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In the Matter of the  
NEW YORK CITY  
LANDMARKS PRESERVATION COMMISSION

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B E F O R E:

ROBERT TIERNEY, Chairperson

Landmarks Preservation Commission  
1 Centre Street  
New York, New York 10007

October 29th, 2013  
1:30 p.m.

TRANSCRIPT OF PROCEEDINGS

Reported By:

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P R E S E N T:

Commissioners:

- ROBERT TIERNEY, Chairman
- MICHAEL DEVONSHIRE
- LIBBY RYAN
- FREDERICK BLAND
- MICHAEL GOLDBLUM
- MARGERY PERLMUTTER
- DIANE CHAPIN

Staff:

- MARK SILBERMAN, ESQ.
- SARAH CARROLL
- WILLIAM NEELEY

2 MS. CARROLL: Item No. 5 is an  
3 application for a Certificate of Appropriateness in  
4 the Borough of Manhattan, Docket No. 12-7519,  
5 Block 1459, Lot 22, 429 East 64th Street, the City  
6 and Suburban Homes Company First Avenue Estate, an  
7 Individual Landmark, two six-story apartment  
8 buildings designed by Philip H. Ohm, built as part  
9 of the model tenement complex City and Suburban  
10 Homes First Avenue Estates in 1914 to 1915, and  
11 altered in 2006. This is an application to  
12 demolish the buildings, pursuant to the Rules of  
13 the City of New York 25-309 on the grounds that  
14 they generate an insufficient economic return.

15 MR. NEELEY: Good afternoon,  
16 Commissioners, William Neeley with the Preservation  
17 Department Staff. The project team is coming in.  
18 While they're getting settled, I'll note that this  
19 is an application by the owner of the City and  
20 Suburban Complex to demolish the two eastern-most  
21 buildings, which are located at the corner of York  
22 Avenue, 429 East 64th Street and 430 East 65th  
23 Street. You've heard this proposal last on June  
24 11th, 2013. Since the hearing, the original  
25 hearing in the public meeting, the application has

2 made a submission to the Commission in response to  
3 public testimony and questions by the Commissioners  
4 and in response to a presentation made on behalf of  
5 the Friends of the Upper East Side Historic  
6 Districts. This document was distributed to you at  
7 the time they were submitted.

8 Today, the applicant will summarize  
9 the information in the most recent and the previous  
10 submission and answer any questions you might have.

11 CHAIR TIERNEY: We're going to open  
12 the hearing solely for the purpose of having the  
13 applicant give remarks, as Bill just alluded. A  
14 motion to open.

15 (Whereupon, the motion is moved by a  
16 Commission Member.)

17 CHAIR TIERNEY: Second.

18 (Whereupon, the motion is seconded by  
19 a Commission Member.)

20 CHAIR TIERNEY: Without objection,  
21 the hearing is open for this purpose. Go right  
22 ahead.

23 MR. SELVER: Mr. Chairman, Members of  
24 the Commission, I'm Paul Selver. I'm a member of  
25 the firm of Kramer Levin Naftalis & Frankel. We

2 are Special Land Use Counsel to Stahl York Avenue  
3 Company, which is the owner of the property at  
4 issue here and the applicant. I'm going to try to  
5 summarize today I think what -- with the focus on  
6 what was in our most recent submission, but  
7 there'll be some history as well.

8 I'm going to begin with the  
9 proposition that this case is different from other  
10 hardship proceedings that the Commission has seen.  
11 It doesn't involve a property that was sold for  
12 redevelopment immediately prior to designation, as  
13 was the case in Mount Nebo and was the case in  
14 KISKA. It doesn't involve a property that was  
15 fully rented up, fully ongoing at the time of  
16 designation, and it doesn't involve a property that  
17 has been designated for many years. Rather, the  
18 history of this particular landmark, these  
19 particular buildings, have followed a much more  
20 winding road.

21 As you know, our client has  
22 consistently argued that these buildings are not  
23 landmarks, either individually or as a part of the  
24 larger full block development. They were carved  
25 out in the 1990 designation of the block by the

2 Board of Estimate. That decision was upheld by the  
3 Supreme Court. And with respect to these  
4 buildings, there was no appeal. There was an  
5 appeal in a companion case involving the City and  
6 Suburban York Avenue Estates, and in that case, the  
7 Appellate Division reversed the Supreme Court and  
8 reinstated the full block designation.

9                   However, for the rest of the 1990s,  
10 and actually even until 2006, there were no actions  
11 taken in the direction of designating these  
12 buildings. During that period, it was not  
13 unreasonable to believe that the Landmarks  
14 Commission was not pursuing the redesignation of  
15 the two properties. And this was because there was  
16 already one full block light-court tenement  
17 landmark that had been designated. So the City was  
18 assured of preservation of that type of development  
19 and that type of model tenement, and it was  
20 because, as we have consistently maintained, these  
21 buildings are actually very significantly different  
22 from those on the balance of the block in terms of  
23 their architect, in terms of their history, and in  
24 terms of their plans.

25                   So beginning in the late 1990s, Stahl

2 took the first concrete steps toward redeveloping  
3 this site by keeping vacant apartments unleased and  
4 emptied -- vacated apartments. It continued to  
5 maintain the buildings in accordance with law and  
6 to provide full services for the tenants who were  
7 there. But it also stopped making capital  
8 improvements to the building, all of this in  
9 anticipation of redeveloping the property once the  
10 buildings had been vacated in an entirely legal and  
11 appropriate manner.

12 However, in 2006, the Commission was  
13 asked to redesignate the two buildings, and in  
14 response to this request, it formally did so. At  
15 the time, there were 50 apartments -- a little over  
16 50 -- 53 apartments, in the two buildings that were  
17 vacant. Stahl challenged the redesignation because  
18 it believed, as it believed in 1990 and still  
19 believes today, that these buildings do not meet  
20 the criteria for designation under the Landmarks  
21 Law. That challenge, as you know, was  
22 unsuccessful, and so we are here with this hardship  
23 proceeding.

24 What makes this hardship proceeding  
25 unique is that it involves properties that in order

2 to be redeveloped, had been partially vacated and  
3 not upgraded in reasonable reliance on a court  
4 decision and the course of conduct by an  
5 administrative agency. The result was that at the  
6 time they were designated, these buildings were not  
7 fully rented up and they were in need of capital  
8 improvements. A substantial capital investment  
9 would have been required to make them marginally  
10 competitive with the other rental properties in the  
11 neighborhoods. And we believe that we've shown in  
12 the course of these proceedings that the  
13 investment, the level of investment that was  
14 required, was far greater than can be supported by  
15 the achievable rents.

16 We haven't in this proceeding argued  
17 that the hardship test under the Landmarks Law, an  
18 inability to earn 6 percent on a property's  
19 assessed valuation, is unconstitutional. But I  
20 have to say that we are reserving the  
21 constitutional claim because we think it is not  
22 without merit and it may be one that our client  
23 would seek to assert in any challenge to a decision  
24 against it in this case. What we do want to say  
25 here though is that we believe that it's incumbent



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2 on the Landmarks Commission to bear in mind just  
3 how artificial and how divorced from economic  
4 reality the Landmarks Law's test really is.

5 First, the starting point of this  
6 test does not fully reflect the basic value of the  
7 property. This is because the Department of  
8 Finance uniformly assesses multiple dwellings at  
9 45 percent of their market value, turning a nominal  
10 6 percent return into a real 3 percent rate of  
11 return, far lower than the return that's acceptable  
12 to any owner of New York City Real Estate.

13 Secondly, and important in this  
14 particular case -- it may not be in others, but in  
15 this case -- it fails to recognize a substantial  
16 portion of the costs of major repairs or capital  
17 upgrades to a building. This is because it allows  
18 consideration of only 45 percent of the hard costs  
19 of the work, not even all of it, 45 percent of the  
20 hard cost of the work. It does not either  
21 recognize or allow to be taken into account the  
22 professional fees, permit fees, insurance charges,  
23 and other soft costs that are incurred as a part of  
24 this work. These soft costs, according to Cushman  
25 & Wakefield, can add up to as much as one half the

2 cost of the work. So basically, three quarters of  
3 the cost of the work does not get accounted for in  
4 assessing, as a part of the hardship test.

5 The bottom line is that in order to  
6 prevail in a case such as this, an owner must  
7 demonstrate that its property is incapable of  
8 earning a reasonable return on investment that is  
9 far below the nominal 6-percent return set in the  
10 Landmarks Law and even further below what the  
11 industry considers acceptable. We know of no owner  
12 who would make the investment necessary to upgrade  
13 the building if it knew its return was going to be  
14 so limited.

15 Nevertheless, and despite the  
16 uneconomic assumptions that it was required to make  
17 in performing the hardship analysis, we  
18 respectfully submit that the facts supporting  
19 Stahl's application show that the stabilized  
20 operation of the York Avenue buildings as landmarks  
21 today would -- or excuse me -- in 2009, in the  
22 test year , would not have earned a reasonable  
23 return. Let's look briefly at the facts that are  
24 undisputed, the facts that are disputed, and what  
25 these facts show.

1           There's no material dispute in the  
2  
3 administrative record about the substantial  
4 accuracy of the description of the buildings on the  
5 two properties, their repair and renovation costs,  
6 or their operating expenses.

7           No one has disputed the essential  
8 facts regarding the buildings. They are 6-story  
9 walk-up apartment buildings that are wholly lacking  
10 in modern amenities. They contain 190 very small  
11 apartments with an average rentable square footage  
12 of about 371 square feet. And there were 53 vacant  
13 apartments in November 2006, when the buildings  
14 were redesignated, and 97 vacant apartments at the  
15 end of the 2009 test year.

16           Nor has there been any significant  
17 dispute regarding the applicant's detailed  
18 estimates of repair and/or rehabilitation costs  
19 under each of the several different scenarios that  
20 were presented to the Commission. These estimates  
21 were prepared by Gleeds New York, an independent  
22 and very experienced construction cost consultant,  
23 after inspection of the York Avenue buildings and  
24 each of their vacant apartments. The lowest cost  
25 of these scenarios was the so-called minimum

2 habitability scenario, which involved only repairs  
3 and improvements to the 97 vacant apartments  
4 necessary to render them legally habitable and did  
5 not involve any capital improvements to the  
6 buildings as a whole. Gleeds estimated that the  
7 cost of this scenario in the 2009 test year would  
8 be about \$4 million.

9 At the other end of the range of  
10 rehabilitation scenarios was a so-called market  
11 rehab scenario, which was designed to make the  
12 apartments reasonably marketable, albeit far from  
13 luxurious. This scenario included both a higher  
14 level of work in individual apartments than did the  
15 minimum habitability scenario and building-wide  
16 capital improvements, such as electrical upgrades  
17 and fully renovated kitchens and baths, that were  
18 not included in the minimum habitability scenario.

19 Gleeds estimated the 2009 cost of the  
20 market rehab scenario to be about \$16.7 million.  
21 To date, there's nothing in the administrative  
22 record, from an expert or from anyone else, that  
23 seriously disputes the essential accuracy of either  
24 of these investments, or at least we haven't heard  
25 anything in the administrative record.

1  
2 Finally, there's no dispute on the  
3 record as to the essential accuracy of Cushman and  
4 Wakefield's estimates of operating expenses under  
5 the various scenarios that were examined. These  
6 estimates were derived from historic expense data  
7 for the York Avenue buildings and expense data for  
8 comparable properties. For both the minimum  
9 habitability scenario and the market rehab  
10 scenario, Cushman estimated 2009 expenses to be in  
11 the range of \$24 per gross building square foot.

12 Thus, the question of whether Stahl  
13 is able to earn a reasonable return within the  
14 meaning of and pursuant to the statutory standards  
15 of the Landmarks Law comes down to a question on  
16 the record of how much income these buildings were  
17 capable of generating in 2009. The answer to that  
18 question lies in the two areas in which the record  
19 shows a material dispute. These are the projected  
20 market rents for the 97 units that were vacant in  
21 2009 and the appropriate allowance for vacancy and  
22 collection losses. Our focus here will be on the  
23 market rehab scenario, as that scenario produced  
24 the highest returns of any that we studied.

25 Cushman & Wakefield looked at rents

2 agreed to in leases actually entered into in 2009  
3 in over 100 buildings on the Upper East Side. Most  
4 were in elevator buildings, but about 15 percent  
5 were in walk-up buildings located between East 60th  
6 Street and East 84th Street. It adjusted the rents  
7 in the 89 elevator buildings using a factor  
8 recognized by HR&A as reasonable in establishing  
9 the difference between rents generally in elevator  
10 and non-elevator buildings, and it concluded that  
11 the York Avenue buildings should rent for about  
12 somewhere between 36.80 and 43.80 per rentable  
13 square foot after adjustment for no elevators but  
14 prior to adjustments for layouts, finishes and  
15 amenities. It found that the 14 walk-up apartment  
16 buildings showed apartments renting at between \$37  
17 and \$39 per rentable square foot, again, without  
18 any consideration as to layouts, finishes and  
19 amenities. Based on these analyses and on earlier  
20 analyses of rents in other buildings within the  
21 First Avenue Estate on the block and an additional  
22 four buildings offsite, and an extensive adjustment  
23 of those, of the rents in those buildings, it  
24 concluded reasonably that the York Avenue buildings  
25 could, after a market rehab, rent for an average of

2 \$40 per rentable square foot.

3 We also note that Cushman's estimate  
4 of \$20 per rentable square foot for units that had  
5 undergone the minimum habitability rehabilitation  
6 has also not been challenged by a showing of rents  
7 from apartments that had gone through a similar and  
8 comparable rehabilitation process. We believe that  
9 such a challenge would've been unsuccessful in any  
10 event. This is because even if the rent projected  
11 in this scenario was increased to \$30 per rentable  
12 square foot or \$35 per rentable square foot and all  
13 other financial considerations, including the  
14 10-percent vacancy rate were kept constant, the  
15 buildings would still not achieve the 6-percent  
16 return within the meaning of the Landmarks Law.

17 Cushman's professional analyses were  
18 disputed by HR&A Advisors. Unfortunately, HR&A's  
19 reports were materially inaccurate in their  
20 conclusions as to rents. And as a result, they  
21 shed more heat than light on what has become the  
22 key area of disagreement in this proceeding.

23 HR&A's basic conclusion was that the  
24 apartments in the York Avenue buildings could,  
25 after a minimum habitability rehabilitation, be

2 rented at \$50 per rentable square foot. This  
3 result is ludicrous in the context of the quality  
4 of the apartments that such a rehabilitation would  
5 have produced. But it's also excessive in the  
6 context of a market rehab for reasons that I'll go  
7 into briefly now.

8 HR&A reached this conclusion by  
9 imputing average rents per apartment in its  
10 comparable buildings directly to the apartments in  
11 the York Avenue buildings rather than calculating  
12 and applying rents on a per-square-foot basis.  
13 This approach is methodologically unsound because,  
14 as real estate professionals know, it does not  
15 acknowledge that one of the most important  
16 variables, if not the most important variable, in  
17 the rent level of an apartment is its size. And it  
18 is particularly inappropriate here because HR&A has  
19 conceded that the average size of its comparable  
20 apartments was materially, that is more than  
21 15 percent, greater than the average size of the  
22 apartments in the York Avenue buildings.

23 HR&A's projection of market rents for  
24 the York Avenue buildings is based on, second, it's  
25 based on listed or asking rents, and not actual



2 rents, for its comparable apartments. The fact is  
3 that listed or asking rents were significantly  
4 higher than rents at which apartments were leased  
5 in 2009. These records show that Stahl's real  
6 property tax counsel has reviewed the Department of  
7 Finance RPIE. That's Real Property Income and  
8 Expense filings for each of the HR&A's buildings in  
9 2009. These records show that, assuming that the  
10 rentable square footage equals 90 percent of a  
11 building's gross residential area, the HR&A  
12 buildings have an actual or imputed 2009 rent of  
13 between \$38 and \$44 a rentable square foot,  
14 depending on the level of vacancy and collection  
15 loss used. Rents of this magnitude are not  
16 consistent with HR&A's projection of market rents  
17 in excess of \$50 a square foot for the York Avenue  
18 apartments, particularly given the superior level  
19 of finishes and amenities in HR&A's comparable  
20 apartments.

21 Finally, we call your attention to  
22 the fact that the only way HR&A was able to show  
23 that the York Avenue buildings could not earn a  
24 reasonable return -- or could earn a reasonable  
25 return was by manipulating the data in the record.

2 As we noted, HR&A's analysis was predicated on  
3 matching projected rents of more than \$50 a  
4 rentable square foot with a \$4 million minimum  
5 habitability scenario for rehabilitation, a  
6 scenario that would've only rendered the York  
7 Avenue buildings' vacant apartments code compliant  
8 and legally habitable. It did not, as I've said,  
9 include improvements that were part of the market  
10 rehabilitation scenario, and were certainly part of  
11 the work on HR&A's comparables, such as upgrading  
12 of electrical systems and renovated kitchens and  
13 bathrooms. It's simply inconceivable that the  
14 small walk-up apartments in the York Avenue  
15 buildings could have achieved rents of more than  
16 \$50 a square foot, which are higher than the  
17 average rents in any of the comparables examined by  
18 either Cushman or HR&A, under the very limited  
19 minimum habitability scenario. Moreover, even if  
20 we were to assume that the apartments in the York  
21 Avenue buildings could rent at \$50 a square foot  
22 and that all of HR&A's other income and expense  
23 assumptions remained unchanged, the HR&A analysis  
24 would still fail to produce -- would fail to  
25 produce a reasonable return if it were based on the

2 proper amount of capital investment, the  
3 \$16.7 million spent in the market rehab scenario.

4 Turning to vacancy and collection  
5 losses, we find a smaller disagreement, but one  
6 that is important nevertheless. Cushman &  
7 Wakefield assumed that stabilized revenues at the  
8 York Avenue building would be reduced by a  
9 10-percent vacancy and collection loss factor.  
10 This assumption is based on the specific  
11 circumstances of the buildings themselves. They  
12 are 100-year-old 6-story walk-up structures with  
13 tiny, awkwardly-laid-out apartments that are devoid  
14 of modern amenities. They are relatively far from  
15 subways and do not have immediate access to retail  
16 services. As a result, they have tended to attract  
17 a younger and more transient population and,  
18 therefore, experience more significant tenant  
19 turnover.

20 In addition, collection losses at  
21 these buildings are significant, with about 20  
22 percent of the tenants in arrears of their rent at  
23 any given time. Together, these factors support  
24 Cushman's assumption of a 10-percent vacancy and  
25 credit loss for the buildings under stabilized

2 occupancy.

3 By way of contrast, HR&A relied  
4 entirely on citywide vacancy statistics in deciding  
5 to use a 5-percent vacancy and collection  
6 allowance. It did not take into account the  
7 particular circumstances surrounding the York  
8 Avenue buildings, which could lead to a  
9 higher-than-average loss factor. Nor did it  
10 recognize, as we pointed out in our last  
11 submission, that citywide vacancy statistics tend  
12 to understate actual vacancy rates. And finally,  
13 it failed to identify any separate collection loss.  
14 Given these deficiencies, HR&A's projection of a  
15 vacancy and collection loss factor of only  
16 5 percent for the York Avenue buildings is neither  
17 realistic nor we believe credible.

18 Here and in this case over the past  
19 period of this application, the applicant has  
20 analyzed the financial consequences of abandoning  
21 its long-standing plan to redevelop the York Avenue  
22 property with a new building, and of restoring the  
23 York Avenue buildings to full occupancy under a  
24 variety of different scenarios. For each scenario  
25 that was analyzed, Gleeds produced a detailed

2 estimate of the capital costs and Cushman &  
3 Wakefield estimated maintenance and operating  
4 expenses. None of these estimates have been  
5 discredited.

6 Cushman also projected achievable  
7 market rents and a vacancy and collection loss  
8 factor for each scenario. The rents were based on  
9 verified actual rents in a number of comparable  
10 buildings, including other buildings in the First  
11 Avenue Estates, and they were adjusted  
12 appropriately to account for differences in  
13 location, condition and level of amenities.  
14 Cushman's vacancy and collection loss reflected the  
15 specific conditions at these buildings. The  
16 evidence in the record that questions the  
17 conclusions that Cushman reached is not based on  
18 adequately analyzed data. It's based in  
19 inadequately analyzed data and on information that,  
20 whatever it's general applicability, is not  
21 appropriate for use in assessing conditions of the  
22 buildings. We believe that such evidence is  
23 neither credible nor when reviewed, critically  
24 persuasive.

25 Together, the analyses submitted by

2 Stahl have conclusively shown that, we believe,  
3 that under each scenario for returning the York  
4 Avenue buildings to a stabilized occupancy, the  
5 achievable net rents would have been insufficient  
6 to generate a 6-percent return on the York Avenue  
7 property's assessed valuation after adjustment to  
8 account for the hard construction costs associated  
9 with each scheme.

10 And I want to stress that what we're  
11 really focusing on here is the fact that in many  
12 ways the construction costs that were required to  
13 put the buildings back together, the buildings that  
14 had been partially vacated in an entirely legal  
15 manner, and at a time when there was no question  
16 that they could be vacated, are what's really  
17 driving this more so than anything underlining.  
18 And that's what makes this case different from  
19 other cases.

20 For that reason, we believe we've  
21 demonstrated that it's not possible, even under the  
22 low reasonable return threshold set forth in the  
23 Landmarks Law, to earn a reasonable return on the  
24 assessed valuation of these properties.

25 We urge the Commission to grant this

2 hardship application, and I'm happy to answer any  
3 questions.

4 CHAIR TIERNEY: Questions? Further  
5 questions from the Commission Members?

6 MR. SILBERMAN: I'm going to go  
7 through these later.

8 CHAIR TIERNEY: Any questions of  
9 Counsel for the applicant? Go ahead.

10 MS. PEARLMUTTER: I'm just going to  
11 work my way backwards. Interrupt whenever you  
12 feel. I'm just going to work my way backwards.  
13 I think I understood that you said that because the  
14 building was vacated by the property owner in  
15 expectation of demolition; that's why it fails to  
16 realize a reasonable return on investment, because  
17 you -- so I'm trying to put that together.

18 MR. SELVER: No. What I said,  
19 Commissioner, was that the amount of money required  
20 to restore the apartments to a condition where they  
21 could be occupied or where they -- legally occupied,  
22 or where they could be competitive with other rental  
23 apartments in the neighborhood was what -- the amount  
24 of money that was required to restore them once they  
25 had been vacated was more than would be supported by

2 the rents that those apartments could generate.

3 MS. PEARLMUTTER: But at the same time  
4 doesn't understanding whether or not you'd be able  
5 to rent up, whether you minimally or moderately or  
6 extremely renovate, doesn't that depend on an  
7 active, aggressive marketing campaign? And in your  
8 papers, you say that actually the campaign consisted  
9 more or less of an office that people could go into  
10 between the hours of something like 8:00 and 4:00,  
11 and word of mouth. It's not listed with any brokers.  
12 I've talked about this before. I actually have direct  
13 experience with going on the so-called website, where,  
14 in fact, it's not a website. It shows the address if  
15 you know what the address is, and it gives you no other  
16 information except a phone number. That's not how we  
17 find out whether there are units vacant. So -- and, in  
18 fact, friends have called because I've told them what a  
19 great deal of an apartment this would be, and they've got  
20 nowhere. And so it seems to me that there isn't any  
21 evidence in the record, with all due respect, that the  
22 apartments have been aggressively rented.

23 MS. RYAN: Marketed.

24 MS. PEARLMUTTER: Marketed, marketed.

25 MR. SELVER: May I respond to that?



2 Because that's not an issue here. What we've  
3 assumed in the analysis that produces the -- that  
4 we made, that addresses the 6-percent return, were  
5 that the buildings were in a stabilized occupancy  
6 with a 10-percent vacancy and collection loss  
7 factor. Now, you can argue whether the 10 percent  
8 is right or whether it should be 5 percent or 15  
9 percent, whatever it is. But we've -- how -- we've  
10 assumed these properties, these apartments, were  
11 marketed. We've assumed there were tenants in  
12 them. We've assumed that there's a reasonable  
13 turnover of tenants and that they are consistently  
14 being marketed so that there is a reasonable  
15 turnover in tenants. What might have been said  
16 with respect to the marketing of the apartments and  
17 the balance of the complex today, and there may be  
18 reason to dispute that, is not relevant to the  
19 analysis that we presented using the 10-percent  
20 vacancy factor.

21 MS. RYAN: I think one of the things  
22 that is being addressed here is that there's a  
23 large amount of money for the expense of lease-up  
24 in your analysis, and I think what we're trying to say  
25 is that actually no lease-up efforts have been made.

2 So that's an expense that doesn't seem to be  
3 relevant in the analysis. And I think it's also  
4 worth noting that in all of the, both internal to  
5 the real estate industry and external to the public  
6 databases where one could find apartments, these  
7 addresses appear nowhere.

8 But the other question that I had for  
9 you is one assumption you made about -- and believe  
10 me, you don't need to be in the real estate  
11 business to know the answer to this -- is that size  
12 is the most important determinant of value of an  
13 apartment. I think we all know it's location,  
14 location, location. And I don't think that that  
15 has been given the appropriate weight in this  
16 analysis.

17 MR. SELVER: If I may respond to  
18 that? I can stand corrected, but I believe that  
19 in all but an initial analysis, I think maybe the  
20 first analysis, did include a rent-up period. In  
21 every subsequent analysis we have taken that out.  
22 There are no soft costs in any of the subsequent  
23 analyses and they're not accounted for as a part of  
24 what I call "the denominator," which is the amount  
25 of money that we have to earn 6 percent against.

2 So with all due respect, Commissioner, I think if  
3 you look at the more recent analysis, you'll find  
4 that we did not include that factor in our  
5 analysis. And with respect to "location, location,  
6 location," you're probably right, but what we're  
7 measuring, the comparables that we're using are all  
8 in roughly comparable locations, maybe even  
9 slightly better locations to the extent that  
10 they're located further to the west. So we think  
11 size is a very relevant differentiator in these  
12 particular cases.

13 MR. SILBERMAN: Paul, if I could just  
14 follow up, I think the reason some of the  
15 Commissioners are asking about the other apartments  
16 is because, contrary to what you just stated, the  
17 level of rent and the vacancy level in the other  
18 apartments is a crucial factor in determining rent  
19 levels as the building lease is up. First of all,  
20 you use them as comparables and the fact that they  
21 are highly vacant, extremely, unheard of high  
22 vacancy rate for any building that you can point  
23 to, you've argued will drive down the prices that  
24 one could get for these apartments.

25 So you're using it in both ways. Not

2 only are you using it in an effort to show that you  
3 can't get a lot for these apartments, but you're  
4 also using it to say because they're vacant that  
5 that would in fact drive down the ability, even if  
6 you could arguably get higher rents than you're  
7 proposing they could get for the subject  
8 properties, you couldn't get them because there'd  
9 be cheaper vacancies up the street a couple of  
10 buildings away.

11 MR. SELVER: Then I may be  
12 misunderstanding something, Mark, because, you  
13 know, it's certainly in our more recent  
14 submissions. The Cushman analyses have not looked  
15 just at other apartments on the block. There are  
16 at least 100 other apartments --

17 MR. SILBERMAN: No, I agree, it's  
18 partly used.

19 MR. SELVER: -- in other areas which  
20 are used to support the \$40-per-square-foot  
21 valuation. And we think, actually, that the  
22 numbers for, that the real numbers for the HR&A  
23 apartments, are generally supportive of the  
24 \$40-a-square-foot rent projection based on 2009 for  
25 the vacant apartments. We're not -- I know we have

2 made that argument in certain situations in the  
3 past. I don't think that that argument applies to  
4 the, certainly to the current analysis, the most  
5 recent analysis that we've done. And we would  
6 stand by the \$40 a square foot without having to  
7 rely on either the rent levels of the other  
8 buildings except to the extent that they might  
9 represent a comparable that we're working off of  
10 and comparing ourselves to and without having  
11 anything to do with the vacancy rate in the balance  
12 of the complex.

13 MR. SILBERMAN: So, Paul, I guess  
14 what I don't understand is -- so it's your  
15 statement that the building, that anything over \$40  
16 isn't substantiated except with a major  
17 building-wide renovation, and yet Cushman &  
18 Wakefield looked at comparable rents in other  
19 buildings on the block, I'm looking now at page 22  
20 of the May 1st, 2010 report, and they show price per  
21 square foot for apartments in the other buildings  
22 as high as -- there's \$50 a square foot, there's  
23 \$54 a square foot. There's a lot. There's \$40,  
24 \$47, \$45. So on what basis is the claim that  
25 somehow -- and there's no claim these buildings,

2 these apartments, are renovated to any greater  
3 level than what would be renovated into a habitable  
4 condition.

5 MR. SELVER: Can I respond to that in  
6 a written submission? Because I'm not that familiar  
7 with that level of detail.

8 MR. SILBERMAN: Sure.

9 CHAIR TIERNEY: Margery. Sure. Keep  
10 going.

11 MS. PEARLMUTTER: I have more comments,  
12 questions, so on. So just a premise, to preface all of  
13 this, our job here is to protect historic buildings and  
14 not to sort of be taken in by certain kinds of arguments  
15 by a landlord whose job -- by a property owner whose goal  
16 is to tear a building down. We're supposed to be  
17 listening to the testimony. And don't forget, very many  
18 people at this table are architects or people involved in  
19 the construction and building industry. So when  
20 you say that there's been no credible evidence to  
21 refute, for example, construction costs, well,  
22 that's actually not true because many people at  
23 this table are very familiar with construction  
24 costs. So when you look at the construction costs  
25 that are submitted with the materials, we are able

2 to evaluate them, or many of the people at the  
3 table are able to evaluate them to determine  
4 whether they are credible. And there have been  
5 questions over the course of these many years of  
6 this application where we have questioned the  
7 construction costs, for example, the huge  
8 construction costs associated with delivering  
9 materials and the sequencing of the construction  
10 where it seems as if you can only renovate four  
11 apartments at a time, or something like that, when  
12 that's simply not credible.

13 And so you use in your argument very  
14 often this language that the HR&A report is flawed  
15 or misleading or not credible, but I would hazard  
16 to say that the information that we're receiving is  
17 certainly misleading when it comes to things like  
18 construction costs, when it comes to things like  
19 apartment values, given what we simply know in the  
20 marketplace and the other information that we've  
21 been provided by HR&A.

22 And I do want to say that with HR&A's  
23 last report, they specifically didn't touch any of  
24 the other numbers. They made that clear. They  
25 said, "We're only going to modify one number, which

2 is the comparables, and leave everything else in  
3 place just so that we can make our conversation  
4 cleaner." And just changing those comparables,  
5 they could show that the building would realize a  
6 reasonable return. They didn't, had they been  
7 asked to or had they taken the time to -- and don't  
8 forget this is volunteers who are doing this kind  
9 of work for us -- had they taken the time to go  
10 back and do cost estimates, then it'd be a whole  
11 other big conversation. It doesn't mean by any  
12 stretch that they accepted any of the other data.  
13 I need to make that clear.

14 The other thing is that because our  
15 job is to try to protect the building, there's  
16 other options for this building than simply  
17 renovating in the various ways to keep it sort of  
18 at the lowest level of the food chain in terms of  
19 occupancy. There's also ways of renovating the  
20 building to be more and more desirable by levels.  
21 You could also, for example, have come to the  
22 Commission and ask to add floors to the building.  
23 You've never done that. That would certainly raise  
24 your potential for economic return.

25 And then in terms of analysis, you're



2 doing this kind of a blending where you take all of  
3 the apartments and blend it together into one price  
4 per square foot. I'm working on a project right  
5 now where we actually look at each apartment type,  
6 therefore, each square footage for the apartment  
7 type. So there are two-bedroom units in this  
8 building, there are one-bedroom units, there are  
9 tiny units. There's a whole range. And you look  
10 at the value against each unit range and then you  
11 can compare apples to apples instead of blending it  
12 down.

13 MS. RYAN: And its floor and location  
14 in the building, which are further distinctions.

15 MS. PEARLMUTTER: Right, exactly.  
16 And so we haven't done that so we're getting this  
17 sort of skewed look at the so-called  
18 362-square-foot apartments when, in fact, they're  
19 not that. There are maybe a few that are, in fact,  
20 that. I don't actually know. But we certainly saw  
21 some really large light-filled -- because there was  
22 a comment about these being somber apartments. On  
23 the contrary, they're some of the brightest  
24 apartments I've ever been in. They have windows on  
25 three sides.

2 And then lastly, I just want to say,  
3 this is kind of -- I'm not sure how this goes, but  
4 I've talked about this before. You made this  
5 application in 2009. You said that during the  
6 period of the application -- well, the period of  
7 the application has been four years moving on to  
8 five years. And I think that when you talk about  
9 an application like this, to ask for the demolition  
10 of the building, and you fixate it on a 2009 value,  
11 that's one thing when you prosecute the application  
12 actively, when you submit materials on time within  
13 short periods to allow the Commission to respond.  
14 But when you drag this out to the point where we're  
15 in 2000-almost-14, where market values are out of  
16 the -- unbelievable -- it defies credibility that  
17 you cannot today make a reasonable return on your  
18 investment. And I protest that we should be  
19 looking at today's values because the building will  
20 be torn down today, not in 2009.

21 MR. SELVER: I just want to say -- I'm  
22 not going to respond to the whole thing. You know,  
23 if people had asked to us to do individual  
24 apartment analyses and people had presented us  
25 with -- I think when we did specific questions on

2 the construction cost numbers, we did go back to  
3 Gleeds and Gleeds explained them. Maybe you feel  
4 they did not explain the, to your satisfaction, but  
5 that's a different issue. If there are questions,  
6 if there are comments, if there are disagreements,  
7 we've tried to respond to them on the record. If  
8 there are things that are not on the record of the  
9 proceeding and that we don't know about, then we  
10 can't very well respond to them and we can't  
11 address them. You know, that's the way it is.

12 CHAIR TIERNEY: Anybody else?

13 MR. SILBERMAN: Commissioners, I just  
14 want to -- and, Paul, we will provide you with a  
15 copy of this afterwards, the Staff has been looking  
16 at some of the issues that have been raised. While  
17 you have these before you, I'm just going to sort  
18 of, for purposes of the record, I'll discuss them  
19 briefly, because we believe that the relationship  
20 of the subject buildings and their apartments to  
21 the rest of the complex is important. And we think  
22 it's critical, in fact, to the way they are arguing  
23 their case. And we believe that the differences  
24 between them are overstated. We believe that on  
25 the one hand, we should look at talking -- looking

2 at comparing these apartments to the apartments in  
3 other buildings, recognizing that because they're  
4 all owned by the applicant and the applicant was  
5 clearly operating them as a unit, was going to move  
6 tenants from these buildings into the other  
7 buildings, that the vacancy rates in these  
8 buildings are highly artificial. The record is  
9 clear, I think, notwithstanding what Mr. Selver  
10 says, that there is no active leasing program for  
11 the rest of this complex and, in fact, time and  
12 time again people go to this building and are told  
13 there are no apartments available or come back  
14 later. So there is no effort to actually market  
15 them, and that will affect, of course, the rents  
16 one could get.

17 So even though I spoke about rents  
18 here that were submitted by Cushman & Wakefield  
19 showing up to \$50 a square foot, that is, in fact,  
20 perhaps an artificial rent, artificially low, or  
21 it's artificial because it's manufactured by the  
22 applicant who was selectively letting apartments on  
23 or off the market. So it's very unclear.

24 But for purposes of our discussion, I  
25 think what we've done is, one of the arguments that

2 the applicant has made is that the apartments in  
3 the other building are substantially larger than  
4 the apartments in these buildings, and there seems  
5 to be a problem, and hopefully we'll iron this out.  
6 We've gone and looked at the tax records submitted  
7 by the applicant and when we -- in terms of gross  
8 square footage on the subject buildings, there's  
9 446 feet gross square footage per apartment. The  
10 applicants are claiming that the other buildings  
11 are substantially bigger. When we have looked at  
12 the information submitted to the Tax Commission, in  
13 fact, that's not the case.

14 There are three other blocks or lots  
15 on this block comprising the City and Suburban  
16 Complex. The one, the two buildings on First  
17 Avenue, they're large. That's a larger building.  
18 That has 157,078 square feet of residential floor  
19 area and 142 apartments. That gives you a gross  
20 square footage of 1,106. But the rest of the  
21 buildings, more than 75 percent of the apartments  
22 are located in the mid blocks on the other two  
23 apartments. And those buildings have average gross  
24 square footage of 360 square feet per apartment,  
25 compared to 440 square feet in the subject

2 building.

3 So we're trying to figure out why  
4 there's been an emphasis on the apartments being  
5 small and cramped when, in fact, most of the other  
6 apartments in this complex are perhaps smaller. We  
7 don't know. The applicant has been unable to give  
8 us leasable square footage numbers, and, in fact,  
9 has stated that the estimate of 450 square foot on  
10 average leasable for the rest of the complex is  
11 just a guess based on sampling of apartments. So  
12 we don't know how that can be the case if 75  
13 percent of the apartments have, in fact, gross  
14 square footage of 360. So we're not sure how they  
15 can come up with 450 square feet. Perhaps they can  
16 provide that information.

17 In addition, superior layouts. The  
18 statement is that many of the apartments in the  
19 other buildings have more regularly-shaped  
20 bathrooms and bedrooms, which can accommodate  
21 standard-size fixtures and furnitures, including  
22 the queen-size bed, which is a big issue. Now,  
23 there's no data to support this claim. Many of the  
24 apartments in the subject building, in fact,  
25 50 percent, have regularly-shaped bathrooms. So

2 I'm not sure what "many" means in the context of  
3 these other, the buildings in the other complex.

4 With respect to bedrooms capable of  
5 holding a queen-size bed, there's no data on, in  
6 fact, which apartments can or cannot hold a  
7 queen-size bed. And moreover, we've looked at, the  
8 vast majority of the walls in these apartments are  
9 nonbearing walls that can be easily moved. In fact,  
10 when Bill Neeley and I did the site visit a few  
11 weeks ago and looked at 55 apartments, and it was  
12 remarkable that a number of them had been changed  
13 very simply by removing a wall. And one question  
14 is: Could you simply move a wall a few inches or  
15 feet and get a queen-size bed if that's such a  
16 critical issue? And we looked at the fourteen plans  
17 that Project Consult looked at, and four of those  
18 plans were for a studio, two rooms. Those don't  
19 count. You can get a queen-size bed in a studio.  
20 Of the remaining ten, eight could easily  
21 accommodate a queen-size bed, if you needed to,  
22 because there's no dimensions showing you couldn't,  
23 in fact, get a queen-size bed. But if you needed  
24 to, you could easily move a wall a foot to  
25 accommodate a queen-size bed. So we believe that

2 difference doesn't account for much.

3 The fact that the other buildings are  
4 closer to retail uses along First and Second Avenue  
5 and closer to the subway, again, we don't believe  
6 that has -- there's been no substantiation on the  
7 impact on rents. First, half of those buildings  
8 are closer to York Avenue, anyway, because they're  
9 the mid-block buildings.

10 And in addition, we've also, Staff  
11 has looked at Walkscore.com, which is a website  
12 used by a lot of real estate companies to market  
13 apartments. They give scores for apartments and,  
14 in fact, there's no difference  
15 statistically-speaking between York Avenue and  
16 First Avenue in terms of their ratings. In terms  
17 of transit, they both got 100, a perfect score on  
18 transit. And with respect to retail, York Avenue  
19 gets a 97, First Avenue gets 100. There's almost  
20 no difference between them. In addition, we also  
21 point out that the other City and Suburban Complex  
22 up on 78th and 79th has a similar walk score, but a  
23 lower transit score than this one.

24 In addition, other issues have been  
25 interior courtyards, creating a safety concern.



2 Again, there's no evidence that there is any safety  
3 concerns or any issue. Moreover, there's been no  
4 application to -- that could be addressed by  
5 putting in a camera, lights, or even a gate. They  
6 could come to the Commission and we'd give them a  
7 gate or they could apply for one and appropriate  
8 control could be discussed.

9 And finally, and I think this is  
10 important, there's been a lot of discussion about  
11 finishes in the apartments in the other buildings.  
12 There's no evidence that those finishes are any  
13 different than what would be used in the renovated  
14 apartments here. If you look at the level of  
15 renovations for level three, which is the vast  
16 majority, of the single biggest group of apartment  
17 changes, they include new kitchens, fixtures, and  
18 new bathroom fixtures, painting, all the plaster  
19 work is fixed, they're all painted. So these are  
20 apartments that are going to have your standard new  
21 inexpensive apartment furnishings. If you look at  
22 the pictures supplied by Cushman & Wakefield and by  
23 Project Consult, they look to be the same fixtures  
24 we see now when we go to the apartments, when Bill  
25 and I were looking at the apartments.

2 So we believe that for purposes of  
3 discussing the ability to, what rent could be  
4 generated by minimally-renovated apartments, we  
5 believe we can look to the other apartments in the  
6 complex. And we'll be providing additional  
7 information in the future.

8 Are there any questions from the  
9 Commissioners or anything?

10 (No response.)

11 MR. SILBERMAN: And, Paul, I will  
12 provide you with this.

13 MS. PEARLMUTTER: I just want to add  
14 to that though, because those units are also held  
15 vacant.

16 MR. SILBERMAN: Of course.

17 MS. PEARLMUTTER: I mean, so it's not  
18 actually representing the market rate because, you  
19 know, they're saying, "Oh, my God. These things  
20 are so hard to rent up even though we have new  
21 kitchens and new bathrooms," when in fact you have  
22 to try in order for someone to rent it.

23 MS. RYAN: I think other things  
24 that's happened since this application was made is  
25 the proposal for micro-housing units that the City

2 is getting behind and the demand for those are  
3 extremely high. So I think that's something that  
4 needs to be incorporated into the analysis.

5 MS. PEARLMUTTER: But to pick up on  
6 that, I know the submission distinguishes the  
7 microunits from these buildings because those are  
8 going to be in brand-new apartments. But, in fact,  
9 Tudor City is one of the most famous collection of  
10 incredibly desirable, wish-I-had-one microunits.  
11 And by the way, there were plenty more where they  
12 came from. It's not a novel concept and they're  
13 all in quite old buildings. Many of them are  
14 walk-ups, otherwise know as tenements buildings,  
15 which is what this is.

16 MR. SILBERMAN: And finally, just to  
17 support this notion that based on what the  
18 applicant has given us, in 2009, they provided  
19 examples to show that listed rents were -- that  
20 taking rents could be different than listed rents.  
21 So they provided evidence of that and we looked at  
22 that. But the point is that the average rent was  
23 still 1,428 per apartment in 2009, even with the  
24 preferential rents that were given, and that the  
25 preferential rents, almost none of them occurred on

2 a base rent that was below, I believe, 1,200. I'll  
3 have to double-check that. So the preferential  
4 rents all occurred at the very, very high end of  
5 the analysis.

6 MS. PEARLMUTTER: I have a question  
7 about these rents since we're talking about having  
8 to use 2009 figures. I know when you're looking at  
9 sales comparables, there are databases that tell  
10 you what was sold in those years. But are there  
11 actually databases that tell you what was leased up  
12 in 2009? Many of those tenants, five years later,  
13 have moved. The leases are renewed every two  
14 years, so where's the access to that data?

15 MS. RYAN: It's not public, but you  
16 could find it.

17 MS. PEARLMUTTER: Of something going  
18 back to 2009?

19 MS. RYAN: Yes.

20 CHAIR TIERNEY: Okay. Do you have  
21 any final comments?

22 MR. SELVER: No.

23 CHAIR TIERNEY: Okay. We're going to  
24 close. This has been useful, productive,  
25 informative. And we're going to leave the record

2 open for two more weeks from today, close the  
3 hearing for today. Motion.

4 (Whereupon, the motion is moved by a  
5 Commission Member.)

6 CHAIR TIERNEY: Second.

7 (Whereupon, the motion is seconded by  
8 a Commission Member.)

9 CHAIR TIERNEY: The hearing is  
10 closed, and we'll go to the next item. Thank you.  
11 Thanks, Paul.

12 MR. SELVER: Thank you.

13 (Time noted: 2:23 p.m.)

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C E R T I F I C A T E

CITY OF NEW YORK )  
 ) ss.:  
COUNTY OF RICHMOND )

I, DANIELLE CAVANAGH, a Notary Public  
within and for the City of New York, do hereby  
certify:

I reported the proceedings in the  
within-entitled matter, and that the within  
transcript is a true record of such proceedings,  
as amended.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 31st day of October, 2013.

\_\_\_\_\_  
DANIELLE CAVANAGH

Landmarks Preservation Commission

October 29, 2013

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Landmarks Preservation Commission

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