av Line Existing Station Layout

4 5 6

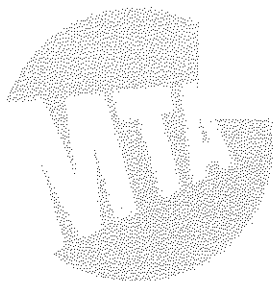
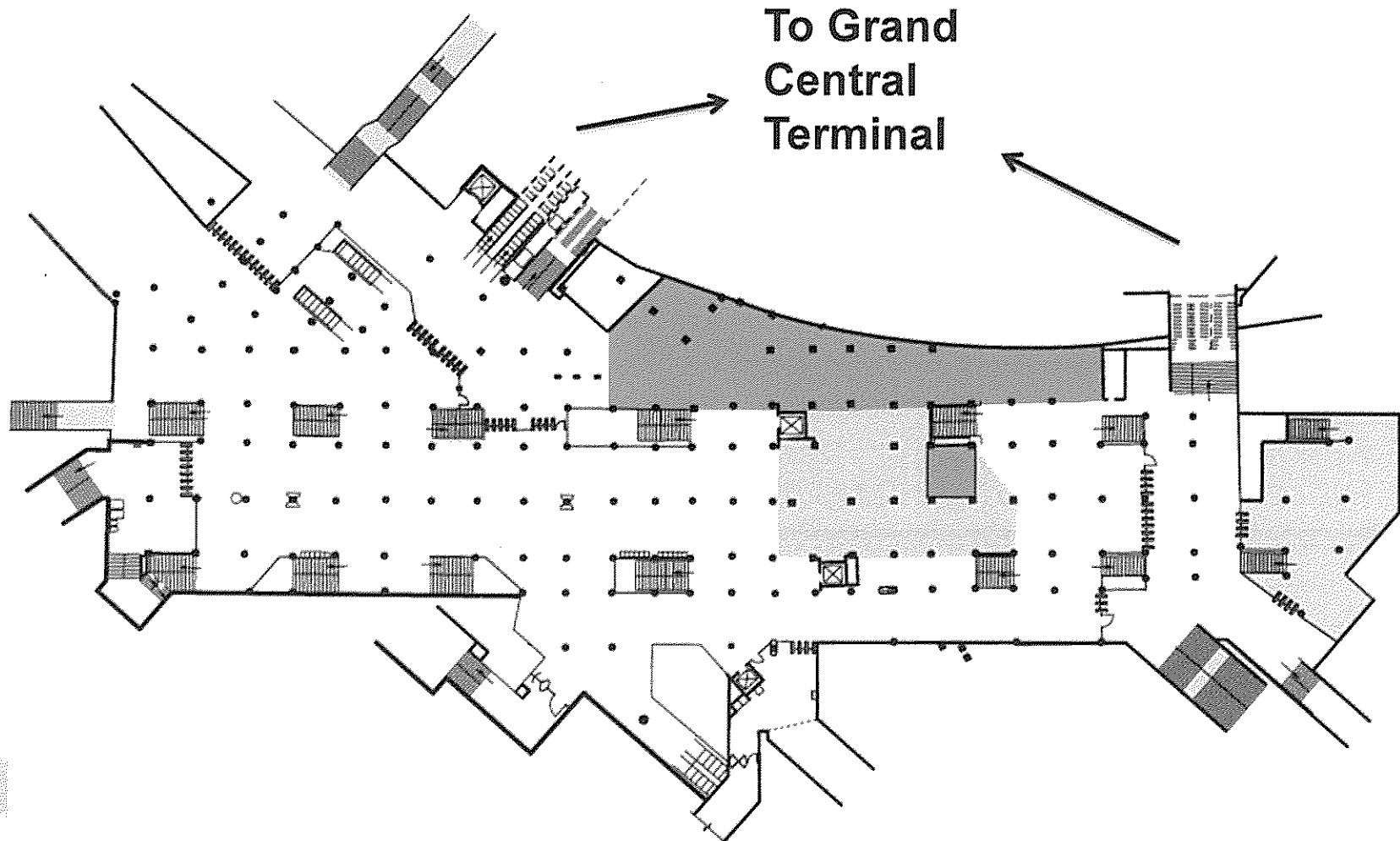




# Lexington Avenue Improvements



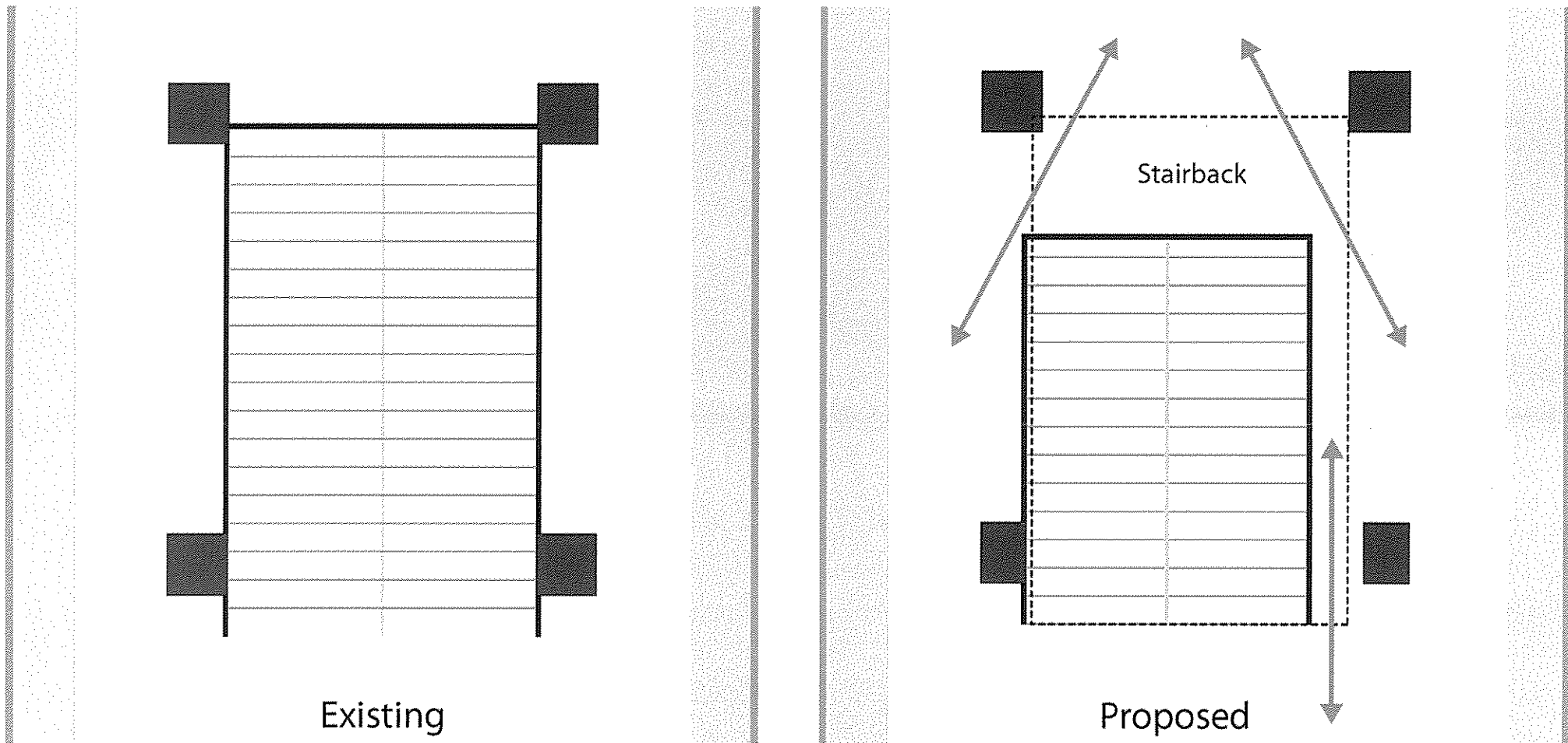
- Make changes at key locations



# Lexington Avenue Improvements:

4 5 6

- Make it easier to enter/exit trains and to move along the platform
- Improve reliability on 4 5 lines



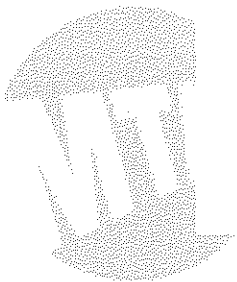
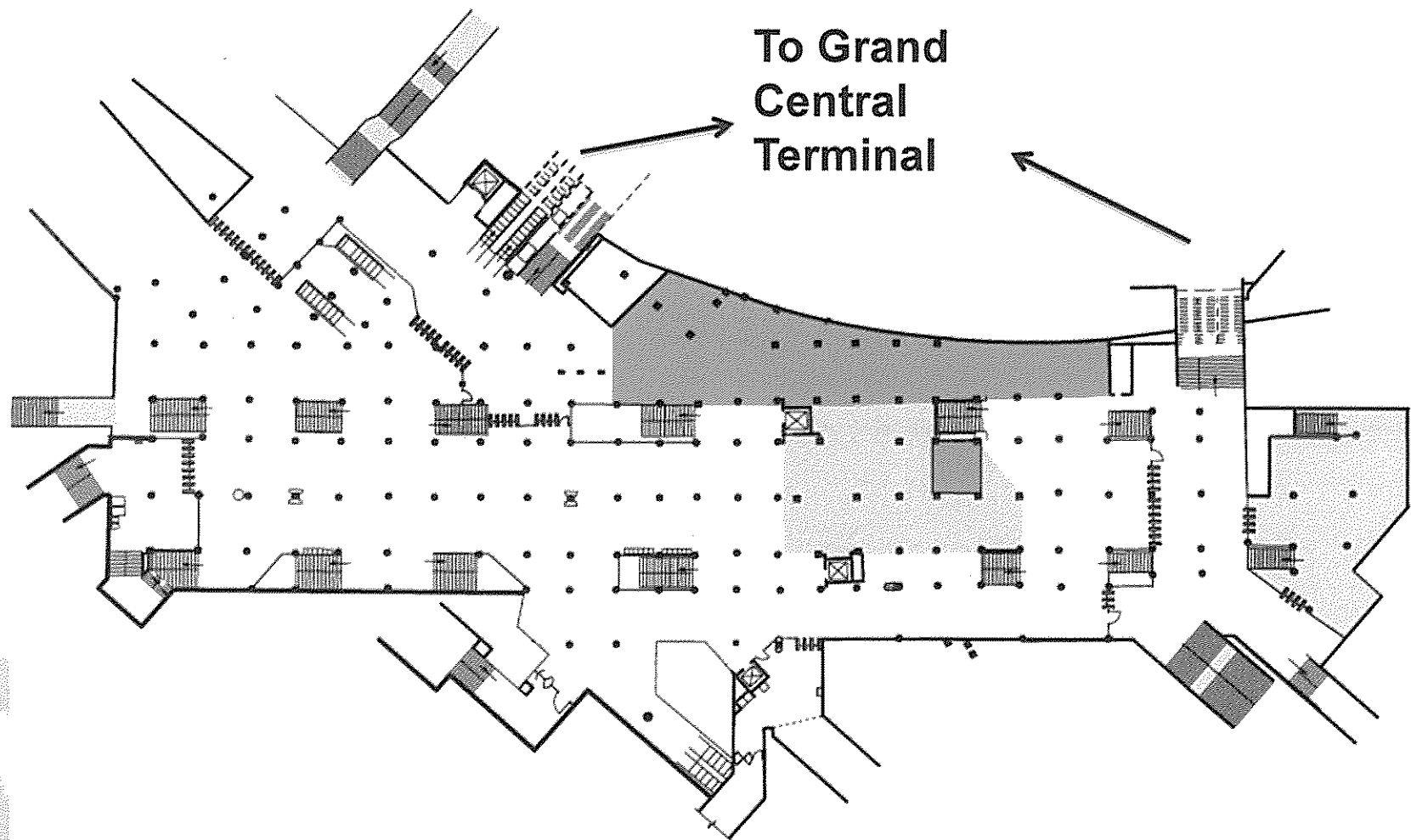
Existing

Proposed

# Lexington Avenue Improvements

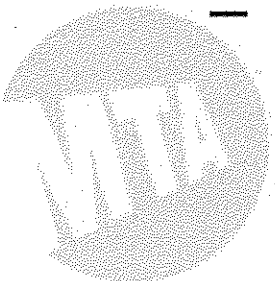
4 5 6

- Add 40% more stair capacity on/off the platform
- Add new mezzanine spaces and improve access to street level
- Move people away from congested areas



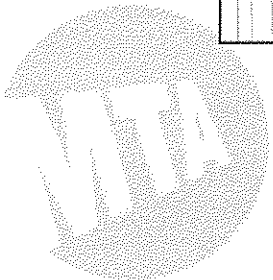
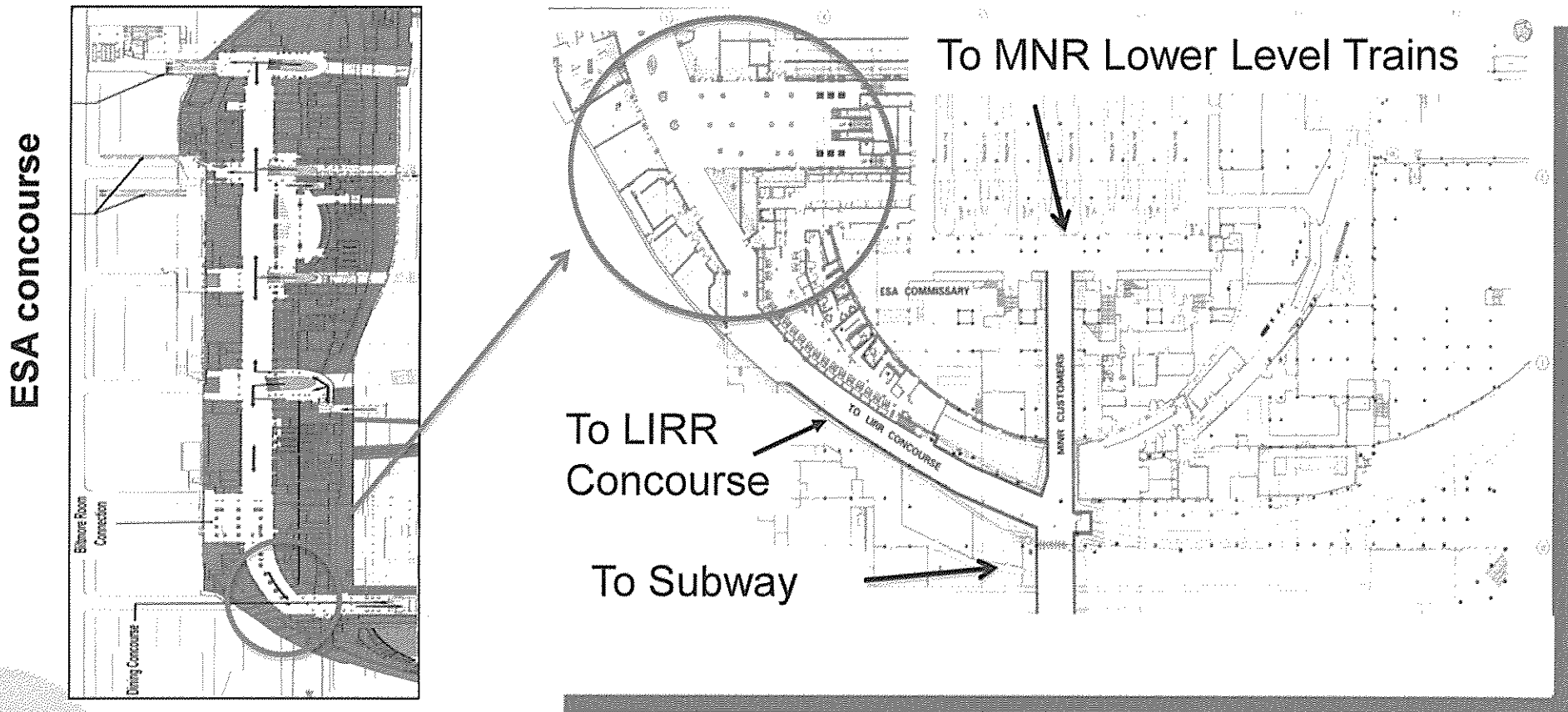
# Accommodating growth over the long-term

- Additional concepts for station improvements will create new connections and passageways
- Timing of these improvements assessed in conjunction with
  - Overall ridership and City employment growth
  - Development in East Midtown
  - Metro-North and ESA ridership and travel patterns
  - Development along **7** line



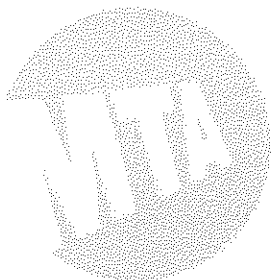
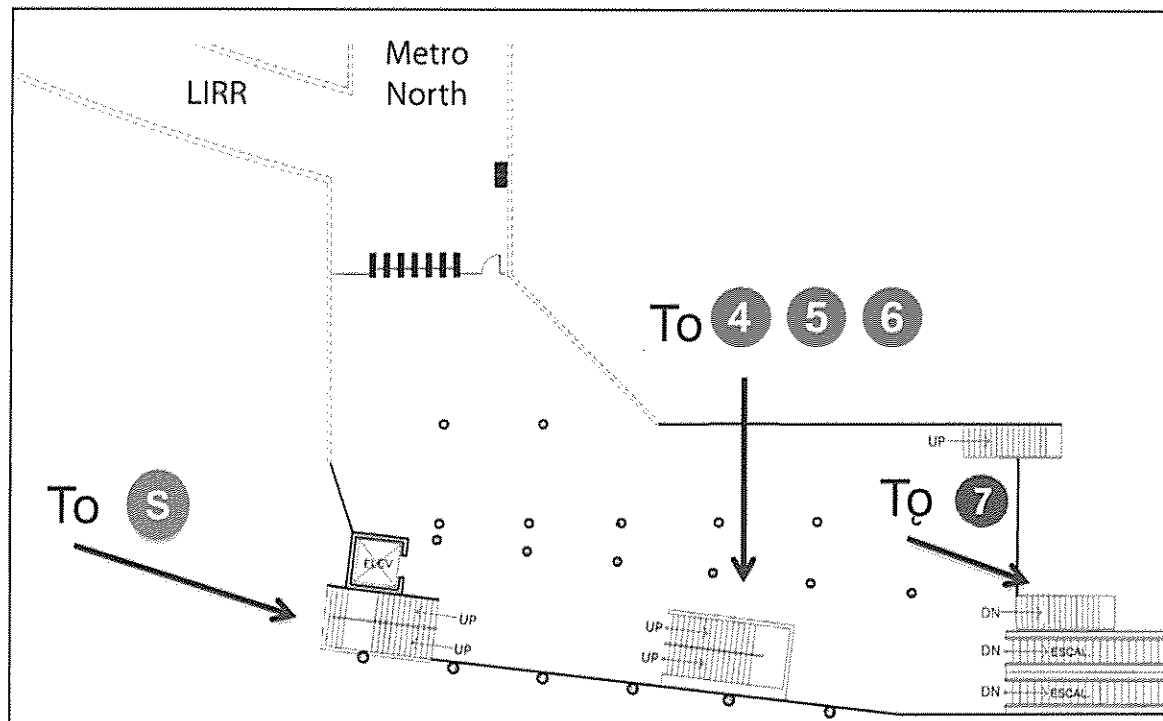
# Additional Grand Central Improvements

- Bypass congested areas like existing main entrance and Lexington platforms



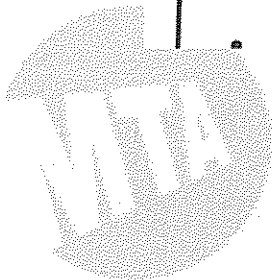
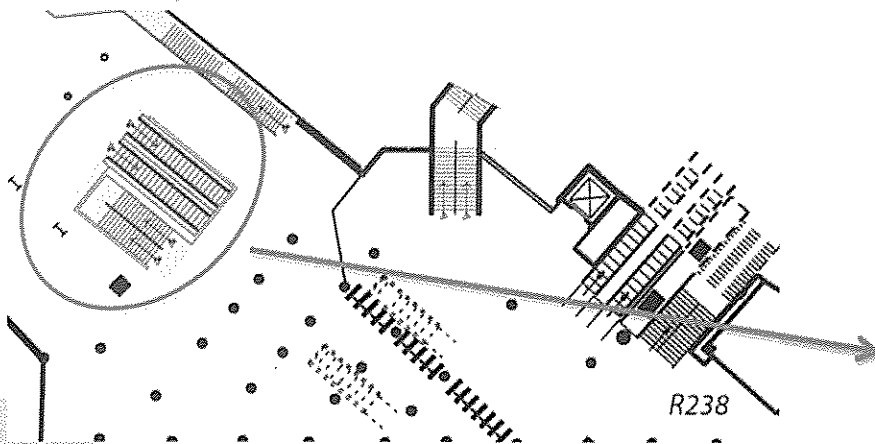
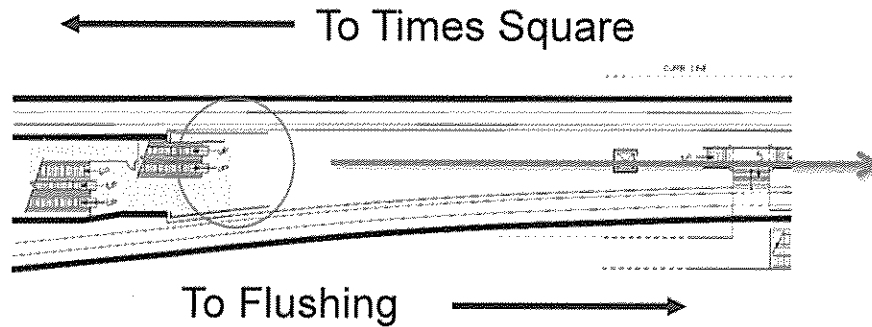
# Additional Grand Central Improvements

- Provide connections to all subway lines
- New path to the north for subway riders through ESA concourse



# Additional Grand Central Improvements

- Make it easier to get to and from **7** platform



# Potential Improvements at other Stations

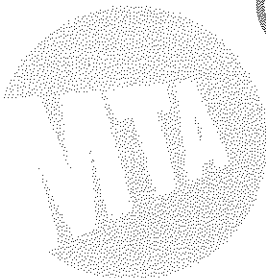
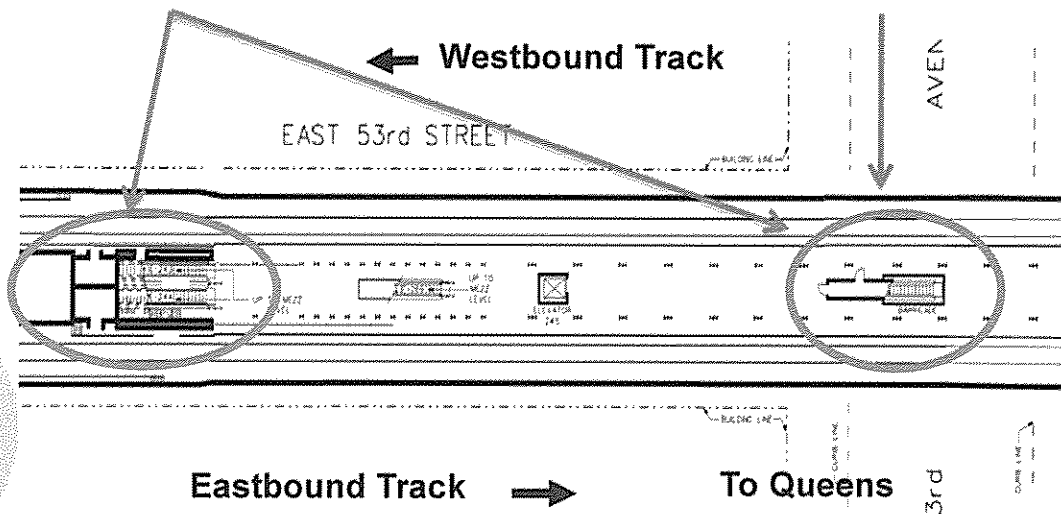
## Lexington Av/53St /51 St



- Relieve congestion at key points
- Speed up/widen escalators from **E** **M** platform
- Add/widen stairs from downtown **6** platform leading to transfer to **E** **M**

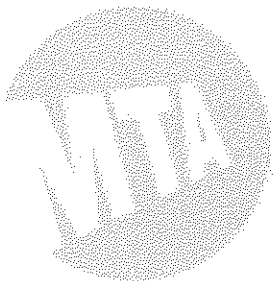
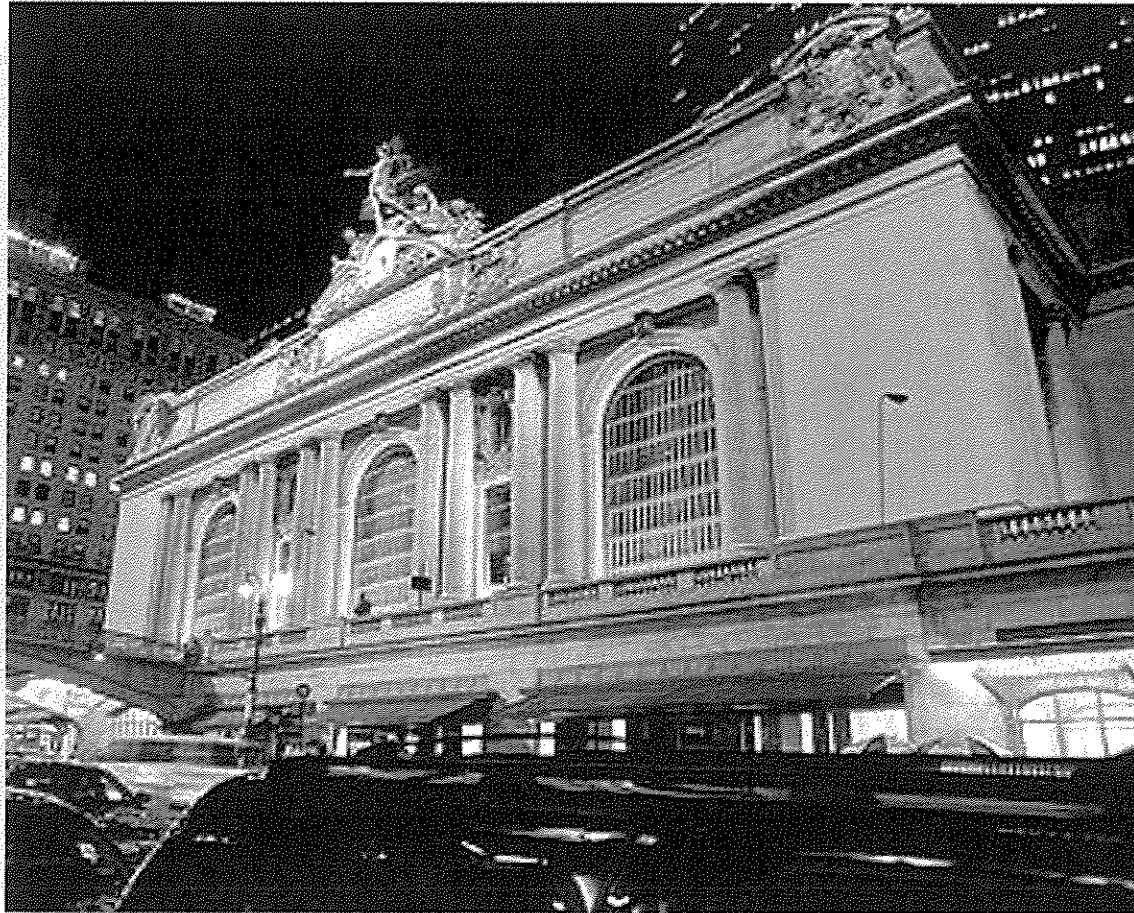


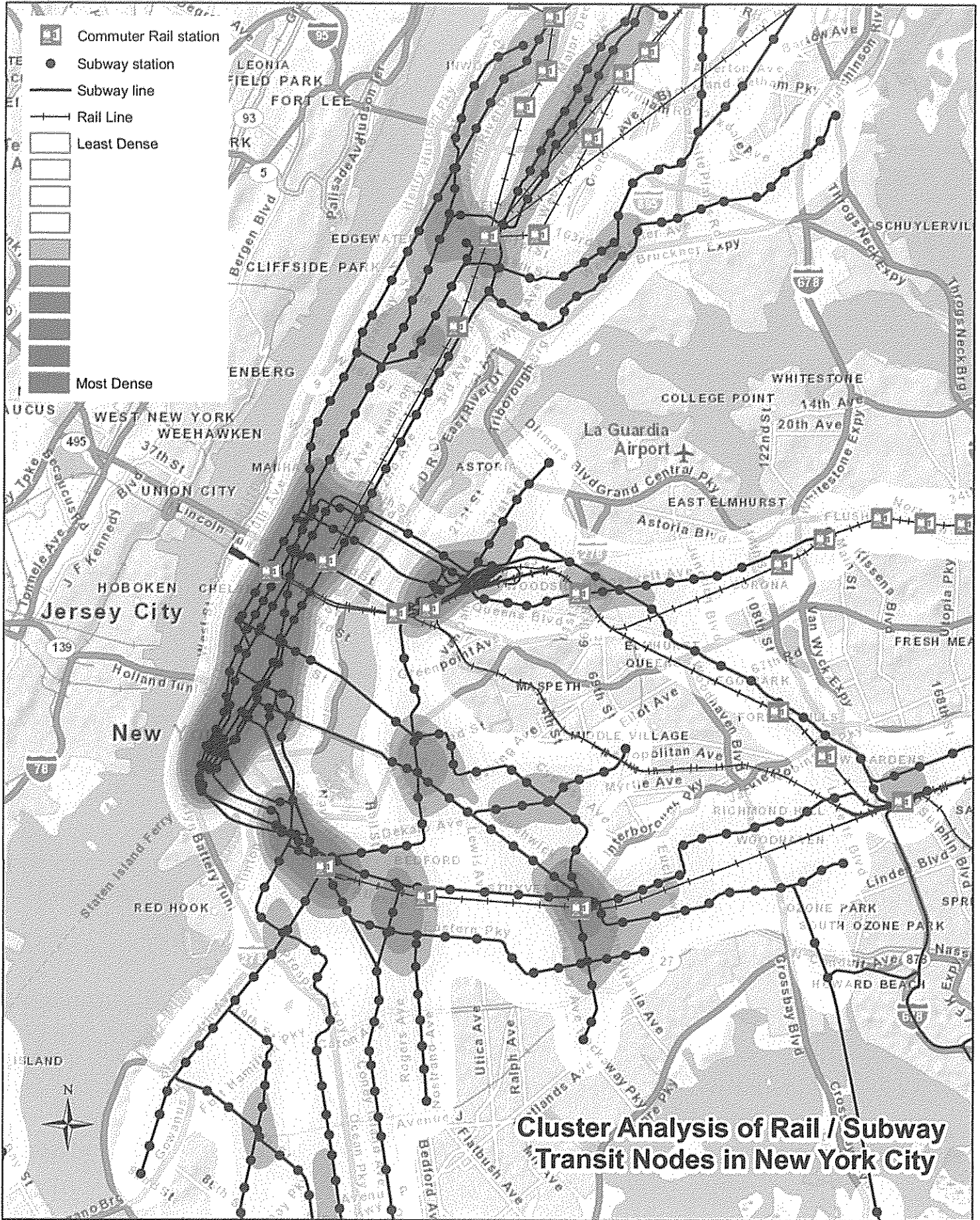
Speed Up Escalators      Widen Escalator





# Transit and growth are linked





**Cluster Analysis of Rail / Subway  
Transit Nodes in New York City**

Data Source: Metropolitan Transportation Authority

**CITY COUNCIL TESTIMONY**  
**OCTOBER 22, 2013**  
**OLIVIA MOSS DELIVERING TESTIMONY FOR CARL WEISBROD,**  
**ON BEHALF OF MIDTOWN TRACKAGE VENTURES**

Council Members,

My name is Olivia Moss, and I am delivering testimony for Carl Weisbrod, partner at HR&A Advisors, a real estate and economic consulting firm.

I am here to testify in opposition to one element of the rezoning proposal before you today: that is regarding the appropriate price, and the mechanism for determining the proposed price, of the District Improvement Bonus (hereinafter "the DIB"). As we understand it, under the proposal the price of the DIB is intended to be roughly equal to the value of transferrable development rights (hereinafter "TDRs") within the proposed East Midtown Subdistrict in order to assure that the property rights of TDR owners within the proposed Subdistrict would not be significantly eroded. We represent Midtown Trackage Ventures, the owner of Grand Central Terminal and the holder of substantial TDRs that would be available for purchase, on a competitive basis with DIBs, by receiving sites within the proposed Subdistrict.

Under the rezoning proposal before you today, the price of the DIB is apparently based upon a study completed by Landauer Valuation & Advisory earlier this year. That study, based upon a handful of inapposite comps, concluded that TDRs within the proposed district should be valued at 60 percent of the land value within the district or a value of \$250/square foot. The Landauer conclusion relies almost entirely on examples where TDRs were acquired through zoning lot mergers, where sellers of TDRs had limited options and, thus, limited leverage in their negotiations with receiving sites. We disagree with the Landauer study's conclusions.

HR&A was engaged by Midtown to undertake an independent analysis of the value of TDRs in relationship to underlying land values. **We concluded that in a true marketplace where TDRs are allowed to float, and where there are numerous potential buyers, the unit value of TDRs approximates the underlying value of the land.** We undertook a detailed study of TDR transactions in the two Manhattan zoning districts that are analogous to the proposal before you today, where TDRs are permitted to float and, therefore, close to a true marketplace of willing TDR buyers and sellers exists – namely the Special West Chelsea District and the Theater Subdistrict.

Our work compared the average price paid for a TDR transaction with the average price of a developable square foot obtained through a land purchase in that district in the year of the transaction. We determined that in these development rights marketplaces, where buyers and sellers have close to equal power, the unit value of TDRs approaches 100%. Indeed, in some instances, TDRs trade at values even higher than the price of the underlying land.

I am submitting herewith a detailed analysis of TDR transactions in both the Special West Chelsea District and the Theater Subdistrict, as well as our review and critique of the Landauer study.

HR&A's conclusion, which aligns with Jerome Haims Realty's appraisal, is that Landauer's methodology does not accurately reflect the value of TDRs within the proposed East Midtown Subdistrict, and that the true value of such TDRs is approximately the same as the underlying value of land within the area.



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MEMORANDUM

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To: Paul Selver - Kramer, Levin, Naftalis & Frankel, LLP  
From: HR&A Advisors, Inc.  
Date: 4/24/2013  
Re: Review of Landauer TDR Pricing Recommendation

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**Introduction**

HR&A Advisors, Inc. (HR&A) has completed a review of the "East Midtown Rezoning District Improvement Bonus (DIB) Contribution Rate Market Study" (the "Landauer" study) completed by Landauer Valuation & Advisory.<sup>1</sup> The study was produced for the New York City Economic Development Corporation (EDC) as a recommendation of the appropriate price for transferred development rights (TDRs) within the proposed East Midtown Subdistrict. The Landauer study values TDRs at approximately \$250 per square foot (psf) of FAR within the Subdistrict, based on a TDR-to-land value ratio of 60 percent applied to the average of comparable fee land sales within and outside the proposed Subdistrict that have taken place in the last 15 years.

**We disagree with Landauer's recommendation. Our detailed analysis of almost 30 TDR transactions in the neighboring Theater Subdistrict and in the Special West Chelsea District, where TDRs are permitted to float to numerous receiving sites, as is being proposed for the Grand Central Subarea within the East Midtown Subdistrict, demonstrates that in such districts TDRs usually trade at close to the same value as land. Occasionally, in districts where air rights are permitted to float, they trade at values even higher than the price of the underlying land.**

In reaching its conclusion regarding TDR-to-land value ratio the Landauer study relies almost entirely on a handful of examples where TDRs were acquired through zoning lot mergers. When TDRs are sold through a zoning lot merger, the number of potential buyers is severely limited and the bargaining power of the seller is weak. Thus, the value of the TDRs is artificially depressed. As will be shown, this is completely at variance with the proposed Grand Central Subarea of the East Midtown rezoning district where TDRs would be allowed to float, thereby establishing the prospect for a truer market price - one where the value of land and of purchased TDRs are roughly equal.

Moreover, the Landauer study considers TDR transactions, with one exception, for sites that were developed for office use within the East Midtown Subdistrict. This narrow view is misleading in two respects: 1) it greatly and selectively reduces the number of examples cited by Landauer; 2) the true analysis should be the value of TDRs in relation to the underlying land value, irrespective of the goals of a particular development. On the other hand, HRA's analysis of floating TDRs in the Theater Subdistrict and West Chelsea examined all floating TDR transactions, regardless of the proposed developments, which provides a more accurate assessment of the TDR-to-land value ratio.

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<sup>1</sup> East Midtown Rezoning District Improvement Bonus (DIB) Contribution Rate Market Study. Landauer Valuation & Advisory. February 28, 2013.

The Landauer study itself concedes that the value of TDRs is comparable in nature to the fee value of the underlying land and notes that “the only difference between them is that TDRs have no ready market (they require a legal receiving site), and they do not include ground-level and below-ground development rights.” By allowing TDRs from landmarked buildings within the Grand Central Subarea to float, the proposed East Midtown rezoning would provide more than 15 potential receiving sites for TDRs, thus virtually eliminating the major difference in the value between land and TDRs within the proposed Subarea. **In late 2012, HR&A conducted an independent analysis of TDR values in districts that most closely resemble the future conditions in the Grand Central Subarea. HR&A’s analysis, described in this report, concludes that when development rights are permitted to float, their relationship to land value approaches, and often exceeds, 100 percent.**

Landauer bases its valuation conclusions on a small sample of eight land fee sale transactions and five TDR transactions, only two of which involved floating TDRs. One of these (383 Madison Avenue), as even the Landauer study admits, “is clearly an outlier.”<sup>2</sup> All but one of the remaining transactions examined by Landauer are fee land sales and the associated TDR transactions are from zoning lot-mergers (where the number of potential receiving sites are extremely limited – usually to one). Therefore, they do not offer appropriate comparables for the valuation of TDRs in the proposed Grand Central Subarea, where air rights will be permitted to float to more than 10 potential receiving sites.

The new rezoning will create two new mechanisms for increasing FAR: (i) purchasing District Improvement Bonuses (DIBs), which allows for increased FAR in exchange for contribution to a neighborhood improvement fund, and (ii) greater flexibility in TDR transfers from landmarked buildings, which will be allowed to float to qualifying sites within the Grand Central Subarea, roughly bounded by 39<sup>th</sup> Street to the south, 49<sup>th</sup> Street to the north, and between Madison and Fifth Avenues to the west and between Lexington and Third Avenues to the east. These mechanisms are distinctly different from TDR transfers through zoning lot mergers, in which TDRs can be transferred to adjacent sites only, and will create characteristics within the district that are distinct from other neighboring areas. By including transactions that took place under a regulatory regime that differs greatly from the one proposed for the Subdistrict, the Landauer study overlooks the complexity of evaluating floating TDRs and DIBs. In addition, the Landauer report provides no analysis of TDR-to-land value ratios in other areas of the city where TDRs are allowed to float.

HR&A has analyzed in depth TDR sales in the two existing districts – the Theater Subdistrict and the Special West Chelsea District – where air rights are permitted to float and which are directly analogous to the proposed conditions for the Grand Central Subarea within the East Midtown Subdistrict. It is clear that the value of floating TDRs approaches 100 percent of land value as restrictions on the market ease and the opportunity for more efficient transactions is created. The additional flexibility offered by floating

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<sup>2</sup> Even the Landauer study recognizes this transaction as an outlier due to the low price received (\$92 psf) for TDRs from Grand Central. It is a transaction that was consummated more than 15 years ago, and thus has little relevance to today’s market dynamic. Industry professionals suggest that this deal was potentially transacted at a low price-point for one, or a combination, of the following reasons.

- The seller of air rights above Grand Central, American Premier Underwriters (APU), is an insurance company based in Cincinnati, Ohio. In the 1990s, while still in the process of disposing of the former Penn Central Transportation assets, APU was mired in court proceedings regarding the use of TDRs over Grand Central.
- TDRs may have been purchased at a price guaranteed in a prior option by Gooch Ware Travelstead for Credit Suisse First Boston, the former owner of 383 Madison. The option may have guaranteed a lower price than the market value at their time of sale.
- The deal was undertaken in 1997; at a time of very low market activity given that New York had not fully recovered from the late 1980s-early 1990s recession.

TDRs increases the number of sending and receiving sites, thereby balancing the bargaining leverage between buyers and sellers. The proposed East Midtown rezoning, permitting TDRs to float within the Grand Central Subarea, would create a similarly efficient market for the transfer of TDRs, suggesting that the average price should reflect a value closer to 100 percent of the current market rate for land sales.

**Analysis of the Theater Subdistrict, NYC**

Established in 1999, the Theater Subdistrict is part of the Special Midtown District in Manhattan. The Special Midtown District was established to promote development and stabilization within Manhattan’s commercial core, and in the Theater Subdistrict in particular, to revitalize a historic area within the City.

**Data**

1. **TDR transactions:** HR&A compiled data from City Planning and the New York City Department of Finance to obtain the size and value of the 14 TDR transactions that took place in the Theater Subdistrict between January 2001 and January 2012. The TDRs from these transactions were transferred to 7 receiving sites. Table 1 shows the TDR transaction information.
2. **Value per buildable square foot:** HR&A used data provided by Eastern Consolidated to obtain the average annual price paid per buildable square foot in Midtown West.

**Table 1: Theater Subdistrict TDR Transactions**

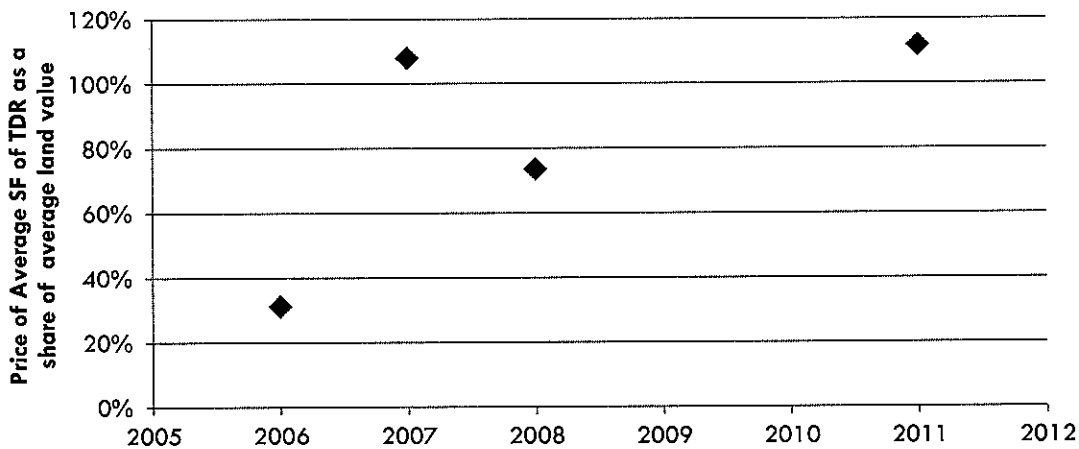
Theater Name (Sending Site)	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share of Land Value
Broadhurst and Booth Theater	120 W 41 <sup>st</sup> St.	9,480	\$400	11/14/2011	\$280	143%
Broadhurst Theater	120 W 57 <sup>th</sup> St.	18,075	\$225	10/10/2011		80%
Majestic Theater	306 W 44 <sup>th</sup> St.	48,180	\$257	10/29/2008	\$300	86%
Booth	250 W 55 <sup>th</sup> St.	18,537	\$211	5/12/2008		70%
Booth	250 W 55 <sup>th</sup> St.	42,081	\$211	5/12/2008		70%
Shubert	250 W 55 <sup>th</sup> St.	29,667	\$211	5/12/2008		70%
Shubert	250 W 55 <sup>th</sup> St.	67,351	\$211	5/12/2008		70%
Martin Beck aka Hirschfield	131-139 W 45 <sup>th</sup> St.	8,483	\$175	5/17/2007	\$170	103%
St. James	131-139 W 45 <sup>th</sup> St.	9,489	\$175	5/17/2007		103%
Broadhurst	131-139 W 45 <sup>th</sup> St.	54,820	\$200	6/21/2007		118%
Martin Beck aka Hirschfield	231 W 54 <sup>th</sup> St.	7,438	\$150	10/27/2006	\$450	33%
St. James	231 W 54 <sup>th</sup> St.	77,840	\$150	10/27/2006		33%
Martin Beck aka Hirschfield	247 W 46 <sup>th</sup> St.	29,104	\$130	6/28/2006		31%
Martin Beck aka Hirschfield	247 W 46 <sup>th</sup> St.	28,901	\$130	10/17/2006		31%

Source: NYC Department of City Planning; New York City Department of Finance; HR&A

## Results

Our analysis shows that the annual average price of TDRs has fluctuated between 31 percent and 143 percent in the period between 2006 and 2011. As shown in Figure 1, the gap between TDRs and land rights exhibits a narrowing trend, providing evidence that as the market becomes more efficient and more information becomes available, the value of TDRs approaches the value of land. Indeed, after 2006, only one TDR transaction<sup>3</sup> traded as low as 70% of TDR value to land value. We also found a large price variation in TDR price for the year 2011, suggesting that specific site conditions can significantly impact the negotiating position of buyers and sellers. Our analysis supports the conclusion that depending on market conditions, the average price of TDRs can shift from well under the average value of land to above land value (from 31 percent to 112 percent as shown below), as levers of the market conditions are moved.

**Figure 1: Theater Subdistrict - Average Price of TDR PSF as a Percentage of Average Land Value**



Source: Eastern Consolidated; NYC Department of City Planning; New York City Department of Finance; HR&A

### **Analysis of the Special West Chelsea District, NYC**

In 2005, the City Council approved a Special West Chelsea District bounded by West 30<sup>th</sup> and West 16<sup>th</sup> Street, between Tenth and Eleventh Avenues. The District was intended to provide opportunities to develop new residential and commercial properties along the new High Line Park and 11<sup>th</sup> Avenue. Sites adjacent to the High Line and in the immediately surrounding area quickly became highly valued for private development, driving the price of land (and TDRs) up.

### **Data**

1. **TDR Transactions:** HR&A compiled data from City Planning and the New York City Department of Finance, and consulted with New York University's Furman Center, to obtain the size and value of the 14 TDR transactions that took place in the Special West Chelsea District since its inception in 2005. The

<sup>3</sup> Oddly, the only floating TDR transaction, other than the 15 year old outlier of 383 Madison Avenue, cited in the Landauer study.

TDRs from these transactions were transferred to 10 receiving sites. Table 2 shows TDR transaction information.

**Table 2: Special West Chelsea District TDR Transactions**

Sending Site	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share Land Value
507 West 27th St.	282-298 11 <sup>th</sup> Ave.	9,875	\$228	1/16/2009	150	152%
507 West 27th St.	529-545 W 28th St.					
507 West 27th St.	517-527 W 28th St.					
512 West 20th St.	537 W 27th St.	2,566	\$310	8/5/2008	300	103%
511 West 23rd St.	282-298 11th Av	6,155	\$400	8/25/2008		133%
507 West 25th St.	282-298 11th Ave.	19,750	\$228	7/10/2008		76%
507 West 27th St.	529-545 W 28th St.					
507 West 27th St.	517-527 W 28th St.					
508 West 25th St.	319 10th Ave.	4,857	\$400	6/4/2008		133%
508 West 29th St.	537 W 27th St.	5,479	\$310	3/28/2008		103%
511 West 23rd St.	282-298 11th Ave.	15,000	\$387	2/21/2008		129%
509 West 20th St.	282-900 11th Ave.	23,080	\$250	1/18/2008		83%
507 West 24th St.	282-298 11th Ave.	37,110	\$250	12/14/2007	320	78%
510 West 25th St.	282-298 11th Ave.					
508 West 25th St.	282-298 11th Ave.					
510 West 25th St.	524 W 19th St.	3,957	\$180	7/13/2007		56%
508 West 25th St.	524 W 19th St.	643	\$180	6/13/2007		56%
509 West 24th St.	303-309 10th Ave.	12,500	\$240	10/19/2006	330	73%
507 West 24th St.	303-309 10th Ave.					
507 West 24th St.	516 W 19th St.	36,800	\$126	5/25/2006		38%
511 West 23rd St.	535 W 19th St.	34,520	\$184	12/21/2005	250	74%

Source: NYC Department of City Planning; The Furman Center; New York City Department of Finance; HR&A

- Value per buildable square foot:** As with the Theater Subdistrict, HR&A used data provided by Eastern Consolidated to obtain the average annual land price paid per buildable square foot, specifically for Chelsea. Data from Eastern is available for transactions from 2002 to 2010, and noted transactions fell between 2005 and 2009.

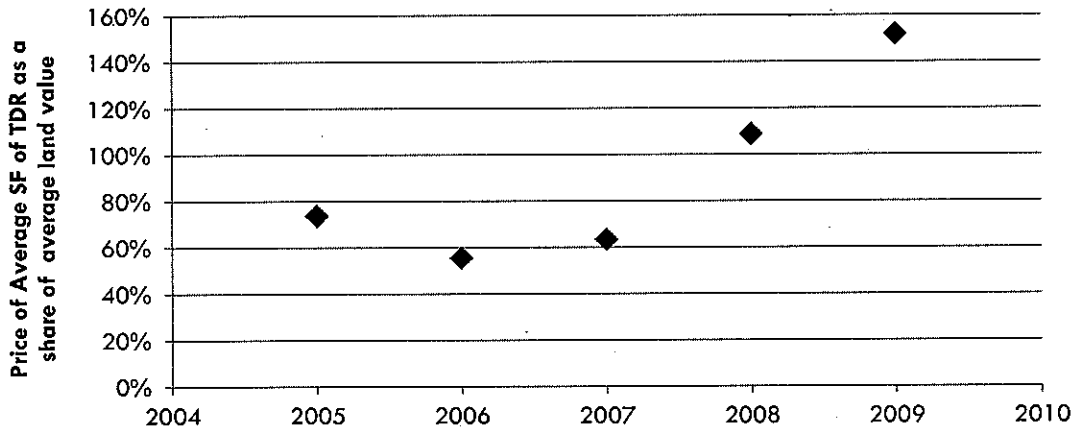
#### Results

Our analysis shows that the annual average price of TDRs has fluctuated from 38 percent to 152 percent in the period between 2005 and 2009. As shown in Figure 2, the gap between average TDRs price and average land values first narrowed and then, as the market became constrained, the value of TDRs surpassed that of land values. Again, this data shows that a plentiful number of sending and receiving sites is necessary for TDRs to stabilize, and that once either type of site is in short supply, the demand for TDRs



can rise or fall quickly. In this case, constraints on sending sites may have driven up the cost of TDRs in 2008 and 2009.<sup>4</sup>

**Figure 2: Special West Chelsea District - Average Price of TDR PSF as a Percentage of Average Land Value**



Source: Eastern Consolidated; NYC Department of City Planning; New York City Department of Finance; HR&A

**Weaknesses of the Landauer Report**

Based upon the very specific findings of HR&A’s analysis of almost 30 TDR transactions in the Theater and West Chelsea Districts, where TDRs are permitted to float, it is apparent that the Landauer study is inapposite to the proposed dynamic in the proposed East Midtown Subdistrict for the following reasons:

**Use of irrelevant comparable TDR transactions**

The Landauer study references three historical TDR transactions within the East Midtown Subdistrict, to receiving sites: 383 Madison Avenue, 434-442 Park Avenue, and 510 Madison Avenue. Of these, only one, the concededly outlier transaction to 383 Madison Avenue (formerly known as the Bear Stearns building), involved floating TDRs.

***Zoning lot mergers versus floating TDRs***

TDR transactions at 434-442 Park Avenue and 510 Madison were zoning lot mergers, representing transactions in which the seller has a limited opportunity to dispose of TDRs due to the limited availability of receiving sites. Zoning lot merger TDR transactions drive prices down, allowing sellers to receive some value for TDRs, but usually much lower than value received for floating TDR transactions, in which sellers have the opportunity to sell to a larger pool of buyers.

<sup>4</sup> Another notable finding is the high price variance observed for the 282-298 11th Avenue site, a residential development undertaken by The Avalon Group, where TDRs transacted from \$229 to \$400 per square feet. This large variation can be attributed to district regulations that required purchasing a minimum amount of TDRs from the High Line corridor before an inclusionary housing bonus could be used.

The price of TDRs in zoning lot mergers does not provide an appropriate proxy for TDR transactions that occur in floating TDR districts. HR&A's findings confirm that prices for floating TDRs establish a significantly higher ratio in relation to fee land value than TDRs that cannot float.

### **Pricing TDRs based on land value**

As previously noted, the Landauer study considers TDR transactions, with one exception, for sites that were developed for office use within the East Midtown Subdistrict. This is inappropriate because, in addition to greatly reducing the number of potential comparables, it doesn't consider the true value of TDRs in relation to the underlying land value, irrespective of the goals of a particular development. On the other hand, HRA's analysis of TDRs in the Theater Subdistrict and West Chelsea examined all floating TDR transactions, regardless of the proposed developments, which provides a more accurate assessment of the TDR-to-land value ratio.

### ***Time-adjusted prices***

The Landauer study references one transaction in which floating TDRs were transferred within the Theater Subdistrict from area theaters to 920 Eighth Avenue, aka 250 West 55<sup>th</sup> Street. The Landauer study text calculates the time-adjusted price of TDRs for this transaction to be approximately \$177 psf (although the Landauer appendix (p. 20) notes that the price suggests that the price at the time of the transaction was \$209 psf, based on the total price paid for the 143,200 sf of air rights transferred). However, HR&A analyzed the same transaction using publicly available data from the City's Automated City Register Information System (ACRIS), with resulting values of \$211 (in 2008 dollars), suggesting that the Landauer study either miscalculated this value in one instance, used a different methodology for adjusting prices in relation to land value, or chose a particular floating TDR transaction for its example. This price was equivalent to 70 percent of land value at the time. **As can be seen from HR&A's very detailed examination of 14 floating TDR transactions within the Theater Subdistrict, the only one cited in the Landauer study has the lowest ratio of TDR value to land value of any TDR transaction within the district since 2006. In fact, other than this one example cited by Landauer, transactions within this district after 2006 show a range of TDR value to land value between 80 percent and 143 percent.**

### **Discounting TDRs in relation to land value**

The Landauer study concludes that transactions "show a strong tendency for TDR sales to be within 10 percentage points of 60 percent of the value of the receiving site fee land." However, the study then suggests a price for TDRs within the East Midtown Subdistrict that is 60 percent of the time-adjusted fee land sales, based on transactions from within and outside the Subdistrict, and mostly comprised of zoning lot mergers. Landauer's only example of a 21<sup>st</sup> Century floating TDR transaction (West 55<sup>th</sup> Street) shows a TDR-to-land value ratio of 70 percent, and even that example is at the lowest end of the range of transactions in the Theater Subdistrict since 2006. HR&A's analysis suggests both that values of floating TDRs are almost always at or above 70 percent of land value. **In fact, of the 28 floating air rights transactions over the past eight years analyzed by HR&A, only eight had TDR-to-land value ratios below 70 percent and these only involved four receiving sites. Furthermore, every one of these eight transactions occurred prior to 2008.**

### **Calculating TDR price within the East Midtown Subdistrict**

Even the Landauer study concludes that TDRs within the East Midtown Subdistrict are valued at more than \$300 psf, but dilutes this conclusion by blending it with a lower price for TDRs gathered from transactions outside the Subdistrict to arrive at its recommendation of \$250 psf. This conclusion muddies the value of floating TDRs with that of zoning lot mergers and transactions that do not conform to the same regulatory scheme as those in East Midtown. As the HR&A's analysis shows, it is important to consider the unique characteristics of floating TDR transactions, and not base prices for TDRs on a totally different type of transaction, such as zoning lot mergers.

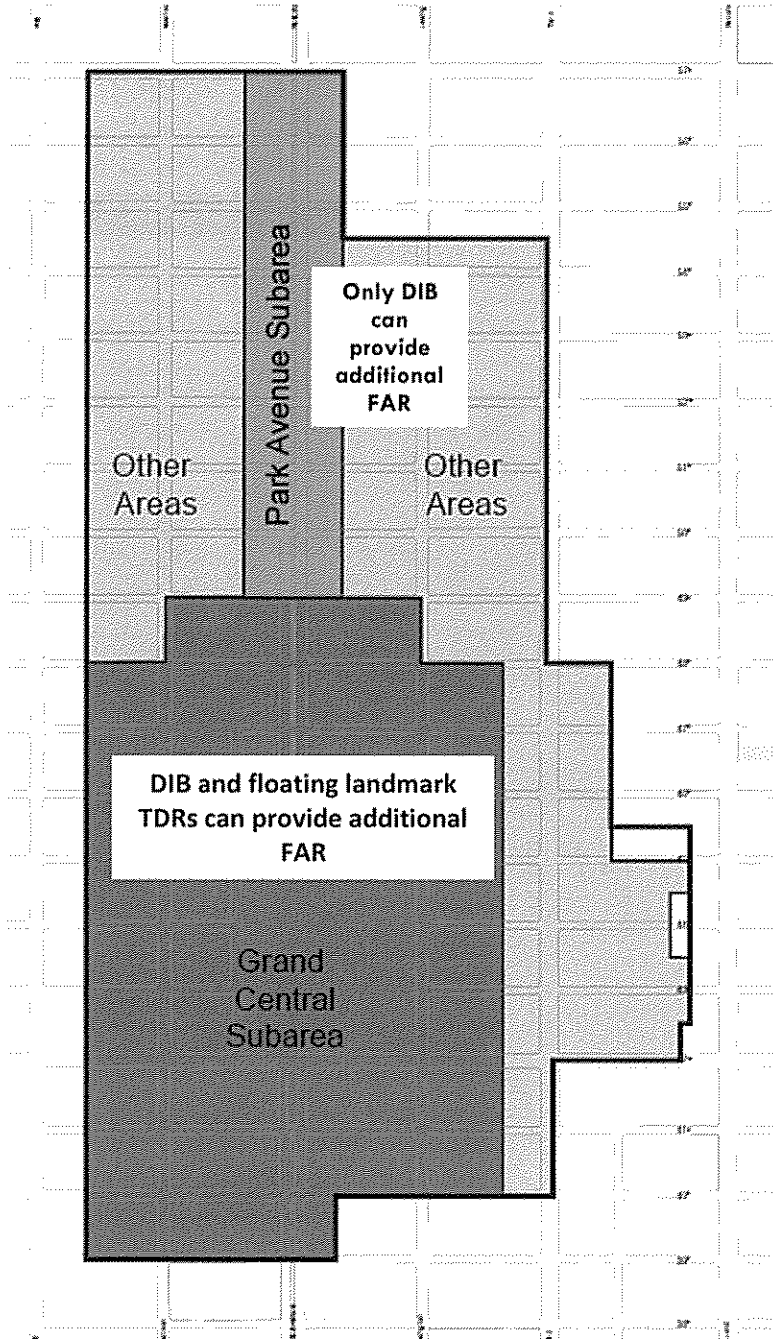
## **Conclusions**

HR&A's analysis indicates that the relationship between the fair market value of development rights and land value can fluctuate greatly even within a district that allows floating development rights. However, as the relationship between buyers and sellers evolves, the ratio of the value of TDRs to land approaches equality. Based on our analysis, we believe that if TDRs were allowed to float throughout the Grand Central Subarea, as proposed by the City's rezoning initiative, they would trade at, or close to, the value of development rights obtained through the purchase of land.

The rezoning of East Midtown represents a path forward to enhance the health of one of the City's commercial districts. It is a highly anticipated rezoning that will set a standard for Districts throughout the City, and may act as a model throughout the Country. The pricing of the DIBs and TDRs, therefore, should be based on a methodology that can be adapted to the unique characteristics of each district, and creates an efficient market for TDR transactions.

In this case, pricing DIBs and TDRs within the East Midtown district at 60 percent of past land values is not appropriate. As the value of TDRs within the district is unlocked, and new mechanisms to allocate them are set in place, the market will become more efficient, suggesting that TDR prices will follow the trends identified in the HR&A's analysis. As described, TDRs in this area should reflect a price much closer to the current market value of land.

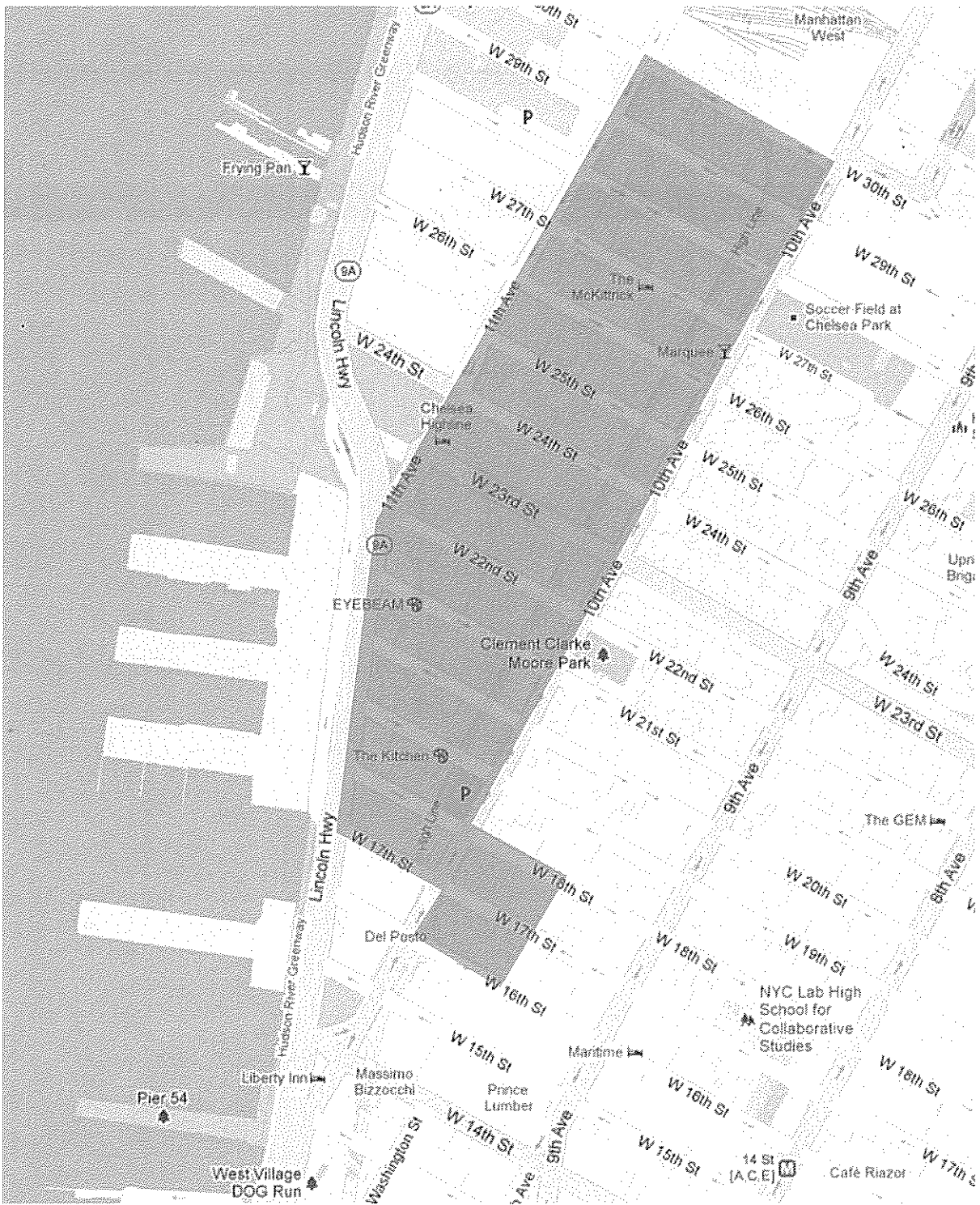
**Appendix 1: Proposed East Midtown District**



## Appendix 2: Theater Subdistrict



Appendix 3: West Chelsea Special Purpose District



# Transferable Development Rights Valuation Study

Prepared for:  
Midtown TDR Ventures, LLC

Prepared by:  
HR&A Advisors, Inc.  
99 Hudson St, Third Floor  
New York, NY 10013  
December 18, 2012



## Introduction

The City of New York is currently considering a proposal to rezone the East Midtown District, including the Grand Central Subdistrict. The proposal would increase the maximum as of right floor area ratio (FAR) for commercial development in eligible sites through the purchase of a District Improvement Bonus or "DIB" from the City or through the purchase of transferable development rights (TDRs) from landmarked buildings. Privately owned TDRs on landmarked buildings within the Grand Central Subarea would continue to be allowed to float within the boundaries of the proposed Grand Central Subarea to any available receiving site.<sup>1</sup> The ability to float TDRs within a designated zoning district is not a new concept, but it only exists in a few areas in Manhattan.

A two-step mechanism is proposed for increasing FAR on qualified sites within the proposed Grand Central Subarea.<sup>2</sup> Above the current base FAR, the first three additional FAR would be purchased from the City through the above-referenced DIB, requiring developers to make a payment to a fund dedicated to area-wide improvements. Additional FAR (beyond the initial 3.0 FAR) could be obtained either by making additional contributions to the DIB or by purchasing available TDRs from landmarked buildings located within the Subarea. Since DIB FAR and TDRs associated with landmarked buildings will play a prominent role in shaping new development in the area, it is important to understand the market value of air rights, particularly in relation to the unit value of land development rights.<sup>3</sup> Determination of the true market value of air rights will suggest the appropriate sales price for the DCP's additional FAR under the DIB mechanism and a fair market value for buyers and sellers entering into landmark TDR transactions. As TDR transactions become more common and enable existing property owners to transfer development rights more freely, a commonly acknowledged price point will allow the market to operate more efficiently. Since their implementation in other districts, TDR transactions have become highly sophisticated. Determining the fair price mechanism for these transactions ensures that the City obtains the appropriate value for its DIBs in order to ensure the proposed neighborhood's improvements will be made, and would help appropriately compensate owners for the restrictions on the development potential of their properties that a landmark designation imposes. The conclusions drawn here should serve as a guide for the sale of TDRs in newly rezoned districts where TDRs are allowed to float to multiple receiving sites.

To examine the value of TDRs, HR&A first developed an understanding of the conditions necessary for an efficient market, then analyzed Manhattan's Theater Subdistrict and the Special West Chelsea District, the only two districts within New York City that provide useful examples of these conditions. Our work compared the average price paid for a TDR transaction with the average price of a developable square foot obtained through a land purchase in that district in the year of the transaction.

We conclude, as discussed below, that the value of TDRs fluctuates as markets shift to give price-setting power to either buyers or sellers, but that in a perfect equilibrium market, where buyers and sellers have equal power, the unit value of TDRs to land development rights should approach 100%.

As shown in Figures 1 and 2, when the Theater Subdistrict and West Chelsea first began to permit the sale of TDRs within each district, air rights traded at a discount to land value. We believe this is attributable to the uncertainties associated with a new, emerging market and a lack of experience from sellers that initially put them at a disadvantage. However, as each market matured and available TDRs began to exhaust, the gap between land values and TDRs narrowed (indeed, in some instances TDRs sold at a higher unit value than the underlying land value). We also found a significant premium in TDR sales in West Chelsea in recent years. We believe this is a reflection of a market imbalance created by a reduction in TDR availability. This evidence supports the conclusion that constraints in the number of sellers or buyers can create deviations in TDR prices through a shift in the negotiating position of buyers and sellers, but

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<sup>1</sup> A map of the proposed sub district can be found in Appendix 1.

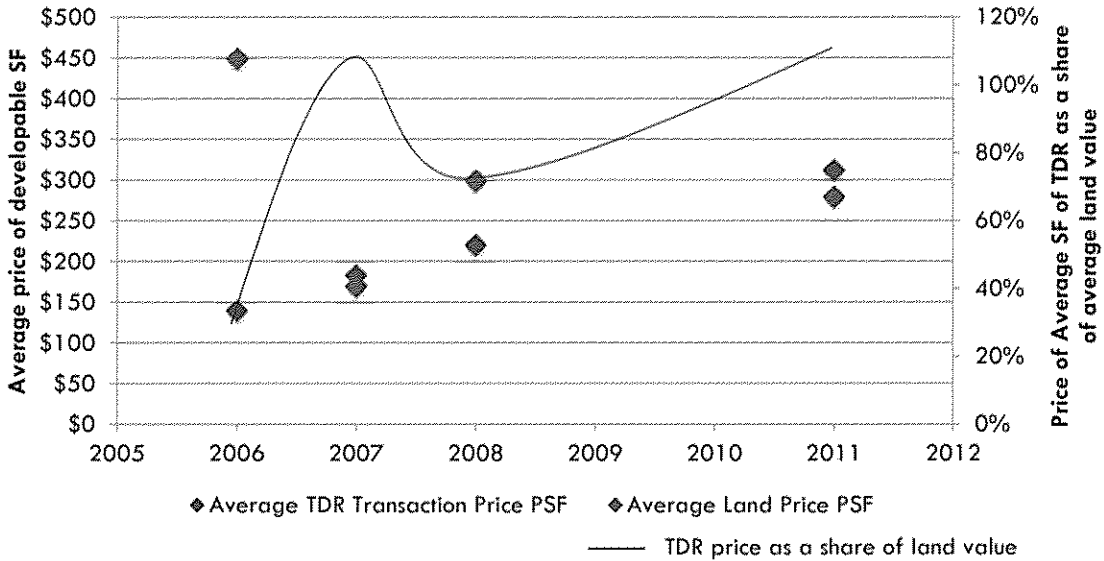
<sup>2</sup> Qualified sites within the Subarea are defined as those with a cleared footprint (i.e. no physical encumbrances) of over 25,000 square feet and full block avenue frontage.

<sup>3</sup> In this memorandum the terms "air rights", "development rights" and "TDRs" are used interchangeably.



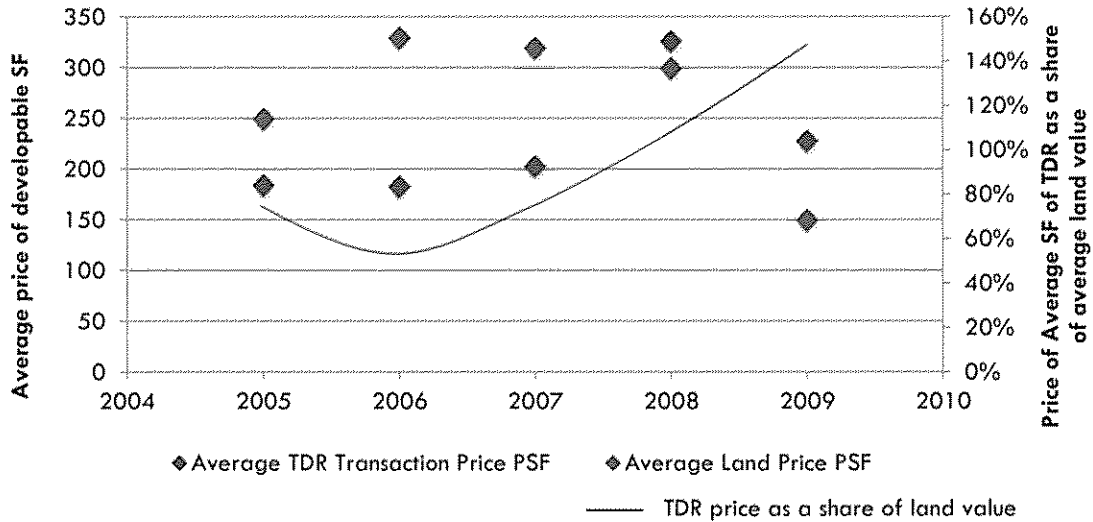
when there are sufficient pools of buyers and sellers, TDRs and land development rights should command close to the same value.

**Figure 1: Theater Subdistrict Average Developable Square Foot Price**



Source: Eastern Consolidated; NYC Department of City Planning; New York City Department of Finance; HR&A

**Figure 2: Special West Chelsea District Average Developable Square Foot Price**



Source: Eastern Consolidated; The Furman Center NYC Department of City Planning; New York City Department of Finance; HR&A

The rest of this report summarizes the results of HR&A's analysis.

## **Establishing the fair price of TDRs**

TDR pricing and regulation is a long-standing topic of discussion. In a 1998 New York Times article, Samuel ("Sandy") Lindenbaum noted the arguments that place the value of development rights anywhere from 50% to 150% of land value, depending on whether the seller or buyer is pricing the rights. Buyers assert that they are unlocking illiquid, theoretical value that sellers would not otherwise be able to monetize, while sellers claim that buyers could not build towers as tall (and, thus, as valuable) if they were unable to purchase air rights.<sup>4</sup> But, in truth, until the mechanism of floating air rights within a district became available in the Theater Subdistrict and, later, in West Chelsea, almost all air rights transfer sales occurred under conditions where either the buyer or seller had significant leverage.

Establishing restrictions on the number of receiving sites usually transfers the power to set prices to the buyer. In most districts, New York City's (NYC) zoning regulations pertaining to TDR transactions originating on landmarked sites restrict TDR transfers to receiving sites immediately adjacent to, or across the street from the sending site, or through a common chain of title.<sup>5</sup> Therefore, TDRs are likely to be transacted at a discount due to the generally limited opportunity that sellers have to monetize their assets. Alternatively, if there happens to be many potential receiving sites and only one potential seller, available TDRs are more likely to sell at a premium to land value.

A different dynamic occurs when TDRs are allowed to float over a wider area. In these circumstances, the presence of multiple granting and receiving sites owned by a variety of buyers and sellers levels the field, precluding either side from holding price setting power. In the absence of other market distortions, this lack of price setting power allows transactions within these areas to reflect a fair market value of TDRs. This balance is usually maintained until TDRs from granting sites begin to exhaust, placing a restriction on supply that shifts price-setting power to sellers, or the availability of receiving sites becomes more limited, shifting price-setting power to buyers.

Varied understandings of the true value of air rights in NYC may also be due to historical lack of familiarity with development rights transfers as such transactions have existed for less than 30 years. Though TDR buyers and sellers have become more sophisticated in recent years, air rights transactions often remain complicated for both parties. Districts that allow TDRs to float without undergoing the City's cumbersome special permit process greatly ease the process of transfers. Developers and sellers in these districts have become more comfortable with transfers, allowing TDRs to be traded more easily and approaching efficient market conditions.

## **Conditions of an efficient TDR market**

We define an efficient market as one that includes the following conditions for TDR transfers:

1. A number of sending and receiving sites distributed among a number of owners
2. Publicly available price information on previous transactions
3. Low transaction costs
4. Low regulatory risk

## **Analysis of efficient markets**

In order to test the value of TDRs in an efficient market, HR&A analyzed transactions in the two districts in New York City – the Theater Subdistrict and the Special West Chelsea District – that exhibit at least most

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<sup>4</sup> Dunlap, David. "Using Thin Air to Let Buildings Grow Taller." New York Times. May 17, 1998.

<sup>5</sup> Air rights transfers from non-landmarked sites are even more restrictive.

of the conditions described above.<sup>6</sup> Each district does not represent a completely efficient market, but complies with most of the above conditions. New York City data was collected from public sources.

### ***Analysis of the Theater Subdistrict, NYC***

Established in 1999, the Theater Subdistrict is part of the Special Midtown District in Manhattan. The Special Midtown District was established to promote development and stabilization within Manhattan's commercial core, and in the Theater Subdistrict in particular, to revitalize a historic area within the City.

The Theater Subdistrict nearly complies with all four efficient market conditions, though this environment has developed over time, making only the most recent transactions proxies for an efficient TDR market. The district differs from an efficient market in the following ways:

<b>Efficient Market Criteria</b>	<b>Theater Subdistrict Deviation/Conformity</b>
<i>A number of sending and receiving sites distributed among a number of owners</i>	<ul style="list-style-type: none"><li>• Granting sites are controlled by only two owners, creating an imbalance between buyers and sellers.</li><li>• After years of intense development, the number of receiving sites has decreased, putting sellers at a disadvantage.</li></ul>
<i>Publicly available price information for previous transactions</i>	<ul style="list-style-type: none"><li>• When newly created, information that would guide the fair market value of TDRs in a floating district was scarce, as the only transaction data available was for non-floating TDR transactions. As a result, developers who were unfamiliar with conditions in a floating TDR district were reluctant to pay prices that differed from what they had previously experienced.</li><li>• Though publicly available, data remains difficult to access.</li></ul>
<i>Low transaction costs</i>	<ul style="list-style-type: none"><li>• The district currently charges a \$15 per square foot transaction cost to a district development fund for all TDR transactions.</li></ul>
<i>Low regulatory risk</i>	<ul style="list-style-type: none"><li>• Transactions still require approval from City Planning through a chairman's certification.</li></ul>

As shown below, notwithstanding the above market constraints, the price gap between land rights and TDRs has significantly narrowed over time.

### ***Data***

1. **TDR transactions:** HR&A compiled data from City Planning and the New York City Department of Finance to obtain the size and value of the 14 TDR transactions that took place in the Theater Subdistrict between January 2001 and January 2012. The TDRs from these transactions were transferred to 7 receiving sites. Table 1 in the next page shows the TDR transaction information.
2. **Value per buildable square foot:** HR&A used data provided by Eastern Consolidated to obtain the average annual price paid per buildable square foot in Midtown West.

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<sup>6</sup> HR&A did not find a district elsewhere in the country that provided a comparable, sophisticated TDR transfer mechanism.

**Table 1: Theater Subdistrict TDR Transactions**

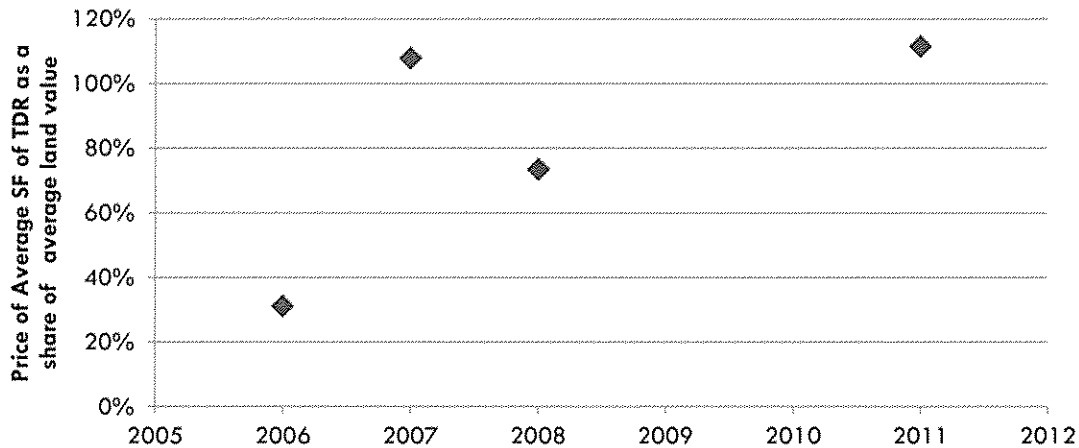
Theater Name (Sending Site)	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share Land Value
Broadhurst and Booth Theater	120 West 41 <sup>th</sup> St.	9,480	\$400	11/14/2011	\$280	143%
Broadhurst Theater	120 West 57 <sup>th</sup> St.	18,075	\$225	10/10/2011		80%
Majestic Theater	306 West 44 <sup>th</sup> St.	48,180	\$257	10/29/2008	\$300	86%
Booth	250 West 55 <sup>th</sup> St.	18,537	\$211	5/12/2008		70%
Booth	250 West 55 <sup>th</sup> St.	42,081	\$211	5/12/2008		70%
Shubert	250 West 55 <sup>th</sup> St.	29,667	\$211	5/12/2008		70%
Shubert	250 West 55 <sup>th</sup> St.	67,351	\$211	5/12/2008		70%
Martin Beck aka Hirschfield	131-139 W 45 <sup>th</sup> St.	8,483	\$175	5/17/2007	\$170	103%
St. James	131-139 W 45 <sup>th</sup> St.	9,489	\$175	5/17/2007		103%
Broadhurst	131-139 W 45 <sup>th</sup> St.	54,820	\$200	6/21/2007		118%
Martin Beck aka Hirschfield	231 W 54 <sup>th</sup> St.	7,438	\$150	10/27/2006	\$450	33%
St. James	231 W 54 <sup>th</sup> St.	77,840	\$150	10/27/2006		33%
Martin Beck aka Hirschfield	247 WEST 46 <sup>th</sup> St.	29,104	\$130	6/28/2006		31%
Martin Beck aka Hirschfield	247 WEST 46 <sup>th</sup> St.	28,901	\$130	10/17/2006		31%

Source: NYC Department of City Planning; New York City Department of Finance; HR&A

### Results

Our analysis shows that the annual average price of TDRs has fluctuated between 31% and 143% in the period between 2006 and 2011. As shown in Figure 3, the gap between TDRs and land rights exhibits a narrowing trend, providing evidence that as the market becomes more efficient and more information becomes available, the value of TDRs approaches the value of land. We also found a large price variation in TDR price for the year 2011, suggesting that specific site conditions can significantly impact the negotiating position of buyers and sellers. Our analysis supports the conclusion that depending on market conditions, the average price of TDRs can shift from well under the average value of land to above land value (from 31% to 112% as shown below), as levers of the market conditions are moved.

**Figure 3: Theater Subdistrict - Average Price of TDR PSF as a Percentage of Average Land**



Source: Eastern Consolidated; NYC Department of City Planning; New York City Department of Finance; HR&A

**Analysis of the Special West Chelsea District, NYC**

In 2005, the City Council approved a Special West Chelsea District bounded by West 30<sup>th</sup> and West 16<sup>th</sup> Street, between Tenth and Eleventh Avenues. The District was intended to provide opportunities to develop new residential and commercial properties, as well as facilitate reuse of warehouse buildings, along the new High Line Park. Sites adjacent to the High Line and in the immediately surrounding area quickly became highly valued for private development, driving the price of land (and TDRs) up.

The District is similar to, and differs from, an efficient market in the following ways:

**Efficient Market Criteria**

*A number of sending and receiving sites distributed among a number of owners*

*Publicly available price information for previous transactions*

*Low transaction costs*

*Low regulatory risk*

**Special West Chelsea District Deviation/Conformity**

- After years of intense development, the number of available TDRs has almost been exhausted, putting buyers at a disadvantage.
- Though publicly available, data remains difficult to access.
- The grantor's responsibility to provide an easement for a stairwell or elevator to the High Line upon transfer of development rights,
- The charge for additional rights to transfer (a \$59 psf donation to the High Line Improvement Fund).
- Transactions still require approval from City Planning.

Data

1. **TDR Transactions:** HR&A compiled data from City Planning and the New York City Department of Finance, and consulted with New York University's Furman Center, to obtain the size and value of the 14 TDR transactions that took place in the Special West Chelsea District since its inception in 2005. The TDRs from these transactions were transferred to 10 receiving sites. Table 2 on the next page shows TDR transaction information.

**Table 2: Special West Chelsea District TDR Transactions**

Sending Site	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share Land Value
507 West 27th St.	282-298 11 <sup>th</sup> Ave.	9,875	\$228	1/16/2009	150	152%
507 West 27th St.	529-545 West 28th St.					
507 West 27th St.	517-527 West 28th St.					
512 West 20th St.	537 West 27th St.	2,566	\$310	8/5/2008	300	103%
511 West 23rd St.	282-298 11th Av	6,155	\$400	8/25/2008		133%
507 West 25th St.	282-298 11th Ave.	19,750	\$228	7/10/2008		76%
507 West 27th St.	529-545 West 28th St.					
507 West 27th St.	517-527 West 28th St.					
508 West 25th St.	319 10th Ave.	4,857	\$400	6/4/2008		133%
508 West 29th St.	537 West 27th St.	5,479	\$310	3/28/2008		103%
511 West 23rd St.	282-298 11th Ave.	15,000	\$387	2/21/2008		129%
509 West 20th St.	282-900 11th Ave.	23,080	\$250	1/18/2008		83%
507 West 24th St.	282-298 11th Ave.	37,110	\$250	12/14/2007	320	78%
510 West 25th St.	282-298 11th Ave.					
508 West 25th St.	282-298 11th Ave.					
510 West 25th St.	524 West 19th St.	3,957	\$180	7/13/2007		56%
508 West 25th St.	524 West 19th St.	643	\$180	6/13/2007		56%
509 West 24th St.	303-309 10th Ave.	12,500	\$240	10/19/2006	330	73%
507 West 24th St.	303-309 10th Ave.					
507 West 24th St.	516 West 19th St.	36,800	\$126	5/25/2006		38%
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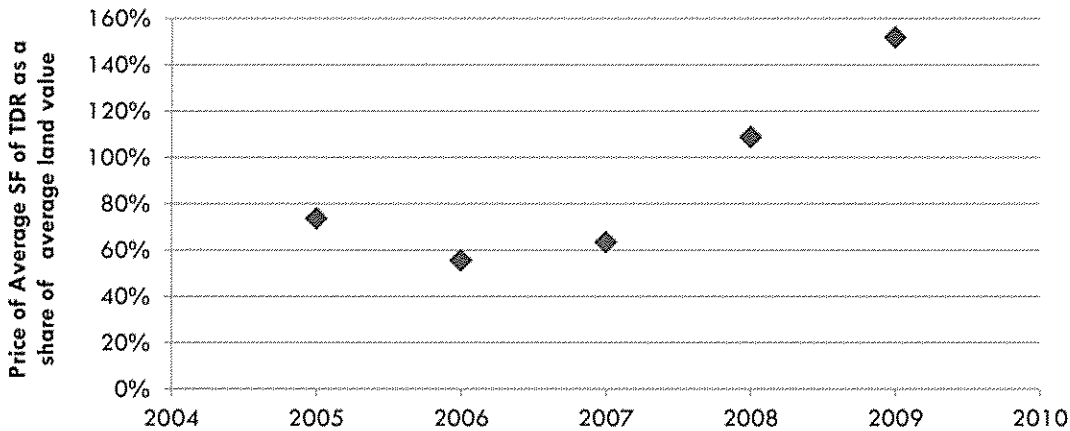
Source: NYC Department of City Planning; The Furman Center; New York City Department of Finance; HR&A

2. **Value per buildable square foot:** As with the Theater Subdistrict, HR&A used data provided by Eastern Consolidated to obtain the average annual land price paid per buildable square foot, specifically for Chelsea. Data from Eastern is available for transactions from 2002 to 2010, and noted transactions fell between 2005 and 2009.

## Results

Our analysis shows that the annual average price of TDRs has fluctuated from 38% to 152% in the period between 2005 and 2009. As shown in Figure 4, the gap between average TDRs price and average land values first narrowed and then, as the market became constrained, the value of TDRs surpassed that of land values. Again, this data shows that a plentiful number of sending and receiving sites is necessary for TDRs to stabilize, and that once either type of site is in short supply, the demand for TDRs can rise or fall quickly. In this case, constraints on sending sites may have driven up the cost of TDRs in 2008 and 2009.<sup>7</sup>

**Figure 4: Special West Chelsea District - Average Price of TDR PSF as a Percentage of Average Land Value**



Source: Eastern Consolidated; NYC Department of City Planning; New York City Department of Finance; HR&A

## Conclusions

HR&A's analysis indicates that the relationship between the fair market value of development rights and land value can fluctuate greatly even within a district that allows floating development rights. Variations in pricing over time are a product of the relationship between buyers and sellers, which evolves as TDRs become more scarce, receiving sites become limited, transaction costs rise, or other factors limit buyers' or sellers' leverage.

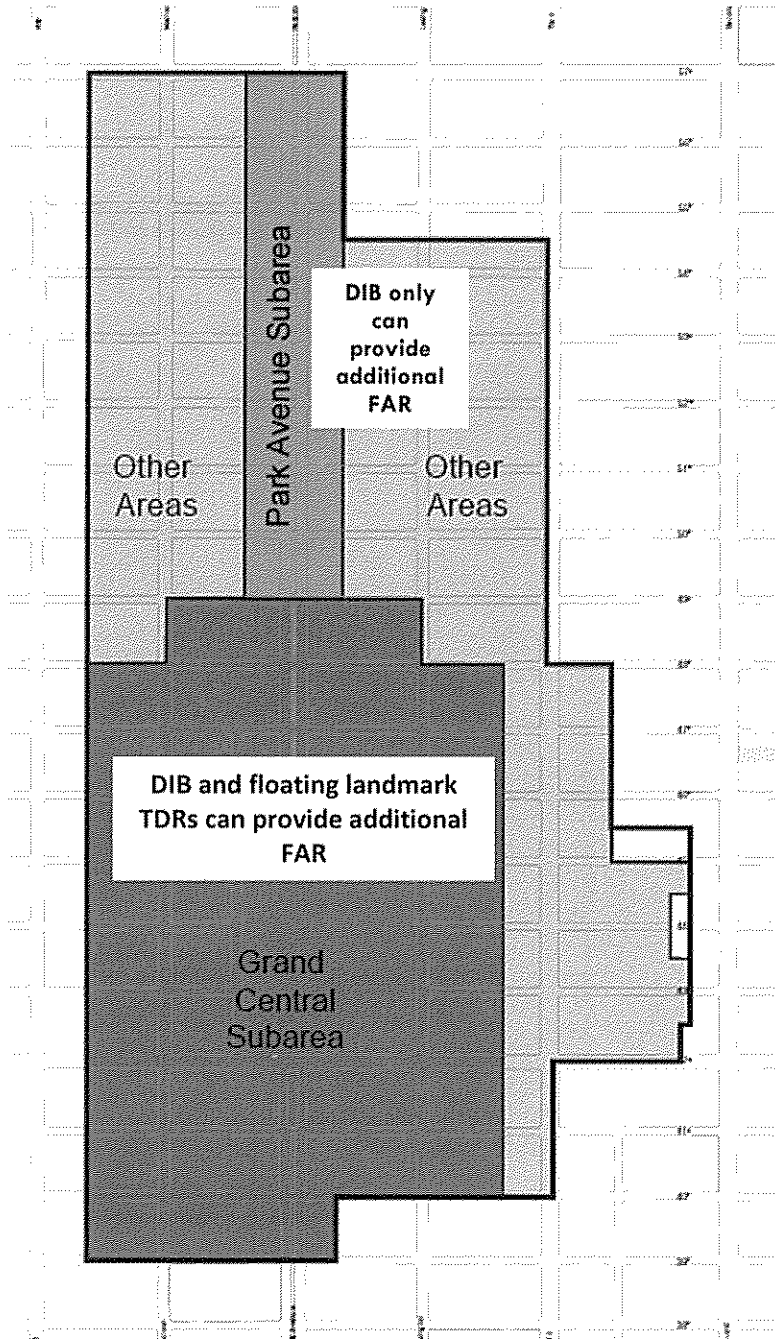
Based on our analysis, we believe that if TDRs were allowed to float throughout the Grand Central Subarea, as proposed by the City's rezoning initiative, they would trade at, or close to, the value of development rights obtained through the purchase of land. In this case there would be only one significant private owner of TDRs that would be available for sale in the proposed district while there are many potential receiving sites. As we have seen in our analysis of both the Theater Subdistrict and the Special West Chelsea District, that would give the seller significant market price power.

<sup>7</sup> Another notable finding is the high price variance observed for the 282-298 11th Avenue site, a residential development undertaken by The Avalon Group, where TDRs transacted from \$229 to \$400 per square feet. This large variation can be attributed to district regulations<sup>7</sup> that required purchasing a minimum amount of TDRs from the High Line corridor before an inclusionary housing bonus could be used.

However, in the proposed Grand Central Subarea, the mechanism of the DIB would provide, in effect, a deep pool of TDRs from more than one seller which, together with the large number of receiving sites, enables establishment of the basic conditions for an efficient market as set forth herein, provided that the cost of the DIB is fairly determined by market conditions. This may be achieved through a market value appraisal methodology that sets the value of DIB and TDRs to, or close to, the market value of the underlying land of the receiving site at the time of the proposed DIB/TDR transaction.



**Appendix 1: Proposed East Midtown District**



## Appendix 2: Theater Subdistrict



Appendix 3: West Chelsea Special Purpose District



**James Korein**  
**Omnispective Management Corp.**

240 Central Park S., New York, NY 10019  
Tel: 212-581-6394 Email: [jimkorein@omnispective.com](mailto:jimkorein@omnispective.com)

10.22.2013

## Statement on Amended East Midtown Rezoning and Lever House

I am Jim Korein, CEO of Omnispective Management Corporation, a family-owned business started by my grandparents more than 75 years ago. My grandmother, Sarah Korein, was one of the first women in New York City's real estate industry. I am here to urge the Council to adopt the East Midtown rezoning proposal, as amended.

We are the owners of 390 Park Avenue, also known as Lever House, a landmark since 1982. Lever House has a usable floor area of approximately 220,000 square feet and in excess of 300,000 square feet of unused development rights. We estimate the as-of-right floor area attributable to the Lever House zoning lot to be approximately 538,000 square feet. The building is leased to an unrelated third party.

We have supported the goals of the East Midtown rezoning plan from its inception. However, we previously expressed our concern that the plan, as originally proposed, would make it more difficult for landmarks like Lever House to sell excess development rights. The sale of landmark air rights can mitigate the adverse economic impact of the landmark designation on the property owner and provide a source of funds to ensure the proper maintenance of the building's landmarked features.

Similar concerns have been voiced by religious institutions with landmarked property in East Midtown.

The Zoning Resolution's existing provisions for transfer of air rights from landmarks are intended to provide some compensatory benefit for the burden imposed on a property owner as a result of landmark designation. While the owner of a building that is not landmarked may demolish its building and build a new one, as-of-right, using all development rights permitted under its zoning classification, the owner of a landmarked building is severely limited, and typically precluded from using its development rights on the landmark site. Some compensation is afforded by Zoning Resolution Section 74-79, which permits landmarks to transfer air rights across the street. However, transfers using this mechanism require a cumbersome ULURP process, which typically takes about two years, and is often impractical for the developer of a receiving site. Therefore, its compensatory benefit has been very limited.

Under the rezoning plan as originally proposed by City Planning, the few options that do exist to transfer development rights under current zoning regulations were further

severely impaired by competition from the DIB (new development rights from the City), which may be purchased and used on an as-of-right basis, without a two-year ULURP process. This negated the limited benefits of the transferable development rights under Section 74-79, effectively destroying a pre-existing transferrable development right that had been conferred with landmark status.

We favor the A-text amendments to the proposed East Midtown rezoning text that the Department of City Planning announced in July. The amended proposal recognizes the harm done by the originally proposed scheme and, through the creation of a Northern Landmark Transfer Area, provides a clearly defined landmark air rights transfer mechanism, analogous to those proposed for the air rights appurtenant to Grand Central Terminal, which are also privately owned.

This will create opportunities during the next decade for us to structure a plan to continue to maintain and further improve Lever House, and to ensure that it remains a competitive office building. We have done this before. By 1998, certain aspects of the Lever House curtain wall had severely deteriorated, most notably the supporting steel and the spandrel glass. We put the original lessee in default. When we re-leased the building, we required the new lessee to completely renovate the curtain wall. The exhibit to the ground lease specifying the renovation is attached. The renovation cost approximately \$15 million. In consideration for the work we required of the new lessee, we provided very favorable ground rent terms for the ground lease through 2019.

We will have the opportunity to address additional improvements when this term is up, or possibly earlier. In addition to maintenance of the Landmark, we believe there are important opportunities for sustainability and energy efficiency. This may be done contractually, as before, in the course of upcoming lease negotiations, or directly, in the event that the net lessee declines to renew.

My family and I are committed to the long-term preservation and improvement of landmarked buildings in New York. We own 240 Central Park South, a pre-war residential building that was landmarked in 2001. Between 2005 and 2007, we undertook a major renovation of 240 CPS, at a cost of over \$20 million. We replaced and restored substantial portions of the building's façade, and restored the eight storefronts on Columbus Circle and Broadway to their original design. We were awarded a Lucy G. Moses Landmarks Conservancy Restoration Award for this project in 2007. Attached are a summary of the renovations done at 240 CPS and an article that appeared in the Architectural Record in 2009.

The purpose of the East Midtown Rezoning is to ensure that this district remains competitive. In its current, amended form, the rezoning proposal addresses both new buildings and landmarked buildings. We believe it will put us in a position to make further improvements to Lever House within a decade. Lever House will belong to our family for generations to come, and we are committed to making the capital

expenditures required to ensure that Lever House remains an iconic and competitive building. As the long-term stakeholders in the building, this is clearly in our economic interest.

We fully support the rezoning proposal and urge the Council to adopt it in its current form.

EXHIBIT F

**FACADE RESTORATION/REMEDICATION  
AT  
390 PARK AVENUE  
NEW YORK, NEW YORK**

Tenant shall retain the services of Landlord's Consultant, Gordon H. Smith Corporation (GHSC) to determine the extent of remediation/replacement required to restore the metal and glass facade. All inspection shall be by GHSC personnel accompanied by any persons selected by Tenant.

The determination by GHSC as to what is to be remediated or replaced the cost of performing such work, and the contractors who shall perform such work shall be final and binding on the parties.

The following tasks and milestone dates for their completion are as follows:

PHASE 1. Head of 21<sup>st</sup> Floor Vision Lite and Above.

- A. Remove all stainless steel covers, trim, louvers, parapet coping and window washing scaffold guide tracks.
- B. Inspect (and test where appropriate) vertical steel mullions to determine which can be remediated versus which must be replaced. All carbon steel (existing and remaining, restored, or new) shall be protected with a high performance corrosion resistant coating.
- C. Except for the vertical steel mullions (see I.B above), all vertical carbon steel members shall be replaced with carbon or stainless steel. All horizontal members shall be replaced with stainless steel.
- D. All spandrel glass shall be replaced with new. All vision glass shall be checked for adequate glass bite and repositioned/replaced as necessary to ensure adequate glass bite.
- E. All replacement materials shall be equal in strength and performance to the existing. If Tenant wishes to propose elements of lesser strength, then the existing, said request must be accompanied by the results of a Wind Tunnel Study performed in an approved Boundary Layer Wind Tunnel utilizing the 100 year Mean Recurrence Interval; with a  $\pm 30$  PSF lower bound. Deflection limits perpendicular to the wall under load shall be limited to  $L/240$  (where it is the unsupported length) or  $3/4"$ , whichever is less. Deflection in the plane of the wall shall be limited to the lesser of  $1/8"$  or that which will reduce glass bite by no more than  $1/8"$  or edge clearance between metal and glass to less than  $1/8"$ . Strength/deflection of elements supporting opposite edge of an individual glass bite shall be equal.
- F. All work shall comply with the more stringent requirements of this letter, applicable Building Code or Governmental Authorities having jurisdiction.
- G. Any ACM will be legally abated.

Phase 1 work shall be completed by December 31, 1999.

PHASE 2. Below Head of 21<sup>st</sup> Floor Vision Lite.

- A. Remove all exterior trim throughout and perform close-up inspection from scaffold of all observable components.
- B. Perform invasive probes and testing as part of further investigation of existing deterioration on approximately 30% of the wall area. Specific areas to be probed and/or tested shall be selected based upon 2.A above and prior inspection data if obtainable from Unilever or Unilever's Engineer.
- C. All cracked, chipped and/or broken glass shall be replaced.
- D. All glass bite shall be checked. Glass shall be repositioned or replaced as necessary to ensure a 3/8" minimum glass bite. Should Tenant wish to reduce this minimum to 5/16", they shall prove that the structural strength of the lite with 5/16" glass bite is equal to or greater than with 3/8" glass bite through testing at an approved Independent Testing Laboratory employing a GHSC approved test regimen.
- E. Based upon the above, all necessary restoration and/or replacement shall be performed. Such restoration and/or replacement shall be subject to 1.C, 1.D and 1.E above.

All Phase 2 Inspections, Items A and B shall be completed by July 31, 1999 with substantially all restoration/replacement complete by July 31, 2001. Provided, further, however, any unsafe conditions will have been remediated in accordance with the provisions of Local Law 11 of 98.

3. SAFETY AND SCHEDULE

- A. The above target/schedule dates notwithstanding, Tenant shall maintain the facade in a safe condition at all times and employ appropriate safeguards (including but not necessarily limited to side walk bridge/shed, overhead and other protection as may be necessary to safeguard the public and building occupants.



## Omnispective Management Corporation

### *240 Central Park South*

Completed in 1941, 240 Central Park South has been designated an individual New York City Landmark and is listed on the National Register of Historic Places. Comprised of two separate towers, the larger of the two, a twenty-eight floor residential tower, is located at the southeastern part of Columbus Circle facing Central Park. The smaller, fifteen floor tower, sits at the corner of Broadway and 58<sup>th</sup> Street. Connecting the two towers is a one story lobby and storefronts that run along Broadway.

A complete restoration project began in 2003. All areas of the building's exterior and interior were addressed, including the following:

- Façade Restoration
- Roof, Terrace & Balcony Replacement
- Courtyard Restoration
- Storefront Replacement
- Electrical Upgrade
- Hallway Renovation
- Lobby Restoration
- Elevator Modernization
- Roof Landscape Installation

The façade restoration was done in consultation with the original brick manufacturer, *Belden Brick*, to match the original brick hues used. Over a year was spent calibrating current gas-fired technologies to allow for the color variations that coal-fired factories once produced. Eventually, the renovation effort resulted in much of the towers' main façade being re-skinned.

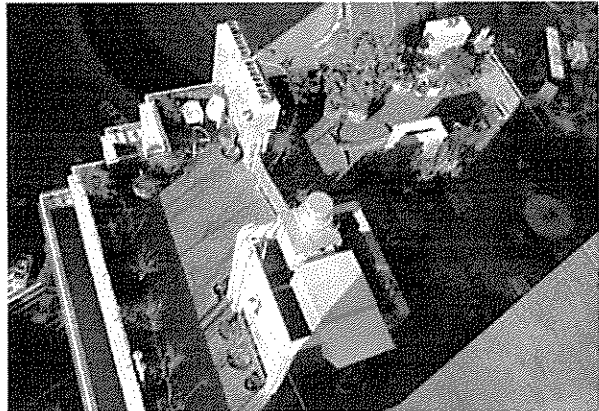
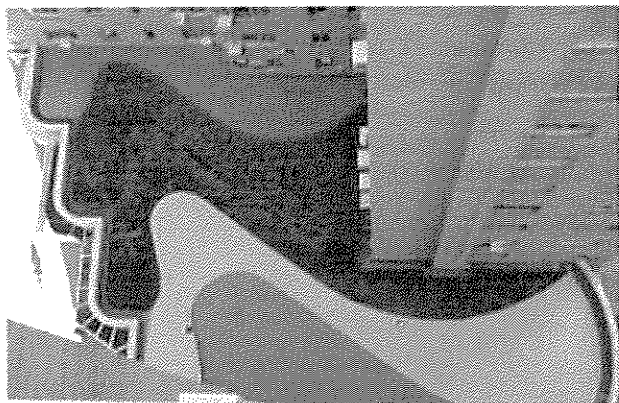
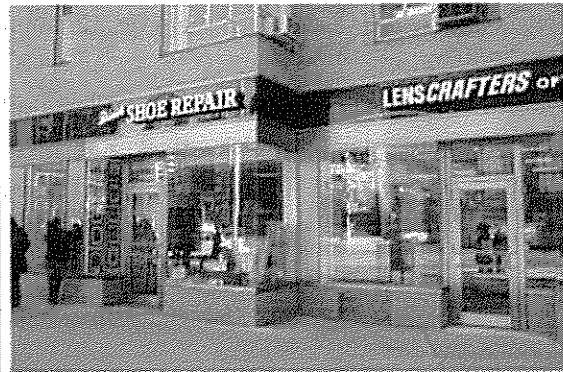
On street level, Bronx-based *Diversified Glass* replaced the custom-fabricated curving storefronts, projecting onto Broadway, with a thicker, more resilient black spandrel glass and substituted the original neon tubes with white LEDs above the bronze sign-bands.

Originally designed with a "Where the Park is Part of the Plan" ethos, 240 Central Park South has installed a 21<sup>st</sup> century green roof to absorb rainwater, reduce heat, and provide an aesthetic boost to residents.

Additionally, the mosaic work "The Quiet City" by noted artist Amedee Ozenfant, which adorns the building's exterior between the third and fourth floors was restored after years of weathering.

Please see the reverse for pictures of the renovations at 240 Central Park South.

**Omnispective Management Corporation**  
*240 Central Park South*



# ARCHITECTURAL RECORD

## 240 Central Park South completes Columbus Circle

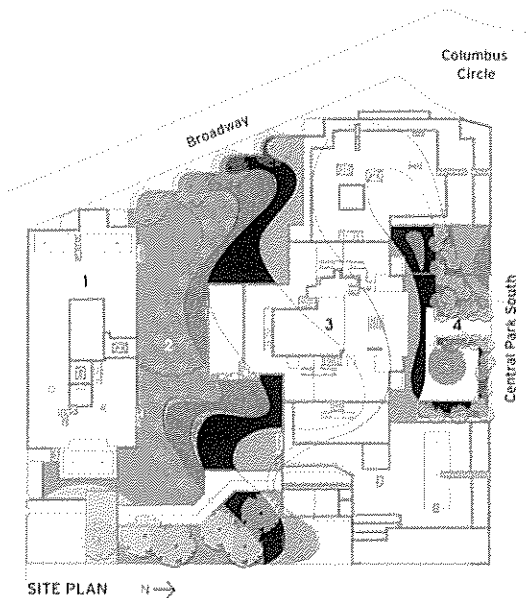
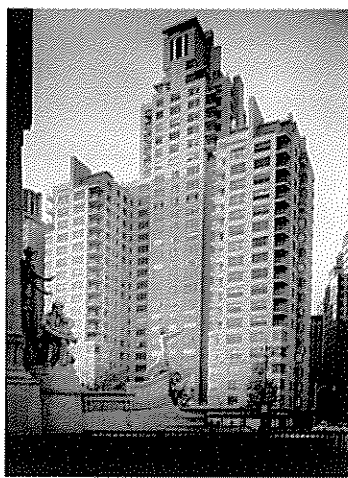
UPGRADES TO AN EARLY MODERN APARTMENT BUILDING MAKE IT MODERN ONCE MORE

By Stephen Zacks

It was state-of-the-art green architecture before the term was coined: a 325-unit luxury apartment building across from Manhattan's Central Park occupying less than half of its site and punched with planters meant to extend the foliage of the park into the high-density development. Completed in 1940 by Albert Mayer and Julian Whittlesey—known for Modern, middle-class apartments that self-consciously vied with the emergence of suburban housing—240 Central Park South featured two towers (the larger one arranged in a horseshoe plan to maximize airflow and views), cantilevered balconies, and generous steel casement windows to reinforce a connection to the landscaped pathways, fields, and ponds across the street.

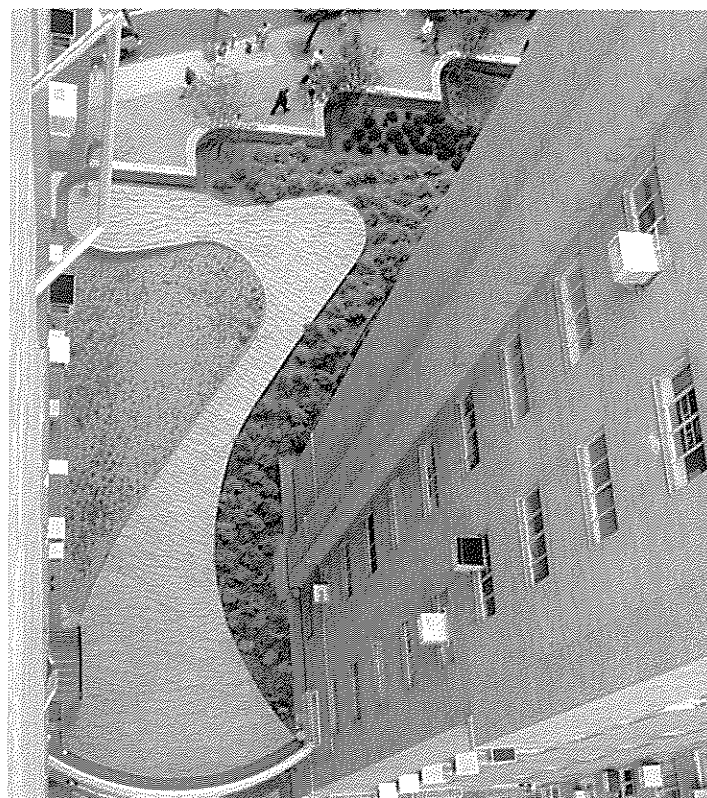
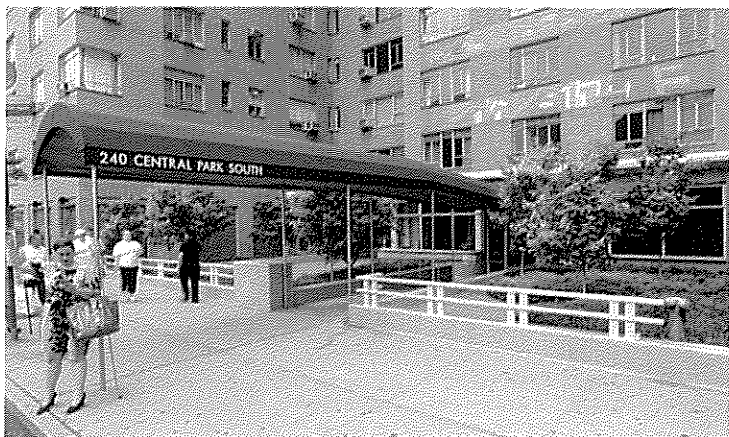
Over the years, everyone from Lewis Mumford to Robert Stern had praised the building as one of the period's best examples of high-density housing [RECORD, January 1941, page 68]. In 2002—a year before the competition to renovate Edward Durell Stone's 2 Columbus Circle made the area a preservationist battleground—it was designated

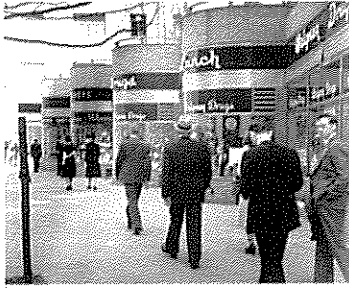
*Stephen Zacks is a contributor to Monocle, Print, and The New York Times.*



The main tower sits on Columbus Circle (far left). Balmori's design for the green roof (left and below) extends to the entrance, which features a mosaic by Amédée Ozenfant (below left).

1. Low-rise tower
2. Green roof
3. High-rise tower
4. Entry courtyard





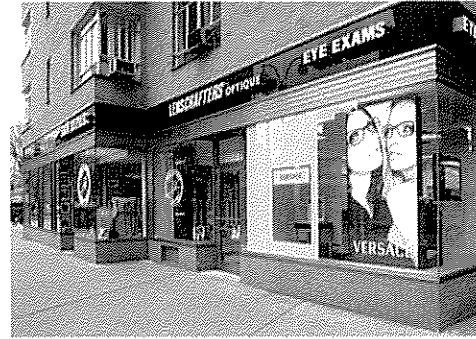
a New York City landmark. Today, 240 Central Park South is the only fully restored landmark on Columbus Circle, and with the help of an artfully landscaped green roof by Balmori Associates and some loving updates by architect Douglas J. Lister, its ideas remain as current as when it was built.

When Lister was hired in 2001, the yellowish-orange brick facade had been badly discolored by previous waterproofing efforts, and he quietly began working with the original manufacturer, Belden Brick, to match the former bright hues of the brick. They spent a year calibrating current gas-fired technologies to allow for the color variations that coal-fired factories once produced, eventually reskinning much of the towers' main facades. Lister also had to upgrade electrical service to the apartments to accommodate today's IT needs, running new lines through hallways and decorating them with historic Art Deco carpet patterns. On the street level, Bronx-based Diversified Glass replaced the custom-fabricated curving storefronts projecting onto Broadway with a thicker, more resilient black spandrel glass and substituted white LEDs above the bronze sign-bands for the original neon tubes.

But the biggest chance for a contemporary upgrade was on the ground-floor rooftops, where gigantic planters above the storefronts expressed the original marketing motto of the building, "Where the Park is Part of the Plan." The roof was engineered to support an ample load of 150 pounds per square foot—four to six times the strength required for most green-roof installations—but over the years, ginkgo trees in the planters had grown to a height of 30 feet and overwhelmed the structure. The repair became an opportunity to introduce a true green-roof system that would absorb rainwater, reduce heat, and provide an aesthetic boost to residents.

Balmori composed a three-dimensional rolling landscape of barberry, spirea, and slate quarried upstate, using polystyrene foam underneath the drainage mat and soil layer to vary its slope. The rooftop is not accessible to residents, but from the towers it appears as gently curling bands of green, purple, and gray that form continuous swaths across several levels of the building and extend into the courtyard. In place of the hardy ginkgoes, cherry trees in the curved bastions above the storefronts connect the rooftop landscape to the street, supplemented by a garden at the entrance featuring red and Japanese maples.

Preserving the building while reconciling it with contemporary standards is an ongoing project: Lister is currently studying how to improve its mechanical systems to reduce energy consumption. The owners also plan to eventually replace the steel casement windows with better-insulated replicas, which would vastly improve the building's efficiency—a process delayed by the need to do in-frame rather than the more ideal brick-to-brick installation, difficult when a building is occupied. For now, its restoration is a great reference point for condo designers and advocates of sustainability alike, currently squaring off over what architecture should look like in a period of economic retrenchment. ■



In recent years, the Broadway storefronts featured a cacophony of colorful signage and awnings. The architects have restored the spandrel glass and uniform appearance of the original storefronts (top) using white LED signs (left).

## DOUGLAS J. LISTER, ARCHITECT

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October 22, 2013

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WRITTEN Testimony to City Council Zoning Committee

There are many reasons to vote this proposal down.

This proposal has:

1. NO Special Permit for all Hotels and fewer good paying jobs;
2. NO Vision for East Midtown's Public Space that is actually VISIONARY;
3. NO feasible Plan for widening the sidewalks of Madison and Lexington Avenues or easing the pedestrian congestion;
4. NO RELIABLE funding Source for transit improvements; and
5. an Obligation to pay MORE legal bills because the city will be sued over the DIB and the DIB pricing scheme.

Ultimately, this proposal ensures that the public will NOT get the most out of the sale of its assets, whether the accounting is done in straight dollars or quality of life. As a result the negatives of the proposal far outweigh the myopic positives that the proposal might bring.

Throughout this ULURP process, I have repeatedly testified that East Midtown needs both wider sidewalks and fewer pedestrians on those sidewalks, especially along Madison and Lexington Avenues. DCP's proposal started out with a half of an idea: to widen one block at a time, development by development. Then they cut back their own half idea through a Text Amendment: just 75% of the block needs to be widened. (75% of a half of an idea is 37.5% of a complete idea) While, glaringly there is still no requirement of developers to reduce the number of their buildings' occupants from using the sidewalk, such as mandating building-transit connections where ever possible; something like the passageways under Rockefeller Center & 6<sup>th</sup> Avenue.

Secondly, the DIF is based on a legally shaky DIB and an even more legally problematic DIB pricing formula. The DIF is supposed to pay for what everyone agrees is the NUMBER ONE most needed improvement project: the Grand Central Subway Station Complex for the 4, 5, 6, 7, and Shuttle trains, which the MTA estimates the cost to be \$175-225 million. The Mayor and his office have spoken about floating \$100 million in bonds, of which just \$78 million will go to the Grand Central Subway Station. The DIF will then pay off the bonds whenever it collects the \$100 million plus all the interest.

What businessman would do that? This is another 37% idea. Not only do we, as a city, still do NOT get a greatly improved Grand Central Subway Station, but we also get saddled with debt that has an unsecured revenue stream for repayment, AND we will have to wait even longer while the DIF is slowly paying off the bonds before the DIF can start on any additional seriously needed projects, AND we get to pay for the DIF's legal defense.

Once again, I ask the Mayor to look at a reliable funding source, like the sale of land in Times Square to the Marriott Corporation. The Comptroller released an Audit Report in February outlining how the city could receive an additional \$170 million for selling the land under the Marriott Marquis Hotel and Theater if it was sold at FAIR MARKET VALUE. Marriott currently rents the land from the city and has the option to buy the valuable Times Square land for just \$20 million in 2017, under a secret sweetheart deal done by the Giuliani Administration. It is estimated that the site would be worth at least \$190 million by 2017. However, the Bloomberg Administration, which should be defending the city taxpayers, has instead chosen to defend the existing terms, which the Marriott currently is in breach of. That \$190 million can repay bonds to substantially improve Grand Central Subway Station right now.

I implore you look at all of my written testimony throughout this ULURP process, to vote this proposal down, and allow a new administration to come up with a better plan. We have time. Even this administration does not want their own proposal to go into effect for four more years. Think how much better a new proposal would be if it had four years to develop.

Let's improve the heart of the city's business district, but let's do it with a plan that is a win-win-win for all of East Midtown stakeholders, the taxpayers, and the city as a whole; not just the lucky and moneyed few.

A handwritten signature in black ink, appearing to be 'J. [unclear]', located at the bottom left of the page.



August 7, 2013

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jmichaelgreeley@msn.com



Written Testimony to the City Planning Commission on the East Midtown Re-Zoning Proposal by the Department of City Planning

My name is Michael Greeley. I am a banquet cook at the Waldorf=Astoria Hotel, and a member of Community Board 5 and the Multi-Board Task Force for East Midtown.

*One of the problems of East Midtown is its desperate need to improve the narrow, over-crowded sidewalks on Madison and Lexington Avenues.* This re-zoning proposal wants to add more people to this neighborhood which will exacerbate this existing problem.

Originally, one way DCP envisioned to slightly mitigate sidewalk overcrowding was to require qualifying sites to have full-avenue frontage, in order for just that one block, the pedestrians would get some breathing space. This would mean Lexington & Madison would get wider sidewalk very, very slowly – one block at a time.

However with the A-Text Amendment, the proposal now would allow only 75% of a block to have a wider sidewalk. Although 75% of the block is better than nothing, but it is a far cry from what the City's main business district needs now and what should be required for East Midtown to support even more density.

*Alternatively, another way to help mitigate the lack of sidewalk space is to require all development sites in the East Midtown Subdistrict to create and maintain transit access points for both the public and the building's occupants to any transit connection that is adjacent or under a new development site.* The Multi-Board Task Force has been speaking about this idea with DCP since July of last year.

Currently the City's proposal requires transit connectivity for only Special Permit sites with the highest FAR. Yet, this re-zoning proposal would up-zone the whole Subdistrict, all of East Midtown, as-of-right. Even if no site is granted a Special Permit, the density in East Midtown is guaranteed to be greater than it is now. Creating and maintaining any possible transit connection for the public and the new building's occupants should be a requirement for every development site in the Subdistrict, both as-of-right sites and Special Permit sites.

In East Midtown, there are 3 existing subway station complexes, Grand Central Terminal, GCT North End Passageways, and the soon to be East Side Access Station and a 2<sup>nd</sup> Ave Subway Station at 42<sup>nd</sup> Street. Connections to these underground transit corridors and any future passageways that are developed by this proposal should be written into the zoning text.

More public transit connections will reduce pedestrian overcrowding on the sidewalks by having more commuters enter directly from transit to their office building; and, more tunnels, passageways, and access points will reduce the amount of time pedestrians are forced to travel on our constricted sidewalks. *If we can't feasibly widen the sidewalks, we should create as many opportunities to reduce the number of pedestrians on Lexington's & Madison's frustratingly too-narrow sidewalks.*

One last point, on which I will include more details by attaching my testimony at the Public Hearing for Community Boards 5 & 6 on May 13, 2013: given that the Mayor recently began to speak about paying for transit improvements in East Midtown through bonds, I would like someone to prevent a repeat of the Hudson Yards bond-repayment scheme which funds the #7 Train extension. *I hope that all the Borough Presidents, the Public Advocate, the City Council, and the Mayor would act on their fiduciary responsibilities to the city taxpayers by identifying now RELIABLE revenue sources to repay the bonds that will be floated for East Midtown.*

One example of a revenue source is the land sale by the city in 2017 (the same year as the proposal's Sunrise provision) of the Marriott Marquis Hotel and Theater for \$20 million, even though that city-owned site in Times Square is worth today about \$200 million. *The revenue generated from selling the Marriott Marquis site at market price would cover at minimum 80% of the cost, as stated by the MTA, to make the necessary mitigations to the 42<sup>nd</sup> Street-Grand Central Station of the 4, 5, 6, 7, and Shuttle lines.*

Public transit is vital to the daily lives of the working poor, to the efficiency of the city's business district, and to improving New York City fiscally. I feel strongly that the city should use public assets to support the public here in New York City. It is clear from the Comptroller's Audit Report that the NYC Economic Development Corporation can and should renegotiate the lease to reflect the fair-market value of the land – which is in the best interest of New Yorkers. The Marriott Marquis chose to breach its contract with the City by failing to maintain the required documentation, and with the agreement now broken, the EDC, assisted by the Department of Citywide Administrative Services, has an opportunity, and I think a fiscal obligation, to make things right.

The Comptroller's Audit Report and my Community Board testimony go into much more detail regarding the Marriott Marquis.

I ask the City Planning Commissioners to sincerely investigate these ideas and to affirm them in their vote on DCP's proposed re-zoning of East Midtown.

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East Midtown Community Board Public Hearing

5/13/2013

J. Michael Greeley  
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My name is Michael Greeley.

I am a Banquet cook at the Waldorf=Astoria Hotel for the past 13 years.

I am also a member of Manhattan Community Board 5, as well as a member of the Multi-Board Task Force on East Midtown.

I testified on September 27<sup>th</sup>, 2013 at the City Planning's Scoping Hearing. My comments at that time were mostly reiterating questions that we as a Task Force had asked DCP but were yet to receive clear answers on.

Again, I will list some STILL unanswered questions and suggest a different alternative to one of East Midtown's problems.

First of all, we should all acknowledge that all of us want East Midtown to be the best that it can possibly be: for its residents, its workers, its tourists, its commuters, its businesses, and for its environment. I would like to see all of us work together to achieve our common goal.

In order to achieve our goal we need to be on the same page and have access to the same information.

So once again, I ask the following questions that were taken from my Sept 27<sup>th</sup> Testimony and from previous letters from the Task Force to DCP:

From the July 2<sup>nd</sup> letter (Question #10):

"If more hotels are built, how will accommodations be made for the inevitable concomitant rise in tourist traffic?"

I did not see any studies in the EIS comparing levels and types of traffic generated from different types of commercial uses (ex: hotel, office, retail).

From the July 20<sup>th</sup> letter (Question #9):

"What will be the cost of administering the DIB fund", and will the costs be capped at a fixed amount or at a percentage of the fund?

We are still waiting on an answer on that, as well as to the following question:

"What is the cost of each of the DIB projects that DCP has already identified?" – which was originally asked in that same July 20<sup>th</sup> letter (Question #4).

Yes, DCP has set a priority list of improvements as:

1. Grand Central–42<sup>nd</sup> Street Subway Station for the 4, 5, 6, and 7
2. Vanderbilt Ave Pedestrian Plazas
3. 53<sup>rd</sup> Street Subway Stations at 5<sup>th</sup> Ave and at Lexington Ave for the E, M, and 6
4. *Widening of sidewalks along Madison, Lexington, & 53<sup>rd</sup> Street*

The MTA did provide us cost estimates in October 2012 for:

*Grand Central–42<sup>nd</sup> St Subway Station (4/5/6/7) improvements at \$175–225 million;*  
5<sup>th</sup> Ave/53<sup>rd</sup> St Subway Station improvements at a cost of \$50 million; and for  
Lexington Ave/53<sup>rd</sup> St/51<sup>st</sup> St Subway Stations: \$40 million.

However, DCP still has *not provided cost estimates* for the pedestrianization of Vanderbilt Ave or *for the sidewalk widening of Madison, Lexington, and 53<sup>rd</sup> St.*

I just want to mention that the East Midtown Task Force does not think the closing of Vanderbilt Ave should be as high of a priority as DCP believes it should be. But I think we are all in agreement with DCP and the MTA that the first priority is to make the Grand Central–42<sup>nd</sup> Street Subway Station more efficient, safer, and easier to use.

I am proposing an Alternative to be studied and hope will be acted on before the end of this year. And, as we asked in our July 2<sup>nd</sup>, 2012 letter in Question #6: “Has DCP considered other non-zoning techniques” to achieve our shared goal of an improved and more robust East Midtown?

As you already know, East Midtown was “down-zoned” in 1982 in an effort to help transform Times Square and West Midtown. East Midtown was effectively put into traction in order for Times Square to grow and strengthen economically. Now it is East Midtown’s turn to be strengthened.

But you might not know that the City Comptroller’s Office released an audit report on February 11, 2013 regarding the Marriott Marquis Hotel. It brought out into the open for the first time that through a 1998 amendment to the original 1982 lease, Marriott is allowed to buy the land under the Marquis Hotel and Theater from the city for \$20 million in 2017. By 2017, it is estimated that the Marquis site in Times Square would be valued at over \$190 million.

*The Comptroller’s Audit (as well as two previous audits) also shows that Marriott is in breach of contract for not maintaining its revenue and rent records to the city. This breach provides us, as a city, a chance to renegotiate with Marriott for a fair-market-value land-sale of the Marriott Marquis site in 2017 – the same year that the “Sunrise” provision begins in East Midtown.*

*The Multi-Board Task Force has a principle that infrastructure improvements should precede development. The city should use the revenue from the sale of city land in the improved Times Square to fund at least 80% of the cost of rehabilitating the Grand Central–42<sup>nd</sup> Street Subway Station – the most used subway station in East Midtown.*



This is an opportunity for Times Square & West Midtown to “pay back” East Midtown and strengthen the city as a whole.

I believe that under the current rezoning proposal, we are likely to see only 2 or 3 new buildings come about over the next 20 years. The demolition and construction of the SLGreen site, which will probably be the first to develop in East Midtown, will not generate \$190 million in DIB money. We will be lucky to get \$200–250 million in DIB money by the end of the next 20 years.

However the 4/5/6/7 Grand Central-42<sup>nd</sup> St Station cannot wait another 20–24 years. It is already overcrowded now.

Let’s do what is right and work together to get a common objective done now. Here is a way to do that IF the Bloomberg Administration is willing to instruct the City EDC to sue Marriott for breach of contract this year and renegotiate for a fair-market-value land sale.

Let’s make improvements to the public realm, to infrastructure, to the transit system. Let’s make a better East Midtown.

We do not need to further subsidize a Washington, DC–based corporation for one of its most profitable locations in the world; a location which came into being through city, state, and federal government interventions. That corporation should do what is right, pay fair-market-value, and help this city improve.

And this Administration should lead and show Marriott the way before the Mayor leaves office. I think that this would be good for Mayor Bloomberg’s legacy.

I ask both Community Boards 5 and 6; please include these ideas in your respective resolutions.

Thank you.

A handwritten signature in black ink, appearing to be 'S. M.', located at the bottom center of the page.

East Midtown Scoping Hearing

9.27.12

Tasks: SocioEconomic (CEQR Chapter 5)

Historic Resources (9)

Urban Design (10)

Water/Sewer (14)

Energy (15)

Transportation (16)

Neighborhood Character (21)

Alternatives (23)

J. Michael Greeley  
60 Thayer Street, 3H  
New York, NY 10040  
212-304-8286  
jmichaelgreeley@msn.com



My name is Michael Greeley. I live at 60 Thayer Street in Inwood, I cook at the Waldorf=Astoria Hotel, I am a member of Manhattan Community Board 5, and I am a member of the East Midtown Task Force for Community Boards 4, 5, and 6.

We have many unanswered questions that DCP needs to disclose in the Draft EIS, and today I want to focus my spoken comments on two tasks of study: Transportation and Neighborhood Character. And among our questions are the DIB and its fund:

- 1) How will the DIB air-rights be priced?
- 2) *Who will audit the fair market value of DIB air-rights and how often?*
- 3) *What City agency will oversee the DIB fund?*
- 4) *Who will be held accountable for the proper management of the DIB fund?*
- 5) *Who or what will enforce that accountability and disclose it to the public?*
- 6) *What will be the cost of administering the DIB fund and the DIB project selection process?*
- 7) *Will the costs be capped at a fixed amount or a percentage of the fund?*
- 8) *Will the City or other governmental agency match DIB money for projects?*
- 9) What is the cost of each of the DIB projects that DCP has already identified?
- 10) How will the community be engaged with the selection of DIB projects?

As an alternative approach:

We ask the city to study a proposal of mandating a developer of a site to fully fund a District Improvement Plan or Project and only after that plan is fully funded would landmark air-rights be available for use.

I would also like to touch on neighborhood character.

The defining characteristics of the neighborhood are that:

1. it is the core Commercial Office District in the city and region;
2. huge numbers of people come into & go out of the neighborhood each business day;
3. it is home to a large number of business services firms which allows our Commercial Office District to run efficiently; and
4. a large number of food and personal services retail firms are here to cater to the huge work force that comes each day.

These defining characteristics must always be kept in mind with any proposal to East Midtown.

However at the moment we are still left with some unresolved questions like:

- 1) Will retail space be encouraged or required at street level?
- 2) Which firms & what types of firms will be displaced due to this zoning change?
- 3) *How will Madison's and Lex's sidewalks be widened to handle even more density?*
- 4) Is anything else envisioned by DCP besides improved subway platforms & staircases?
- 5) *Can improved sidewalk grates be designed to encourage walking on them, especially by ladies in high-heeled shoes and when it rains by men in dress shoes?*
- 6) Is there room for a new Madison/Lexington Ave loop bus line?
- 7) Can a bus line be put on Park Avenue?
- 8) Can corporate black cars have on-site parking, instead of lined-up and idling in the street?
- 9) *What will be done about the increased vehicular traffic due to new hotels and residential conversions at mid-block "soft sites"?*

*As an alternative: I also ask the City to study a proposal of using Special Permits for hotel and residential development & conversions because crosstown traffic is already so slow from 9am to 7pm Monday to Friday.*

Thank you for your time and I am looking forward to in-depth study and answers to these questions and alternatives.

In addition to my spoken comments, I also ask DCP to study the following questions:

**(SocioEconomic)**

- 1) How might a re-zoning impact the area's Class B office space and the number of jobs housed in such buildings?
- 2) How many East Midtown buildings are today considered Class A versus Class B?
- 3) If any Class B buildings are torn down and replaced with Class A (or if Class B/C buildings are converted to hotels or residential) where will these tenants and their employees go?
- 4) Given the growing number of technology companies seeking affordable office space in Manhattan, how might this segment of the City's economy benefit or lose from any possible re-zoning?



- 5) What is the FAR and vacancy rate for each of the under-performing buildings in East Midtown?
- 6) What is the profile of commercial tenants in these buildings that are regarded as under-performing?
- 7) How many businesses occupy these under-performing buildings, what is their tax contribution to the City, and how many jobs do they represent?
- 8) If forced to relocate, where might they move and will that put additional pressure on rents in other neighborhoods?
- 9) Where are these Class A tenants now and what kind of rents do they pay?

**(Historic, Alternatives)**

- 10) Will LPC identify any of the buildings that are not already landmarked?
- 11) Besides GCT, will other landmarks be able to transfer air-rights to a larger area?

**(Urban Design, Energy, Water/Sewer)**

- 12) Will the bulkhead & streetwall regulations be altered enough to achieve unique signature buildings?
- 13) How will green, sustainable building and operational practices be encouraged?
- 14) How will wind funneling and downdrafts be diminished with even higher towers?
- 15) How can water use and discharge (rain) into the sewer system be mitigated?
- 16) How will this increased development generate its own electrical & heating energy?





THE COUNCIL  
OF  
THE CITY OF NEW YORK  
CITY HALL  
NEW YORK, NY 10007

CHRISTINE C. QUINN  
SPEAKER

TELEPHONE  
212-788-7210

February 13, 2013

Seth Pinsky  
President  
New York City Economic Development Corporation  
110 William Street  
New York, NY 10038

Dear Mr. Pinsky:

We write to express our strong recommendation that the New York City Economic Development Corporation (NYCEDC) renegotiate its lease agreement (Agreement) with the Marriott Marquis Hotel (Marriott). The Comptroller's February 11, 2013, Audit Report on the Compliance of Marriott Marquis with Its City Lease Agreement ("Audit") makes several assertions that are of concern. In particular, the Audit finds that the NYCEDC's 1998 amendments to the Agreement may have been based on an inaccurate analysis of the Agreement and similarly inaccurate calculations about how the adopted changes would affect the amount of revenue that the City receives pursuant to the Agreement.

According to the Audit, the 1998 lease amendments have cost the City over \$170 million in reduced rent payments and could cost the City tens of millions of dollars more should Marriott choose to buy the property under the current terms. If Marriott were to purchase the property under the current terms of the Agreement, the City stands to lose out on \$173.1 million from such a sale.

At a time when we face difficult choices between raising taxes or making cuts to public services like education, it is disheartening to learn that the City gave away hundreds of millions of dollars to a luxury hotel in Times Square.

Worse still, the City gave away taxpayer dollars to the only large hotel in the City where, according to reports, workers lack access to quality, affordable health care and protections for immigrants. As we have made clear in the past, employers who engage in these types of practices are not worthy of our city.

We recognize that there are situations where the City can and should promote economic development through subsidized lease arrangements, but there was no such justification for the amendments made in 1998. At that point, Times Square was booming and the Marriott was situated on one of the most desirable pieces of hotel real estate in the country.

Clearly, you were not responsible for a lease amendment made over a decade before you assumed responsibility for the agency. The question now is, what can we do to make this right? The Comptroller's report notes that, despite having a very favorable lease, Marriott appears to have breached the agreement by failing to retain the necessary documentation of its revenue receipts. If the lease is found to have been breached, we ask that you immediately renegotiate an agreement that is fair, equitable and in the best interests of the public.

We appreciate your attention to this matter and look forward to working with you to resolve the issue in an effective and timely manner.

Sincerely,

Christine C. Quinn  
Speaker

Margaret Chin  
Council Member

Jessica S. Lappin  
Council Member

Julissa Ferreras  
Council Member

Leroy G. Comrie  
Council Member

Jumaane D. Williams  
Council Member

Annabel Palma  
Council Member

Helen Diane Foster  
Council Member

Letitia James  
Council Member

Peter Koo  
Council Member

Rosie Mendez  
Council Member

Elizabeth Crowley  
Council Member

Michael Nelson  
Council Member

Robert Jackson  
Council Member

Daniel J. Halloran  
Council Member



Brad Lander  
Council Member

Daniel Dromm  
Council Member

Mark Weprin  
Council Member

Ydanis Rodriguez  
Council Member

Albert Vann  
Council Member

M. C. Arroyo  
Council Member

Diana Reyna  
Council Member

David Greenfield  
Council Member

Lewis A. Fidler  
Council Member

Inez Dickens  
Council Member

Daniel R. Garodnick  
Council Member

G. Oliver Koppell  
Council Member

Stephen Levin  
Council Member

Mathieu Eugene  
Council Member

Andy King  
Council Member

Gale A. Brewer  
Council Member

Jim Gennaro  
Council Member

Jimmy Van Bramer  
Council Member

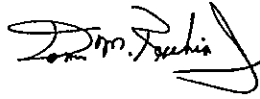
James Vacca  
Council Member

Darlene Mealy  
Council Member

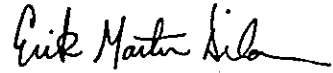
Vincent J. Gentile  
Council Member



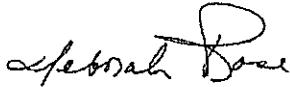
Melissa Mark-Viverito  
Council Member



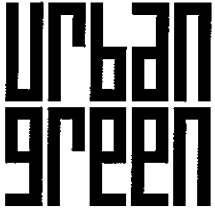
Domenic M. Recchia, Jr.  
Council Member



Erik Martin-Dilan  
Council Member



Deborah Rose  
Council Member



## FOR THE RECORD

**Testimony of Russell Unger  
Executive Director, Urban Green Council  
Before the New York City Council Subcommittee on Zoning & Franchises**

October 22, 2013

Good morning Chairperson Weprin and members of the Committee. My name is Russell Unger and I am the Executive Director of Urban Green Council, which is the U.S. Green Building Council of New York. I am here to testify about the energy efficiency standards in the proposed East Midtown rezoning, LU 945-2013.

The East Midtown rezoning proposal breaks new ground: for the first time, the City Planning Commission has recommended energy efficiency standards in a rezoning. We strongly support this direction and hope it will be a model in NYC and elsewhere. Done right, buildings in East Midtown could serve as an ongoing pull for the industry, leading the way to more energy efficient high rise construction.

You might ask why should we have energy efficiency in a rezoning? That's because building new or larger buildings means more demand on already-strained energy grids and city infrastructure. It makes sense to ask developers in an upzoned area to minimize that burden.

There is also a tradition of using rezoning to advance major city planning goals, including affordable housing and public transportation. Maximizing energy efficiency – which reduces air pollution, carbon pollution, and energy costs – deserves a place alongside these other concerns.

The Commission proposes that new projects in East Midtown exceed today's energy code by 15%. But given new codes and market patterns, we believe that figure should be 25% if it's to drive change in the marketplace.

Here's how we get to that figure:

- Within the next year, New York State will adopt an updated energy code. The U.S. Department of Energy estimates this code will reduce non-tenant energy in large commercial buildings by 31.5%. Estimates prepared for City Planning put the figure lower for typical NYC office buildings, but still around 10%.
- All new Class A office buildings are built to LEED. To hit the minimum level of LEED certification in the latest version of LEED, a core and shell building needs to beat the energy code by 2%.
- However, there has not been a Class A office building in recent memory built to less

than LEED Gold. We're told by many consultants the path to LEED Gold would require a minimum of three energy points. That means 7% better than code.

- Putting these together, a new market-rate office building in East Midtown will beat current code by about 18% without any other regulations: 10% from the new code, and 7% from the market. ( $1.10 \times 1.07 = 1.177$ )

How do we get from 18% to 25%?

1. The language in the rezoning proposal permits a method of calculating energy consumption that makes efficiency seem about 3% better than that calculated through standard industry practice. So we need to add 3% to the proposed efficiency to compare like to like, bringing us up to 21% as the real baseline for industry practice. ( $1.10 \times 1.03 \times 1.07 = 1.212$ ). We do recommend removing the nonstandard method from the rezoning language.
2. 25% – just a 4% increase over expected practice – leaves us very close to the margin of error for energy modeling but just enough to nudge this district forward. Of course, the Commission will need to revisit this threshold in the future as the energy code changes to ensure it maintains an equivalent lead over industry practice.

I would like to reiterate our appreciation for the Commission's leadership in including energy requirements in the East Midtown rezoning and its groundbreaking work on Zone Green last year. With the changes we recommend, the energy efficiency provision could be even stronger. I look forward to answering any questions you may have.



**TERRAPIN**  
BRIGHT GREEN

22 October 2013

Councilman Mark Weprin  
Chair, Zoning Subcommittee  
250 Broadway, Suite 1807  
New York, New York 10007

RE: Letter in Support of East Midtown Rezoning Proposal

Dear Councilmember Weprin:

Our sustainability research and consulting firm, Terrapin Bright Green, released a report earlier this year entitled *Midcentury (Un)Modern: An Environmental Analysis of the 1958-73 Manhattan Office Building*. While we had no agenda or expected findings when we began analyzing this large NYC building stock, we were – and continue to be – interested in investigating the role of 1950s-1970s era office buildings in accommodating the estimated one million more New York City residents that PlaNYC predicts by 2030.

As you are aware, PlaNYC sets its sights on what New York City needs to accomplish by 2030 to reduce greenhouse gas emissions, protect the quality of drinking water, and reduce wastewater outflows while improving the quality of life for over 9 million inhabitants. The 2011 PlaNYC update underscores both the urgency of the City's sustainability issues and the opportunities these efforts represent. A core question it poses is whether or not we can support more people without placing additional burdens on the already stressed water, energy and transportation infrastructure.

Tens of millions of square feet of commercial office buildings were built in Manhattan from the 1950s through early 1970s. Designed when energy resources were cheaper, most were built with single-glazed curtain wall exteriors, a then-modern technology that has since been dramatically improved if not eclipsed outright. Many buildings of this era do not meet current code requirements for handicap accessibility, life safety, and wind loading. In addition to being energy inefficient, they tend to have very low ceiling heights and tight column spacing which makes them frequently unable to achieve higher office space ratings in the market, despite being in prime locations with proximity to transportation hubs.

Our study examined lifecycle energy and water tradeoffs in three scenarios applied to a case study building, 675 Third Avenue: (1) properly maintaining these buildings; (2) retrofitting to modern standards; and (3) then examined a full replacement at higher floor area ratio (FAR). The results show that all three scenarios improve efficiency. Careful maintenance likely provides cost-effective but not significant performance improvements to the case study building. Deep retrofits, while theoretically resulting in significant improvements in energy

performance, were unlikely to be financially viable and cannot improve user experience. Full replacement with an upzoned, high-performance building could nearly double occupancy and improve spatial quality, health, and safety while dramatically reducing per person energy use.

New York City is growing and putting pressure on its building stock to evolve. Obviously there are buildings in this age cohort with intrinsic architectural and historical value that should be preserved and retrofitted. Typically these buildings were designed to be corporate headquarters like the Lever House, Seagram's Building, Look Building, and others. However, there are also dozens of buildings that were designed and constructed quickly to meet immediate demands and maximize floor area under that era's height restrictions, rather than use floor area that could have produced buildings with taller ceilings with more daylighting and other attributes that commercial tenants now desire in office space. Therefore, solutions that add higher quality square footage need to be part of the solution, as do incentives for accelerating the spread of high performance building practices. In addition to energy and water savings, the benefits include green job creation and better quality, healthier workplaces for New Yorkers, present and future.

The current legislation developed by the Department of City Planning could significantly aid in successfully realizing these goals. As we have done in the past, most recently this year as members of the Building Resiliency Task Force, we look forward to working on future legislation that is even more ambitious to transform the entire building industry in New York City.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Browning', written over a horizontal line.

William Browning  
Partner, Terrapin Bright Green, LLC



**TERRAPIN**  
BRIGHT GREEN

22 October 2013

Councilman Mark Weprin  
Chair, Zoning Subcommittee  
250 Broadway, Suite 1807  
New York, New York 10007

RE: East Midtown Rezoning Proposal

Dear Councilmember Weprin:

As you may be aware, Terrapin Bright Green released a report earlier this year entitled: *Midcentury (Un)Modern: An Environmental Analysis of the 1958-73 Manhattan Office Building*. Our research was focused on understanding the challenges owners face when attempting to upgrade mid-century commercial buildings, and the results support several key components of this rezoning effort. Specifically,

- 1) **Existing Non-Complying Buildings** – Providing a mechanism for additional overbuilt buildings to be redeveloped will be critical in ensuring a vibrant mixture of office space for the district.
- 2) **Sustainability Requirement** – Our research demonstrated that these new buildings should easily be able to exceed the NYC Energy Conservation Code by 15% and we know that this is critical for the City's infrastructure and to mitigate Climate Change impacts.

The Public Realm improvements will be critical to ensure that Midtown East is inviting, vibrant, and sustainable, especially with the addition of green infrastructure to mitigate CSOs. I am also pleased to see the addition of 20% allowance for residential uses in new development. This will add to the vitality of the neighborhood but also presents new opportunities for high performance buildings to economically utilize energy and water resources on site.

Personally, I am proud of the Department of City Planning for developing this legislation and hope that the implementation is as successful as possible. We look forward to working on future legislation that will continue to transform the building industry in New York City into a world-class example of sustainability and next-generation mixed-use neighborhood design.

Sincerely,

Chris Garvin, AIA, LEED AP BD+C  
Partner, Terrapin Bright Green, LLC  
Senior Associate, COOKFOX ARCHITECTS, LLP

**THE NEW YORK  
LANDMARKS  
CONSERVANCY**

October 22, 2013

**STATEMENT OF THE NEW YORK LANDMARKS CONSERVANCY AT THE NEW YORK CITY  
COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES, REGARDING THE MIDTOWN EAST  
REZONING PROPOSAL**

Good day, Chair Weprin and Councilmembers. I am Andrea Goldwyn, speaking on behalf of the New York Landmarks Conservancy. The Landmarks Conservancy is a 40-year old, private, independent, not-for-profit organization. Our mission is to preserve and protect historic resources throughout New York.

As a preservation group, the Conservancy has substantial concerns about the proposed Midtown East rezoning. We believe that this plan has the potential to gut and destroy the very character of this area, encouraging demolition of landmark quality buildings on sites that the Department of City Planning has identified as prime for development.

These buildings are an essential part of the mix that makes New York such a special place. This proposal ignores them. It also ignores that the tech firms rejuvenating the City's economy are flocking to its older buildings, in historic districts such as Chelsea and Flatiron, which feature a unique sense of place. London didn't tear down its historic architecture to build the Shard, and neither should New York.

The Landmarks Preservation Commission is reviewing a list of 32 buildings for designation. We support that list, but this area is rich with historic resources, many already eligible for the National Register of Historic Places, that should also be considered for LPC designation. The plan encompasses 70-plus blocks, so there is no reason to take down the best of its architecture, when there is ample room for new design. The rezoning is racing toward an artificial deadline, out of sync with the Landmarks Commission at exactly the time when they should be working together. The inclusion of a five-year sunrise provision is clear proof that this plan does not need to be approved now.

Our concerns regarding this sweeping proposal go beyond the landmarks issues. An unprecedented coalition of Community Boards issued a thoughtful and detailed analysis of the proposal along with their rejection, but here we are moving along toward a final vote without satisfying answers.

Why is the City cutting out the public and this Council out of a review process that has yielded new construction across the five boroughs? City Planning has stated that the rezoning will result in just a few buildings. Shouldn't this public ULURP process should be able to handle them?

The City has not offered specifics on how Grand Central and the streets of Midtown East should accommodate existing overcrowding, East Side Access, or the tens of thousands of workers at these new buildings. A handful of pedestrian plazas, which were never the top community priority, won't do it.

We agree with critics who say that the City is selling itself short by setting one price for air rights across 70 very different blocks. And we share concerns that future administrations will start to crack open the lock box in response to the demands of future budgets.



Although the plan rewards energy efficiency, it supports demolishing pre-war buildings, which have built-in efficiency measures.

As architect Robert AM Stern noted in his op-ed piece in the New York Times, "The problem with the so-called planning study is that it's not a plan. It trusts that developers will build world-class buildings, and that we'll sort out the public realm as we go."

The Conservancy agrees that change and growth are integral to New York's success, but not at the expense of the distinct historic architecture that makes the City great. We don't think that this proposal can be fixed in the short amount of time remaining in this administration. We would want to give the Landmarks Commission the time it needs to review and designate the significant buildings within the rezoning area; to see the footprint of the Special District reduced, perhaps staying the same size as the existing Grand Central Subdistrict; to see the FAR limits remain at current levels, or have a modest increase; to allow developers to purchase air rights from Grand Central Terminal before the City; and we would want to ensure that the public's voice is not eliminated as future development is contemplated.

If these measures, and the many more that the Community Board has requested cannot be met, we ask the Council to reject this plan. In today's political environment, we know that compromise is a worthy goal, but if this plan passes, it will set in stone policies that will prove detrimental to the City's future. We ask you to help clear the way towards a new vision for Midtown East that protects the best of our architectural heritage and allows the public a voice in the area's development.

The blend of new and old is what keeps New York vital and unique. The historic architecture of Midtown East should be an integral building block to its success.

Thank you for the opportunity to express The Landmarks Conservancy's views.



Testimony before the  
Subcommittee on Zoning and Franchises  
on the **East Midtown Rezoning proposal**  
(L.U. No. 945 and 946)  
October 22, 2013

On behalf of the American Institute of Architects New York Chapter (AIANY) and its nearly 5,000 architect and associate members here in New York, I am pleased to offer testimony in testimony on the East Midtown Rezoning. The ultimate goal of which is to allow for the development of a world-class business district and major job generator for the future of New York City. A future that is characterized by the design of the next generation of great buildings.

We agree that it is sound planning for the City's future to have first class commercial space and added density linked to transportation. It needs to be done carefully, replacing outdated and obsolete buildings with new, sustainable structures that contribute to the public realm, while at the same time protecting the grand character of Park Avenue. We thank the Department of City Planning for their efforts on the study and their willingness to offer stakeholders the opportunity to review these zoning changes throughout the process. We appreciated the productive dialogue.

Around the globe there are numerous excellent examples of transit-orientated development, and they consistently add to their City's accessibility, quality, and the competitiveness of their business centers. East Midtown is no different. There are several compelling reasons to support the rezoning of these 73 blocks of East Midtown surrounding Grand Central Terminal as follows:

- **NEW DEVELOPMENT:** The updated zoning will allow for new development that would replace approximately 10 million square feet of aging commercial space, and add approximately 4.5 million square feet more. This new modern office space will ensure the area's continuing role as a premier business district and economic engine;
- **TRANSIT ORIENTATED DEVELOPMENT:** It is sound planning for the City's future to have first class commercial space and added density linked to transportation;
- **ENERGY EFFICIENCY:** The plan requires new buildings that utilize the zoning incentives to attain a higher standard for energy efficiency, ensuring that new office towers in East Midtown will be some of the City's most sustainable. This initiative is the first to make such a requirement;
- **"SUNRISE" CLAUSE ALLOWING FOR LATER START:** The plan allows for a "sunrise" clause which is most important, so as not to undermine the build out and occupancy of other developments scheduled to come online;
- **STREAMLINED PROCESS:** The proposed rezoning would streamline the process for landmark transfers in the Grand Central Subarea which will go a long way toward a more efficient process;
- **LANDMARKS TRANSFER:** The revised or A text would create a new Northern Subarea similar in nature to the Grand Central Subarea, to allow landmarks to transfer unused development rights to Qualifying Sites as-of-right starting in 2019;
- **PUBLIC REALM STUDY:** A public realm study is underway and is being led by the team of Gehl Architects, Jonathan Rose Companies and Skanska as under the New York City Department of Transportation in partnership with the New York City Department of City Planning. The goal of which is to generate design ideas for the public spaces in East Midtown, and should as part of the process, engage a range of design professionals. We look forward to the outcomes which should be focused on place-making.

AIANY supports the rezoning of East Midtown for the reasons listed above however we are concerned that we don't miss an opportunity to look at the design and planning challenges necessary now and going forward into the next administration. Additional areas to consider are:

- **ENCOURAGE INNOVATIVE BUILDINGS:** The proposed regulations for bulk and setback controls should focus on encouraging innovative buildings and creative design;
- **LANDMARKING:** The identification and protection of potential landmarks, while underway, is not complete. We would recommend that every effort is made to identify eligible buildings and move forward with increased cooperation and coordination to protect significant architectural and historic resources;
- **EMDIFC:** The East Midtown District Improvement Fund Committee may benefit from increased membership and a public meeting schedule defined within the text;
- **TIMELINESS:** A commitment on build out of the necessary infrastructure in a timely manner to support development is crucial and will go a long way to alleviate overcrowding on the sidewalks. Requiring these upgrades ahead of the buildings being constructed should also be considered;
- **BELOW GROUND RETAIL:** The challenge before us is to reimagine and create a more interconnected above and below grade pedestrian experience, similar to some Asian cities where below grade retail can be desirable high end space. An opportunity to make below grade upgrades, while thinking about fostering improved commercial space, as in Hong Kong and other Asian cities. By focusing on the interior as well, sidewalks and public spaces will become less crowded allowing for an improved pedestrian experience;
- **MULTI-LEVEL SPACE:** The design quality improvements, made in conjunction with the Metropolitan Transportation Authority (MTA), should not just be functional, allowing more people to enter the system, but should also focus on design and the quality of the experience. A multi-level pedestrian experience: above grade building connections (2<sup>nd</sup> floor) could be achieved among the new building sites that are clustered along Madison Avenue, which would also relieve the pedestrian crowds on the sidewalks;
- **GRAND CENTRAL CONCOURSE:** The city should consider starting on a below grade commercial master plan as well as a transportation access plan with the MTA to compliment above grade, street level zoning. This plan could provide incentives to owners to construct new sub-grade passages and arcades that create a new "Grand Central Concourse". This transportation access plan would map the existing underground networks of passages both private and public including connections to subway and rail stations and at the same time identify creative solutions to enliven the space and increase accessibility.

In conclusion, we commend the Department of City Planning on this effort and urge the Subcommittee on Zoning and Franchises to approve the rezoning while at the same time considering this as a first step on the path to a coordinated effort to reimagine the above and below grade experience for those living and working in the East Midtown area.

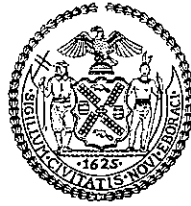
Respectfully submitted,

Jill N. Lerner, FAIA  
President

Rick Bell, FAIA  
Executive Director

SANDRO SHERROD  
CHAIR

VICE-CHAIRS  
RICHARD EGGERS, 1<sup>ST</sup>  
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**TESTIMONY BY SANDRO SHERROD, CHAIR  
OF MANHATTAN COMMUNITY BOARD SIX BEFORE THE  
CITY COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES  
OCTOBER 22, 2013**

Good afternoon Chair Weprin and members of the council. My name is Sandro Sherrod and I have the privilege of being chair of Manhattan Community Board Six.

I am here today to speak against the special midtown district (LU 0945-2013 and LU 0946-2013) items before you. I suspect you have already heard and will hear again today why this approach is short sided and fails to actually improve one of our city's greatest business venues.

Since my time is limited I would like to draw your attention to two points about this plan. Today, not in some future forecast, the district is in dire need of infrastructural improvements and is growing less attractive to businesses because of the current overcrowding of pedestrian and vehicular traffic on the streets. Below, the IRT platforms are dangerously overcrowded during rush hours and straphangers jostle to board subway cars as they enter the stations already filled to capacity. The MTA recently reported that it would need over \$450 million to address its current overburdened system.

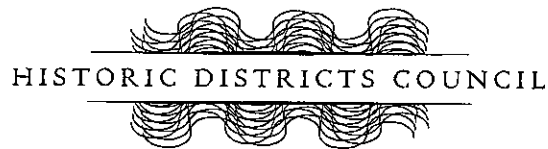
Yet this proposal doesn't even begin to address this, instead it promises to deliver more straphangers, pedestrians and cars to East Midtown in exchange for some "improvement" funds-funds that will likely amount to just a couple of new staircases.

The public realm, or the look and feel of the sidewalks, plazas and open spaces is perhaps even worse underserved. I like many others, hoped this would be an opportunity for our best urban planners to outline a comprehensive blueprint for future use and expansion in a way that invokes both the unique corporate and architectural history of East Midtown's past and the ever expanding business needs of the district.

Yet this proposal doesn't layout a design for an interwoven set of public spaces that communicate together as a single healthy functioning district to improve movement within and better the quality of life for those that traverse it- instead it carves out less travelled side streets to turn them into fragmented islands of pedestrian refuge. Worse than this it provides little to no guarantee that any of the public realm improvements will ever be implemented because of a loosely constructed framework, yet it does guarantee that developers will be able to raze our city's architectural history for even more densely packed towers.

While I agree that East Midtown deserves a plan, this plan only amounts to a lost opportunity for New York and I believe we deserve better. This is not just my opinion but those of key stakeholders like local elected representatives and Community Boards 1, 4, 5 and 6 and others through the Multi-board Taskforce, which is why so many have been working for a more inclusive and a plan worthy of New York.

I implore the committee to reject the creation of a special midtown district until a comprehensive plan can be completed to address not just the current needs of the district but the needs that any plan for increased density will create and even beyond. I thank the committee for the opportunity to speak before you today.



THE ADVOCATE FOR NEW YORK CITY'S HISTORIC NEIGHBORHOODS

232 East 11<sup>th</sup> Street New York NY 10003  
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Statement of the Historic Districts Council  
City Council Commission  
October 22, 2013

The Historic Districts Council is the advocate for New York City's designated historic districts, individual landmarks and structures meriting preservation. The Council is dedicated to preserving the integrity of New York City's Landmarks Law and to furthering the preservation ethic. The East Midtown Rezoning proposal is definitely a dynamic one and one which could transform an iconic section of Manhattan. Vibrant change is part of New York's character and should be encouraged appropriately. In this case, we question both the cost of such change and wonder if its possible benefits will actually emerge.

While we have heard from City Planning presenters numerous times that this plan will only produce a few buildings of the tallest allowable heights, it is effectively an upzoning of the entire area. This should not be downplayed. Any block where enough street frontage is assembled could host a building far taller than what exists. The decrease in street frontage necessary from the original proposal would, of course, increase the ease and likelihood of these massive buildings. The inclusion of special provisions for retaining non-complying floor area and allowing residential use would further spur new construction as these uses are more profitable than the office space that this proposal claims the city needs so badly.

The District Improvement Bonus, Fund, and Committee are central pieces of the proposed rezoning. HDC is concerned about the public's role in this process. As proposed, the DIF is to be overseen by five mayoral appointees who will decide which projects happen in what order. A more varied composition including a representative of the community board would make more sense. While it is good to know that all meetings of the committee will be open to the public, there is no mention of how or even if the public can contribute to the meeting. Rather than allowing the committee to adopt their own procedures, including one for public comment regarding the District Improvement project list, these issues should be decided now. Given the adverse impact of some of these new buildings and the potentially important role the DIF could play in mitigating them, it would be wrong to leave the affected community out of the planning. Furthermore, we are unclear as to the ability of New York City to implement changes to MTA property. We understand that things such as subways entrances can be created, but this will not substantially alleviate an over-burdened IRT transit line. The City is selling the sky for a promise that the MTA will do something to help the public. This is not a good bargain. Finally, Mayor Bloomberg recently announced that improvements will happen before the DIF is funded. We are pleased by this turn of events – as transit improvements at this site in particular are an urban necessity – but this action calls to question the basic purpose of selling development rights all together. What and who are they really benefitting?

While we are happy to see the possibility of selling air rights extended to all of the area's landmarks, HDC is also concerned that the use of DIB first, and air rights from individual landmarks only after that bonus is used up, could hurt individual landmarks by taking away a possible source for preservation funding. After all, the preservation of these landmarks which give such character to East Midtown is certainly a district improvement, as contributing as any DIF project.

HDC has concerns regarding the Vanderbilt Avenue design rules, particularly the requirement for transparency of 70% of the streetwall, a height of 60 feet. It seems unnecessary to require more than the 50% of the ground floor already stipulated elsewhere in this plan. The signage and merchandising which would then become the streetwall would not



HISTORIC DISTRICTS COUNCIL



THE ADVOCATE FOR NEW YORK CITY'S HISTORIC NEIGHBORHOODS

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enliven the public open space envisioned for Vanderbilt Avenue, it would only commercialize it. Attractive, well-designed architecture with interesting bases - not just transparent glass - would be more of a contribution to the streetscape.

HDC, along with our sister organizations the Municipal Art Society and the New York Landmarks Conservancy, support the designation of buildings deemed eligible by the Landmarks Preservation Commission. Our groups' lists and that of LPC have some overlap and some differences, but they only go to show the wealth and diversity of historic and architectural treasures still unprotected in this area. It is important that we make sure the LPC recommendations do not just become a list that we check off as places are lost - Frank Lloyd Wright's Hoffman Auto Showroom and the American Encaustic Tile Building have already been irreparably damaged. Instead, it must be a guiding document that works along with this rezoning to help create the best East Midtown possible. Community boards, elected officials, and the public must all urge LPC to move forward with calendaring these important pieces of midtown before it is too late.

Finally, we have to ask, as so many others have, what's the rush? The sunrise provision shows that this massive rezoning is not immediately necessary. Why not wait a few years, see how developments at the World Trade Center, Hudson Yards, Long Island City, and elsewhere have impacted the city's various needs, and then reexamine what is truly best for East Midtown and New York City?

# MANHATTAN COMMUNITY BOARD FIVE

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Vikki Barbero, Chair

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Wally Rubin, District Manager

## TESTIMONY OF WALLY RUBIN, DISTRICT MANAGER OF COMMUNITY BOARD FIVE, AT THE CITY COUNCIL'S HEARING ON EAST MIDTOWN, OCTOBER 22, 2013

My name is Wally Rubin and I am the District Manager of Community Board Five.

I would like to talk about the sale of air rights in East Midtown. Under the City's current plan, the money from these air rights sales will be going into a fund to pay for vital infrastructure improvements below ground and public realm improvements above ground. In other words, these funds are going toward just the kinds of projects that are the public sector's job, the government's job, to accomplish. Further, despite what the Administration says, these are the improvements, far more than shiny glass towers, that, if comprehensive and smartly designed and well-executed, will truly make East Midtown a Class "A" business district ready for the 21<sup>st</sup> Century.

Yet, instead of maximizing the income that will be derived from these sales, the City has set a price that undercuts its goals and shortchanges the public. It sets one price for 73 blocks when every real estate broker the world over knows that the first mantra of real estate appraisal is "location location location." I'm not even sure my next door neighbor's apartment is worth as much as mine, let alone some property 73 blocks away. Who here would disagree with me? The Administration's strategy might give developers reliability, but at the unacceptable price of undercutting the public interest and the public good, not to mention common sense.



Luckily, there is an easy solution. The Administration makes the claim that it expects only between two and twelve new buildings to be constructed due to this rezoning. Not a very large number, and all the more reason to maximize the city's return.

Let there be an independent appraisal at the time of each transaction, as there is when the City sells its property. Then we, the citizens of New York, will know we have gotten the fairest and best price from each sale.

Thanks so much for your consideration of this proposal.

Tuesday 22 October 2013

Testimony by Terrence O'Neal

I am Terrence O'Neal, Chair of the Land Use & Waterfront Committee, Community Board 6 and a member of the Multi-Board Task Force. I am also a licensed architect here in Manhattan, in independent practice in New York City since 1993, as well as a resident, adjacent to the southern end of the Study Area. Thank you for the opportunity to speak to you.

City Planning first presented this plan to Community Board 6 in June of 2012, with the nearly completed plan presented to us in July 2012. Ever since then, Community Board 6, and subsequently the Multi-Board Task Force, has been asking for a public realm plan. How will the existing infrastructure be affected and how to mitigate those affects, as a result of this plan?

Month after month after month, the Department of City Planning, to their credit, returned to present to us as they developed the plan. Month after month after month, the Multi-Board Task Force and elected officials representing the area, requested a public realm plan. The city finally relented, over 1 year later, after the ULURP application was certified, and began the process to develop a plan in June of this year. As with most plans that are unnecessarily rushed, in my opinion the recently released report, issued just in time, prior to this hearing, presents an approach that does not live up to a neighborhood that all of us agree is the Number One Business Address in the world.

The urban planners working on the plan met with representatives of the Multi-Board Task Force in August. We were encouraged for a moment, as the team appeared to be very open to our ideas: Alleviate congestion on Lexington Avenue from 42<sup>nd</sup> to 47<sup>th</sup> Streets, for example. Greatly improve the cramped entrance to the Lexington Avenue line in that location. Not only were these suggestions ignored, but we were disconcerted when we suggested tying in their plan to the underground network. They responded: "The underground network is not in our scope." How

can you responsibly design the elements of the public realm for the Number One Business address in the world, and not consider how the underground network ties in with elements proposed on the surface. There are many possibilities of vistas from underground to above ground, innovative techniques to enhance and improve the underground network, none of which were in the scope for this talented group of urban planners. I attended all 3 public sessions for this public realm plan. The charge the designers were given was all wrong from the beginning. It appeared, in June this year, that the public realm plan was rushed, and now we can see it in the results: a patchwork of ideas; let's spruce up a little on 51<sup>st</sup> street, clean up somewhat at Pershing Square, but no unifying vision for this very important business district. This is nowhere near good enough for the Number One Business address in the world, and none of us should accept it.

I commend the administration for proposing this much-needed study of East Midtown. The Multi-Board Task Force agrees that the goals of the rezoning are worthy of consideration. But not this plan, not this way, and not based on a political calendar. It is too important.

Rewind and readjust. We need a ULURP application that includes all aspects of the plan, not hastily-conceived ideas incorporated after-the-fact with no opportunity for public review. We must advance a first-rate, well-thought-out plan for this district, which contains some of the foremost business addresses in the world. Anything less is unworthy of consideration. Let's get it right the first time. Thank you.

# Yale University

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September 15, 2013

Hon. Daniel Garodnick  
Council Member  
New York City Council  
250 Broadway  
New York, NY 10007

Dear Council Member Garodnick:

I am writing to you to express Yale University's interest in the East Midtown Rezoning proposal.

In the future, Yale University would like to explore the possibility of a New York City presence to support our research and programs in New Haven. As you know, the Yale Club of New York City owns and operates the building located at 50 Vanderbilt Avenue (Block 1279, Lot 28) (the "Clubhouse"), between East 44<sup>th</sup> and 45<sup>th</sup> Streets in Manhattan. Several sites on the western portion of Block 1279 are part of an MTA RFP for redevelopment. Block 1279 is uniquely suited for a Yale New York City presence given its location across from Grand Central Terminal, which provides rail access to New Haven, and the presence on the Block of the Clubhouse, which is already home to 11,000 New York City-based Yale alumni.

I understand that if the East Midtown rezoning proposal is adopted as currently drafted, the University would not be permitted to utilize any property on Block 1279, adjacent to the Yale Club, since Use Group 3 community facility use, which includes colleges and universities, would not be permitted on a Qualifying Site within the Grand Central Subarea Core. According to the map of Projected and Potential Development Sites that is attached to the East Midtown Environmental Impact Statement, every site within a reasonable proximity of the Yale Club (from East 42<sup>nd</sup> to East 47<sup>th</sup> Streets) is expected to be developed under the proposed East Midtown rezoning and as noted, under the current proposal, none of the new buildings constructed on these Qualifying Sites could be occupied by a Yale University facility.

Yale University's alumni, current faculty and students often utilize The Yale Club as a center of camaraderie and support when they come to New York City. The Club's lodging, meeting rooms, dining and sports facilities would be a perfect complement to any possible academic presence. In addition to enhancing the Campus atmosphere, locating any possible future Yale University facility adjacent to the Yale Club would obviate the need for duplication of these facilities and would encourage Yale Club members to participate in the academic life of the University.

Hon. Daniel Garodnick

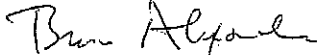
September 15, 2013

Page 2

As I know you are aware, the benefits to New York City's economy of attracting institutions of higher learning are widely recognized. Not only do they train the workforce, but they create jobs, diversify the economy and boost overall economic activity resulting in increased tax revenues. The rezoning can encourage the development of new buildings in East Midtown that can accommodate these important economic engines.

I encourage you to modify this rezoning proposal to allow Use Group 3 colleges and universities to be located on Qualifying Sites in the East Midtown Subdistrict and thank you for your consideration of this issue.

Sincerely yours,

A handwritten signature in cursive script that reads "Bruce Alexander".

Bruce Alexander

cc: Hon. Robert Steel, Deputy Mayor



**Testimony of Russell Unger  
Executive Director, Urban Green Council  
Before the New York City Council Subcommittee on Zoning & Franchises**

October 22, 2013

Good morning Chairperson Weprin and members of the Committee. My name is Russell Unger and I am the Executive Director of Urban Green Council, which is the U.S. Green Building Council of New York. I am here to testify about the energy efficiency standards in the proposed East Midtown rezoning, LU 945-2013.

The East Midtown rezoning proposal breaks new ground: for the first time, the City Planning Commission has recommended energy efficiency standards in a rezoning. We strongly support this direction and hope it will be a model in NYC and elsewhere. Done right, buildings in East Midtown could serve as an ongoing pull for the industry, leading the way to more energy efficient high rise construction.

You might ask why should we have energy efficiency in a rezoning? That's because building new or larger buildings means more demand on already-strained energy grids and city infrastructure. It makes sense to ask developers in an upzoned area to minimize that burden.

There is also a tradition of using rezoning to advance major city planning goals, including affordable housing and public transportation. Maximizing energy efficiency – which reduces air pollution, carbon pollution, and energy costs – deserves a place alongside these other concerns.

The Commission proposes that new projects in East Midtown exceed today's energy code by 15%. But given new codes and market patterns, we believe that figure should be 25% if it's to drive change in the marketplace.

Here's how we get to that figure:

- Within the next year, New York State will adopt an updated energy code. The U.S. Department of Energy estimates this code will reduce non-tenant energy in large commercial buildings by 31.5%. Estimates prepared for City Planning put the figure lower for typical NYC office buildings, but still around 10%.
- All new Class A office buildings are built to LEED. To hit the minimum level of LEED certification in the latest version of LEED, a core and shell building needs to beat the energy code by 2%.
- However, there has not been a Class A office building in recent memory built to less

than LEED Gold. We're told by many consultants the path to LEED Gold would require a minimum of three energy points. That means 7% better than code.

- Putting these together, a new market-rate office building in East Midtown will beat current code by about 18% without any other regulations: 10% from the new code, and 7% from the market. ( $1.10 \times 1.07 = 1.177$ )

How do we get from 18% to 25%?

1. The language in the rezoning proposal permits a method of calculating energy consumption that makes efficiency seem about 3% better than that calculated through standard industry practice. So we need to add 3% to the proposed efficiency to compare like to like, bringing us up to 21% as the real baseline for industry practice. ( $1.10 \times 1.03 \times 1.07 = 1.212$ ). We do recommend removing the nonstandard method from the rezoning language.
2. 25% – just a 4% increase over expected practice – leaves us very close to the margin of error for energy modeling but just enough to nudge this district forward. Of course, the Commission will need to revisit this threshold in the future as the energy code changes to ensure it maintains an equivalent lead over industry practice.

I would like to reiterate our appreciation for the Commission's leadership in including energy requirements in the East Midtown rezoning and its groundbreaking work on Zone Green last year. With the changes we recommend, the energy efficiency provision could be even stronger. I look forward to answering any questions you may have.

October 22, 2013

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## East Midtown Rezoning Rezoning Testimony – Build the Second Avenue Subway Through Midtown First, Then Rezone

My name is Lawrence W. Scheyer. I am a member of Manhattan Community Board Six, and serve on the Land Use & Waterfront Committee as well as the Public Safety, Environment and Transportation Committee. Testifying as an individual, I endorse the comments and recommendations of the Multi-Board Task force, and would like to focus on this crucial omission from the transportation-related considerations regarding the rezoning proposal.

Much has been made about so-called “public realm” improvements, but the crucial improvement that has remained unmentioned is the need first for the Second Avenue Subway to be built – in particular the third phase running through East Midtown with connections to move passengers easily to and from Grand Central Terminal. This proposal is premature, and I believe if it achieves its intended result, it will create clearly avoidable problems that will be endured and suffered through by generations to come.

**First, the current context:** Midtown Manhattan, particularly East Midtown, is one of several immensely important commercial districts in New York City, and it features iconic buildings like Grand Central Terminal, the Chrysler Building the Pan Am (now Met Life) building, and the CitiCorp Building. But, a century ago – before there was a NYC Zoning Resolution – for all practical purposes, development in this area was defined, and physically limited, by the New York Central Railroad’s development of Grand Central Terminal and its template for its immediate physical environs at the intersection of crossing subway lines. Then, in 1929, designs were drawn up for a city-owned four-track Second Avenue Subway and to tear down the ageing Second Avenue and Third Avenue Elevated trains and to open up those avenues for development. The elevateds closed in 1940 and 1955, respectively, and many of the small walk-up tenement buildings immediately adjacent to that area were replaced by larger, modern buildings. But, loss of dedicated funding time and again caused deferral of construction of the Second Avenue Subway (and even led to its reduction in scale to the currently-planned two-track format). That is the major cause of the severe



overburdening we have of the capacity of the Lexington Avenue subway – the only East Side north-south rapid transit artery that remained. (It might be noted that there recently was introduced Select Bus Service on First and Second Avenues – but such service is just a half-measure, and an inadequate substitute for the capacity that a proper subway can provide.)

Further straining the transportation infrastructure is the proposed United Nations Consolidation Building at First Avenue and 42<sup>nd</sup> Street -- an iconic structure in its own right. But, since it lies just outside the boundary of the proposed special district, it promises to add further, unconsidered, pressures on the transportation network. My point is that the Second Avenue Subway can and should be well-underway through the heart of East Midtown before we encourage construction of bigger buildings that will add density to this built-up area.

**Transportation:** Let us remind ourselves that the desirability of the current proposal stems from the centrality and accessibility this location has benefitted from during the century that followed the opening of Grand Central Terminal (and the development of the related Terminal City buildings in air rights over covered rail yards). This is the reason East Midtown was, and will always be attractive to tenants and developers – without rezoning. Unfortunately, I do not believe the minimal proposed Lexington Avenue subway access improvements will add sufficient additional North-South transportation capacity for the vastly increased daytime population of this area that new construction inspired by the zoning proposal, and other, unrelated, East-West transportation improvements will bring.

Other cities that increased density without first adding to their transportation capacity created a permanent problem for themselves. Look at London (after it aggressively pursued the creation of lots of larger new buildings): Transport For London has determined it is necessary periodically to prevent passengers from entering some of its Underground stations to allow clearing of platforms, stairways, and corridors and alleviate unsafe levels of crowding. That is why the southerly Second Avenue Subway extension is needed now.

**What was proposed:** MTA planners shared some ideas they have been working on for making improvements to the passenger experience in its existing public transportation infrastructure, including (partially funded) construction of additional stairways to subway platforms at the Lexington Avenue line at Grand Central Station, and an (unfunded) new fare control entrance from Grand Central Terminal, which will improve the flow of passengers to and from the subway platforms below and facilitate a less congested transfer between the Lexington Ave. (4,5,6) and Flushing-Times Square (7) lines. In addition, a bypass ramp (also unfunded) is proposed for a more direct connection from the subways to the LIRR East Side Access terminal. Other (unfunded) MTA proposals for improvements to increase capacity at the study area's other subway stations

include physically carving out adjacent underground spaces for stairways and escalators at the 5 Av station, and for the connection between the Lex Av and 51 St Stations. These MTA proposals are necessary improvements, absent the rezoning. But, they are not realistic unless there is a dedicated large enough source of funding available in advance. Moreover, when the new East Side Access Long Island Rail Road "station" opens around 2018 beneath the current two levels serving Metro-North trains at Grand Central Terminal, this will generate additional foot traffic in the study area, as well as providing potential tenants for new buildings. However, many travelers arriving at Grand Central from Long Island will not be working within walking distance, and they will still need to take a Lexington Avenue IRT (4,5,6) subway to get to and from East Side destinations. Because the Midtown segment of the Second Avenue Subway will not be opening in tandem with East Side Access, this will strain the maximum capacity of the Lexington Ave. IRT (4,5,6) subway line. Finally, ridership on the 7 train is also expected to increase when Communications Based Train Control (now being installed) will allow the running of more trains (carrying more passengers) to Grand Central station from points East and West on the 7 line, and many of them will need to transfer to the North-South Lexington Avenue IRT (4,5,6) subway line.

**Second Ave. Subway.** The (so-far unrealized) plan is to continue constructing the Second Avenue subway south of 63rd St. along the East Side, including a physical connection with Grand Central Terminal and its subway stations. (See, <http://www.mta.info/capconstr/sas/description.html>) It should be noted that the Second Avenue subway, when it was originally designed in 1929, was a four track trunk line, with express and local service, intended to replace the capacity of two elevated rapid transit train lines and bring daylight to the darkened the streets. The removal of the EIs opened up a mid-century wave of real estate development, but the lack of coordinated construction of the Second Avenue subway has left East Midtown jammed-up to this day. (See, <http://www.mta.info/capconstr/sas/background.html> ).

East Midtown lost its 2nd Ave. EI trains in 1942. The 3rd Ave. EI ceased operations on May 12, 1955, and their ancient steel superstructures were carted away. After decades of starts and stops and redesigns and postponements due to funding drying up for various reasons, the project was mothballed in the early 1970s. When the project was resurrected in its current incarnation, the MTA broke the "full build" construction of the Second Avenue subway down into a consecutive series of four smaller, incremental construction projects. The MTA is presently working on Phase 1, a segment from 96th St. down to, and connecting with the presently unused pair of crosstown tracks in the 63<sup>rd</sup> St. tunnel to connect with the BMT Q train express tracks at 57 St. (7<sup>th</sup> Ave.). (The Long Island Railroad's East Side Access will utilize the 63<sup>rd</sup> Street tunnel's lower level.) Please note that it is not until Phase 3 that the Second Avenue line will continue southward through Midtown toward the Financial District (including the tie-in to

Grand Central). Before that, an (unfunded) unscheduled northerly Harlem terminus is proposed to be built.

I should emphasize that the connector between the Second Avenue Subway and Grand Central Terminal is crucial to providing relief for overcrowding on existing facilities, and considering the distance between Park/Lexington Ave. and Second Ave. a “people mover” needs to be considered. It might take the form of an underground corridor (like what was constructed from Pennsylvania Station to Herald Square, under W. 33<sup>rd</sup> St., through which a slidewalk or other continuous conveyer system would operate (such as that in use at the Court Sq. subway station complex, and at all major airports). In addition, the idea of a river-to-river trolley on 42<sup>nd</sup> St. has been bandied about.

But, in regard to any public realm infrastructure – including transportation – that ought to be built there must first be in place a mechanism that will – in advance – provide sufficient funding to pay for these improvements.

**Funding - Value Capture Method.** Former MTA chief Jay Walder now works for a Hong Kong transit agency that effectively harnesses revenues derived from real estate development for development and operation of mass transportation. Shouldn't the New York City City Council study this success story, and seek to emulate it –before this rezoning can be seriously considered?

Please fully consider these ideas before making your decision.

Thank you for giving me the opportunity to be heard.

# NYPIRG Straphangers Campaign Riders Alliance Tri-State Transportation Campaign

## Testimony on Proposed East Midtown Rezoning October 22, 2013

Our groups have concerns about the transportation aspects of the proposal to rezone the East Side of Manhattan. We think there should be more time to make sure rezoning produces the resources to meet midtown's transit needs.

The problem is clear: Riders in the Grand Central area are already suffering intolerable crowding. Amazingly, the Lexington Avenue line (4, 5 and 6) carries 1.3 million people each weekday, nearly one-third of all daily riders. Anyone who regularly uses the Grand Central subway station – the epicenter of this crowding – knows the impact from daily bitter experience.

This crowding should be addressed in the near future, well before any rezoning creates more density and crowding. The MTA has identified \$340 to \$465 million in improvements needed in the next ten years in east midtown. Great transit helped make the city's premier business what it is today; building new transit improvements are critical to midtown's future.

To his credit, Mayor Bloomberg has proposed advancing City funds before proceeds are generated from the purchase of development rights. The City would then be reimbursed by a portion of the monies from the development rights. At this moment, it is unclear how much money would be advanced and whether it would be sufficient.

We also are worried about the valuation process here, in many ways similar to the past debates over the full market value of two of the MTA's biggest properties, the Hudson River Yards in Manhattan and the Vanderbilt Yards in Brooklyn. We are concerned that the City is underpricing the value of the development rights undercutting the City's stated goal of improving transit.

In our view, more time is needed to make sure that the proposed Grand Central-area property rights are priced at full value.

Testimony for the City Council Hearing on East Midtown

Barbara Mutterperl

Tuesday, October 22<sup>nd</sup> 2013

Thank you for the opportunity to testify here today. Though I live on the Upper East Side, this proposal will have a profound impact on my life. I depend on the 4/5/6 train line to get around the city. Current overcrowding has made simply leaving the neighborhood an ordeal. During rush hour, the conditions go beyond unpleasant and became dangerous. With such serious overcrowding, I seriously challenge the wisdom of adding yet more workers and residents.

What the area's transit system needs is not tinkering, but a serious overhaul. A rezoning might be able to provide such a transformative change, but this proposal falls far short. As of this morning, with the ULURP clock almost up, we still have no details of what the commitment to infrastructure funding will be. We still have no idea what public realm initiatives will be undertaken and how much they will cost. Even if the City is willing to guarantee payment for the entire list of improvements the MTA has identified, we are only mitigating *current* overcapacity. We need longer-term solutions to these persistent problems. As the population of New York swells and our city becomes denser and denser, we must think ambitiously about how to accommodate this density.

Rather than adjusting a stair here and removing a column there, the City should be looking at dramatic interventions like committing funds to the 2<sup>nd</sup> Avenue Subway, improving Select Bus Service, or connecting Grand Central to Penn Station and a one-stop ride to the airports. Unfortunately, what you have before you confronts none of these long-term opportunities and instead focuses on providing a sweetheart deal for developers as an administration leaves office. New Yorkers deserve better and we demand better.

Thank you.

COOKFOX ARCHITECTS, LLP

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New York, NY 10011  
212 477 0287  
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October 22, 2013

Councilman Mark Weprin  
Chair, Zoning Subcommittee  
250 Broadway, Suite 1807  
New York, New York 10007

RE: Letter in Support of East Midtown Rezoning Proposal

Dear Councilmember Weprin:

My name is Bob Fox and I am a partner at COOKFOX Architects. I came to New York City in 1966, 47 years ago, eager to learn all I could about high rise buildings. I was fortunate to get a job working at Emery Roth & Sons, then the most prolific firm in producing high rise buildings in our city.

Emery Roth & Sons had a carefully defined formula in their approach to high rise buildings, resulting in a very repetitive building form:

1. The largest floor plates possible that follow zoning defined envelopes – leading to the familiar “wedding cake” buildings.
2. A simple steel structural frame – columns about 20 feet apart and lightweight poured concrete floors.
3. Single glazed exterior curtain walls – then a fairly new technology with operable windows for exterior maintenance.

These were commodity buildings, so all thinking went to maximizing floors sizes while minimizing costs. As most of these were pre-“energy crisis” buildings, no thought was given to energy consumption. Fast construction was also a priority, as Manhattan was growing rapidly and new office space was in high demand.

To be fair, some of these buildings are still pretty good, but many have outlived their useful lives. The column spacing does not readily accommodate the floor layouts of today, the mechanical systems have long passed their expected life, and these buildings all consume more energy than they should. The exterior walls leak both air and water and because they were designed before today’s wind code, would be unsafe in even a category 3 hurricane.

I fully support the Midtown East Rezoning in that it will encourage building owners to replace some of the worst offenders with new state of the art buildings – LEED Platinum of course! This rezoning and the construction of beautiful and sustainable buildings will help NYC maintain its world class status as a leading urban center.

I think we can all agree that to continue to exist on this planet we must learn to become part of nature. So, how does nature work? Think of a forest – an important ecosystem where plants and animals have cycles of growth, maturity, and then regeneration. So must cities. In order to regenerate our building stock, poorly performing buildings should be replaced by new and better ones.

Thank you for your time, consideration, and attention to this very important rezoning matter.

A handwritten signature in black ink that reads 'Robert F. Fox, Jr.' with a stylized flourish at the end.

Robert F. Fox, Jr.  
Partner, COOKFOX Architects

## East Midtown Rezoning—Carol Willis Testimony

Good morning, Madame Speaker and Members of the City Council.

My name is Carol Willis and I am the founder, director, and curator of The Skyscraper Museum, although I speak here today not in that role, but as an individual. I am also an academic—an architectural and urban historian who has published widely on the history of skyscrapers and on the NYC zoning law.

I speak today in favor of the City Planning Commission's East Midtown Rezoning proposal because it serves *the best interests of the city as a whole*. My view is based on two key premises:

**1. Commercial buildings are urban infrastructure.** This is not a conventional definition, but we should be thinking of buildings collectively, rather than as individual private properties. The gross rentable space in the business core is currently a fixed asset that is aging, like our tunnels and railroads, and requires continuous reinvestment.

**2. Density is vitality, and the Grand Central district can easily support greater density due to its extraordinary mass-transit infrastructure.** Over the past century, the transportation nexus of Grand Central has afforded East Midtown advantages that have created an area of unparalleled prestige and accessibility for all sorts of workers and consumers. Within this decade, the system will be enormously enhanced by the investment in the LIRR East Side Access.

The Commission's proposal for moderate up-zoning and air rights transfers will make room for productive density and incentivize reinvestment in older buildings that are egregiously energy inefficient and enormously expensive to modernize. The East Midtown market will then continue to compete effectively with areas of new construction.

The issues of historic preservation and the mechanics of landmarking are important, and certainly a part of the planning process in this district. I have a lot to say about the list of high-rise buildings that I believe should be designated and protected as landmarks—but I have limited time, so I will submit my list in my written testimony. In short, though, in my view,



there are ten skyscrapers within the district that merit individual designation. However, landmark protection is an independent action that has its own clear rules and goals, and these should not be confused with the process of up-zoning.

People who have opined in newspapers or elsewhere that the zoning proposal “is not a plan” or a “unified vision” and who prefer preserving the present buildings to any possible future ones are, I believe, wrong-headed about the character of East Midtown, which has in fact been an area of continuous change. In the 1920s, the Beaux Arts treasure box of Grand Central was encircled and overpowered by a group of ambitious, gaudy Art Deco towers, including the now-beloved Chrysler Building. In the 1950s and ‘60s, many Park Avenue apartment blocks were replaced with gleaming glass International Style towers, including the now-landmarked Lever House and Seagram Building. Every successive era (until now) has partially, but significantly, transformed East Midtown, so that today, the district resembles far more the spectacular heterogeneity of Manhattan than an idealized acropolis of Beaux Arts Terminal City.

Some object that the new guidelines will enrich a “handful of developers,” but impoverish the public realm. I do believe the proposal’s detailed regulations for the improvement of public space will safeguard the existing light and air in the upper-levels of the district and ensure a positive benefit to the streetscape. But in any case, the City has a mechanism to deal with profits: taxes.

Creating more taxable real estate and more first-class office space for workers who will arrive at Grand Central from the urban watershed of suburban homes intensifies the productive value of New York’s century-long investment in its transportation and building infrastructure in East Midtown. It is a win-win for the City, and it should be recognized for what it is: *city planning*.

Thank you.

## **NYC Landmark Recommendations in the East Midtown Rezoning Area**

10 Skyscrapers recommended for individual designation by Carol Willis

### **Hotels**

1. Hotel Beverly, 125 E 50<sup>th</sup> St., *Emery Roth & Sylvan Bien, 1926-27*
2. Shelton Hotel, 525 Lexington Ave., *Arthur Loomis Harmon, 1922-23*
3. Lexington Hotel, 509 Lexington Ave., *Schultze & Weaver, 1928-29*

### **Pre-War Commercial/Office Buildings**

4. Pershing Square Building, 100 E 42<sup>nd</sup> St., *York & Sawyer, 1914-23*
5. Graybar Building, 420 Lexington Ave., *Sloan & Robertson, 1927*
6. Lincoln Building, 60 E 42<sup>nd</sup> St., *J.E.R. Carpenter, 1929-30*
7. Lefcourt National Building, 519 Fifth Ave., *Shreve, Lamb & Harmon, 1929*

### **Post-War Commercial/Office Buildings**

8. Union Carbide, 270 Park Ave., *Skidmore Owings & Merrill, Gordon Bunshaft & Natalie de Blois, designed 1955; built 1957-60*
9. Universal Pictures Building, 445 Park Ave., *Kahn & Jacob, 1946-47*
10. Citicorp Center, Lexington btw. 53<sup>rd</sup> & 54<sup>th</sup> St., *Hugh Stubbins & Associates, Emery Roth & Sons, 1976-78*

22 October 2013 Testimony to City Council  
East Midtown Rezoning Proposal  
By Nancy Aber Goshow, AIA LEED AP BD+C

**Sustainability:**

I am Nancy Aber Goshow, AIA, a licensed architect and a 10 year member of CB5, Manhattan and a member of the Multi-board East Midtown Rezoning Task Force.

I live and work in midtown Manhattan. I own and operate a Woman Owned architectural firm, Goshow Architects. We design healthy high performance green building for the public sector, for the public good. I care very much about the future of this great city.

The provisions of the proposal could do more to promote the development of sustainable buildings.

Sustainability is all about a healthy, livable city

My comments focus on four issues of concern in the proposal's text on sustainability as presented to our Task Force by the City Planning Commission:

- First: The proposal requires Buildings that utilize the DIB to outperform the 2011 NYC Energy Conservation Code by 15 percent;
  1. Zoning incentives should focus on performance based and life-cycle analysis requirements and not simply on exceeding a NYC Code minimum;
  2. Seattle is way ahead of NYC with its sustainable zoning incentives, incentives based upon performance standards which require reporting the actual performance of the water and energy conservation systems over the life of the building.
  3. If NYC wants to compete at the global level with other sustainable cities in the US and around the world, then it needs to take a more comprehensive look beyond modestly exceeding existing energy conservation codes.
- Second: According to the City Planning Commission 15% above the 2011 NYC Energy Conservation code is "Comparable to One Bryant Park energy performance"

However

1. The Energy Performance of One Bryant Park tower is not the best sustainable design standard for the proposal to reference

2. There are a number of attributes of the building on the plus side:
3. But on the negative side:
  - 1) It produces more greenhouse gases;
  - 2) And uses more energy per square foot than any comparable office building in Manhattan;
  - 3) It uses more than twice as much energy per square foot as the 80-year-old Empire State Building;
  - 4) Its energy performance is worse than the Goldman Sachs headquarters, a similar NYC building
- Third: The proposal requires compliance with the standard in place at time of building permit:
  1. Zoning incentives should offer increased FAR in exchange for a variety of performance-based building design elements over the life of the building not just energy performance at the time of building permit. Such performance-based building design elements would include water use reduction, construction activity pollution prevention, light pollution reduction, reduced heat island effect, storm water runoff management, indoor and outdoor air quality, daylight, and thermal comfort.
  2. Other performance based building design elements to consider for inclusion are requirements for increased management of waste water outflows into an already overloaded NYC sewer system, preservation and enhancement of open space, minimum building envelope performance requirements and use of non-toxic building and finish materials.
- Fourth: The proposal has the First sustainability requirement proposed in New York City Zoning Resolution;

However:

1. Sustainability is much more than energy performance;
2. There is a sustainable "sweet spot" between building height and population density. At what point, is the benefit of building tall buildings compromised by the high cost of embodied energy in steel and concrete, high heat gain and heat loss, and various other factors, including social and psychological effects? We need to find that sweet spot and incorporate it into the proposal before us.
3. **Embodied Energy** is the sum of all the energy required to produce a material, as if that energy was incorporated or 'embodied' in the product itself. It determines the effectiveness of energy-producing or energy-saving devices, or the "real" replacement cost of a building, and, because

energy-inputs usually entail greenhouse gas emissions, in deciding whether a product contributes to or mitigates global warming. It answers the question: Does the material save more energy than it took to make it?

4. If NYC is to compete with sustainable cities around the world, then this minimal requirement needs to be much more comprehensive in its sustainable design goals.

This proposal  
could be the catalyst  
for a healthy, livable  
21<sup>st</sup> century world class city  
for all New Yorkers



October 22, 2013

## **Testimony before the New York City Council Subcommittee on Zoning and Franchises in Opposition to the Proposed Midtown East Rezoning**

DOCOMOMO US New York/Tri-State is a local chapter of an international organization working in over 50 countries to identify, document and protect buildings, sites and neighborhoods of the Modern Movement.

The proposed rezoning would negatively impact the historic context of Midtown East and its architectural resources, particularly those of the Modern period, that provide a distinctive character to the area.

During the postwar era, a large-scale building boom transformed entire sections of New York City's streetscape from masonry mid-rise structures to glass and steel skyscrapers. East Midtown both exemplifies the cultural development of new businesses that established themselves in Midtown and architectural achievements that comprise a specific and distinct modernist architecture in which New York City led the way and was a model for other cities. These buildings were innovative in their use of materials and their situation within the streetscape.

This is a district that has been of concern to our organization for some time. We have documented many of these buildings in our Midtown Modern Survey and recently held a walking tour "East Midtown Modern at Risk" on October 6th to help increase awareness of the potential threats that would result from this rezoning.

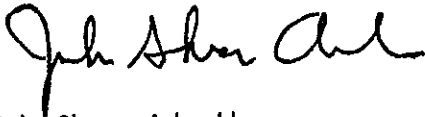
While the iconic Seagram Building and Lever House are protected as New York City designated landmarks, many of their undesignated Modern movement neighbors, which together with them define the distinctive character of this area, would be threatened by the proposed rezoning. Significant works of Modern movement architecture, which would be endangered include Park Avenue's first postwar office building, the Universal Pictures Building (1947) by Kahn & Jacobs, the Union Carbide Building (1958-60) designed by Gordon Bunshaft and Natalie de Blois of Skidmore, Owings & Merrill, along with additional buildings designed by SOM and other leading architects of the era such as William Lescaze, Max Urbahn, and Emery Roth & Sons.

DOCOMOMO New York/Tri-State has requested that the New York City Landmarks Preservation Commission (LPC) evaluate 15 significant Modern movement buildings within the boundaries of the proposed rezoning for potential designation. They have responded that certain of those buildings "may merit designation and will be further considered..." However, we regret that no Modern movement buildings are among those that the LPC has recently calendared in response to requests for evaluation from DOCOMOMO, various other preservation organizations and concerned citizens.

East Midtown's Modern movement buildings have significance both individually and collectively as potential historic districts. Together they create a landscape of postwar corporate culture unmatched in any other city in the world. They were built as Class A buildings and can be renovated and retrofitted to both maintain their aesthetic value and contribute toward a sustainable future for the city.

DOCOMOMO New York/Tri-State respectfully requests that the Subcommittee on Zoning and Franchises oppose the proposed Midtown East rezoning unless greater protection for our architectural heritage can be assured.

Sincerely,

A handwritten signature in black ink, appearing to read "John Shreve Arbuckle". The signature is fluid and cursive, with the first name "John" being the most prominent.

John Shreve Arbuckle  
President  
DOCOMOMO New York/Tri-State

RESOLUTION

Date: July 9, 2013

Committee of Origin: Land Use

Re: East Midtown Rezoning. Department of City Planning proposed Zoning Text Amendment (N 130247 ZRM) and Zoning Map Amendment (C 130248 ZMM) to amend the Special Midtown District of the New York City Zoning Resolution.

Full Board Vote: 32 In Favor 1 Against 3 Abstentions 0 Present

This resolution is based on the following facts:

The Department of City Planning seeks to rezone a 70-block area surrounding Grand Central Terminal in the East Midtown section of Manhattan.

The goals of the rezoning include preserving and strengthening East Midtown as one of the world's premier business addresses and key job center for the City and the region, and seeding the area with new modern and sustainable office buildings to maintain its pre-eminence as a premier office district.

To accomplish these and other goals, the proposed rezoning seeks to establish a new East Midtown Subdistrict and replace special permit requirements for increased bulk and density with an "earned as-of-right" zoning framework. Among other things, the rezoning would create an opportunity for developers of new construction on qualifying sites in the East Midtown Subdistrict to earn the right to build up to 24 FAR in certain portions of the Subdistrict, and up to 21.6 FAR in other portions, in exchange for certain actions that include acquiring transferable development rights ("TDRs") from certain landmark sites and/or by purchasing TDRs from the City of New York itself.

Under certain circumstances in a defined portion of the Subdistrict closest to Grand Central Terminal, developers could qualify through purchase and other means for up to 30 FAR on new construction sites.

The proposed rezoning could add 5% or more to the FAR density of the Subdistrict, and add tens of thousands of additional workers to the area, including to the commuting routes to and from the Subdistrict, as well as to local streets both before and after work as well at lunch and other times during workdays.

One way in which developers may earn the right to additional FAR under the proposed rezoning is to make contributions to a District Improvement Fund ("DIF") measured as a multiple of the amount of zoning square feet added to a site, with the initial price placed at \$250 per square foot for most increases.

The proposed rezoning would be subject to a "sunrise" provision which would allow developers to begin reserving the right to earn additional as-of-right FAR immediately, but not be permitted to build based on the increased density until July 2017.

*Subway and Mass Transit*

The principal north-south subway line serving the Subdistrict, the 4/5/6 (formerly the east side IRT), is operating above its rated capacity, with some estimates reaching 116% of capacity.

East Side Access, which will create a commuter rail connection between the Long Island Rail Road and Grand Central Terminal, is expected to come online in or about 2019, only two years after the "sunrise" for use of the increased density under the proposed rezoning.

The Transit Authority's number 7 line is expected to be extended to west midtown in the coming years, and is anticipated to attract additional riders who will travel to and through Grand Central subway stations and the Subdistrict generally.

With respect to transit, the proposed rezoning creates significant concerns as to whether:

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- The DIF will generate sufficient funding to accommodate the existing excess demand for transit service in the Subdistrict, let alone accommodate the increased number of users anticipated with additional jobs if the additional density is used and built.
- The improvements funded by the DIF will be completed in time to address existing as well as projected additional needs for transit access to/from the Subdistrict.
- There is a comprehensive and achievable plan vetted by the MTA to meet current excess demand and adequately provide for expected increases in service demands under the assumptions relevant to the proposed rezoning.
- Any shortfall in funding to meet the immediate needs of commuters and others seeking access to Grand Central Terminal and the Subdistrict, as well as meeting the heightened demands after the increased density is built, would be resolved by re-allocating funding for maintenance and improvements in other areas served by the Transit Authority, reducing service and/or improvements to other parts of the transit system (including the Upper West Side in Community District 7).

#### *Traffic and Parking*

The Grand Central Subdistrict is already among the most congested areas both for pedestrians and for vehicular traffic within the public realm.

Additional commercial density in the Subdistrict can reasonably be anticipated to create additional demand for deliveries, service calls, customer and client visits, and a variety of other additional demands on surface transportation and the on- and off-street parking that will be required to accommodate such increased demands.

These increased demands will inevitably lead to spill-over demand in other areas of Manhattan for parking.

The increased surface traffic attracted to the areas of increased density are expected to create additional congestion that can back up into other areas of Manhattan, including the Upper West Side.

The increased traffic congestion can also reasonably be expected to increase travel times for City buses and other modes of surface transportation in the Subdistrict that also serve the Upper West Side and other areas of Manhattan.

#### *Public Realm*

The congestion experienced by users of vehicular transportation in the Subdistrict is rivaled by the congestions experienced by pedestrians and other non-vehicular street users, especially in the area immediately adjacent to Grand Central Terminal. The potential introduction tens of thousands of additional workers to already overcrowded sidewalks and passageways will require significant changes and improvements to the public realm. At present, there is no comprehensive plan to meet those needs, no assurance that the DIF will generate sufficient funds to carry out an integrated plan once adopted, and no expectation that such needed improvements will be completed before the increased demand arrives on the affected sidewalks and surrounding areas.

As with Transit, the drain on limited resources to supplement the potential shortfalls in the DIF will strain the ability of the capital and expense budget to respond to existing demands outside the Subdistrict, including for projects undertaken or needed on the Upper West Side.

#### *Landmarks, TDR Transfers and Other Incentives*

Certain already-designated landmarks within the Subdistrict that have unused TDRs are anticipated to seek in the near- or long-term to sell or transfer those rights either to contiguous sites or, if in certain select sub-areas, across a broader geographic area.

The creation of a system that would make TDRs available for purchase in competition with the TDRs that owners of designated landmarks may seek to sell, convey or exploit at other locations would materially limit the

ability of owners of landmark structures to realize a benefit from those TDRs, has the potential materially to undermine the long term viability of the New York City landmarks protection statutes. This is especially so if the price at which additional FAR could be earned as-of-right from the City itself is less than that sought by landmark owners, or the overall cost of obtaining TDRs from landmark sites in terms of both purchase price and securing necessary approvals exceeds the perceived obstacles to the use of such TDRs.

The ability to purchase additional FAR directly from the City itself will also potentially reduce the demand for other means open to developers to achieve additional FAR, such as affordable housing bonuses where applicable. The absence of affordable housing throughout our City is linked, among other things, to the demand for City shelters and related services. Since the Upper West Side has seen its stock of affordable housing units converted to shelters to meet pressing short-term need without replacing the lost affordable units, any reduction in the viability of incentives to create affordable housing has a direct connection to the experience of residents and neighbors on the Upper West Side.

A Joint Task Force of Community Boards 5 and 6 (Manhattan), to which Community Board 1 and 4 have subscribed, as well as Community Boards 5 and 6 individually, have adopted a resolution to disapprove of the proposed rezoning.

CB7 adopted on June 4, 2013, a resolution setting forth certain issues and concerns with the proposed rezoning which have an impact on Community District 7, as set forth above. The CB7 June 4, 2013, resolution concluded that Community District 7 is "affected" by the proposed rezoning.

Many but not all of the concerns and issues identified by CB7 above are included in the Joint Board Task Force resolution and the report accompanying the resolution. Many but not all of the concerns and issues identified by the Joint Board Task Force are consistent with the concerns and issues raised above and in CB7's June 4, 2013, resolution.

The issues and concerns identified by CB7 above and in the June 4, 2013, resolution must be addressed and solutions implemented prior to, not as a result of or after, the adoption of a rezoning plan of the scope and with the anticipated consequences of the East Midtown rezoning proposal. Addressing such issues and concerns requires both the formulation of detailed plans for remediation and improvement and the development of means to ensure that all of the funding necessary to complete such remediation and improvement are available.

Now, Therefore, Community Board 7/Manhattan resolves to support the overall sense of the Joint Community Board Task Force resolution to disapprove the proposed East Midtown rezoning proposal.

Testimony by Danielle Freni, Director of Communication, Central Synagogue  
to the New York City Council Subcommittee on Zoning & Franchises  
at the 10/22/13 Midtown East Plan Public Hearing  
on behalf of Central Synagogue

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Good afternoon, my name is Danielle Freni, Director of Communication of Central Synagogue (a/k/a Congregation Ahawath Chesed Shaar Hashoyim).

Central Synagogue has been part of the East Midtown community since 1870. Our current Sanctuary, located at the corner of East 55<sup>th</sup> Street and Lexington Avenue, was dedicated in 1872. Our congregation comprises over 2,000 households and more than 6,000 individuals, many of whom work and/or live in East Midtown. Since our inception, our congregants have been active participants in the religious, cultural, commercial and civic life of East Midtown and the City as a whole. Our institution is deeply committed to our City's welfare.

Each Friday evening and Saturday morning we open our Sanctuary doors to all who choose to enter, and many of our neighbors who live and work in East Midtown seek comfort, calm and spiritual fulfillment within our gorgeous Sanctuary. We also serve our congregants and the broader New York City community in many other important ways.

We appear at this hearing to encourage your full-fledged support of the East Midtown rezoning.

We treasure the landmark status of our Sanctuary, which was one of the earliest designated New York City Landmarks in 1966. Our Sanctuary became a National Historic Landmark in 1975. While our religious and educational missions will forever be our first priorities, we are immensely proud of our landmarked Sanctuary building, which we work hard to maintain for our congregants and for all of our neighbors and guests. The disastrous fire that severely damaged our Sanctuary in August 1998 and the subsequent restoration renewed our commitment to our neighborhood and our home.

Our Sanctuary has approximately 110,000 square feet of unused development rights. Current zoning provisions for the transfer of development rights on landmarks, however, do not provide adequate opportunities for us to transfer and sell these development rights to advance our mission. In particular, our Community House, located directly north of our Sanctuary across East 55<sup>th</sup> Street, sits on a merged zoning lot that is overbuilt by more than 20 percent, the limit for a receiving site in our zoning district. As a result, even our own Community House is ineligible to receive a transfer of our unused floor area. We therefore welcome the proposed modifications in the East Midtown Rezoning that will allow us and all owners of landmarks located in the ‘Northern Subarea’ of East Midtown – whether religious, non-profit or private – a broader opportunity, often on an as-of-right basis, to transfer unused floor area to development sites in East Midtown. This is an important and highly innovative land use refinement to the transfer mechanisms in the Zoning Resolution. It would provide owners of landmarked properties, who are currently unable to develop the full zoning potential of their properties, with a more flexible basis to transfer development rights to a broader range of receiving sites than those directly across the street, which is the limit in current zoning.

We thank you for proposing to incorporate this broader landmark transfer mechanism in response to our concerns and those of our sister religious institutions. We appreciate the complexities that your Council faces in balancing the many diverse issues required to keep East Midtown a robust and welcoming environment for business and tourism and our City’s status as the greatest city in the world. Real estate is not my professional field, but fellow congregants have explained to me and our clergy how daunting and important this rezoning task is. We wish you the Wisdom of Solomon in completing this exercise and respectfully and enthusiastically ask for your support.

LAW OFFICES OF HOWARD B. HORNSTEIN  
203 EAST 72ND STREET  
NEW YORK, NEW YORK 10021

October 22, 2013

LAND USE COMMITTEE  
ZONING AND FRANCHISE SUB-COMMITTEE

TESTIMONY OF HOWARD B. HORNSTEIN  
EAST MIDTOWN REZONING PROPOSALS AND LEGISLATION

MY NAME IS HOWARD B. HORNSTEIN, BY WAY OF BACKGROUND I SERVED AS A COMMISSIONER ON THE BOARD OF STANDARDS AND APPEALS FROM 1973-1976 AND I WAS A MEMBER OF THE CITY PLANNING COMMISSION FROM 1976-1984. I HAVE SPENT MY ENTIRE ADULT LIFE IN THE FIELD OF LAND USE AND ZONING. I TAUGHT FOR 12 YEARS AT ST. JOHNS UNIVERSITY SCHOOL OF LAW WITH THE LATE DEAN PATRICK ROHAN. THE COURSE WAS REAL PROPERTY AND MY COMPONENT WAS THE REVIEW AND STUDY OF ACTUAL MATTERS THAT APPEARED BEFORE THE NEW YORK CITY PLANNING COMMISSION.

I APPEAR BEFORE YOU TODAY NOT REPRESENTING A CLIENT BUT TESTIFYING IN FAVOR OF THE EAST MIDTOWN REZONING PROPOSALS AND LEGISLATION. IT IS MY BELIEF THAT THE PROPOSALS ARE CRUCIAL TO THE CONTINUED ECONOMIC VITALITY AND GROWTH OF NEW YORK CITY'S BUSINESS CORE. THESE PROPOSALS WILL HELP INSURE NEW YORK CITY CONTINUES AS THE WORLD CAPITOL. THE PROPOSAL ALLOWS FOR CONTROLLED GROWTH AND RENEWAL THAT WILL ENHANCE THE BUSINESS CORE AND STIMULATE SIGNIFICANT

ECONOMIC ACTIVITY IN TERMS OF DEVELOPMENT, CONSTRUCTION, AND OTHER JOBS IN THE OFFICE AND HOTEL AREAS.

THE LEGISLATION THAT IS BEFORE YOU TODAY I BELIEVE IS BALANCED AS TO THE DENSITY PROPOSED AND IS NOT EXCESSIVE. IT IS MY UNDERSTANDING THE BLOOMBERG ADMINISTRATION IS COMMITTING FUNDING FOR VARIOUS IMPROVEMENTS IN THE TRANSPORTATION SYSTEM IN THE AREA WHICH WILL BE A KEY ELEMENT OF SUPPORT FOR THIS LEGISLATION. TO TAKE NO ACTION OR A NEGATIVE VOTE WOULD GIVE A SIGNAL THAT NEW YORK CITY IS NOT PREPARED TO GROW AND RENEW ITSELF. THE CITY IS A LIVING DYNAMIC ORGANISM; GROWTH IS A KEY COMPONENT OF ITS ATTRACTIVENESS TO THE WORLD. WE KNOW WITH RAPIDITY OF DIGITAL AND WIRELESS COMMUNICATIONS WHERE BUSINESS LOCATES ITSELF TODAY IS NOT AS LIMITED AS IT WAS IN THE PAST. I URGE YOU TO VOTE IN FAVOR OF THE PROPOSAL. THE WORLD IS CHANGING SO RAPIDLY AS IT SAID IN A RELIGIOUS CONTEXT BUT IT IS MEANINGFUL IN ALL ELEMENTS OF LIFE. "IF I AM NOT FOR MYSELF WHO WILL BE FOR ME?" LET'S MOVE NOW AND BE FOR NEW YORK CITY.

FOR MORE INFORMATION CONTACT:

HOWARD B. HORNSTEIN  
THE LAW OFFICES OF HOWARD B. HORNSTEIN  
203 EAST 72<sup>ND</sup> STREET – SUITE 7B  
NEW YORK, NY 10021  
(212) 861-0162

Statement of Jerome Haims Realty Inc.  
to the New York City Planning Commission  
Regarding the East Midtown Rezoning  
October 22, 2013

I am Jerome Haims, the President of Jerome Haims Realty. My firm has been in existence for approximately 50 years. We have appraised many East Midtown properties during that time frame (properties along Park Avenue, Madison Avenue, Lexington Avenue, etc.) We have appraised the World Trade Center and the Empire State Building. Currently, we are engaged by the MTA to appraise the Second Avenue Subway. We are also currently engaged by the City to appraise the Columbia University expansion project.

We have prepared an appraisal that was submitted to the Planning Commission for the value of the the East Midtown Rezoning's commercial Transferable Development Rights. We have also prepared a critique of the Landauer Valuation & Advisory valuation at that time. Currently, we have prepared a critique of Landauer's valuation of the East Midtown Rezoning's residential TDRs, as well as a reply to Landauer's critique of our appraisal.

In this assignment, we were asked to value the commercial development rights pursuant to the East Midtown Rezoning. We believe that, absent site-specific analyses, at a minimum, the valuation of the East Midtown TDRs should be divided into the Grand Central, Park Avenue, Other-East, and Other-West sub-areas consistent with the sub-areas of the zoning. Setting a single price for a 70 block area is simply wrong.

We have utilized sales of land with the appropriate “C” zoning and analyzed and adjusted them to these sub-areas. This resulted in land values from \$500 to \$555 for the Park Avenue sub-area.

Since the development rights we are valuing are “floating,” we analyzed floating development right sales and we concluded a TDR value ratio of 80%, resulting in our value opinions as follows:

Park Avenue TDR Value:	\$445 per square foot
Grand Central TDR Value:	\$415 per square foot
Other West TDR Value:	\$430 per square foot
Other East TDR Value:	\$400 per square foot

These values appropriately reflect the sub-areas of the East Midtown Subdistrict.



We believe that floating development rights are a special category in comparison to zoning lot merger development rights where marketability is severely limited to the adjoining property.

Statement of Jerome Haims Realty Inc.  
to the New York City Planning Commission  
Regarding the East Midtown Rezoning  
October 22, 2013

I am Jerome Haims, the President of Jerome Haims Realty. My firm has been in existence for approximately 50 years. We have appraised many East Midtown properties during that time frame (properties along Park Avenue, Madison Avenue, Lexington Avenue, etc.) We have appraised the World Trade Center and the Empire State Building. Currently, we are engaged by the MTA to appraise the Second Avenue Subway. We are also currently engaged by the City to appraise the Columbia University expansion project.

We have prepared an appraisal that was submitted to the Planning Commission for the value of the the East Midtown Rezoning's commercial Transferable Development Rights. We have also prepared a critique of the Landauer Valuation & Advisory valuation at that time. Currently, we have prepared a critique of Landauer's valuation of the East Midtown Rezoning's residential TDRs, as well as a reply to Landauer's critique of our appraisal.

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These values appropriately reflect the sub-areas of the East Midtown Subdistrict.

We believe that floating development rights are a special category in comparison to zoning lot merger development rights where marketability is severely limited to the adjoining property.

**JEROME HAIMS REALTY, INC.**  
**REAL ESTATE APPRAISERS & CONSULTANTS**  
**630 THIRD AVENUE, NEW YORK, NY 10017**  
**212-687-0154, FAX 212-986-4017**

October 22, 2013

Midtown Trackage Ventures LLC  
551 Fifth Avenue, 34<sup>th</sup> Floor  
New York, New York 10176

Re: Reply to Landauer Valuation and  
Advisory's "Response to Haims 7/1/13  
East Midtown Rezoning DIBs Appraisal"

To Whom It May Concern:

We are submitting this letter in connection with the "Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal" ("the Response") from Landauer Valuation & Advisory ("Landauer"), a subsidiary of Newmark Grubb Knight Frank. This letter is intended as a reply to the certain criticisms by Landauer of our July 1, 2013, appraisal of the East Midtown DIB commercial development rights.

To reiterate, the City has tentatively established a contribution rate of \$250 per square foot for the DIB TDRs based on the Landauer valuation study (with a valuation as of December 2012). This rate represents a generic overall average that would be applicable regardless of the location of the receiver site for the DIB TDRs. In contrast, our opinions of the average values of the East Midtown DIB commercial transferable development rights, as of July 1, 2013, are:

VALUATION SUMMARY	
East Midtown Subarea	TDR Value
Grand Central	\$415.00
Park Avenue	\$445.00
Other - West	\$430.00
Other - East	\$400.00

In their Response, Landauer's criticism of our valuation of the East Midtown DIB commercial development rights is divided into three main subjects:

- Highest and Best Use Conflict;
- Floating vs. Zoning Lot Merger Values; and
- Direct vs. Indirect Approach.

Our reply to such criticisms is as follows.

**Midtown Trackage Ventures LLC**

**Re: Reply to Landauer Valuation and Advisory's**

**"Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal"**

**2.**

**Highest and Best Use Conflict**

Landauer contends that we have contradicted the proposed East Midtown zoning regulations by introducing residential land sales as representative of commercial land values in East Midtown. First and foremost, none of the seven comparable land sales utilized in our valuation analysis involved residential development. The sales are summarized below:

1. Commercial Site – Hotel  
30 West 46<sup>th</sup> Street  
Extell planned 194-room hotel  
Sold in 2012 to Cambria Suites.  
In 2013, plans approved for a 196-room hotel
2. Commercial Site – Retail and hotel  
516 – 520 Fifth Avenue  
Thor Equities purchased, primarily for its retail value
3. Commercial Site - Hotel  
138 – 146 East 50<sup>th</sup> Street  
Extell purchased this and two adjacent sites  
Adjacent to the W and San Carlos Hotels  
Identified as Site 17 in East Midtown EIS as hotel development site
4. Commercial Site – Hotel  
120 – 122 West 41<sup>st</sup> Street  
Hotel – M1-6 site, no residential allowed  
130 - room hotel planned by purchaser, Stanford Hotels
5. Commercial Site – Hotel  
45 – 47 West 38<sup>th</sup> Street  
Hotel – M1-6 site, no residential allowed  
180 – room hotel planned by purchaser, Lodgeworks
6. Commercial Site - Hotel  
447 – 451 Lexington Avenue  
Hotel Boutique Grand Central Opening in 2013  
92 – room hotel
7. Commercial Site – Hotel  
678 – 684 Lexington Avenue  
Hotel being planned by SOM for Marmara Hotel Group  
Negotiations to buy additional air rights for \$700 to \$1000 psf

**Midtown Trackage Ventures LLC**

**Re: Reply to Landauer Valuation and Advisory's**

**"Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal"**

**3.**

Clearly, the sales utilized in our analysis are commercial sales and are therefore appropriate for the appraisal problem at hand. Regardless of Landauer's misunderstanding of the facts, they further assert that recent sales within the East Midtown Subdistrict are irrelevant merely because those sites were purchased primarily for hotel and retail use.

Use is certainly one of the primary factors that should be compared in the valuation analysis. However, Landauer refuses to recognize that the use has to be considered within the context of the land sales' zonings. For Landauer to assert that a Midtown C-zoned site (permitting residential, hotel, or office uses) that was purchased for hotel use cannot be considered a substitute for an equally-zoned development site that will be developed with office use is short-sighted. If all factors are equal but for the intended development (permitted by zoning) of the buyer, then the price paid for such sites should be competitive, or equal, to one another. Just because hotel use is a site's highest and best use at a specific time does not mean that the market will accept a price from an office developer that is any lower than the price being paid for a hotel developer.

Landauer's argument is without merit since it does not reflect market realities. We stress that consistency in permitted uses (i.e., zoning) between the proposed qualifying sites and the comparable land sales used is all important. Our valuation maintains this constancy and reflects sound appraisal practice. If the intention of the East Midtown DIB pricing is to reflect market value, Landauer's criticism should be disregarded.

Landauer states that "the absence of land purchases in East Midtown for office use is also indicative that the economics of building new office buildings is less profitable than hotels." We do not disagree with this statement; it is a market reality. The appraisers have been tasked with opining on the market value of the proposed DIB commercial development rights as of a current date of value. Unfortunately, the recent past and current economic environment cannot support new office development. There is no denying that this makes for a very difficult valuation problem. However, the valuation has to reflect the market realities as of the date of value.

Landauer's answer to the above issue is to look far into the past and try to fit the realities of an entirely different economic climate into the current economic climate. Such an approach is very problematic and will quickly, as Landauer says of our valuation, "run afoul" of the intent of the proposed rezoning. To put it simply, the appraisal problem is

*What would a market participant have to pay currently to develop an office building "as-of-right" in the East Midtown subdistrict?*

**Midtown Trackage Ventures LLC**

**Re: Reply to Landauer Valuation and Advisory's**

**"Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal" 4.**

Again, the answer is simple. The price that would have to be paid would have to be at least as much as what market participants are paying for equally-zoned land that would permit the same development. At this point in time, those equally-zoned sites are being purchased by hotel developers. If two sites can accommodate the needs of a hotel developer and the needs of an office developer equally, then the market value of those two sites should be equal.

**Floating vs. Zoning Lot Merger Values**

Landauer criticizes our use of floating TDR sales in our analysis as opposed to TDR sales involving zoning lot mergers.

Landauer states that the Theater District floating TDR sales we utilize were either for residential condo apartments or hotel use development and that none were for office use. This criticism has no merit since our use of floating TDR sales was not for direct comparison on a price per square foot basis. Rather, we utilize the TDR sales to determine the correct TDR to fee land value ratio. These ratios are entirely applicable regardless of the proposed use.

Landauer states that we are incorrect in our belief that sellers of TDRs through zoning lot mergers have less bargaining power than do sellers of floating TDRs. They offer five reasons for this:

- Landauer states that floating TDRs have multiple sellers competing with each other for a sale to a single buyer at any given time which may depress prices.

We disagree. TDRs being negotiated via a zoning lot merger more often than not involve only one buyer and one seller. The bargaining power of the seller is significantly lower. In a zoning lot merger, the buyer typically has the ability to successfully develop their site without the TDRs. If the TDRs seller cannot strike a deal with the buyer and the buyer develops their site without the TDRs, it is highly likely that the seller will not have another opportunity to sell their TDRs again. Therefore, there is tremendous motivation on the seller's side and this typically results in lower TDR to fee value ratios. In the case of floating TDRs, a deal that does not occur today with one buyer can be accomplished with a different buyer at a later time. The value of the TDRs is not lost forever. Further, buyers of floating TDRs typically have no other source of TDRs, thereby weakening their negotiating power. Therefore, buyers of floating TDRs are more likely to pay for TDRs at a higher TDR to fee value ratio. This is clearly demonstrated by the floating TDR sales presented in our appraisal report.



**Midtown Trackage Ventures LLC**

**Re: Reply to Landauer Valuation and Advisory's  
"Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal" 5.**

- Landauer states that in every market there can be desperate buyers and desperate sellers.

We agree. This very reason is why the valuation of the East Midtown TDRs should be valued on an individual basis, taking into consideration the specific characteristics of the receiver sites (especially location).

- Landauer states that floating TDR sales only add potential for increased story height.

We agree somewhat. Landauer forgets that the East Midtown DIB TDRs will only be available for qualifying sites that will primarily be full block-front sites on major avenues. For such sites, the DIB will only provide the potential for increased story height and bulk. Therefore, floating TDR sales are the ideal market evidence for the valuation of the DIB TDRs.

- Landauer states that a buyer of zoning lot merger TDRs for an adjacent lot is motivated to pay up for the TDRs because the TDRs can also include lot line window easements and view corridor protection that further enhance the overall project.

This is true. However, as mentioned in the prior point, the qualifying sites in the East Midtown subdistrict are block-front sites that have no need for lot line window and view corridor easements. This aspect of zoning lot merger TDRs is a significant reason to exclude such TDR sales from the valuation of the East Midtown DIB TDRs. In their appraisal report, Landauer makes no attempt to account for this very distinction between floating TDR sales and zoning lot merger TDR sales. The qualifying sites already have a lot area and basic (unbonused) bulk that affords significant height and views. The DIB TDRs primarily add bulk and height. Floating TDR sales are not tainted by the possible benefits of lot line windows and view protection. Landauer's point only supports our use of floating TDR sales as being the most comparable (in terms of TDR to fee value ratio) to the subject DIB TDRs.

- Landauer states that the purchase of floating TDRs will not accomplish the same protection as zoning lot merger TDRs.

Again, this is true. However, this factor is not relevant to the DIB TDRs and the qualifying sites that have been identified in the proposed East Midtown rezoning.

Landauer concludes this segment of their Response by stating the above reasons support their notion that zoning lot merger TDRs can be more valuable than floating TDRs. If this is the case, then why do floating TDR sales tend to have TDR to fee land value ratios that are much greater than those demonstrated by zoning lot transfer TDR sales? Landauer's criticism is not logical and ignores the realities of the marketplace and the likely actions of buyers and sellers in the context of the TDR purchases envisioned for the DIB TDRs.

**JEROME HAIMS REALTY, INC.**

**Midtown Trackage Ventures LLC**

**Re: Reply to Landauer Valuation and Advisory's**

**"Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal"**

**6.**

### **Direct vs. Indirect Approach**

Landauer praises the Direct Approach to value TDRs because it is "straight forward and involves selection and analysis of TDR sales comparables to determine a value indication directly from the data." Landauer states that we should have also considered the direct approach in our valuation analysis as "a useful second alternative for determining value."

We agree that using both approaches is ideal. However, as appraisers, we must utilize our experience and judgment to determine what approaches to value are appropriate for the appraisal problem at hand. Regardless of our belief that zoning lot merger TDRs are just not applicable for the valuation of the DIB TDRs (both for direct or indirect comparison), Landauer's analysis of the TDR sales in their appraisal is non-existent. Landauer only makes adjustments for time.

As Landauer points out, zoning lot merger TDR sales can involve other value-making factors such as lot line window and view corridor easements. Landauer's analysis via the direct approach is not really an analysis. The direct approach for TDR valuation is the same as the Sales Comparison Approach that is part of the indirect approach. Such an analysis must account for as many items of comparison as possible. Such items include location, amount of TDRs, size of the receiver site (both lot area and developable bulk), zoning, views, height, just to name a few. Landauer provides no discussion of such factors and no analysis of such factors. A time adjustment alone does not account for the intricacies of the TDR sales they rely on. We recognized the pitfalls of employing the direct approach in this appraisal assignment and, in our professional judgment, we decided that such an analysis is not warranted given the market data available. We have provided valid reasons for excluding the direct approach and we believe that its exclusion is necessary for a sound opinion of value.

Landauer also criticizes our indirect approach by the following points:

- Landauer states that our land sales are not for office use.

For the reasons stated previously herein, the land sales utilized in our analysis are valid and applicable to the appraisal problem at hand. They reflect the appropriate zoning and location for a meaningful valuation analysis.

- Landauer states that our land sales are not of the same magnitude as those of the qualifying sites.

Our analysis adequately adjusts for size differences to make the comparable sales "equal" to the likely receiver site in the subdistrict.

**Midtown Trackage Ventures LLC**

**Re: Reply to Landauer Valuation and Advisory's  
"Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal" 7.**

- Landauer states the majority of the land sales involved hotel development, but our location adjustments are based on office rent differences in the area.

Our use of office rent differences as a basis for our location adjustments is completely valid given the fact that the use of the subject DIB TDRs will be for office use. Further, the locational characteristics behind the appeal of hotel locations is not so unlike the locational characteristics that drive the appeal of office locations. Both uses recognize and desire good central locations near public transportation and cultural amenities.

Landauer also criticizes the floating TDR sales utilized in our appraisal. Landauer states that our TDR sales involved only four receiver sites, thereby diminishing the effectiveness of the comparable TDR sales. Landauer fails to note that the TDR sales, while transferring to four receiver sites, involved a number of donor sites (various theaters and donor sites in the West Chelsea District).

Landauer takes issue with the fact that the TDR sales we utilize involved only residential condos and hotels. We stress that the indirect approach is meant to establish a ratio. That ratio is much less tied to the use of the TDRs in question than a direct comparison of TDR sales prices. The ratio is a universal relationship that is applicable to the DIB TDRs regardless of the restriction of the TDRs to office use. Further, the underlying valuation of the likely receiver site accounts for use and other site-specific factors. Landauer's criticism is no valid.

Landauer claims that the higher TDR to fee land value ratios exhibited by floating TDR sales is primarily due to the fact that our TDR sales were for hotel and residential development. Landauer states that residential projects enjoy more value enhancement by the purchase of TDRs than do hotel or office projects. This is simply not true. The added height that TDRs provide to hotel and office projects provides significant benefits. Higher floors for both hotels and office buildings translate to higher room rates and office rents. There are many office tenants that command the prestige of higher floors with impressive views. In fact, higher floors for residential use have a threshold where residents become disconnected from the neighborhood at street level. This is not the case for office users that conduct business on a daily basis and can add to their presence and reputation by the office space they occupy. The ratios of the floating TDR sales in our appraisal are applicable to residential, hotel, or office use.

**Midtown Trackage Ventures LLC**

**Re: Reply to Landauer Valuation and Advisory's**

**"Response to Haims 7/1/13 East Midtown Rezoning DIBs Appraisal"**

**8.**

In summary, Landauer's Response to our appraisal report is incorrect and fails to provide any significant criticism that would lead us to revise or change our opinion of values for the East Midtown DIB TDRs. We believe that we have developed a reliable opinion of market value that reflects current market realities and is more specific to the East Midtown Subdistrict than Landauer's valuation.

Very truly yours,

JEROME HAIMS REALTY, INC.



Jerome Haims, MAI, CRE, FRICS  
President  
Certified New York State  
General Real Estate Appraiser  
Certificate No. 46000003369



Yamil N. Arocho  
Vice President  
Certified New York State  
General Real Estate Appraiser  
Certificate No. 46000045109

**JEROME HAIMS REALTY, INC.**

**JEROME HAIMS REALTY, INC.**  
**REAL ESTATE APPRAISERS & CONSULTANTS**  
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**212-687-0154, FAX 212-986-4017**

October 22, 2013

Midtown Trackage Ventures LLC  
551 Fifth Avenue, 34<sup>th</sup> Floor  
New York, New York 10176

Re: Critique of Landauer Valuation &  
Advisory's September 23, 2013,  
Appraisal of the East Midtown Rezoning  
District Improvement Fund  
Bonus (DIB) for Residential Use

To Whom It May Concern:

We are submitting this letter in connection the residential transferable development rights (TDRs) associated with the District Improvement Bonus mechanism of the modified proposed East Midtown rezoning. This letter is intended as a critique of the September 23, 2013 City-commissioned residential development rights appraisal prepared by Landauer Valuation & Advisory ("Landauer"), a subsidiary of Newmark Grubb Knight Frank.

In their appraisal, Landauer opines as to the approximate expected average value, of the proposed East Midtown Rezoning's District Improvement Bonus (DIB) residential Transferable Development Rights (TDRs) to be sold by the City to developers of qualified sites within the proposed East Midtown Subdistrict. The DIB TDRs are comparable to "floating" development rights in that they may be used on any qualifying site in the Subdistrict. The recent modification of the proposed rezoning permits developers of projects utilizing the DIB mechanism to develop up to 20% of the project with residential or hotel uses.

Landauer has established a value of \$360 per square foot for the DIB residential TDRs (as of September 2013). Landauer's value represents a generic overall average that would be applicable regardless of the location of the receiver site for the DIB TDRs.

We have carefully reviewed the September 23, 2013, Landauer Report and we disagree with the analyses and opinions reported therein. We are of the opinion that Landauer has understated the market value of the residential DIB TDRs located within the Subdistrict.

**Midtown Trackage Ventures LLC**

**Re: Critique of Landauer Valuation & Advisory's  
September 23, 2013, Appraisal of the  
East Midtown Rezoning District  
Improvement Fund Bonus (DIB) for Residential Use**

**2.**

In their appraisal, Landauer utilizes two approaches commonly utilized by appraisers to value TDRs. The first approach, commonly referred to as the Direct Approach, involves the analysis of comparable sales of TDRs and a direct comparison to the subject TDRs. A unit value (per square foot) is then selected for the subject TDRs.

The second approach, commonly referred to as the Indirect Approach, involves a determination of the market value of the TDR receiver site and then applying a market-based ratio (between TDRs and fee land value) to the receiver site's land value to arrive at an opinion of value for the subject TDRs. This indirect approach acknowledges the critical importance of the tie between the value of TDRs and the value of the land where the TDRs will be utilized.

**Direct Approach**

For the valuation problem at hand, we are of the opinion that the Direct Approach is not applicable and that Landauer's use of the Direct Approach results in an unreliable opinion of market value for the East Midtown DIB residential TDRs. Landauer's Direct Approach valuation has several flaws, which include:

- Landauer presents only three TDR sales located within the East Midtown Subdistrict that occurred in 2006. These TDR sales in Landauer's valuation are simply too old to produce a reliable and realistic opinion of a contemporary market value of the DIB residential TDRs.

These sales involved three sellers and the same buyer. The \$256.09 per square foot average time-adjusted price paid in for these TDRs cannot be directly compared to the subject floating DIB TDRs. In the case of these TDR sales, the buyer had already amassed a very large site surrounding the smaller donor sites. The receiver site (the former Drake Hotel site) is so large that the buyer had tremendous leverage with the sellers because the receiver could be developed without the TDRs. Therefore, the donor site's had no other viable opportunity to sell their TDRs. The buyer could simply walk away from the deal. Such bargaining leverage likely prevented the sellers from realizing the higher values that are exhibited by Landauer's other TDR sales. This is supported by the fact that there are more recent TDR sales in inferior neighborhoods (such as East 22<sup>nd</sup> and 23<sup>rd</sup> Streets) that traded at much higher prices (\$277.87 to \$592.44 per square foot).

- Landauer presents nine residential TDR sales located outside the East Midtown Subdistrict. The sales transpired between June 2006 and June 2013. The time-adjusted prices per square foot for these TDR sales range from \$179.60 to \$592.44 per square foot, with an average of \$395.09 per square foot. Landauer recognizes that the oldest sale, at \$179.60 per square foot, is an outlier. The second oldest sale from September 2008 should also be disregarded as being too old.

**JEROME HAIMS REALTY, INC.**

**Midtown Trackage Ventures LLC**

**Re: Critique of Landauer Valuation & Advisory's  
September 23, 2013, Appraisal of the  
East Midtown Rezoning District  
Improvement Fund Bonus (DIB) for Residential Use**

**3.**

Eliminating the two oldest TDR sales from Landauer's analysis, the time-adjusted price range then becomes \$277.87 to \$592.44 per square foot, with an average of \$436.91 per square foot. Landauer states that they give greater consideration to the more current dates of the eight TDR sales from outside the East Midtown Subdistrict (excluding the outlier) and that "an average value approximating \$350 to \$400 per square foot of FAR is generally indicated." This conclusion is contrary to what the sales that Landauer gives greater consideration to actually indicate. The average price (excluding the outlier) is actually \$422.35 per square foot. As previously noted, if the second oldest sale is also excluded from consideration, the average is \$436.91 per square foot. Also, four of the nine sales have prices well over \$400 per square foot. This is all without any consideration by Landauer that the subject East Midtown Subdistrict is a superior neighborhood than the locations associated with their TDR sales.

Given the TDR sales data presented by Landauer, it is clear that a conclusion of value of \$360 per square foot for the DIB residential TDRs is a significant understatement of value.

- Landauer fails to make adjustments to the TDR sales (except for time) to account for differences in location. East Midtown has distinct subareas (as the proposed zoning itself acknowledges by defining these areas and establishing different rules for each). The differences in these subareas must be reflected in the valuation of the DIB residential TDRs.
- Landauer's TDR sales reflect TDR discounting that is typical for zoning lot merger TDRs transfers. It is crucial to distinguish TDRs sold via a zoning lot merger from TDRs sold as "floating" TDRs. Typical TDR transfers are achieved through zoning lot mergers, where the donor site must be contiguous (for at least 10 feet) with the receiver site for the TDRs. When TDRs are sold through a zoning lot merger, the number of potential buyers is severely limited and the bargaining power of the seller is weak. Thus the value of the TDRs is artificially depressed. Landauer only considers TDR sales that involved a zoning lot merger. Therefore, Landauer's TDR sales are not comparable to the DIB residential TDRs.

Despite being inapplicable, Landauer's Direct Approach valuation lacks adequate analysis of the data presented to be considered reliable. Further, the indication of value for the East Midtown DIB residential TDRs based on a correct analysis of the data presented in Landauer's Direct Approach strongly suggests an average value of at least \$436 per square foot of FAR.

**Midtown Trackage Ventures LLC**  
**Re: Critique of Landauer Valuation & Advisory's**  
**September 23, 2013, Appraisal of the**  
**East Midtown Rezoning District**  
**Improvement Fund Bonus (DIB) for Residential Use**

4.

**Indirect Approach**

We believe that the Indirect Approach is most appropriate for the valuation of the East Midtown DIB residential TDRs. Due to the inextricable connection between the value of the receiver site and the value of the TDRs, a careful analysis of land values in the Subdistrict is warranted. Landauer's Indirect Approach has several flaws, which include:

- Landauer presents only three land sales located in the Subdistrict, but their analysis and consideration of those sales is questionable. The first sale is the February 2006 sale of 510 Madison Avenue, which Landauer adjusts for time to \$428.73 per square foot of FAR.

The second sale is the sale of 434-442 Park Avenue (the former Drake Hotel site) in January 2010. Landauer adjusts this sale for time to \$843.70 per square foot of FAR.

The third sale is the sale of 145-147 East 47<sup>th</sup> Street in May 2011, which Landauer adjusts for time to \$384.72 per square foot of FAR.

Of the three land sales, the third sale is simply not comparable to the typical qualifying site under the proposed East Midtown Rezoning. The third sale is relatively small mid-block development site. Given the lack of any adjustments to the Landauer's fee land sales (except for time), it is not appropriate to give any significant weight to this sale. In developing their opinion of the DIB residential TDR value, Landauer notes that the average price per square foot for these three sales within the Subdistrict is \$552.38 and that using a 70% TDR to fee land value ratio results in a TDR value indication of \$386.67. This implied value is significantly skewed by Landauer's third sale.

Landauer indicates that "in the case of 434-442 Park Avenue, it is considered to be a 100% location within the proposed East Midtown Subdistrict." In other words, Landauer considers the \$843.70 per square foot time-adjusted price of this sale to be the high end of the fee land values in the East Midtown Subdistrict. If that is the case, then the \$552.38 per square foot average price which Landauer considers is only 66% of the \$843.70 top value for the Subdistrict. This is entirely unreasonable since the majority of the qualified sites within the Subdistrict that can use the DIB residential TDRs will be located along the major corridors of Madison, Park, Lexington and Third Avenues. The variance in land values for qualifying sites from Landauer's "100%" location should not exceed 20%. That is, such sites should command values between \$675 per square foot and \$844 per square foot.



**Midtown Trackage Ventures LLC**

**Re: Critique of Landauer Valuation & Advisory's  
September 23, 2013, Appraisal of the  
East Midtown Rezoning District  
Improvement Fund Bonus (DIB) for Residential Use**

**5.**

Landauer's understatement of the fee land values within the Subdistrict is a direct result of including their third, non-comparable sale in the average. Only Landauer's first and second land sales within the Subdistrict are indicative of land values for qualifying receiver sites. Excluding the third sale from the average results in an average time-adjusted price of \$636.22 per square foot of FAR for development sites within the Subdistrict. This more realistic average price represents a price point that is 75% of the \$843.70 per square foot price considered to be the 100% price point by Landauer.

By giving no weight to Landauer's third land sale within the Subdistrict and considering an average fee land value of \$636 and Landauer's same 70% TDR to fee land value ratio, the indicated value of the DIB residential TDRs (from these sales) becomes \$445 per square foot. This is significantly higher than Landauer's \$360 per square foot opinion of value for the East Midtown DIB residential TDRs.

- Landauer also presents a set of 17 land sales located outside the East Midtown Subdistrict. The sales occurred between May 2006 and June 2013, with 10 of the sales occurring between 2011 and 2013.

Landauer makes adjustments to these sales for time, but fails to make adjustments for location or other characteristics that affect land prices.

As previously noted, Landauer considers the location at 434-442 Park Avenue, with a time-adjusted price of \$843.70 per square foot to be the "100%" location. In comparison, the \$492.83 average of Landauer's 17 sales outside the Subdistrict is far below that of the 100% location. In fact, the average of the 17 sales represents only 58.4% of the 100% location price. This alone suggests that the 17 land sales warrant significant upward location adjustments. By using the time-adjusted prices for these 17 sales without any location adjustments is inappropriate and leads Landauer to severely understate the value of the East Midtown DIB residential TDRs.

Landauer considers the \$492.83 per square foot average time-adjusted price of the 17 land sales located outside the Subdistrict and applies their 70% TDR to fee land value ratio to arrive at an indication of TDR value of \$344.98 per square foot. The average time-adjusted price of those of the 17 land sales which occurred in 2012 and 2013 is \$548.38 per square foot. Utilizing Landauer's 70% TDR to fee land value ratio (which we believe to be too low) and the \$548.38 per square foot average price of the more recent land sales results in an indication of value of \$383.87 per square foot of FAR. As we will discuss later, a higher TDR to fee land value ratio is warranted and, therefore, the indicated value from these more recent land sales outside the Subdistrict would be greater than Landauer's \$360 per square foot DIB residential TDR value opinion.

**Midtown Trackage Ventures LLC**

**Re: Critique of Landauer Valuation & Advisory's  
September 23, 2013, Appraisal of the  
East Midtown Rezoning District  
Improvement Fund Bonus (DIB) for Residential Use**

**6.**

- Landauer also fails to recognize the various subareas within the district and the differences in land values that each subarea could command. The East Midtown Subdistrict has unique areas (as evidenced by the City's division of the Subdistrict into subareas). It is unrealistic for Landauer to assign a generic unit land value to the entire Subdistrict.
- In order to select a TDR to fee land value ratio for their Indirect Approach, Landauer presents 28 paired TDR and fee land sales that exhibit ratios ranging from 17.4% to 145.8%. Landauer concludes that TDRs should be valued at 70% of the value of the receiving site fee land. That ratio is largely representative of ratios achieved for TDRs acquired via a zoning lot merger. Acquisition of TDRs via a zoning lot merger is not the same as the acquisition of "floating" TDRs, like the East Midtown DIB residential TDRs. Zoning lot mergers typically include only one buyer. As such, that buyer has significant bargaining leverage and, therefore, the price paid for TDRs is at a significant discount to the fee land value of the receiver site. Floating TDRs have a multitude of potential buyers and are not restricted to an adjacent receiver site. Therefore, floating TDRs can achieve, and where they are permitted have achieved, prices at a lesser discount to the fee land value of the receiver site.

Of their 28 paired TDR and fee land sales, nine of the transactions involved floating TDRs within the Theater Subdistrict or the Highline corridor the Special West Chelsea District. Those nine transactions demonstrate TDR to fee land value ratios of 33.4% to 145.8%, with an average of 89.6%. In contrast, the balance of the 28 pairs has an average of only 57.6%. The difference between floating TDR ratios and zoning lot merger TDR ratios is dramatic.

Landauer ultimately concludes that "based on the available data, a reasonable ratio of prices on a per square foot of FAR basis for TDRs as a percentage of fee land that adopts a longer term perspective appears to be within 10 percentage points of 70% of the value of the receiving site fee land." Therefore, Landauer considers ratios as high as 80% to be reasonable. As we have shown, the ratios demonstrated by the truly comparable floating TDR transactions presented in Landauer's appraisal show an average ratio of just under 90%.

We believe that a ratio between 80% and 90% is appropriate for the valuation of floating development rights. Landauer's 70% ratio, which is distorted by zoning lot merger TDR sales, is simply too low and does not reflect the realities of the marketplace.

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**7.**

- Landauer supports their \$360.00 per square foot conclusion of value for the East Midtown DIB residential TDRs via the Indirect Approach by considering two separate value indications. The first value indication is based on the time adjusted average fee land sales price based on the comparable land sales within the East Midtown Subdistrict (\$552.38 per square foot of FAR) and a 70% TDR to fee land value ratio. The indicated value of the TDRs is \$386.67 per square foot of FAR.

$$\$552.38/\text{sq.ft. of FAR} \times 0.70 = \$386.67/\text{sq.ft. of FAR}$$

The second value indication is based on the time adjusted average fee land sales price based on the comparable land sales outside the East Midtown Subdistrict (\$492.66 per square foot of FAR) and a 70% TDR to fee land value ratio. The indicated value of the TDRs is \$344.86 per square foot of FAR.

$$\$492.66/\text{sq.ft. of FAR} \times 0.70 = \$344.86/\text{sq.ft. of FAR}$$

Landauer reconciles these two value indications with the value indication via the Direct Approach to support their ultimate \$360.00/sq.ft. of FAR conclusion of value for the East Midtown DIB residential TDRs.

As we have demonstrated, the average fee land price for the sales located within the East Midtown Subdistrict should exclude the Landauer's third sale, resulting in an average of \$636.22 per square foot of FAR. Utilizing this more realistic land value and a more realistic TDR to fee land value ratio of 80% to 90% would result in a value indication ranging from \$508.92 to \$572.60 per square foot of FAR.

$$\$636.22/\text{sq.ft. of FAR} \times 0.80 = \$508.92/\text{sq.ft. of FAR}$$

$$\$636.22/\text{sq.ft. of FAR} \times 0.90 = \$572.60/\text{sq.ft. of FAR}$$

As we have demonstrated, the average time-adjusted price of those of Landauer's 17 land sales (located outside the East Midtown Subdistrict) which occurred in 2012 and 2013 is \$548.38 per square foot. Utilizing this more realistic land value and a more realistic TDR to fee land value ratio of 80% to 90% would result in a value indication ranging from \$438.70 to \$493.54 per square foot of FAR.

$$\$548.38/\text{sq.ft. of FAR} \times 0.80 = \$438.70/\text{sq.ft. of FAR}$$

$$\$548.38/\text{sq.ft. of FAR} \times 0.90 = \$493.54/\text{sq.ft. of FAR}$$

**Midtown Trackage Ventures LLC**

**Re: Critique of Landauer Valuation & Advisory's  
September 23, 2013, Appraisal of the  
East Midtown Rezoning District  
Improvement Fund Bonus (DIB) for Residential Use**

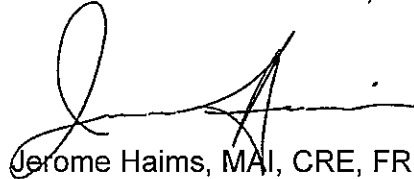
**8.**

Given the value indications presented above, it is reasonable to conclude a TDR value between \$450 and \$550 per square foot, assuming a correct analysis of the data presented in the Landauer appraisal.

In summary, Landauer's valuation of the East Midtown DIB residential TDRs is based on faulty analyses that result in a significantly understated and overly generic opinion of value of \$360 per square foot of FAR. We have demonstrated herein that correct analyses of Landauer's very own market data strongly suggests that the East Midtown DIB residential TDRs could command a much higher value than \$360 per square foot of FAR.

Very truly yours,

JEROME HAIMS REALTY, INC.



Jerome Haims, MAI, CRE, FRICS  
President  
Certified New York State  
General Real Estate Appraiser  
Certificate No. 46000003369



Yamil N. Arocho  
Vice President  
Certified New York State  
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**JEROME HAIMS REALTY, INC.**

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10.22.2013

**Statement on East Midtown Rezoning and Lever House (verbal)**

I am Jim Korein, CEO of Omnispective, a family-owned business. My grandmother, Sarah Korein, was one of the first women in New York City's real estate industry. We are the owners of Lever House, a landmark since 1982. Lever House has in excess of 300,000 square feet of unused development rights. The building is leased to an unrelated third party.

Currently, the owner of a building that is not landmarked may demolish the building and build a new one, as-of-right, using all its development rights. But the owner of a building **landmarked for the public good** is essentially precluded from using its unused development rights on the landmark site.

While the original proposal made matters far worse for existing landmarks, the amended proposal provides a clearly defined landmark air rights transfer mechanism, analogous to that proposed for the air rights appurtenant to Grand Central Terminal.

We hope this will allow us to structure a plan to continue to maintain and improve Lever House, **as we have done before**. By 1998, the steel and spandrel glass of the Lever House curtain wall had severely deteriorated. **We provided the new lessee favorable ground rent for its first 20 year term on the condition that it renovate the curtain wall, which cost approximately \$15 million.**

My family and I are committed to the long-term preservation and improvement of landmarked buildings in New York. Between 2005 and 2007, **we undertook a major renovation of 240 CPS, another landmark, at a cost of over \$20 million and were awarded a Lucy G. Moses Landmarks Conservancy Restoration Award.**

The purpose of the East Midtown Rezoning is to ensure that this district remains competitive. In its current, amended form, the rezoning proposal addresses both new buildings and landmarked buildings. **We believe it will put us in a position to make further capital improvements to Lever House within the next decade. Lever House will belong to our family for generations to come, and we are committed to ensuring that it remains an iconic and competitive building, which is in our long-term economic interest.**

We fully support the rezoning proposal and urge the Council to adopt it in its current form.

# THE CITY CLUB OF NEW YORK

FIGHTING VIGOROUSLY FOR THE URBAN ENVIRONMENT AND RESPONSIBLE GOVERNMENT

Statement of Michael Gruen, President of the City Club

Re East Midtown Rezoning Proposal

New York City Council Land Use Committee

October 22, 2013

The City Club agrees that too little study has been given to this proposal. It has serious planning flaws and fatal legal weaknesses.

On planning issues, we are generally in accord with other public interest groups opposing the proposal. Our comments may not cover precisely the same issues, but we do not mean to appear in conflict. Our position on the planning issues is spelled out in a written statement we are submitting to you today

On the law, very briefly, we believe that the proposal exceeds the zoning power. It constitutes zoning for sale, a practice condemned by the New York courts. It also violates standards for regulatory takings defined in a series of US Supreme Court cases commonly known as Nollan and Dolan.

These Supreme Court cases specifically address “exactions,” meaning conditions or charges imposed by government on the issuance of permits for construction or other uses of land. The contemplated charge of \$250 per square foot that a developer wanting to use the new zoning rights involved here must pay in order to get a building permit is an “exaction.”

Exactions are constitutionally suspect because they force the owner to make a choice between acceding to the condition or making the demanded payment, on the one hand, or not doing so and being unable to use the owner’s property in an otherwise permissible manner. Exactions are not necessarily illegal. But they must meet tests requiring a close relationship between the exaction and the land use objective the government legitimately would accomplish by denying the permit. They must also be reasonably proportional to the burden the projected development would place on public systems.

For reasons that are fully explained in documents on our website, [www.cityclubny.org](http://www.cityclubny.org), the charges here do not meet the Supreme Court’s standards. If adopted, the charges, we believe, will be declared void by a reviewing court. The upzoning, however, will be deemed valid and will survive unless the Council explicitly states its intention that the two must stand or fall together.

THE CITY CLUB OF NEW YORK  
PAGE 2

The Commission's report on the proposed rezoning expresses some disagreement with our legal conclusions. A second written statement we are submitting to you today, and e-mailed to you last week, explains why we think the Commission is mistaken on every one of its points.

This proposal was prepared in haste by the Planning Commission. It deserves far deeper consideration than the Commission has been able to give to it. We urge that it be rejected at this time so that the Commission may give it further attention in the coming year.

# THE CITY CLUB OF NEW YORK

FIGHTING VIGOROUSLY FOR THE URBAN ENVIRONMENT AND RESPONSIBLE GOVERNMENT

## East Midtown: Revisit and Revise

Statement for City Council, October 22, 2013

What might be done with an extra year to improve upon an over-hastily produced plan now before you?

Below are five areas of investigation that could lead to a better proposal, worthy of New York City, with broad support and less risk of successful legal challenge.

The Planning Commission's proposal remains fundamentally flawed. The City Club urges that the plan be disapproved in order to refer it back to the Planning Commission with a request for reconsideration based on further public input. The Commission should be asked to submit a new proposal by December 31, 2014.

Without pretending to be exhaustive, we propose that the Commission should reconsider the following issues:

### **Vision and Public Policy**

The proposal lacks a proper foundation. The Planning Commission has not made a sufficient study of what makes East Midtown attractive as a business address? Is it a monoculture of very large businesses occupying very large floor plates? Or does it include such other factors as:

- Smaller service businesses requiring smaller space in less expensive buildings.
- Restaurants and diversified retail stores with individualized as well as chain food and merchandise.
- Galleries and other cultural venues.
- A variety of open spaces for rest, reflection and socializing.
- A mixture of attractive (including landmark-quality) older buildings along with the new, assuring a sense of continuity.

One foundation of East Midtown's attractiveness is access – both to the place and among the activities and people within and near the place. It is access and the urban environment that brings the large new office buildings, not the reverse. The plan must become far more specific in identifying transportation and access needs and how to solve them.



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It has long been City policy to spread commercial office development from East Midtown to other parts of the city in order to reduce congestion, and to promote economic development and job creation throughout the City.

The zoning proposal for East Midtown seems intended to reverse that policy.

- Before making such a change there should be a thorough market and economic study that relates the public investment in infrastructure, particularly transit, and the private investment in commercial real estate.
- The impact of East Midtown rezoning on such other commercial growth centers as Downtown, Hudson Yards, Long Island City, and Jamaica should be studied with far greater care than has been devoted to this issue to date.

## **Transit Infrastructure**

Aside from the Grand Central subway stations and East Side Access, the following should be addressed:

- A direct rail connection between Penn Station and Grand Central to allow NJ Transit and Amtrak to serve the east side.
- One-seat rail access to each of the three airports.
- Light rail service in a pedestrianized 42 Street.

It seems doubtful that a successful effort to preserve East Midtown's pre-eminence in the business world can be accomplished without close attention to the transportation network serving the area and connecting it not only to other parts of the City, but to the world.

## **Urban Design**

Essential to the future attractiveness of East Midtown is the plan for the public realm. This includes the physical envelopes of buildings and the relationships of the bottoms of the buildings to the streetscape. In the immediate area of Grand Central Terminal, it also includes the interrelation of buildings, transit facilities, and streets, including the interior and underground passages and spaces for public circulation and activities.

The effort should:

- Identify existing elements of the Grand Central area pedestrian system that should be improved or reopened.
- Identify useful extensions of that pedestrian system both in existing buildings and in probable development sites.
- Examine how East Side Access could be made more commodious and better integrated into the Grand Central system.

# THE CITY CLUB OF NEW YORK

- Study how best to employ the market for transferrable development rights.

## Conservation

Readdressing East Midtown during 2014 would allow more time for the Landmarks Commission to do its work. The plan itself needs to address these preservation issues:

- The proposed zoning compels demolition of existing buildings by anyone wanting to take advantage of the new zoning. That should not be necessary. Many of New York's big buildings accommodate sites that could not be included in an assemblage (see *Holdouts* by Andrew Alpern and Seymour Durst, 1984), often to the benefit of the streetscape.
- In the Theater District the zoning lists theaters as protected from demolition. A similar approach might be taken to protect the remaining buildings that help define the Grand Central area and distinguish it from surroundings such as Park Avenue.

## Funding

It is a principle of the Multi-Board Task Force that "infrastructure should precede development". It is also important that there be an equitable relationship between those who bear the cost of improvements and those who benefit from them.

One objection to the current proposal is that there is no mechanism to ensure that improvements that are already needed would be funded immediately without waiting until development occurs. A second objection is that improvements that have broad benefits, including easing the commute to Lower Manhattan would be funded by a few developments in East Midtown. And a third objection is that some of the work is supposedly already funded as part of East Side Access and the extension of the 7 subway line; it appears that the plan contemplates replacing that existing funding with funding from the purchase of development rights under the new rezoning.

The legal problem of selling zoning rights as opposed to imposing legitimate development impact charges, requires careful study. If the scheme is to survive as an impact charge, the following issues must be addressed:

- A strong evidentiary basis for allocating actual costs of infrastructure development among developers, public, and possibly developers outside the sub-district must be established. This requires knowing the nature and cost of each improvement which will be part of the plan.
- Non-severance clause. It is probable that a court finding illegal the requirement that an owner pay a charge to enjoy the full benefit of the zoning would nevertheless allow the increased floor area allowance to remain in effect. The City will have the new buildings but not the funding it anticipates.

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The inclusion of a severability clause in a legislative act raises a presumption that the Legislature intended the act to be divisible." N.Y. Stat. Law § 150 (McKinney). One would assume that the inclusion of a non-severability clause would raise the opposite presumption.

# THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

City Club Rebuttal of Planning Commission Legal Position  
October 21, 2013

## Summary

The City Planning Commission has sought in its Report on East Midtown Rezoning to rebut the City Club's position that the rezoning scheme's sale of zoning rights feature. This page briefly summarizes the City Club's response which is set forth full on subsequent pages.

The zoning power is limited. It does not extend to illegal actions. These include the sale of zoning rights and imposition of unconstitutional conditions on exercise of property rights.

1. **CPC: This is an "innovative" "incentive zoning mechanism" (CPC Rept. 49).**

**CCofNY:** It may be innovative, but it is not "incentive zoning" as commonly understood.

2. **CPC: The City has done substantially the same thing at Hudson Yards (ZR 93-31), and West Chelsea (ZR 98-25). (CPC Rept. 57).**

**CCofNY:** Each exaction case must be judged on its own merits.

3. **CPC: This is not a "zoning for sale" situation, as found invalid in other cases, because the City is not motivated by a conflict of interest. (CPC Rept. 57).**

**CCofNY:** The applicable New York cases do not rest on whether there was a conflict of interest. If the courts considered it relevant, they would surely find a conflict of interest here where the City juxtaposes an over-riding interest in raising funding against an ostensible interest in sound planning.

4. **CPC: The Fund will be used "only for improvements within the Subdistrict that support the integrated land use plan." (CPC Rpt. 57).**

**CCofNY:** That in itself does not satisfy the requirements of the key United States Supreme Court cases.

5. **CPC: Participation is entirely voluntary. (CPC Rpt. 57).**

**CCofNY:** The Supreme Court has squarely held that it is not.

6. **CPC: "The legal doctrines relating to exactions . . . do not apply to a legislative incentive bonus mechanism." (CPC Rept. 57).**

**CCofNY:** That proposition is inconsistent with both law and common sense.

# THE CITY CLUB OF NEW YORK

**Fighting vigorously for the urban environment and responsible government**

**City Club Rebuttal of Planning Commission Legal Position  
October 21, 2013**

## **Full Statement**

The Planning Commission's Report on the East Midtown rezoning proposal now before the City Council includes a brief response to legal arguments of The City Club of New York that the charge-for-use-of-zoning-rights aspect of the rezoning would be voided by the courts, while leaving the upzoning aspect intact.<sup>1</sup> The City Club submits this statement to the Council to show that the Commission's arguments are invalid.

The principle features of the rezoning plan consist of two elements: 1) upzoning to allow as much as double the currently allowed floor area on certain "qualified sites," being large parcels located along wide streets; and 2) selling much of the increased zoning rights to the owners of such parcels for upwards of \$250 per square foot. The City administration estimates that proceeds of the sales would exceed \$500 million, which would be placed in an improvement fund for financing unspecified, unprioritized, and uncosted transportation and pedestrian circulation improvements within the East Midtown area.

The City Club's analysis starts with the well-settled rule that the zoning power is limited to land use planning according to a well-considered plan, and for the general welfare. The power does not encompass the entire police power, but is restricted to regulation of land use.<sup>2</sup> Its scope does not extend to leveraging zoning for fund-raising purposes; taxation has its own rules and limitations.<sup>3</sup>

Nor does zoning power extend to extra-legal or extra-constitutional actions. The United States Supreme Court has addressed this form of limitation in a group of cases relating to "exactions," consisting of the entire range of conditions or charges imposed by government as a

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<sup>1</sup> The City Club Report is available at [www.cityclubny.org](http://www.cityclubny.org). The Planning Commission's response is primarily at pages 56-57 of its Report No. N 130247(A) ZRM, available on the Commission's website.

<sup>2</sup> Sunrise Check Cashing v. Town of Hempstead, 20 N.Y.3d 481, 485 (2013).

<sup>3</sup> See Municipal Art Society of New York v. City of New York, 137 Misc.2d 832 (Sup. Ct. N.Y. Co. 1987). Cf. Waters Landing Ltd. Partnership v. Montgomery County, 337 Md. 15, 650 A.2d 712, 724 (1994) (sustaining a charge as an excise tax, after the legislature amended a development fee exaction to cast it as a tax); and Koontz v. St. Johns River Water Management District, 133 S.Ct.2586 (2013) (recognizing the distinction between taxing and taking).

# THE CITY CLUB OF NEW YORK

condition for permitting exercise of property rights such as development of property.<sup>4</sup> In brief, the Court has held that such exactions must directly advance a legitimate governmental interest that would be served by denying the permit (the “nexus” requirement), and that the amount or scope of the exaction must be reasonably proportionate to the burden the owner’s action would impose on the public (the “rough proportionality” requirement).<sup>5</sup>

The City Club contends that the charges fail both the nexus and the proportionality tests because of the inconsistency of the main announced purpose of the scheme with the charge. For this purpose, we take the Commission at its word: it has developed this scheme in order to promote development of better office buildings in a district that the Commission sees as lagging behind other major international urban players. But charging developers for exercising the new zoning rights and building just what the City supposedly wants is counterproductive. It can only tend to discourage such construction by making it more expensive. One could answer that there is a secondary purpose of raising money to fund various transportation and pedestrian circulation improvements. Sliding past the inherent tautology of that argument (the purpose of raising money to make improvements is to raise money to make improvements) and the uncanny similarity it has to selling zoning rights, brings us to the proportionality issue.

The proportionality that the Supreme Court requires is utterly absent in this proposal. The price is fixed on the basis of estimated market value of similar transferrable development rights, an amount having no discernible relationship to the burden imposed by new construction. The price is the same throughout the district, even though the environmental impact statement indicates that almost all the burden of increased development would occur in the Grand Central area; development in the northern portion of the district would have little to no impact. The EIS also establishes that the problems in the transportation system already exist and new construction, even in the Grand Central area, will add relatively little to crowding and subway bottlenecks that would need remediation even without new development.

The City Planning Commission’s (“CPC”) counter-arguments are set forth below, followed by the City Club’s rebuttal of each counter-argument.

1. **CPC: This is an “innovative” “incentive zoning mechanism” (CPC Rept. 49).**

**CCofNY:** Calling this “incentive zoning” subverts the term’s plain meaning. An “incentive zoning mechanism” is commonly understood to mean encouraging an owner to make an improvement on (or sometimes immediately adjacent to) his own property for the public benefit, which the owner would be unlikely to make without the incentive, usually in the form of a zoning bonus.<sup>6</sup> As stated above, the charge in this case tends only to *disincentivize* by

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<sup>4</sup> Koontz concerned a non-possessory conservation restriction and the impact fee the agency offered the owner as an option in lieu of lesser restrictions on his own property.

<sup>5</sup> Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994); Koontz v. St. Johns River Water Management District, 133 S.Ct. 2586 (2013).

<sup>6</sup> Asian Americans for Equality v. Koch, 72 N.Y.2d 121, 129 (1988).

# THE CITY CLUB OF NEW YORK

increasing construction cost. The incentive aspect actually runs in the opposite direction: the plan sweetens the rewards to the City of realizing its desire to generate bigger and better office buildings by adding a monetary payoff to the City to be spent largely on fixing pre-existing subway station problems that would otherwise have to be fixed with public funds.

2. **CPC: The City has done substantially the same thing at Hudson Yards (ZR 93-31), and West Chelsea (ZR 98-25). (CPC Rept. 57).**

**CCofNY:** The Commission does not claim that the arrangements employed in those areas have undergone judicial review, and we are not aware that they have. We have not analyzed their legality as each case is unique and must be analyzed on its own merits. Even if the Hudson Yards and West Chelsea cases were legally sustainable, that would not mean that the East Midtown proposal is.

3. **CPC: This is not a “zoning for sale” situation, as found invalid in other cases, because the City is not motivated by a conflict of interest. (CPC Rept. 57).**

**CCofNY:** When someone makes something and then transfers it to another in exchange for cash, that looks, sounds, smells and feels like a sale. That someone surely has the burden of proving otherwise. The Commission claims that a sale, at least for present purposes, requires a conflict of interest. That is not a manifest requirement of case law. And lack of conflict is not self-evident in the circumstances here.

The Commission is apparently referring to the Columbus Circle Coliseum case, Municipal Art Society v. City of New York, 137 Misc. 2d 832 (Sup. Ct. N.Y. Co. 1987), where the City had a direct financial interest in the outcome of a zoning application because it owned the property and its contract of sale provided that the price the City would receive would be \$57 million lower if the buyer could not get approval from the Planning Commission for a subway entrance floor area bonus. But the court’s decision did not turn on the City’s conflict of interest. It turned on the illegality of what amounted to a sale of zoning rights for \$57 million.

The MAS case does not stand alone. In City of New York v. 17 Vista Assoc., 84 N.Y.2d 299 (1994), the City had tried to sell the right to a building permit. 17 Vista had agreed to buy the subject downtown property on condition that a building permit would first be issued. When the Buildings Department initially denied the permit, the City administration entered into an agreement with the buyer and seller to expedite, and assure issuance of, the building permit for a price which included the \$500,000 promissory note from 17 Vista at issue in the case. The Court of Appeals voided the note (but not the permit). “The City, said the Court, “is restricted from bargaining and agreeing to schemes or arrangements beyond public policy and procedures prescribed by the law, under the guise of ‘public good.’” (84 N.Y.2d at 306).

Even if one assumes that these cases rest on the existence of a conflict of interest on the part of the City, it would make no difference here. On the one hand, the City is obligated to make zoning decisions in the interest of the public welfare from a land use planning point of view. On the other hand, the City has an obvious interest in fixing dangerous pre-existing

# THE CITY CLUB OF NEW YORK

defects in the Grand Central subway stations without raising taxes or transit fares to do it. That, too, sounds very much like a conflict of interest in which land use planning is likely to take a back seat to fiscal interests.

The real difference between MAS and East Midtown lies more in the amount of money at stake: \$57 million then, upwards of \$500 million now.

**4. CPC: The Fund will be used “only for improvements within the Subdistrict that support the integrated land use plan.” (CPC Rpt. 57).**

**CCofNY:** Perhaps this is an oblique reference to Nollan, Dolan and Koontz. But it fails to grapple with the specific tests of those cases. Those tests require more the mere fact that the money will be spent somewhere within a quite large geographical area (more than 70 blocks). The Commission ignores such factors as: that the charge is based on “market price,” not impact; that the anticipated expenditures from the fund largely relate to very serious *existing* problems which new construction will exacerbate to little or no extent; and that the charge is the same for all and fails to take into account differing impacts in different areas of the subdistrict. Dolan requires tailoring the exaction to different circumstances among different parcels; Koontz confirms that requirement by referring favorably to several state cases applying Dolan through formulae that vary the amount of monetary exactions according to degree of impact. (133 S.Ct. at 2602).

**5. CPC: Participation is entirely voluntary. (CPC Rpt. 57).**

**CCofNY:** The Supreme Court held earlier this year in Koontz that the rules of Nollan and Dollan cannot be evaded by use of the pretext that an owner who seeks to develop his property has the freedom to choose to pay and get his permit, or not to pay and endure the property’s present condition, however unsatisfactory. “Pay or suffer” is a threat, not an invitation.

In Koontz, and Dolan as well, the Court theorized that demanding a quid pro quo for allowing you to exercise a right is an impermissible “unconstitutional condition.” The point can be illustrated by slightly varying the East Midtown scheme. Suppose the Council were to approve the rezoning but eliminate the idea that the higher floor area can be “earned as of right” by paying into the Fund. Instead, the Council simply provides that the maximum floor area ratio (the ratio of floor area to lot size) for the applicable sites is increased to 24 or 30, as the case may be. It then authorizes the Department of Finance to seize the additional FAR above the amount currently permitted (generally 12 or 15), and to offer to sell it back to the owner at \$250 per square foot. No-one would question that such an arrangement constitutes a taking. Koontz explains that government does substantially the same thing by offering the permit (here, the right to exercise newly permitted zoning rights) only upon payment of a charge. Unless the charge is intimately and fairly related, as Nollan and Dolan require, it is illegal.<sup>7</sup>

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<sup>7</sup> The New York Court of Appeals had applied the unconstitutional conditions doctrine much earlier in Seawall Associates v. City of New York, 74 N.Y.2d 92, 113-14 (1989), cert. denied,



# THE CITY CLUB OF NEW YORK

6. **CPC: “The legal doctrines relating to exactions . . . do not apply to a legislative incentive bonus mechanism.” (CPC Rept. 57).**

**CCofNY:** We understand the emphasis here to be on “legislative.” What we believe CPC refers to is a theory espoused by some that the Nollan/Dolan holdings apply only to “legislative” determinations, not to “adjudicative” ones. The term, “legislative,” is sometimes used in this context to refer to decisions by a legislative body, and sometimes to decisions which are legislative in nature in that they apply a general rule uniformly to a broad group of property owners. CPC seems to suggest that the rezoning proposal here is “legislative” in both senses.

The concept of a “legislative” exemption from Nollan/Dolan lacks a sound legal basis and has gained little support from the courts. Most importantly, it has not been accepted in New York.<sup>8</sup>

First, there are few State Supreme Courts that adhere to the legislative/adjudicative distinction.<sup>9</sup> At least one other State (besides New York) applies Nollan/Dolan across the board to legislative as well as adjudicative exactions.<sup>10</sup>

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110 U.S. 500 (1989), where it voided a local law putting a moratorium on removing single room occupancy residential units from the market, and compelling owners to improve the SRO units, but allowing the owner to buy its way out of the regulation by paying \$45,000 per unit or replacing the unit elsewhere. The Court denounced the “stark” choice offered by the law – “either submit to an uncompensated and, therefore, unconstitutional appropriation of your properties or pay the price (in cash or in replacement units) – [as] just the sort of exaction which could be classified, not as a valid regulation of land use but 'an out-and-out plan of extortion.'”

<sup>8</sup> See Manocherian v. Lenox Hill Hospital, 84 N.Y.2d 385 (1994) (holding invalid a rent stabilization amendment adopted by the legislature and designed to favor a limited class of medical service prime tenants at the expense of their subtenants). Earlier, Court of Appeals had applied Nollan to hold unconstitutional a local law of New York City concerning regulation of SROs. Seawall Associates v. City of New York, 74 N.Y.2d 92 (1989). More recently, the Court of Appeals ruled that a town’s flat fee of \$1,500 per lot, adopted legislatively and applicable throughout the town, in lieu of dedication of part of a subdivision for park use, satisfies Dolan. Twin Lakes Development Corp. v. Town of Monroe, 1 N.Y.3d 98 (2003). These cases have been limited on other grounds, but the Court has not stepped back from the proposition that Nollan and Dolan apply to both legislative and adjudicative exactions.

<sup>9</sup> See e.g. Wolf Ranch, LLC v. City of Colorado Springs, 220 P.3d 559 (Colo. 2009) (applying a legislated legislative exemption); San Remo Hotel L.P. v. City and Cnty. of San Francisco, 27 Cal. 4th 643, 668, 41 P.3d 87, 103 (2002); and see Home Builders Ass'n of Cent. Arizona v. City of Scottsdale, 187 Ariz. 479, 481, 930 P.2d 993, 995 (1997), a case of minimal importance because the state statute that it applies in lieu of Dolan mirrors the Dolan test.

# THE CITY CLUB OF NEW YORK

Rationales offered for exempting legislative action do not make a whole lot of sense. One rationale supposes that legislatures are unlikely to err or unjustly burden any one class because they will be reminded of their errors at the next election. Another supposes that broadly applicable systems of exaction carry less risk of “extortionate” action.<sup>11</sup> But, as the frequent Congressional impasses over debt limits and budgets suggest, legislatures are not necessarily evenly responsive to the electorate. Broad application may tend to ameliorate, but broad injustices such as Jim Crow laws do occur and are no less harmful because they apply broadly.

Justices Thomas and O’Connor have opined more convincingly that an infringement of rights is no less harmful to the individuals affected if it comes from the legislature than if it comes from a zoning board:

It is not clear why the existence of a taking should turn on the type of governmental entity responsible for the taking. A city council can take property just as well as a planning commission can. Moreover, the general applicability of the ordinance should not be relevant in a takings analysis. If Atlanta had seized several hundred homes in order to build a freeway, there would be no doubt that Atlanta had taken property. The distinction between sweeping legislative takings and particularized administrative takings appears to be a distinction without a constitutional difference.<sup>12</sup>

Bringing those thoughts closer to home, if the Mayor issued an edict requiring a \$250 per square foot contribution to a development fund under his control from East Midtown owners applying to build more than a certain amount of floor area, there would be no question that Nollan/Dolan would apply. The result would be precisely the same if the Planning Commission and Council approved the measure. Why should the legal treatment be different?

Finally, Nollan, Dolan and Koontz provide no meaningful support for the “legislative/adjudicative” distinction. Each of these cases has strong elements of “legislative” character, at least to the extent of concerning a practice backed by legislation and applied on a consistent and broad basis. Dolan does use the term, “adjudicative,” in describing the regulatory action before it, but only in a brief aside concerning where the burden of proof lies; the use of the term did not relate to the question of whether the Nollan/Dolan tests themselves apply, which Court ruled they do.

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<sup>10</sup> See B.A.M. Dev., L.L.C. v. Salt Lake Cnty., 128 P.3d 1161, 1167-68 (Utah 2006), expressly deferring to legislative judgment reflected in legislation adopted after plaintiff’s cause of action arose and, therefore, not applicable to it), and cases cited by Koontz, 133 S.Ct. at 2602.

<sup>11</sup> See San Remo Hotel L.P. v. City and Cnty. of San Francisco, 27 Cal. 4th 643, 668, 41 P.3d 87, 103, 105 (2002).

<sup>12</sup> Parking Ass’n of Georgia, Inc. v. City of Atlanta, Ga., 515 U.S. 1116, 1117-18 (1995) (dissent from denial of an application for the Court to hear an appeal).

# THE CITY CLUB OF NEW YORK

Far more important than the fact that the Dolan Court appended a term of no particular relevance to the outcome is the steady progression from Nollan to Dolan to Koontz, by which the Court, at each step, expanded the scope of the exaction rule and reiterated its firm intent that the rule not succumb to a strategy of creating loopholes.

# STATEMENT OF DAVID BROWN ON BEHALF OF THE ARCHDIOCESE OF NEW YORK AND TRUSTEES OF ST. PATRICK'S CATHEDRAL CONCERNING THE PROPOSED EAST MIDTOWN REZONING

My name is David Brown and I appear on behalf of the Trustees of St. Patrick's Cathedral.

As one of the oldest structures in East Midtown, St. Patrick's has seen well over a century of change in this neighborhood. Continued revitalization is critical if the area is to prosper and we are persuaded that the proposed rezoning and the public improvements it will generate are essential to attract new development.

In particular we wish to highlight the provisions of the proposed zoning which directly affect St Patrick's and other landmark structures in East Midtown.

While St. Patrick's has a substantial amount of unused air rights that it cannot use on site, it has not been able to transfer any of them -- nor given its location is there any likelihood that it will be able to do so under existing zoning.

As the Cathedral has undertaken a \$175 million restoration program, the absence of an outlet for these air rights imposes a significant burden.

The proposed rezoning seeks to remedy this shortcoming of existing zoning by giving landmarks like St. Patrick's the opportunity to transfer air rights to a larger number of potential development sites. This will make it possible some day for St. Patrick's and other landmarks to realize on some of the locked-in value of their landmarked sites.

As these much-needed benefits cannot be realized unless the updated rezoning is approved and new development occurs, we urge the Council to balance the competing interests and finalize this initiative. In your review of the rezoning, we believe it is critical to make the real estate development process as clear and predictable as possible.

In particular, the pricing of the air rights and the use of the special permit process should be designed to reflect the risks inherent in commercial office building development.

In closing, I want to reiterate the vital importance of the proposed rezoning for the Cathedral.

We are grateful that the City has recognized the need to provide some relief for the East Midtown landmarks and are grateful to the Community Boards and the civic groups for their support. In conclusion, we urge the City Council to approve the East Midtown rezoning.

**FOR THE RECORD**

October 22, 2013

Hon. Christine C. Quinn, Council Speaker  
New York City Council District 3  
224 W. 30th Street, Suite 1206  
New York, NY 10001

Dear Speaker Quinn:

The Chelsea Reform Democratic Club stands with our Community Board 4, as well as Boards 1, 2, 5, 6, 7 and 8 in strongly urging you to vote "No" on Mayor Bloomberg's proposed upzoning of Midtown East. We object both to the merits of the plan as well as to the process leading up to the council vote.

**Regarding the process: Slow It Down!**

It was just one year ago that the Department of City Planning presented the citizens of New York City with its crystallized proposal for a rezoned Midtown East, a massive swath from 39th to 57th Streets, and from east of 5th to 3rd Avenues in some places. Generally with projects of this scope, a much longer period leading up to the ULURP process is allowed for civic evaluation and input.

By the mayor's own reckoning, haste is unnecessary. Because a "sunrise" provision is written into the plan, the new allowable FAR will not take hold until four years after its passage. If, even according to Mayor Bloomberg, the need to create additional office space in our central business district is not really urgent, why should we rush into adopting his plan?

The more informal period for public review and the ULURP itself have taken and are taking place during an unusually active New York City election season. Civic actors, who might ordinarily pay close attention to a plan of this magnitude, were and are focused on electing their favored candidates. Our citizens need post-election breathing room before they can properly evaluate how, or, even whether, to radically remake a great urban space.

**Regarding the scope of this plan and its proposed FAR: Scale it Down!**

To the extent that we have had time to study the mayor's plan, members of CRDC see many problems associated with its implementation. Most critically, the proposed new FAR allows for towers that will overwhelm relatively narrow streets and will put impossible strains on already overtaxed infrastructure. And although in recent days, the mayor has indicated a desire for the city to upgrade transportation in Midtown East, he has yet to spell out details of that proposal.

Additionally, construction of the glass-and-steel behemoths envisioned in the mayor's plan will mean certain destruction for dozens of beloved, landmark-quality buildings, including the Yale Club, the Graybar Building, and the Roosevelt Hotel. No rezoning should take place until sufficient time is given for the Landmarks Commission to study those and other high quality, as-yet-to-be landmarked buildings around and near Grand Central Terminal.

HOME CLUB OF  
CITY COUNCIL SPEAKER:  
Christine C. Quinn

ASSEMBLY MEMBER:  
Richard Gottfried  
and  
FORMER STATE SENATOR:  
Tom Duane

STATE  
COMMITTEEWOMAN:  
Sylvia DiPietro

DISTRICT LEADERS:  
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SECRETARY:  
Linda Longstreet

## **Finally: Remake the Remake!**

In several years there may be legitimate call for additional office space near Grand Central Terminal. But right now, we know that there is need for new housing. A truly purposeful and modern plan to rezone Midtown East should include on certain sites the conversion of commercial space into residential use.

The mayor's argument for the radical remake of Midtown East is that our city's economic future depends on the creation of additional enormous office towers. But in recent decades we have seen neighborhoods blossom and grow – and attract new business – when they included beloved older structures alongside signature new buildings, and when they mixed together commercial, residential, retail, and recreational use. That approach to planning would address public need, but, in the words of Lola Finkelstein, chair of the Multi Board Task Force on East Midtown: [In regard to the mayor's plan] "... consideration of the public's needs was secondary to the interest of real estate developers."

Your home political club is depending on you to reverse that priority. **Stop the mayor's ill-conceived plan, and allow the next administration, working with the community, to plan our city's future!**

Sincerely,

For The Chelsea Reform Democratic Club



Steven Skyles-Mulligan, President

### Copies sent by fax to:

Simeon Bankoff	Exec. Director, Historic Districts Council
Andrew Berman	Exec. Director, Greenwich Village Society Hist. Pres.
Robert Benfatto	District Manager, Manhattan Community Board 4
Amanda Burden	Chair, City Planning Commission
Bill De Blasio	New York City Public Advocate
Daniel Garodnick	New York City Council Member, District 4
Andrea Goldwyn	Director, Public Policy, NY Landmarks Conservancy
Richard Gottfried	New York State Assembly Member, District 75
Brad Hoylman	New York State Senator, District 29
Corey Johnson	Chair, Manhattan Community Board 4
Liz Krueger	New York State Senator, District 26
John Liu	New York City Comptroller
Carolyn Maloney	United States Congress Member, District 12
Jerrold Nadler	United States Congress Member, District 8
Wally Rubin	District Manager, Manhattan Community Board 5
Scott Stiffler	Associate Editor, Chelsea Now
Scott Stringer	Manhattan Borough President
Robert Tierney	Chair, Landmarks Commission

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F-212-243-2035 Richard Gottfried  
F-212-669-8878 John Liu  
F-212-669-4305 Scott Stringer  
F-212-669-4701 Bill De Blasio  
F-212-947-9512 Corey Johnson  
F-212-947-9512 Robert Benfatto  
F-212-442-1457 Daniel Garodnick  
F-212-465-1628 Wally Rubin  
F-212-614-9127 Simeon Bankoff  
F-212-995-5268 Andrea Goldwyn  
F-212-669-7960 Robert Tierney  
F-212-229-2790 Scott Stiffler  
F-212-720-3219 Amanda Burden  
F-212-475-9582 Andrew Berman



**FOR THE RECORD**

**October 22, 2013 testimony by the Guides Association of New York City**

The Guides Association of New York City, or GANYC, respectfully objects to the current plan to rezone Midtown East.

That plan proposes a radical remake of midtown, intended to add new large-scale office towers. While the proposed rezoning is aimed to enhance economic growth, it fails to consider the major role played in our city's economy by the tourism-and-hospitality industry.

Our licensed guides bring hundreds of clients to Midtown East daily, via subway, on foot, and by taxi, limousine and motor-coach. We know from everyday experience how densely populated that district can be. The rezoning plan would place even more stress on its already overtaxed infrastructure. There is no concrete proposal to deal with the added burden that the plan would place on Midtown East.

Our clients spend a great deal of money along 42nd street as they tour Grand Central Terminal and walk along that historic street viewing the Chrysler Building, Yale Club, Roosevelt Hotel, Graybar Building, and New York Public Library, among many other sites. In all likelihood, our visitors would not find enchantment in the sterile Midtown East that is currently proposed. The creation of massive new towers would necessarily mean the destruction of many of our most venerable buildings. Furthermore, the new towers would block sight lines to those classic structures left unharmed by the wrecking ball.

GANYC supports new architecture. But before new buildings go up in Midtown East, we want the Landmarks Preservation Commission to study the district and identify buildings that are worthy of preservation. We anticipate that an accurate survey would list such a vast number of buildings that, the commission should go beyond making simple individual designations, but instead, declare a portion of Midtown East as a new historic district.

Before leaping forward with the proposed plan, we ask you to take the time to consider the long-term benefits that the economy enjoys from the more than 55 million visitors who come to NYC each year. As guides, we know that they want to see our city's historic sites. And along the way, they are ready to spend money here. But if we do not endeavor to protect those sites, we endanger not only the specialness of our city but its economic future as well.

Sincerely,

Daniel Ellis

President  
Guides Association of New York City  
Contact: 917-501-4310

Judy Richheimer

Chair/Government Relations Committee  
Guides Association of New York City  
Contact: 212-243-3525

City Council Public Hearing – East Midtown Rezoning  
Anthony Malkin

- I am Anthony Malkin, Chairman, President, and CEO of Empire State Realty Trust.
- I am here to speak in favor of the East Midtown Rezoning. Midtown must continue to be one of the world's premier business addresses and a key job center for NYC and the region.
- Grand Central Terminal, the East Side Access project, and the subways connected to them are critical capital investments for New York City. The multi-billion dollar East Side Access project will increase its importance with an expected 24 more trains per hour delivering a projected 162,000 additional commuter trips per average working weekday. To have this critical asset underutilized because of inadequate and archaic office, retail, and amenities diminishes the city's potential. Why invest all this money for people to come to midtown just to move through it to go somewhere else? This is the least expensive place, from an impact on quality life perspective, to add density.
- Under today's zoning, the city does not have the potential to maximize revenue from real estate, corporate, and income taxes. Under today's zoning, the increases in capacity of Grand Central Terminal will lead to increased congestion on the sidewalks, streets and subways through and outside the proposed district as commuters move out of the district rather than stay in the district. 87 percent of the existing building inventory was constructed prior to 1975, and the Grand Central submarket has the highest vacancy rate of all the Midtown submarkets... today, people are walking past those vacancies to go to work in other buildings, and that will not change.
- One more comment, we are experts at adaptive reuse of existing properties. At the Empire State Building, we have recreated the city's Landmark, the World's Most Famous Office Building, into a vibrant economic hub. We have approached all our other older assets in the same way.
- Keep in mind, our property at One Grand Central Place is no Empire State Building. Its design will not satisfy larger, higher density tenants which otherwise would be attracted to its superb location. One Grand Central Place has nearly double the floor area that is permitted by current zoning, it will never be redeveloped under current zoning law. The proposed East Midtown zoning text that is the subject of today's public hearing would provide targeted zoning incentives that would allow non-complying buildings on qualifying sites to retain their existing floor area.
- We strongly support the proposed East Midtown Rezoning and its goal of encouraging the development of modern, sustainable office buildings that, together with transit and pedestrian improvements, will offer the best and least impactful opportunities for growth on the island of Manhattan for the good of all New York City.



THE COMMITTEE TO PRESERVE THE UPPER WESTSIDE

**FOR THE RECORD**

**Testimony of LANDMARK WEST!  
Before the New York City Council Subcommittee on Land Use  
Proposed East Midtown Rezoning  
October 22, 2013**

LANDMARK WEST! is a not-for-profit community organization committed to the preservation of the architectural heritage of the Upper West Side.

LW! strongly opposes the East Midtown rezoning proposal by the NYC Department of City Planning. Today, LW! departs our own architecturally vibrant Upper West Side to speak on behalf of our extended neighborhood, East Midtown, whose unprotected architectural resources merit public comment.

As Robert A.M. Stern, architect and dean of the Yale School of Architecture writing in the *New York Times* on April 21, 2013, and others have urged, a thoughtful proposal must consider the intrinsic value the historic buildings around Grand Central have imparted to the area. If heard and designated, the 31 buildings eligible for Individual NYC Landmark status will again spur development, as preservation has done for the SoHo and Flatiron districts. Rather, the LPC has, in the words of *New York Times* architecture critic Michael Kimmelman on July 24, 2013 “dragged its feet on the landmark status of these buildings... greasing the wheels for development.”

East Midtown is one of the most architecturally iconic sections of the city. Grand Central Terminal first posited East Midtown's status as a world-class transit and business district when it opened in 1913, 100 years ago. The development that followed resulted in construction of the beloved buildings that created Terminal City as a distinct enclave and major center of business in Manhattan. This is the neighborhood that the Chrysler Building and the elegant office towers of the post-World War II construction boom call home. Collectively, the layers of this building fabric have served as a nucleus for investment for over a century. Future layers of the world's premier business address deserve a comprehensive plan and stringent public review process that truly listens to the public's unanswered questions and concerns.

Instead, New Yorkers have been presented a hastily-composed "plan," which will be damaging to our entire city. As the *New York Times* has reported, the plan has been “a rush job, too hurried for the public good,” thinly veiled beneath a desire to have it approved before the end of Mayor Bloomberg's final term. Michael Kimmelman agrees, characterizing the proposal's aim to “limit public oversight.”

But, it is time to put politics aside. Absent from the East Midtown "plan" is a discussion about the future of 31 historic buildings which are eligible as Individual Landmarks by the Landmarks Preservation Commission; absent is public input on new construction of extraordinary size and density; absent is "a guarantee that in the future the Chrysler Building and the Empire State

Building will not be lost in thickets of taller buildings," as heeded by architect Robert A.M. Stern in his op-ed to the *New York Times* on April 21, 2013.

Abundantly present in the East Midtown proposal are strong voices of criticism, if not cries for help, and not only from preservationists. Collectively, Community Boards 1, 2, 4, 5, 6, 7, 8, and 10, the *New York Times*, transit advocates, elected officials, and community groups request a plan for East Midtown of the caliber of the great city it seeks to serve. The plan in its current form is an affront to architecture, urban planning, and the people of New York.

We urge the City Council to listen to New York today, and not be sorry tomorrow, and deny the proposed East Midtown rezoning.

# MANHATTAN COMMUNITY BOARD FIVE

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Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109  
New York, NY 10123-2199  
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

## TESTIMONY OF VIKKI BARBERO, CHAIR OF COMMUNITY BOARD FIVE, CITY COUNCIL HEARING ON EAST MIDTOWN, TUESDAY, OCTOBER 22<sup>ND</sup>, 2013

My name is Vikki Barbero and I am the chair of Community Board Five. I have been on the board for twenty years and over that time have seen this board grapple with some of the biggest issues facing the city.

As we demonstrated in the case of the Madison Square Garden special permit process, our board is more than capable of performing a thorough and thoughtful analysis of complex planning issues and working collaboratively with stakeholders to achieve a goal. That is why we are particularly disappointed by the administration's unwillingness to heed our concerns and work with us.

Community Boards play a vital role in the development of our city's future. The community's engagement on such large land use decisions is indispensable, improving these projects and ensuring that they provide a public benefit. Instead of partners working together to secure a successful midtown, the City elected to view us as obstacles to overcome or simply ignored in its drive to get something, *anything* passed.

In the case of East Midtown, after thorough analysis and numerous attempts to improve the proposal, we have come to the same conclusion that so many other stakeholders have: this proposal is simply not good enough. New York deserves better. We stand with more than half of Manhattan Community Boards; State Senators Liz Krueger and Brad Hoylman; Councilmembers Garodnick, Lappin, and Brewer; transit advocates; preservationists; environmental advocates; the Hotel Trades Council; The New York Times; and more in demanding better for New York.

Thank you for the opportunity to speak today.

[WWW.CB5.ORG](http://WWW.CB5.ORG)

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Gene Santoro, Community Board 6, Testimony re East Midtown  
Rezoning Plan

**FOR THE RECORD**

10/22/13

Thank you for the chance to air my views. First let me say that I admire many of Mayor Bloomberg's infrastructure initiatives, from the remaking of New York's streets into a more livable and safer environment to the recent conclusion of the long-term project called Water Tunnel Number 3, which he resuscitated and shepherded. But the success of projects like these was based on a thorough grasp of the needs involved, which resulted from significant, detailed planning.

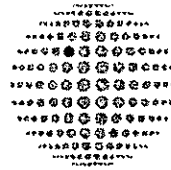
Unfortunately, planning is the vital element sorely lacking on this mammoth project. Like Councilperson Dan Garodnick and the Multi-Board Task Force that comprises four community boards including Community Board 6, I think it is high time to redesign East Midtown in order to create a vibrant, welcoming, state-of-the-art business district. But also like them, I object to the Department of City Planning's utter lack of comprehensive planning about the public realm involved here. I believe the public realm clearly needs thorough examination before the city embarks on such a wide-ranging, comprehensive project. After all, it will shape a crucial part of Manhattan for decades to come.

Here are a few salient questions the DCP has not answered. How will Grand Central Terminal be redesigned to accommodate the additional tens of thousands of commuters this plan's implementation would bring? What will happen to the already narrow, congested sidewalks along Lexington and Madison Avenues? Where are the "livable streets" aspects—plazas, street cafes, and open-air amenities that are a Bloomberg trademark—to make East Midtown a more pleasant and human-scale place? What of the added burden to the severely taxed capacities of our transit system and Con Edison? How will the additional garbage, sewage, and other human byproducts generated by a new East Midtown be dealt with?

There are myriad unanswered questions like these that DCP needs to investigate and address before a single backhoe begins work on this project. I look forward to seeing their studies, and

believe that this process, properly conducted, will create a new East Midtown that will truly be a landmark for a new era.

Thank you.



**PARTNERSHIP**  
for New York City

**TESTIMONY BEFORE THE SUBCOMMITTEE ON ZONING AND FRANCHISES**  
**OF THE NEW YORK CITY COUNCIL**

TUESDAY, OCTOBER 22, 2013

KATHRYN WYLDE  
PRESIDENT & CEO

The Partnership for New York City represents the city's business leadership and its largest private sector employers. We support the proposed rezoning for East Midtown and believe that it represents a long term plan that will contribute in important ways to New York's future as a global commercial center.

East Midtown is the city's most important office district, but its building stock is increasingly outdated and inadequate to serve the needs of the contemporary high tech office market. Public investment of more than \$20 billion in two major transit projects, East Side Access and the Second Avenue subway, can only be justified by an upzoning that allows for modernizing and expanding the office stock and substantially increasing the number of jobs that can be accommodated in the Midtown East corridor.

The Partnership recently collaborated on a study with global consulting firm Aon Hewitt that examined how New York can maintain its competitive status and continue to attract and retain top global talent in the 21<sup>st</sup> century. A key recommendation was to develop incentives that encourage construction of new buildings with open workspaces and transform the city's older building stock into new, creative spaces that the millennial workforce demands. The proposed rezoning would authorize development of a few new, state-of-the-art commercial buildings that could renew Midtown East and ensure that it continues to anchor the nation's strongest business district. The plan also generates revenues to support transportation upgrades and pedestrian improvements that are required to maintain the area's world class status.

Development takes a very long time in the city and requires a huge up-front investment. The major development that this rezoning contemplates is probably a generation away, but it is important that the vision of what Midtown East will become is established now so that private and public investment in the central business district can proceed with certainty as to the long term benefits that this important assemblage of urban real estate will bring to the city.

The rezoning proposal, which has been refined through community dialogue, deserves your support and we urge its approval. Thank you.



**FOR THE RECORD**

FTR



**Testimony of Andrew S. Hollweck  
Vice President, New York Building Congress  
At a Hearing of the New York City Council  
Regarding the East Midtown Rezoning  
October 22, 2013**

The New York Building Congress supports the Bloomberg Administration's proposed East Midtown rezoning. The rezoning will permit responsible renewal of New York City's premier office district, facilitate job growth and expansion of the City's tax base. We urge the Council to approve this plan.

East Midtown is anchored by Grand Central Terminal, which will soon house the MTA's East Side Access project, providing a direct rail link between Long Island and Manhattan's east side for the first time, bringing tens of thousands of new commuters to the neighborhood.

Failure to capitalize on this multi-billion dollar infrastructure investment will be a missed opportunity for the City. Right now, zoning guidelines for the neighborhood discourage creation of new office buildings and actively prevent useful increases in bulk on many key sites. The Administration's proposal enables builders to assemble sites, tear down existing large structures, and erect the larger, modern buildings to house a growing workforce.

Moreover, because of their age and quality, the building stock around Grand Central is simply inadequate to accommodate the changing needs of many commercial office tenants. For example, industries within the technology sector that hardly existed two decades ago are beginning to look for Class A space and have different needs than traditional office tenants. With an average building age of 70 years, some buildings simply cannot offer the floor plans and amenities important to many of these new tenants.

The rezoning should attract more people to the area, which is why the Building Congress supports thoughtful proposals to improve public amenities around Grand Central. For example, a protected bike or pedestrian route on the elevated portion of Park Avenue around Grand Central makes good sense and would be a beautiful new amenity. The City has also agreed to pre-fund some of the critical improvements to mass transit and public open spaces that are to be supported by the District Improvement Fund. We support this effort, and urge a careful evaluation of the fund to determine if it accomplishes its intended goals.

Finally, we encourage very prudent application of the City's landmarking power to protect only those buildings with clear architectural value. This will ensure that the full benefits of the rezoning are realized.

The East Midtown rezoning will facilitate development of modern office space to attract and retain the world class employers that drive the City's economy. The Building Congress endorses the East Midtown Rezoning and urges the Council to approve this plan.

October 22, 2013

### **City Council Testimony Re Proposed Mid-Town Re-zoning**

I am Joe Hagelmann, a member of CB 5 and of the Multi-Board Task Force. The topic of my testimony today addresses the issue of Historic Landmarks in the East Midtown study area.

While preservationists applaud the creation of a Northern Landmark Transfer Area the Taskforce remains concerned with protection of the buildings identified by the Landmarks Preservation Commission as possible landmark designations.

Unless something is done *immediately*, the remaining non-designated historic resources are in danger of being altered or demolished.

According to the EIS, of the 56 eligible resources in the area, 14 are in projected or potential development sites. Of these, 11 are LPC eligible and three are New York State eligible. A list of the 11 LPC eligible buildings is annexed to my testimony. **Only one of these has been calendared for a hearing by LPC.** The EIS states that these buildings could be partially or completely demolished and will not be protected under the proposed re-zoning. Simply by listing these buildings in the EIS, the problems have already started.

One of the endangered resources, the American Encaustic Tile Company Building at 16 East 41st Street, has had its façade stripped. We also lost, the Frank Lloyd Wright Hoffman Auto Showroom, at 430 Park Avenue.

We urge the following of the LPC:

1. Immediately calendar the remaining 9 buildings it considered for possible designation;
2. Consider using standstill agreements to protect the remaining 10 buildings. Such agreements provide that the owner agrees not to alter or demolish the building and LPC agrees not to calendar the building during the term of the agreement. In the past LPC has successfully used this method to provide continuing protection for possible eligible buildings; and

3. Work with the Department of Buildings to prevent the issuance of building permits for the remaining 10 buildings that would alter the exterior and also alert LPC of such applications.

We would also urge that LPC reconsider the remaining 40 buildings that were listed by The Landmarks Conservancy, Historic Districts Council and the Municipal Arts Society as potential landmarks in the proposed re-zoned area.

Thank you.

The 11 Endangered Buildings under the East Mid-Town Rezoning:

# Address (EIS ID Number)

1. 22-24 East 41st Street (87)
2. 100 East 42nd Street (91)
3. Six East 45th Street (94)
4. 45 East 45th Street (95)
5. 509-511 Lexington Avenue (125)
6. **525 Lexington Avenue (124) (calendared by LPC)**
7. 250 Park Avenue (133)
8. 830 Third Avenue (137)
9. 50 Vanderbilt Avenue (140)
10. 16 East 41st Street (142)
11. 18-20 East 41st Street (141)

Other East midtown buildings calendared by LPC:

Graybar Building, 420 Lexington Avenue

Pershing Square Building, 125 Park Avenue

Hotel Lexington, 511 Lexington Avenue

Beverly Hotel (later the Benjamin Hotel), 557 Lexington Avenue



Louis J. Coletti  
President & CEO

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**FOR THE RECORD**

# **TESTIMONY PRESENTED TO THE NEW YORK CITY COUNCIL**

## **SUBCOMMITTEE ON ZONING AND FRANCHISES**

### **MIDTOWN REZONING OCTOBER 22, 2013**

**Submitted By**

**Louis J. Coletti**

**President & CEO**

**Building Trades Employer's Association**



GOOD MORNING MADAME CHAIRPERSON AND MEMBERS OF THE CITY COUNCIL. MY NAME IS LOUIS COLETTI AND I AM THE PRESIDENT OF THE BUILDING TRADES EMPLOYERS' ASSOCIATION REPRESENTING 2,000 UNION CONSTRUCTION COMPANIES IN NYC.

FIRST LET ME SAY THANK YOU TO THE CITY COUNCIL FOR ITS VISION AND POLICIES OVER THE PAST DECADE WHICH HAS SUSTAINED NEW YORK CITY'S POSITION AS THE WORLD'S LEADING INTERNATIONAL CITY AND HAS KEPT NEW YORK'S ECONOMY SO STRONG THROUGH SOME VERY DIFFICULT TIMES.

I AM HERE TODAY TO STRONGLY URGE THE CITY COUNCIL TO APPROVE THE REZONING PROPOSAL FOR EAST MIDTOWN. YOUR APPROVAL WILL SEND A STRONG AND DECISIVE SIGNAL NOT JUST TO DEVELOPERS INTERESTED IN BUILDING THE EAST MIDTOWN MARKET- BUT TO WORLD BUSINESS LEADERS WHO WANT TO BE LOCATED IN NEW YORK CITY.

IT IS A WONDERFUL POSITION TO BE IN WHEN I SAY THE NEW YORK CITY MARKET DEMANDS NEW COMMERCIAL OFFICE SPACE- HOW MANY OTHER CITIES IN THE UNITED STATE, AND THE WORLD, CAN MAKE THAT CLAIM?

THAT'S WHY THE CITY COUNCIL APPROVAL OF THIS REZONING PROPOSAL IS SO IMPORTANT TO PUTTING OUR CITY AHEAD OF THE CURVE, ONCE AGAIN, IN DEFINING ITSELF AS THE LEADING CITY IN THE WORLD. THIS REZONING PROPOSAL PROVIDES MUCH NEEDED INNOVATION, ARCHITECTURAL DISTINCTION AND COMPETITIVE OFFICE SPACE IN ORDER TO MAINTAIN OUR PRESENCE AS A FIRST-CLASS WORLD CITY.

WHY DO WE NEED THIS ADDITIONAL SPACE? SINCE 2000, MANHATTAN HAS HELD A VACANCY RATE OF 4% AND ADDED ONLY 5 MILLION SQUARE FEET OF COMMERCIAL OFFICE SPACE. ON THE AVERAGE EAST MIDTOWN OFFICE BUILDINGS ARE MORE THAN 70 YEARS OLD AND CANNOT COMPETE FOR

TENANTS IN PROVIDING THE TYPE OF OFFICE SPACE COMPANIES WANT AND NEED TO COMPETE IN TODAY'S GLOBAL ECONOMY.

NEW YORK CITY MUST BE ABLE TO OFFER TO AND PROVIDE PROSPECTIVE COMPANIES BUILDINGS WITH COLUMN-FREE FLOORS, GREATER FLOOR-TO-CEILING HEIGHTS, ENERGY EFFICIENT FEATURES AND WORLD CLASS DESIGNS. THIS WILL APPEAL TO CURRENT TENANTS AS WELL AS TODAY'S NEW WORKFORCE, BOTH AT HOME AND INTERNATIONALLY, AND CREATE IN EAST MIDTOWN AN ORDERLY AND COMPETITIVE COMMERCIAL DISTRICT.

JUST LOOK AT THE SUCCESS HUDSON YARDS AND MANHATTAN WEST ARE HAVING IN LEASING NEW COMMERCIAL OFFICE SPACE FOR THEIR NEW BUILDINGS-IT IS PRECISELY BECAUSE OF THE FACTORS I JUST MENTIONED.

AND WITH THE MAYOR'S ANNOUNCEMENT TO ADVANCE FUNDING FOR SOME OF THE MASS TRANSIT AND OPEN SPACE IMPROVEMENTS IMMEDIATELY UPON THE PASSAGE OF THIS REZONING PROPOSAL THE TIME TO ADOPT THESE CHANGES IS NOW.

EVERY DAY WE DELAY THIS DECISION IS A DAY WE INCREASE THE THREAT OF UNDERMINING THE ECONOMIC COMPETITIVENESS OF THIS AREA. MIDTOWN EAST HAS ALWAYS BEEN ONE STEP AHEAD OF THE INTERNATIONAL COMPETITION BECAUSE IT HAS EVOLVED AND CHANGED TO MEET THE DEMANDS OF THE GLOBAL ECONOMY.

THE BUILDING TRADES EMPLOYERS' ASSOCIATION AND ITS 2,000 MEMBERS STRONGLY URGE YOU TO APPROVE THE MIDTOWN ZONING PROPOSAL.

THANK YOU.



The City of New York

# Manhattan Community Board 1

Catherine McVay Hughes CHAIRPERSON | Noah Pfefferblit DISTRICT MANAGER

**New York City Council  
Subcommittee on Zoning and Franchises**

**East Midtown Rezoning  
N130247(A) ZRM, C130248 ZMM**

**Testimony by Diana Switaj, Director of Planning and Land Use  
Manhattan Community Board 1**

**Tuesday, October 22, 2013  
Council Chambers, City Hall, New York, NY  
9:30 A.M.**

Good morning. I am Diana Switaj, Director of Planning and Land Use at Manhattan Community Board One (CB1). Thank you for the opportunity to comment on this application for the City's proposed East Midtown Rezoning plan.

The proposed plan for rezoning the East Midtown area around the Grand Central District would increase the maximum allowable Floor Area and create incentives for new development in East Midtown. This proposed rezoning would result in a projected increment of approximately 4.4 million square feet of space in the next 20 years, and it is this net increase that drives most of the negative impacts of the proposed rezoning including increased load on public transit and overcrowded streets and sidewalks.

The 4, 5 and 6 train lines are currently at 116% capacity<sup>1</sup>. It is currently utilized by many residents, workers and students, and is expected to draw even more riders after the build-out of the World Trade Center site. We believe that the City of New York and the MTA must resolve subway capacity issues in advance in order to accommodate the expected increase in ridership as a result of the East Midtown zoning change.

While CB1 supports the concept that zoning changes may be necessary to permit the commercial office space in the East Midtown area to be upgraded and maintained as 21st Century Class A commercial space, CB1 believes that a 4.4 million square foot net increase in commercial office space in the East Midtown area would place an unsustainable and unmitigatable burden on the transportation infrastructure that serves not only East Midtown, but Lower Manhattan as well. Accordingly, CB1 strongly urges that the proposed zoning changes be adjusted such that development in accordance with the new zoning would not result in a net increase of commercial office space in the East Midtown area.

Thank you for the opportunity to testify today.

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<sup>1</sup> Straphangers Campaign: Letter to Mayor Bloomberg & Chairman Ferrer of the Metropolitan Transit Authority, 2013  
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www.nyc.gov/html/mancb1



The City of New York

# Manhattan Community Board 1

Catherine McVay Hughes CHAIRPERSON | Noah Pfefferblit DISTRICT MANAGER

**New York City Council  
Subcommittee on Zoning and Franchises**

**East Midtown Rezoning  
N130247(A) ZRM, C130248 ZMM**

**Testimony by Michael Levine, Consulting Planner  
Manhattan Community Board 1**

**Tuesday, October 22, 2013  
Council Chambers, City Hall, New York, NY  
9:30 A.M.**

Good morning. I am Michael Levine, Consulting Planner for Manhattan Community Board One (CB1). Thank you for the opportunity to comment on this application for the City's proposed East Midtown Rezoning plan.

As a result of the terrorist attacks on the World Trade Center on September 11, 2001, 14 million square feet of commercial office space in Lower Manhattan was destroyed or damaged. Now, almost twelve years after the attacks of 9/11, Lower Manhattan is in the middle of a renaissance as more residents, office and businesses have come to the area than were lost during the attacks.

The rebuilding of Lower Manhattan is a long-term process and is vital to the restoration and revitalization of our neighborhood. Currently, the redevelopment of the World Trade Center site is on track. CB1 wants to make sure that the positive momentum continues.

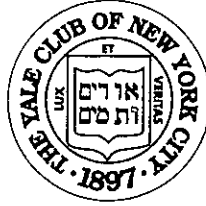
The proposed East Midtown Rezoning contains a "sunrise" provision under which building permits could not be issued until July 1, 2017. But, the final build-out of the World Trade Center site will extend beyond 2019, according to the World Trade Center Campus Security Plan Final Environmental Impact Statement released on August 14, 2013.

CB1 strongly urges that a comprehensive review of how the proposed East Midtown Rezoning would affect Lower Manhattan be conducted, with a particular emphasis on the extent to which an up-zoning of office and commercial space in Midtown would adversely impact the ongoing redevelopment of Lower Manhattan.

Finally, CB1 strongly urges that the sunrise provision of the proposed East Midtown Rezoning be extended to a later date on which certain meaningful World Trade Center site development milestones could be accomplished, such as completion of a fixed number of buildings and square feet of space completed and leased, before the proposed rezoning is adopted.

Thank you for the opportunity to testify today.





# The Yale Club of New York City

Testimony of Alan Dutton  
before the Zoning and Franchises Subcommittee of the Land Use Committee  
of the New York City Council  
(N 130247 ZRM; C 130248 ZMM)  
October 22, 2013

Good morning Chair Weprin, Members of the Subcommittee and Councilmember Garodnick.

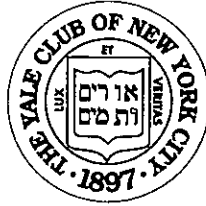
I am Alan Dutton, General Manager of the Yale Club, which is located on Vanderbilt Avenue between 44<sup>th</sup> and 45<sup>th</sup> Streets, in the heart of the Grand Central Subarea Core of the proposed East Midtown Subdistrict.

The Club was constructed on this site in 1915 and has grown markedly since that time. Today, it has 11,000 members who use the Club for dining, lodging, business meetings, educational programs, and social functions. The Club is the largest university club in the world and is a thriving and bustling home, not only for its members, but for the New York City business community. It hosts over fifty different business groups and industry associations annually for educational and community programming.

The 22-story Clubhouse includes 138 guest rooms, three restaurants, athletic facilities, and meeting and banquet rooms that can accommodate up to 350 guests. The Club employs more than 250 people, 160 of whom are members of Local 6, and has annual revenue of approximately \$34 million. On any given day, over 1,000 people come in and out of the Club.

The Club is in need of additional meeting space for its programs, including educational and community programming, as well as expanded accommodations for events so that it can meet the current needs of its members, as well as adapt to future needs. This is key to remaining a vibrant and viable institution.

In addition, Yale University has expressed an interest in exploring the possibility of a New York City presence to support its research and programs in New Haven. The



## The Yale Club of New York City

lots on the western portion of the block on which the Yale Club is located (Block 1279), which are part of an MTA RFP for redevelopment, are the logical location for both the Club and Yale University's expansion.

I would like to express my appreciation to the Mayor's Office and the Department of City Planning for their tireless work on this complex and comprehensive rezoning proposal and in particular for their willingness to work with the Yale Club in an effort to incorporate the Club's needs into the proposal. I specifically want to thank the City Planning Commission and the Department for the change they did make to the proposal to allow Use Group 6E non-commercial clubs to be located on Qualifying Sites. Unfortunately, in spite of these efforts the Club continues to have two serious objections to the proposed rezoning. Unless these concerns are addressed by revisions to the text, the Yale Club will be unable to support the proposal as currently drafted.

While the proposal as modified by the City Planning Commission would allow the Club as a Use Group 6E non-commercial club to expand horizontally into a new building to be constructed on the MTA site using the District Improvement Bonus, the proposed rezoning would preclude community facility uses, such as Yale University, from locating in such a building or in any such building within reasonable proximity of the Yale Club. This result would harm the Club, which is a center of camaraderie and support for Yale alumni, faculty and students in New York City. It would require the geographic bifurcation of Yale's presence in New York City, resulting in inefficient duplication of facilities and discouraging Yale alumni and Club members from participating in the academic life of the University as well as discourage those participating in University programs from participating in the life of the Club.

Second, the proposed use of the District Improvement Fund to eliminate or curtail vehicular traffic on Vanderbilt Avenue poses a serious threat to the Club.

The recently issued Public Realm Vision Plan proposes to pedestrianize and reduce to one lane the portion of Vanderbilt Avenue between East 45<sup>th</sup> and East 43<sup>rd</sup> Streets, including by crowding the western half of the Avenue with planters and seating. This



## The Yale Club of New York City

proposal to severely curtail vehicular access to the Club's only public entrance, which is located on Vanderbilt Avenue, would cause the Club great harm. As an initial matter, reducing vehicular access to a single lane on Vanderbilt Avenue would cause an undue traffic burden at the Club's entrance due to the many drop-offs by buses, vans and other vehicles, which would block the passage of traffic in the one vehicular lane. It would also require Club members (and others) arriving by car and taxi to be dropped off at the corner of 44<sup>th</sup> or 45<sup>th</sup> Streets, which would pose a hardship to many of the Club's guests, including those arriving with luggage to stay in one of the Club's 138 rooms, and those arriving in inclement weather or attending one of the many large events the Club frequently hosts, such as weddings and other life cycle events. Perhaps most importantly, the proposal would unreasonably burden and discriminate against the Club's sizable elderly and disabled population, as the accessible elevator is located adjacent to the Club's entrance on Vanderbilt Avenue. The Club strongly opposes the closure of Vanderbilt Avenue, as well as any change to a single-lane, single-direction right-of-way, as it would cause the Club serious harm.

In addition, the Public Realm Vision Plan also proposes to narrow 44<sup>th</sup> Street between Madison and Vanderbilt Avenues to one lane, crowding both the northern and southern sides of the street with planters. The Club's service entrance is located on the north side of 44<sup>th</sup> Street. The proposed narrowing of 44<sup>th</sup> Street will cause the Club an undue burden because all of the Club's deliveries (e.g. food, beverage, furniture, equipment, HVAC, building maintenance supplies, special events deliveries) are made on 44<sup>th</sup> Street. Depending upon how narrow 44<sup>th</sup> Street will be, every delivery to the Club could block 44<sup>th</sup> Street until the delivery is complete. Delivery vehicles are often parked outside the Club's service entrance for 20 minutes or more while deliveries are brought to the Club's kitchen on the 19<sup>th</sup> floor. The Club strongly opposes narrowing 44<sup>th</sup> Street to one lane, as well as any other change that unduly inhibits deliveries to the Club or otherwise causes the Club serious harm.

Thank you for your consideration.



**Testimony of Judith M. Gallent  
before the Zoning and Franchises Subcommittee of the Land Use  
Committee of the New York City Council  
(N 130247 ZRM; C 130248 ZMM)  
October 22, 2013**

Good morning Chair Weprin, Members of the Subcommittee and Councilmember Garodnick.

My name is Judy Gallent from Bryan Cave LLP. I represent the Yale Club, which is located on Vanderbilt Avenue between 44<sup>th</sup> and 45<sup>th</sup> Streets, in the heart of the Grand Central Core of the proposed East Midtown Subdistrict.

The Yale Club would like to thank the Mayor's Office, the Department of City Planning, and the City Planning Commission for working with the Club to incorporate its concerns into the rezoning proposal. However, certain aspects of the proposed text will impose serious burdens on the Club's operations, and unless modifications to these provisions are made, the Club is unable to support the proposal.

The Club has outgrown its facility on Vanderbilt Avenue and is in desperate need of expansion, ideally horizontally into the new building to be constructed on the MTA site to the west. Yale University has likewise expressed interest in locating a New York City-based facility adjacent to the Club, to take advantage of the obvious synergies that exist among the Club, the University and its alumni.

Under the current proposal, Use Group 6E non-commercial clubs, such as the Yale Club, can be located in new buildings on Qualifying Sites. However, Use Group 3 schools and universities are not permitted in any new buildings on Qualifying Sites. This will preclude Yale University from establishing a New York City presence in any new building on a Qualifying Site within the East Midtown Subdistrict, and will force the University to situate itself at impractical distances from the Yale Club and Grand Central Station, with its rail access to New Haven.

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Furthermore, although the stacking regulations of the proposed text permit many commercial uses to be located on the same story as or above a residential use in a new building on a Qualifying Site, they do not grant the same latitude to Use Group 6E uses. Since the Yale Club's expansion would require floor-to-floor alignments, this omission could hinder the Club's growth.

In addition, the proposed rezoning specifically prohibits existing buildings from remaining within the minimum site geometry of a Qualifying Site. Both DCP and the EIS assumed that the block on which the Yale Club is located will eventually be cleared of all of its buildings to permit a 40,000 square foot, entirely vacant Qualifying Site that would be developed with a new 30 FAR building, pursuant to a special permit for Superior Development. However, the Yale Club intends to retain its iconic Club House. Consequently, unless the text is amended to allow existing Use Group 6E buildings to remain on Qualifying Sites, the anticipated development of the block can never take place.

Finally, as stated in Mr. Dutton's testimony, the Club objects to the pedestrianization of Vanderbilt Avenue as contemplated in the Public Realm Vision Plan, which would have a very serious negative impact on the Club's operations and unreasonably burden and discriminate against the Club's sizable elderly and disabled population.

Thank you for your consideration of the Yale Club's concerns.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

MICHAEL T. SILLERMAN  
PARTNER  
PHONE 212-715-7838  
FAX 212-715-7832  
MSILLERMAN@KRAMERLEVIN.COM

August 8, 2013

Via Hand Delivery

Honorable Amanda M. Burden, FAICP  
City Planning Commission  
22 Reade Street  
Room 2W  
New York, NY 10007-1216

Re: August 7, 2013 East Midtown Rezoning Public  
Hearing Testimony on behalf of the Hotel  
Benjamin, the Hotel Lexington, and the Marriott  
East Side Hotel

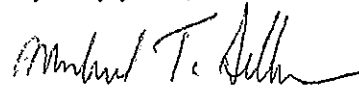
Dear Chair Burden:

Please find enclosed ten (10) copies of the testimony I delivered at yesterday's East Midtown Rezoning public hearing with respect to our concerns about the potential designation of three hotels located in East Midtown as individual New York City landmarks.

I have also attached written testimony from the owners of each of the three hotels, The Hotel Benjamin, the Hotel Lexington, and the Marriott East Side Hotel.

Thank you for your consideration in this matter.

Very truly yours,



Michael T. Sillerman

MTS:le  
Enclosures

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**Michael T. Sillerman, Kramer Levin Naftalis & Frankel LLP**  
**Testimony to the City Planning Commission**  
**at the 8/7/13 Midtown East Plan Public Hearing on behalf of the**  
**Hotel Benjamin, the Hotel Lexington & the Marriott East Side Hotel.**

Good Morning. My name is Michael T. Sillerman from Kramer Levin Naftalis and Frankel. Kramer Levin is special land use counsel to the owners of three hotels located in East Midtown. The Hotel Benjamin, the Hotel Lexington and the Marriot East Side Hotel are separately owned and operated but are all located on the east side of Lexington Avenue (between East 47<sup>th</sup> Street and East 51<sup>st</sup> Streets). Each hotel enthusiastically supports the East Midtown Plan. The proposed rezoning is a vital and concrete step towards ensuring East Midtown's future as a world-class business district and major job generator for New York City. The proposal will promote the development of new, state-of-the-art energy efficient commercial buildings and fund needed improvements to the subway and pedestrian network in the area. As New York City hotel operators and owners, our clients welcome the prospect of a revitalized East Midtown. However, they are very concerned that their ability to provide equally modern, energy efficient and attractive hotel rooms will be significantly impaired if, as an unintended consequence of the rezoning, these hotels are designated as individual New York City landmarks.

The three hotels were each built in the 1920's as affordable apartment hotels. They are located within two blocks of each other, but distinct, having been constructed by different architects for different owners. Each of these hotels has been significantly altered over the years to accommodate retail tenants, modern windows, HVAC sleeves and necessary and often unsightly repairs to address significant underlying structural issues. Notwithstanding the significant investment in the buildings by their owners, these hotels face serious obstacles in their attempts to compete both with more generously designed older hotels such as the Waldorf Astoria and the more modern hotels that have been built nearby or in the rest of Manhattan.

Like the outmoded and obsolete office buildings in East Midtown, these hotels cannot meet the expectations of today's and tomorrow's guests due to the design and the physical limitations of the original buildings. The low ceilings, narrow corridors and small windows that characterize each of the hotels make it impossible as a practical matter to provide the adequately sized and well-lit rooms that guests expect and that national and international hotel chains require without doing comprehensive gut rehabilitation, including a complete façade replacement, of the building. Landmark designation will make it impossible to make the kind of rehabilitation needed or alternatively to redevelop their sites, and it will thus cripple their ability both to serve and to benefit from the new business development expected under the East Midtown Rezoning. It will also increase the costs of operating these already economically challenged hotels by imposing additional landmark related costs for the on-going repairs that these aging buildings require.

Over time, the reduction in revenue attributable to the functional obsolescence of the hotels themselves and to their decreasing appeal to prospective guests, together with the increased costs associated with maintaining an outmoded physical plant to landmark standards can be expected to compromise the hotels' economic viability. The ensuing losses would extend beyond the interests of the hotel owners and the job security of the union members who work there; they would include the cost to the City of the lost opportunity to offer modern, sustainable hotel options that will be convenient to and will complement the new office buildings expected under the rezoning.

Prior to the initiation of the East Midtown Rezoning, none of the preservation groups, community boards and the Landmarks Preservation Commission staff had ever expressed any interest in designating these hotels as individual landmarks. Whatever the motivations behind this sudden and unexpected call for designation, it must be evaluated on the merits pursuant to the criteria set forth in the Landmarks Law. And the law's criteria require more than a finding that a building is old, that it has a recognizable style, that it was designed by a named architect, or that its guests have included one or two people of note. We think that an objective review of these hotels will show that none of them demonstrates the level of special architectural character and historical significance required for individual landmarks designation.



The CEQR process required for the rezoning has resulted in the identification of these three hotels as historic resources that could be adversely impacted as the result of the rezoning. However, it is equally important that the CEQR process address the economic and planning consequences that will result if one or more of these hotels are designated. In light of the relative lack of distinction of these hotels and the important policy objectives at stake, a designation which would effectively freeze these properties is not the right option to address this potential impact. Instead, a more appropriate mitigation for the potential alteration or demolition of these minor hotels would be a requirement that the hotels' architecture and history be documented in accordance with Historic American Buildings Standards (HABS).

We ask the Commission to consider this issue carefully, both in the context of the CEQR process and in its Charter mandated review of any individual landmarks designation that might occur in the future. The Midtown East Plan should not be diluted by a misguided and lasting landmarks designation. Modern, first-class offices need modern, first-class hotels –not hotels that suffer from the same (or even greater) shortcomings of age and design as the current office stock. It would be ironic if existing hotels in East Midtown are deprived of their ability to modernize at the same time that City implements a plan to allow office buildings to achieve this same goal. Designation of these hotels is contrary to the goals of the Midtown East rezoning and would frustrate the realization of the City's goal to restore East Midtown as a premier office district.



# THE BENJAMIN

August 7, 2013

Amanda Burden  
Chair, New York City Planning Commission  
22 Reade Street  
New York, NY 10007

Re: The Benjamin Hotel, 125 East 50<sup>th</sup> Street, New York, NY

Dear Chair Burden:

On behalf of the ownership of The Benjamin Hotel (DP Fee Holding Co., LLC), I am pleased to provide this testimony regarding the East Midtown Rezoning.

We would like to express our support for the Midtown East Rezoning, which we see as an important policy initiative that will benefit Midtown, the entire City and the metropolitan region, and complement the other major development initiatives such as Hudson Yards and the World Trade Center. The improvements to the urban infrastructure and transportation system, the addition of world-class modern buildings, and an increase in options for businesses to occupy new space are all ideas whose time has come.

Our excitement and support for the plan is only tempered by one small issue. By designating our hotel as a landmark, our ability to take part in this great improvement will be squashed. Landmarking would place significant financial and operational burdens on The Benjamin, creating an inability to modernize – which is the very goal of the Midtown East Rezoning.

By way of background, The Benjamin was designed in 1926/1927 by Emery Roth, one of New York City's noted architects. Unlike his 'showpiece' projects, this has always been considered one of his many secondary, undistinguished 'derivative' designs. It was built as The Hotel Beverly, a low-priced apartment hotel similar to many other undistinguished buildings of that era that dotted business centers. This lack of significance is apparent by its absence in the descriptive narrative in the WPA guide to New York City or the various AIA Guides to NYC. It is also not mentioned in the standard Landmarks texts on Roth, in Roth's body of work, and in the history of hotels and apartment hotels both in New York City and nationally. In fact it is characterized as a minor building that does not rise to the level of "special" that characterizes the purpose of the New York City Landmark's Law, which clearly demonstrates by these

scholarly and research reports that this is a minor building not worthy of landmarking. While we are proud of The Benjamin and the service we provide, we agree with Paul Goldberger's comment as it relates to The Benjamin. "Roth was a commercial architect, one who willingly and admittedly made numerous compromises in the service of his clients, and who was more concerned with getting a job done than in creating structures that would change the direction of architectural history."

We are proud of all of our hotels, and have carefully curated a family of high quality, well-respected and individual hotels. Over the years, we have paid specific care to The Benjamin and made significant investments in the building, both interior and exterior, as well as its operations. As we are all aware, New York City hotels, especially those in Midtown, need continual investment and upgrading to keep them competitive and to keep the City's supply of accommodations at the forefront of the industry. Unlike anyone else, we know the hotel inside and out. The physical limitations of the building pose significant operational challenges and these will continue to grow with time.

We are highly concerned about the oddly-timed sudden push for designation. The sudden push to designate The Benjamin is not merited on the grounds of architectural significance given the numerous alterations over years, the actual design of the building, and the loss of original fabric.

The most apparent reason why the hotel is not suitable for destination is that after many decades of exterior changes, the façade is no longer intact and bears no resemblance to the original design. The principal street level façades were demolished and replaced in the 1960s and 1970s. The current façade is the fourth generation façade at street level. What is in place now is a modern recreation of the base façade and lacks the original detail of Emery Roth's scheme. The original small-pane guestroom casement windows have been entirely replaced with inexpensive, dark finished 1/1 metal windows. Because of low floor-to-ceiling heights, air conditioning was introduced with large through-wall HVAC units in each room; as a result large grills are the dominant feature of both facades, destroying architectural integrity and key elements of the original façade elements. These new elements (windows, HVAC openings, replaced areas of the base, extensive masonry replacement of the upper levels) mean that some 40% of the façades are not original and are vastly different from the original design. Should any of these elements need to be replaced in the future – which is likely given the need to constantly upgrade to remain competitive – the painfully high premium required to meet LPC standards for items like replacement windows that match the original windows would be an impossible financial burden on the hotel that it could not support.

Aside from the intentional changes made to the façade and structure, on-going physical deterioration has destroyed much of The Benjamin's historic fabric that is important to designation. The building suffers from extensive deterioration on all of its façades and at all levels because of the failure of the original barrier wall system. The brick and mortar repairs made in the past few decades do not match the original fabric, since the original wire-cut brick is no longer available. As a result the exterior is a hodge-podge different colors and textures. The ongoing barrier wall system problem needs to be addressed, but designation-related restrictions will create costs that cannot be compensated for by increased room rates. Aside from this

problem, the structure is poorly configured for modern hotel operations, with low ceiling heights; fixed, small corridor-to-exterior wall dimensions, small room sizes, and narrow corridors. On the technical side, passenger and service elevators are not compliant with current code and required capacity, and light and air do not meet current standards. With a current Energy Star rating of 63, the building falls far below the minimum required rating of 75; this requirement must be considered for any window replacement or other upgrades, hitting the hotel's bottom line hard.

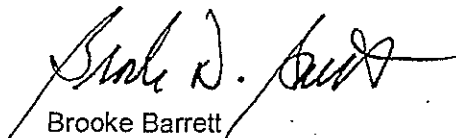
All of this forces The Benjamin into a noncompetitive situation against modern peer hotels in Midtown and it cannot afford to be forced to meet more expensive landmark-level repairs.

Had the structure not been altered so significantly, its lack of architectural significance is still the litmus test for designation. And The Benjamin is, plain and simple, *not* architecturally significant. Emery Roth designed some significant structures in Manhattan - the Beresford, San Remo and El Dorado apartment buildings, and the nearby Ritz Tower. Each of these is a designated landmark, bragging stellar design, ample sites, and classic massing schemes that contribute to the City's skyline and architectural dialogue. The Benjamin is a smaller, stripped-down knock-off of Roth's nearby Warwick, and never had much to distinguish it in the first place. One of four yellow brick and limestone hotels on Lexington Avenue, it is a pedestrian, workaday structure that just happened to be designed by a noted architect who also created some true landmarks. The Benjamin is not one of Emery Roth's landmarks.

Perhaps one of the oddest issues concerning the proposed designation is the claim that the structure has historical and cultural significance. For decades preservationists failed to identify the property as significant. It was only when a few individuals saw the landmarking option as a way to derail the Midtown East Rezoning that The Benjamin was even noticed. It is not been used as the setting for novels or movies, nor been the site of any location-related significant activity. Using designation as a tool to stop another government action is not the reason the landmarking process was created; in fact, when it is attempted using a non-significant property like The Benjamin it puts the entire purpose at risk.

The Benjamin looks forward to continued operations serving tourists and business people in a more vibrant and improved Midtown East. A landmark designation that would impede its ability to maintain and improve its hotel services is contrary to the intent and the spirit of the Midtown East rezoning. The Benjamin hopes that both the City Planning Commission and the Landmarks Preservation Commission will not act at cross-purposes.

Sincerely,

  
Brooke Barrett



**DIAMONDROCK  
HOSPITALITY**

Investors • Owners • Employees • Brands

3 BETHESDA METRO CENTER • SUITE 1500 • BETHESDA, MARYLAND 20814

**William Tennis, EVP & General Counsel, DiamondRock Hospitality**  
**Testimony Submitted to the NYC Planning Commission**

**Midtown East Rezoning**

**August 7, 2013**

This statement is being delivered by William Tennis, the Executive Vice President and General Counsel of DiamondRock Hospitality Company, a premier lodging-focused real estate company in the United States. DiamondRock, owner of four hotel properties in New York City including The Lexington hotel, located at 511 Lexington Avenue at the corner of East 48<sup>th</sup> Street, would like to express its enthusiastic support for the proposed Midtown East Rezoning.

DiamondRock shares the Bloomberg Administration's vision for a new Midtown East commercial district. We believe that City Planning's proposal provides a zoning framework that can unlock the development potential of this important area and pave the way for a handful of new, state-of-the-art, architecturally distinctive mixed-use towers over the coming decades. This rezoning can serve as the catalyst that will ensure Midtown East remains an attractive and desirable destination for growth and investment by a broad range of U.S. and international firms.

As a lodging-focused real estate company, DiamondRock is highly concerned about maintaining a thriving Midtown East. We strongly support this rezoning which will expand the City's tax base, add thousands of permanent jobs in East Midtown and fund improvements to the subway and pedestrian network in the area. We especially applaud City Planning for including a requirement for a higher standard for energy efficiency, ensuring that new commercial towers in East Midtown will be at the leading edge of sustainable design. From DiamondRock's perspective, equally modern, energy efficient and attractive hotel buildings will be needed in the future to serve the guests of a flourishing Midtown East.

DiamondRock believes that this rezoning is essential for the New York City's core business district to remain competitive as well as provide a mechanism for infrastructure improvements and enhancement of the public realm. Our enthusiasm notwithstanding, we are deeply troubled by what may prove to be an unintended negative consequence of the plan that prevents our property at 511 Lexington Avenue from participating in the important mission of the Midtown East Rezoning.

The potential individual landmark designation of The Lexington Hotel conflicts directly with and, in the end, will undermine the vital planning and economic goals of the rezoning. Based on the history, appearance and condition of 511 Lexington Avenue, our property does not possess the special character and architecture required for individual landmark designation. Indeed, until now, it has never been even considered for LPC review. The reality is that The Lexington Hotel has become a pawn in the conflict regarding passage of this legislation.

It is important to note The Lexington Hotel's long tenure of extraordinary service that its workforce provides to many thousands of guests each year. Moreover, The Lexington plays a significant role in Midtown East—indeed it is one of only a handful of full-service hotel properties in the area. However, judging solely on the merits, landmark designation requires a property to meet a high watermark of historical architecture which goes beyond simply being an old building. Criteria which 511 Lexington does not meet.

One of the many reasons The Lexington Hotel does not merit landmark designation is demonstrated by the sweeping scope of alterations this property has undergone over the decades to accommodate new fenestration and HVAC sleeves, as well as extensive façade alterations. To be specific, more than 80 percent of the original decorative façade along 48<sup>th</sup> Street has been removed and replaced during myriad renovations; parapet walls on the corner of the building have been added to hide AC equipment and all of the original windows have been replaced. And despite being an important building in DiamondRock's hotel portfolio, the fact is The Lexington has never been viewed as a significant work of architecture by historians or preservation groups like the AIA or the Municipal Art Society.

Notwithstanding the significant investment we've made in our property, DiamondRock faces serious obstacles in our attempts to compete both with more nearby older hotels such as the landmarked Waldorf Astoria and the modern, new hotels that have been built elsewhere in Manhattan and likely to be built in the Midtown East Subdistrict. Like other buildings in East Midtown that are struggling with inefficient and outdated design, The Lexington Hotel already faces challenges in meeting the expectations of today's and tomorrow's guests due to the physical limitations of the original building. Low ceilings, narrow corridors and small windows make it impossible to provide the larger and well-lit rooms that guests most desire and that national and international hotel chains readily offer. To remain competitive, a comprehensive gut rehabilitation, including a complete façade

replacement, of the building would be required. Landmark designation will make it impossible either to transform the building or redevelop the site in the future, crippling DiamondRock's ability to benefit from the Midtown East Rezoning. Landmarking will also increase the costs of operating what is already an economically challenged hotel by imposing additional landmark-related costs for the extensive renovations continually required by this building. These costs cannot be covered by increased room rates and makes The Lexington even more non-competitive against new hotels.

Over time, the reduction in revenue attributable to the design and infrastructure challenges faced by The Lexington, together with the increased costs associated with maintaining the building to LPC standards will compromise the hotels' economic viability. Moreover, the loss would include the cost to the City of the lost opportunity to offer modern sustainable hotel options in East Midtown convenient to the new office buildings anticipated under the rezoning.

Given the important policy and planning objectives involved here, we believe the City Planning Commission should make clear its opposition to any action that would either deliberately or inadvertently obstruct the goals of the proposed rezoning. This means considering the potential economic and planning consequences involved with landmark status and affirming that buildings located in the Midtown East Subdistrict which fail to meet the highest standards of historical and architectural merit should not be considered for individual designation.

Historic preservation plays a vital role in the City's economy and in the quality of life for both visitors and residents. As a matter of policy, landmark designation is an important planning tool, however, one that must be used wisely. **It should not be used as a tool to block growth and development. Nor should it be indiscriminately ascribed to buildings which lack the extraordinary historical character to support New York City landmark designation. This is especially true in connection with The Lexington Hotel, where designation would preserve a building that is increasingly less efficient and undermine the regeneration of East Midtown for the 21<sup>st</sup> Century.**

**Testimony by Kramer Levin Naftalis and Frankel LLP Submitted on Behalf of Prime Property Fund, LLC, the owner of the Marriott East Side Hotel, to the City Planning Commission at the 8/7/13 Midtown East Plan Public Hearing**

The Commission's goal of revitalizing East Midtown as a world-class business district and major job generator for New York City will strengthen demand for hotel occupancy in the neighborhood. But, the Marriott East Side hotel will only be able to help meet this demand if it can provide a competitive room product. The identification of the hotel as a historic resource and the consequent misguided interest in designating the Marriott East Side as a New York City landmark is contrary to the Commission's goals. If the hotel is designated as an individual New York City landmark, it will be deprived of the ability to modernize along with its neighboring office buildings and it will be unable to compete.

Since 2005, almost \$50 million has been invested in the Marriott East Side Hotel. Despite this significant investment in the property, the hotel has struggled to perform due to the increasing cost of operations and an inventory of guest rooms that cannot compete with the new product offered by modern hotels constructed in the city. Net Operating Income is less than half what it was in the early years of ownership. With 79 new hotels opening in the next three years with a projected 15,000 new rooms, the competitive landscape is only going to increase. Landmark designation would make it impossible to make the kind of rehabilitation needed to convert the building into a modern, sustainable hotel that would complement the new office buildings expected under the East Midtown Rezoning initiative. It would also escalate already high maintenance and repair costs to the point where operation as a full-service hotel may no longer be economically viable, potentially resulting in the loss of 413 jobs. The Marriott East Side is a union hotel, so most of these positions are union jobs.

The hotel's difficulties are a direct result of its increasingly obsolescent building. The Marriott East Side hotel was built in 1922-23 as a bachelor residence for men with 1,200 exceptionally small rooms, many of which utilized group bathrooms. It has since been reconfigured to a full service hotel with 646 rooms, but retains numerous operational challenges due to its original design including small rooms (even by New York standards), small windows with inadequate natural lighting and little protection from street noise, narrow corridors, low ceilings, and 125 different room configurations. Substandard and inefficient heating and cooling systems significantly impact guest satisfaction and contribute to high operating costs. Three years ago, the hotel was further impacted by the construction of the adjacent Hyatt 48 Lex building. Eighty-five guest room windows were bricked over and one of the building's best amenities, the Fountain Terrace, was obscured, relegating it to a staging area for air conditioning units rather than the event and wedding venue it used to be.



The building also suffers from extensive failure of the original barrier wall system due to the materials and construction techniques used in the building's construction. Extensive repairs have been required to date that have resulted in replacement of approximately 35% of the façade, but the remaining original materials will require equally extensive and ongoing repairs. Important design features originally constructed in stone, such as gargoyles, have been replaced with light weight glass-fiber-reinforced polymer due to the risk of collapse resulting from inadequate support. Repairs to the façade are obvious since replacement brick and mortar does not match the original material in color or finish. These repairs can be seen in twenty-story vertical stripes at the building's corners, horizontal bands at window lintel positions, and the total reconstruction of entire surfaces of parapets and cornices at the setbacks of the building. This has significantly disfigured the building and altered the original visual unity of the structure. Repairs to the façade have been costly and will continue to be a burden to ownership as long as the original façade remains in place.

Other physical alterations have been made to the exterior of the building over time, including significant modifications to the Fountain Terrace (removal of the character-defining original fountain, paving, pergolas, hanging lamps and other decorative elements), enclosure of two other terraces, replacement of most of the original windows with modern window systems, insertion of HVAC units under windows (resulting in hundreds of façade penetrations), addition of a modernist canopy above the front entrance, and enclosure of the sky bridge. These changes have also significantly altered the original appearance.

In addition to its lack of architectural integrity, the hotel lacks the historical and architectural significance to merit designation as a landmark. The Marriott East Side hotel has been the subject of numerous historical claims that exaggerate the importance of the building, and in some cases are factually inaccurate. While it is true that Georgia O'Keeffe and Alfred Stieglitz resided in the hotel at various times and made the building a subject of their art, it was not their primary residence at any point in time and they lived in many other locations throughout the city that were true residences. There are other far more significant New York City sites associated with these artists that better represent their work and lives, such as 509 Madison Avenue, the only surviving Stieglitz gallery. The building was not the first, or even one of the first in New York City to take into account the 1916 Zoning Code. It was also not the first major building or the first hotel to reflect the code. It did not initiate a new generation of design for tall buildings in New York City. In fact, the building represented the end of a design. The building did garner much fanfare when it was constructed due to its free-standing giantism among a sea of small structures. However, within a few years it was surrounded by taller buildings on all sides, making it unremarkable to modern historians.

On three separate occasions in the 1970s and 1980s, the New York City Landmarks Preservation Commission took no action and expressed little or no interest in calendaring

this building despite the submission of requests for consideration. The building has been significantly altered due to necessary structural repairs since then, making it even less appropriate for landmark designation now than it was 40 years ago. The sudden and unexpected call for designation now is unwarranted and is in stark contrast to the primary goal of the proposed East Midtown Rezoning initiative, which is to maintain and improve the vibrancy, viability, and competitiveness of East Midtown through development of state of the art commercial buildings. World class amenities are a necessary component of this goal.

The prospect of a landmarks designation is not justified on the merits and will prevent the Marriott East Side from participating in the revitalization of this important commercial district. We ask the Commission to consider this issue carefully as it moves forward with the East Midtown Plan.

Public Hearing on East Midtown Rezoning  
City Council Subcommittee on Zoning and Franchises  
October 21, 2013



I am here today to express SEIU Local 32BJ's support for the proposed rezoning of Midtown East. 32BJ counts, amongst its membership of over 70,000 New Yorkers in the property services industry, the janitors and security officers that help keep our flagship commercial offices spotless and secure. Our members know the office buildings in New York City better than anybody. They have seen the industries at the heart of New York's economy continue to change rapidly and they have seen the advances in technology that have rewritten the way that work is done.

But Midtown East's older buildings and outdated zoning laws have not kept in step with the pace of economic inventiveness. Rather than foster responsible growth, these rules serve to hold the area back, because as it stands, the neighborhood can't come up with the modern, energy efficient office facilities needed to attract world-class tenants. This inability could make the whole city's economy suffer. Increasing the supply of state-of-the-art office buildings will foster the creation of quality jobs, both blue-collar and white-collar, and that will have a real economic impact, both through direct wages and benefits for working people and through the greater tax revenue to be gained for all New Yorkers.

In keeping with this vision for the area as a continued economic engine, we also believe that hotels can play an important role in the creation of good jobs—when developed carefully. They can complement commercial uses, support the City's tourism industry, and serve to create a neighborhood that is not deserted come 5pm. But it is as important to hold hotels to high labor standards; just we often hold residential and commercial development to those standards when it comes to job creation. In addition, any development of hotels must be done in such a way that is compatible with the dominant uses in the district, avoids their negative impacts, and ensures an appropriate use mix in

the neighborhood. We believe a district-wide special permit process would help ensure that the appropriate mix of hotels is built in the area, by responsible developers.

Alongside an emphasis on job creation, the proposed improvements to the transit infrastructure that are included in this rezoning are another solid investment in the future of New York, and especially of its ordinary citizens. This is an aspect of the civic realm that is in critical need of increased funding and the rezoning being considered today includes the promise of capital investment in transit.

Rezoning Midtown East is important, in order to keep this famous business district a global icon in today's changing economy. Allowing the construction of more modern office facilities, with column-free floors, greater ceiling heights, and modern design will go a long way to keep New York's office stock up-to-date and compatible with greater advances in energy efficiency. At the same time, encouraging new investment in this area of longstanding significance will serve to boost the local economy through the creation of good jobs with quality benefits, the kinds of jobs that are needed to patch this city's fabric and reinstate a New York middle class.

For these reasons, we urge you to approve this rezoning, and urge the inclusion of district-wide special permits for hotels in the final rezoning. Thank you.

Good Morning to Chair Weprin and Honorable Council Members:

My name is Kathy Thompson and I am a member of Community Board 6. Over the past several months I have listened to a number of presentations made by the City on the proposed East Midtown Rezoning; and I have been an active participant in the negative resolution vote issued by Community Board 6, in conjunction with the Multi-Board Task Force.

Throughout the presentation processes which resulted in the negative resolution, the community board remained concerned over a long list of questions arising from the proposed rezoning that the City was unable or unwilling to answer.

In response to the many voices raising concerns about the rush to push this proposal through without solid foundations to build upon, Mayor Bloomberg made a belated offer to advance the funds that will be needed to alleviate any additional overcrowding of the already overburdened transit lines at Grand Central Station. This offer is certainly a step in the right direction, but is by no means definitive. This belated offer from the administration is not included in the scoping plan that is already in effect; so we wonder how this plan can be enacted if it has been introduced outside of the realm of the scoping vehicle.

In addition to this gray area, what assurances are there that the next mayor will have the ability to enforce the vague package of improvements suggested by Mayor Bloomberg?

A joint public realm study conducted by the City Planning Commission and the Department of Transportation did not include input from ~~Council Member Daniel Garodnick~~ nor ~~the~~ Multi-Board Task Force; both of which have extensive knowledge of the specific concerns to be addressed in the district. In fact, their ideas and suggestions were met by the study consultants as not in their scoping plan. Since this study was undertaken after the scoping was begun, how can it possibly make a positive impact through the process?

I was greatly distressed to learn that after the countless testimonies before the City Planning Commission in August asking for a delay in the proposal in order to allow for more time and thoughtful consideration of the plan and to address many of the unresolved issues that community boards and others have raised, and that in spite of the concerns raised by two commissioners, the CPC approved the plan before them.

I can only assume they did not take into consideration the many voices who asked for a delay for continuing study.



I will now ask this Subcommittee to reject this proposal for the same reason that I asked the CPC in vain to reject it:

To allow for more time and thoughtful consideration of the plan and to address many of the unresolved issues that community boards and others have raised.

The community is not clamoring for this proposal to be approved by the end of 2013. We have this one opportunity to get it right; whether that runs into the year 2014 or beyond.

I thank you for your time and consideration today.

Kathy Thompson  
Member, Community Board 6

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 945 Res. No. 10.22.13

in favor  in opposition

Date: 10.22.13

Name: (PLEASE PRINT) ~~TOXIC VENTURES~~

Address: 711 W 130

I represent: HOC

Address: 232 E 11th ST.

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 945 Res. No. 10/22/13

in favor  in opposition

Date: 10/22/13

Name: (PLEASE PRINT) Sandro Sherrad

Address: 270 First Avenue

I represent: CB6

Address: 166 UN PL 10097

FILED  
RECORDS TASK  
-1126

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 945 Res. No. 945/946

in favor  in opposition

Date: 10/24/13

Name: (PLEASE PRINT) Andrew Peterson

Address: 100 W 11th St

I represent: Argent Ventures

Address: 100 W 11th St

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/946  
 in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: Jerry Hains

Address: \_\_\_\_\_

I represent: Jerome Hains Realty

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/946  
 in favor  in opposition

Date: 10/13/13

(PLEASE PRINT)

Name: Paul Sellman

Address: \_\_\_\_\_

I represent: Kramer Levin

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/946  
 in favor  in opposition

Date: 10/13/13

(PLEASE PRINT)

Name: Carl Weirbeod or Olive Moss

Address: \_\_\_\_\_

I represent: HR & A Advisors

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/946

in favor  in opposition

Date: 10/13/13

(PLEASE PRINT)

Name: Phil Bowman

Address: 1121 A Avenue

I represent: Boies, Schiller & Flexner LLP

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/946

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: Alan Dutton

Address: Boies Schiller & Flexner LLP

I represent: Yak Club

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 945/946 Res. No. 945/946

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: MICHAEL KENZINE

Address: \_\_\_\_\_

I represent: MAN COMMUNITY BOARD 11

Address: 149-57 CHAMBERS ST

MULTE-  
BOARD TASK  
FORCE

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 10945 Res. No. 946

in favor  in opposition

W/ CONDITIONS Date: 10/22/13

(PLEASE PRINT)

Name: DIANA SWITA

Address: \_\_\_\_\_

I represent: MAN COMMUNITY BOARD 1

Address: 119-51 CHAMBERS ST

MULTI-BOARD TASK FORCE

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Judy Richheimer

Address: \_\_\_\_\_

I represent: J Guides Association

Address: of NYC

945

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 111

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Judy Richheimer

Address: \_\_\_\_\_

I represent: Democrat Refcom

Address: Democrat Club

945

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

9/11/13

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Denator Liz Krueger mer

Address: 4890 12th AVE

I represent: CHELSEA ROBEAM

Address: DEMOCRATIC CLUB

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: NICHOLE GREEN

Address: 249 W 34

I represent: CITY CLUB OF NY

Address: same

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

10/22/13

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/946

in favor  in opposition 10/22/13

Date: 10/22/13

(PLEASE PRINT)

Name: Eddy Koffert

Address: \_\_\_\_\_

I represent: Bridge Club on behalf of Yale Club

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

945/946

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10-22-13

(PLEASE PRINT)

Name: MARK DILLER *Community Council*

Address: 171 W 79 10024

I represent: COMMUNITY BOARD 17/MANHATTAN

Address: 250 WEST 87th 10024

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

945/946

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: Simeon Bankoff

Address: \_\_\_\_\_

I represent: Historic District Council

Address: 232 E. 11th street, 10003

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/6

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: TIM KOREIN

Address: Owner Lever House

I represent: Omnispecore Management Corp

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/6

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Tommy Kelly

Address: \_\_\_\_\_

I represent: St Green + Hines

Address: KPF

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/6

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Jamie Von Klenpever

Address: \_\_\_\_\_

I represent: St Green, KPF

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/6

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Gene Kohn

Address: \_\_\_\_\_

I represent: St Green, KPF

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/6  
 in favor  in opposition MIDTOWN EAST

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Marc Holliday

Address: 420 Lexington Avenue

I represent: SL Green, CSD

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: KENNETH JACKSON

Address: \_\_\_\_\_

I represent: PROFESSOR COLUMBIA

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 2/10/27/13

(PLEASE PRINT)

Name: BOB FOX

Address: TERRACE BRIGHT GREEN

I represent: ~~FOURTH AVENUE~~

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: BILL BROWNING

Address: \_\_\_\_\_

I represent: TERRAPIN BRIGHT GREEN

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: CHRIS GARVIN

Address: \_\_\_\_\_

I represent: TERRAPIN BRIGHT GREEN

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: JORDAN M. ISENSTADT

Address: \_\_\_\_\_

I represent: ABNY

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: BILL MONTANA

Address: \_\_\_\_\_

I represent: SELF

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: CAROL HARRIS

Address: \_\_\_\_\_

I represent: ROOSEVELT HOTEL

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: ADITH SENICER

Address: \_\_\_\_\_

I represent: BZBJ

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: RUSSELL HUNGER

Address: \_\_\_\_\_

I represent: US GREEN BUILDINGS COUNCIL

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: MICHAEL SILLERMAN

Address: \_\_\_\_\_

I represent: HOTELS BENJAMIN, LEVINGTON, MARRIOTT

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: JAMES CURRANT

Address: \_\_\_\_\_

I represent: SELF

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: ADAM COURTNEY

Address: \_\_\_\_\_

I represent: SELF

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: MITCHELL MOSS

Address: \_\_\_\_\_

I represent: PROFESSOR NYU

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: DOUGLAS WOODWARD

Address: \_\_\_\_\_

I represent: ALUM

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/6

in favor  in opposition

Date: \_\_\_\_\_

Name: TERRY O'NEAL (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: CB6 - M-B T.F.

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Jennifer Carey (PLEASE PRINT)

Address: 243 W. 30th St

I represent: CB-5

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: COREY JOHNSON (PLEASE PRINT)

Address: 220 W. 15th St, 2B - 10011

I represent: MANHATTAN COMMUNITY BOARD 4

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. East Midtown Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: Bob Leiber

Address: \_\_\_\_\_

I represent: Urban Land Institute

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: Jeff Mandell

Address: \_\_\_\_\_

I represent: office of the Mayor

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: TONY MALKIN

Address: \_\_\_\_\_

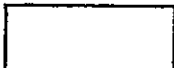
I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK** E Elmhurst

Appearance Card



I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/2013

(PLEASE PRINT)

Name: CRISTINA LONG

Address: 46-11 104th Street

I represent: CB4

Address: 46-11 104th Street

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: October 21, 2013

(PLEASE PRINT)

Name: SUSAN NIAL

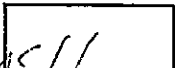
Address: 2166 Broadway

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 945/6

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Danielle Freni

Address: 30 E. 81st St, NYC

I represent: Central Synagogue

Address: 123 E. 55th St, NYC



THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card



I intend to appear and speak on Int. No. 945/6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: WACEY RUBIN

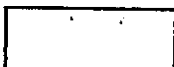
Address: [Signature]

I represent: COMMUNITY BOARD FIVE

Address: 450 SEVEN AVENUE

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card



I intend to appear and speak on Int. No. LU 9450 946 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: State Senator Brad Hoylman

Address: 322 8th Ave, Ste 1700

I represent: New York State Senate 27th District

Address: \_\_\_\_\_

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card



I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10.22.13

(PLEASE PRINT)

Name: Andrea Goldinger

Address: 1 Whitehall St, NYC 10004

I represent: NY Landmarks Conservancy

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/946 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: David Brown

Address: 1011 1st Ave

I represent: Archdiocese of NY

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945&6 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/2013

(PLEASE PRINT)

Name: JOHN ARBUCKLE

Address: 308 W. 107TH ST. #3, NY, NY 10025

I represent: DOCOMOMO NY/TRI-STATE

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ~~130947~~ 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Vikki Barbara

Address: \_\_\_\_\_

I represent: Chair, Community Board 5

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Ron Dwenger

Address: \_\_\_\_\_

I represent: Community Board 5 member

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Eric Stern

Address: \_\_\_\_\_

I represent: Community Board 5 member

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Nancy Goshaw

Address: \_\_\_\_\_

I represent: CBSS

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: David R. Golodoff

Address: \_\_\_\_\_

I represent: CBS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

945/6

I intend to appear and speak on Int. No. 945/946 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Stuart Pertz

Address: 125 Berkeley Place

I represent: The City Cens of NY

Address: NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Kathy Thompson

Address: \_\_\_\_\_

I represent: CBS Community Board 6

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

945

I intend to appear and speak on Int. No. 945 <sup>X</sup> Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Michael Greeley Thompson

Address: Community Board 6

I represent: CBS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945/946 Res. No. 945/946  
 in favor  in opposition

Date: 10/22/13

(PLEASE PRINT)

Name: Rick Bell Executive Director

Address: 536 L A Guardia Place 10012

I represent: American Institute of Architects New York

Address: Chapter

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 945 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Gene Russianoff

Address: \_\_\_\_\_

I represent: Straphangers Campaign

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card 945/16

I intend to appear and speak on Int. No. 947/16 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

Name: JOHN YOUNG  
FRED COSENTI  
(PLEASE PRINT)

Address: 417 BROADWAY

I represent: CITY PLANNING

Address: NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

Name: David Karnovsky  
(PLEASE PRINT)

Address: \_\_\_\_\_

I represent: DCP

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card 945/16

I intend to appear and speak on Int. No. 947/16 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/22/13

Name: JOHN M. BOBET  
(PLEASE PRINT)

Address: 121 Berkeley Place

I represent: CITY PLANNING NY

Address: NY

Please complete this card and return to the Sergeant-at-Arms