
LANDMARKS PRESERVATION COMMISSION

PUBLIC HEARING

Item 1, 429 East 64th Street,
a/k/a 430 East 65th Street

Centre Street
New York, New York

May 20, 2014
11:18 a.m.

TRANSCRIPT OF PARTIAL PROCEEDINGS

BEFORE:

HON. ROBERT B. TIERNEY, Chair

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COMMISSIONERS PRESENT:

ROBERT TIERNEY, Chair

FREDERICK BLAND

DIANE CHAPIN

MICHAEL DEVONSHIRE

MICHAEL GOLDBLUM

MARGERY PERLMUTTER

ROBERTA WASHINGTON

ALSO PRESENT:

Mark Silberman, LPC Counsel

William Neeley

Sarah Carroll

Staff

The Public

The Press

Reported by:

Kari L. Reed

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2 MS. CARROLL: Public meeting,
3 Item Number 1, Application for a Certificate
4 of Appropriateness in the Borough of
5 Manhattan. Docket number 12-7515, Block
6 1459, Lot 22, 429 East 64th Street, City and
7 Suburban Home Company, First Avenue Estate -
8 Individual Landmark. Two six story apartment
9 buildings designed by Philip H. Ohm, built as
10 part of the model tenement complex City and
11 Suburban Homes First Avenue Estates in
12 1914-1915, and altered in 2006. This is an
13 application to demolish the buildings
14 pursuant to the Rules of the City of New York
15 25-309, on the grounds that they generate an
16 insufficient economic return. This was
17 originally presented on January 24th, 2012,
18 and last presented on October 29th, 2013.

19 THE CHAIR: Yes, let's hold on a
20 second until the two --

21 MR. SILBERMAN: So should we take
22 a couple minutes break?

23 THE CHAIR: Two minutes.

24 MR. SILBERMAN: Okay, two minutes.

25 (Pause in the proceedings)

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THE CHAIR: One minute.

(Pause in the proceedings)

THE CHAIR: Good morning.

MR. NEELEY: Good morning,
Commissioners. I'm William Neeley, with the
Landmarks Preservation Commission staff.
This is the application by the owners of the
City and Suburban complex to demolish the two
easternmost buildings, 429 East 64th Street
and 430 East 63rd Street -- 65th Street,
located on York Avenue, on the grounds of
insufficient return. We have distributed
some materials this morning, including
another copy of the staff's original handout
to you, which will orient you to the site and
remind you of the existing and historic
conditions of the buildings and size.

The first public hearing was in
January of 2012. Subsequently, the
application -- applicant made additional
submissions to the Commission in response to
public testimony and your questions, copies
of which were distributed to you at the time
they were submitted, and which were

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2 summarized and discussed at the public
3 meeting of June 11th, 2013.

4 There was a third public meeting,
5 hearing, on October 29th, 2013.

6 Finally, there have been various
7 communications and submissions in response to
8 questions since that time, copies of which
9 were forwarded to you. Mark Silberman, LPC
10 Counsel, summarized the staff's subsequent
11 actions on this application and will start
12 off today's discussion.

13 MR. SILBERMAN: Thank you, Bill.

14 Commissioners, I'm going to
15 summarize a draft resolution. As you know,
16 we have been circulating a draft resolution
17 for the last two weeks. Last night,
18 yesterday I circulated the most recent draft.

19 I just want to remind everybody,
20 please, we have court reporters here, and
21 would you please speak into the mike and
22 slowly if you can, and that includes
23 reminding me to do the same.

24 The application before you, as
25 Bill said, seeks a finding of hardship to

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allow the owner to demolish 429 East 64th and
430 East 65th street, the last buildings
constructed as part of the City and Suburban
First Avenue Estate. The applicant concedes
the demolition of these buildings would be
inappropriate under the Commission's
appropriateness standards, and seeks to
demolish them pursuant to a finding of
insufficient return.

The applicant desires to demolish
the buildings and to construct a new
development on the site. It has asserted
that, if granted, it is prepared to follow
all legal requirements to vacate the
building, including offering tenants an
equivalent apartment in the Other Buildings
in the complex, and demolish the building
expeditiously.

The hardship test, as defined in
section 25-309 of the Administrative Code,
requires the applicant establish to the
satisfaction of the Commission that the
improvement parcel that contains the
designated structures cannot earn a

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2 reasonable return. A reasonable return is
3 the net operating profit that is equal to or
4 exceeds six percent of the assessed value of
5 the improvement parcel. The hardship test
6 allows various expenses, but does not include
7 other costs, such as mortgage interest and
8 amortization, in the calculus. In applying
9 this test, the Commission was guided by the
10 last hardship application it decided, the
11 KISKA decision, in 1989.

12 In applying the hardship test to
13 the application before you, we need to take
14 into account the fact that the owner of the
15 property began to warehouse apartments in
16 pursuing its development plans before the
17 Commission designated the buildings in
18 November of 2006. At the time of designation
19 there were 53 vacant apartments out of a
20 total of 190 in the two buildings.
21 Notwithstanding the designation, the owner
22 continued to warehouse apartments as they
23 became empty and while it unsuccessfully
24 challenged the designation in court, and
25 after it began to prepare for this hardship

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application. Consequently, at the time the application was filed, there were 107 vacant apartments. There are currently at least 110 vacancies.

In determining whether the buildings and improvement parcel could make a reasonable return, the applicant submitted development scenarios involving renovation of vacant apartments and re-renting them. The rental income from these renovated apartments, plus occupied apartments, plus other income generated by the property and other assets, is integral to determining the application.

Because of the ever changing number of vacancies, the applicant has, since approximately May of 2010, based its economic analyses on 97 vacant apartments and 93 occupied apartments.

The applicant submitted four basic renovation scenarios: the Base Building and Apartments scenario, the Apartments Only scenario, the Minimum Habitability scenario, and the Elevator scenario. It also submitted

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2 analyses for certain of these scenarios with
3 varying different assumptions.

4 In analyzing these scenarios,
5 there are a number of discrete issues that
6 have to be determined. First, what rents can
7 renovated apartments generate? And that
8 question is also limited by the reality that
9 these are rent stabilized and the rent
10 controlled units.

11 Second, what is the appropriate
12 level of vacancy and collection loss that
13 should be deducted?

14 Third, does or could the
15 improvement parcel generate other sources of
16 income, for example, by building storage
17 facilities or through the sale of development
18 rights?

19 Fourth, what will the
20 post-renovation operating expenses be?

21 Fifth, what is the proper amount
22 for depreciation?

23 Sixth, what will be the projected
24 real estate taxes?

25 There's also the question about

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whether and how projected soft costs should be considered in the analysis.

Finally, there is the question of projecting the post-renovation assessed value of the improvement parcel against which the six percent return would be compared.

As a threshold matter, the question arises whether the improvement parcel for this application should be just lot 22, as argued by the applicant, or should be all of block 1459, which comprises the entire City and Suburban complex. In considering this issue, it should be noted that the Subject Buildings are part of a historic housing complex, with a shared history and shared development. It appears that the division of tax block -- of the tax block into four lots is the historic condition. They share a common mechanical plant with the Other Buildings, share maintenance and other labor costs, and share an on-site rental office. In addition, between at least 2008 and 2012, the owner filed consolidated tax filings for all the

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2 lots on block 1459, as well as the Stahl
3 owned building that comprises the entire
4 block facing York Avenue directly across East
5 65th Street. The owners opposed this
6 interpretation and declined to provide some
7 information on the rest of the complex on the
8 grounds that it is irrelevant to this
9 proceeding.

10 Given the factors discussed above,
11 the draft resolution circulated to you
12 concludes that block 1459 and not just lot 22
13 is the proper improvement parcel under the
14 Landmarks Law. On this ground alone, the
15 application can be denied. Nevertheless, the
16 Commission did a full analysis of the
17 hardship application, presuming that the
18 improvement parcel is just lot 22, as
19 proposed by the owner.

20 As another threshold matter, the
21 resolution proposes that the owner's decision
22 to continue to vacate apartments after
23 designation constituted a conscious business
24 risk, and the costs to renovate these
25 apartments are therefore a self-imposed

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hardship and should not be taken into account
for purposes of depreciation and for some
projections of post-renovation assessed value
using the cost approach. More on that later.

Finally, as another threshold
matter, the resolution focuses on the
Apartments Only and Minimum Habitability
scenarios.

Moving to the discrete issues
listed above, the resolution proposes to
agree with the applicant that the Apartments
Only scenario could generate rents equal to
\$35 a square foot in rent. However, in
addition, based mostly on an analysis of
apartments in the Other Buildings that would
be rented, what -- I'm sorry, based on mostly
on what apartments in the Other Buildings
were being rented for, the resolution concludes
that the Apartments Only scenario could
generate rents equal to \$40 a square foot or
higher. The basis for this conclusion
includes the high rent per square foot
attained in the Other Buildings, and the fact
that preferential rents weren't required for

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2 rents below \$1,200 a month.

3 The resolution concludes that
4 renovated apartments in the subject building
5 will be as nice if not nicer than apartments
6 in the Other Buildings in terms of finishes,
7 they're generally similar in size to many
8 apartments in the Other Buildings, and that
9 their location on York Avenue does not make
10 them materially less desirable to other
11 apartments in the complex.

12 Other data provided by Cushman
13 about rents for small apartments in other
14 allegedly comparable buildings supports this
15 conclusion. Moreover, rents at the Subject
16 Buildings include heat and electricity, and
17 don't require brokers' fees, something that
18 makes them even more attractive and less
19 expensive when compared to apartments in
20 Other Buildings.

21 With respect to the Minimum
22 Habitability scenario, the resolution
23 proposes a finding that the record does not
24 support the applicant's conclusion that they
25 could rent for only slightly more than six

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2 thousand -- hundred dollars a month, and they
3 could command at least \$869 a month, which is
4 the average rent for occupied apartments in
5 the Subject Buildings. The resolution notes
6 that in no instance was a preferential rent
7 required to rent an apartment in the Other
8 Buildings for less than \$1,200, which implies
9 that rents below that amount are usually the
10 result of legal rent limits and not what
11 rents could obtain if they were -- if
12 renovations allowed rents to be increased
13 to that level.

14 As to the vacancy and collection
15 loss factor, the resolution proposes the
16 finding that the record does not support
17 using the applicant's projected ten percent
18 vacancy and loss factor. This is
19 significantly higher than the average for the
20 area, which peaked at slightly less than five
21 percent in 2009. And that's for both
22 collection -- vacancy and collection loss.
23 The area's average vacancy rate for the five
24 years surrounding 2009 was 1.5 percent, and
25 the highest vacancy rate was just under 2.5

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2 in 2009.

3 To the extent this is based on the
4 applicant's testimony that the Other
5 Buildings have a vacancy rate that exceeds 20
6 percent, the resolution notes that the owner
7 has not acted rationally, prudently or
8 efficiently in seeking to reduce this alleged
9 vacancy in the Other Buildings.

10 Notwithstanding the alleged high vacancy
11 rate, the owner testified it had done nothing
12 to better market the apartments, such as
13 listing in different media and with brokers,
14 or making changes to make them more
15 desirable, such as building storage.

16 The resolution also proposes an
17 inference that the owner has consciously kept
18 apartments in the Other Buildings off the
19 market as part of its plan to develop the
20 Subject Buildings, as it needs to be able to
21 offer relocation assistance to rent
22 stabilized tenants in the Subject Buildings.
23 For these reasons, the applicant has not
24 demonstrated that average vacancy and
25 collection loss factors for the area

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2 shouldn't apply.

3 The resolution also proposes a
4 finding that the applicant has not
5 demonstrated that the improvement parcel
6 cannot generate other income in addition to
7 the \$12,500 of miscellaneous income
8 recognized by Cushman. First, the resolution
9 proposes to include approximately \$12,000 in
10 assigned income from the laundry facilities
11 located in the Other Buildings, in accordance
12 with the historic practice of the owner's
13 accountants. The fact that this income is
14 not a right under a lease should not prevent
15 this assignment from continuing for purposes
16 of the hardship analysis, especially as the
17 owner's consultant noted that laundry
18 facilities in the complex are deemed an
19 amenity.

20 The resolution also proposes a
21 finding that the applicant has not adequately
22 explored other ways to generate income from
23 the property, including building storage
24 facilities in the basement and renting the
25 roofs to cell phone companies. The

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Commission staff -- the Commission asked the applicant to look at building storage facilities, but the applicant simply stated that it was not economical. Given that the apartments are not large, the applicant should have more thoroughly explored this option.

Significantly, the resolution notes that the unused development rights on the improvement parcel have some value as they could theoretically be transferred by special permit to the Stahl owned site adjacent to the Subject Buildings or to Rockefeller University. The applicant's argument that there is no receiving site is not credible, given that Stahl owns the adjacent building, which is not landmarked. The fact that there are rent stabilized or controlled tenants does not render the development rights worthless, as proposed by the applicant.

The resolution does not support the applicant's projection of post-renovation operating costs that are more than 50 percent

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2 greater than the average operating costs for
3 the rest of the complex. The Subject
4 Buildings had their facade redone just prior
5 to designation, in an effort to stave off
6 designation, and well over half the
7 apartments will be renovated under all of
8 these development scenarios. Thus, there is
9 no justification for such a high estimate.
10 Instead, the resolution proposes to increase
11 the average operating costs by 15 percent
12 over the average operating costs of the Other
13 Buildings, to account for alleged but not
14 specified inferior conditions of the Subject
15 Buildings.

16 Depreciation. As discussed above,
17 the resolution does not support allowing the
18 applicant to depreciate the cost of
19 alleviating the self-imposed hardship of
20 renovating 44 apartments vacated after
21 designation. Therefore, the depreciation
22 will include only the cost of renovating 53
23 apartments, as well as certain window work in
24 the Apartments Only scenario. Included in
25 these expenses is a 15 percent contingency,

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2 as well as 22 percent for soft costs. The
3 applicant has argued for a soft cost
4 percentage of 32 percent. Approximately a
5 third of that is interest on the construction
6 loan. As mentioned above, the hardship
7 provisions exclude mortgage interest from the
8 reasonable return calculations. In KISKA,
9 soft costs did not include loan interest,
10 although the mortgage recording tax was
11 included. Therefore, interest has been
12 excluded from the soft costs, but all other
13 loan related costs are included.

14 The last two items are related,
15 projecting the future real estate assessment
16 after renovation, and the real estate taxes
17 after renovation.

18 There are two approaches to
19 projecting assessed value, the income
20 approach and the cost approach. The
21 applicant has argued for using the cost
22 approach because it's more fair because it
23 explicitly factors in the cost of renovation,
24 and because it asserts the Commission
25 utilized this approach in KISKA.

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The Department of Finance submitted a letter stating that it uses the income approach. While the applicant's attorneys challenged this statement, the resolution proposes adopting the income approach, as advocated by the Department of Finance. Furthermore, the resolution notes the Commission did not use the cost approach in KISKA when projecting the future assessment for the development scenarios involving rental properties as opposed to sales scenarios. The cost approach was used when the development scenarios involved the sale of a building, as investors would have to recoup these costs at the point of sale. However, returns on investment rental properties occur over time, by efficient operating costs and the lowest possible real estate tax. With respect to -- among other factors.

With respect to projecting future real estate taxes, the resolution proposes to base the projection on the income approach as detailed by the Department of Finance. The

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2 owner has proposed projecting real estate
3 taxes as 25 percent of effective gross
4 income. However, there's no actual
5 relationship between effective gross income
6 and real estate taxes. In addition, the
7 Department of Finance submitted a statement
8 that it only uses the income approach in
9 valuing income producing properties.

10 Therefore, the record supports
11 using the income approach to project future
12 taxes. While this varies from the approach
13 in KISKA, the resolution notes that if one
14 did project real estate taxes using the cost
15 approach, it would result in a substantially
16 higher tax, equal to approximately 35 percent
17 of the effective gross income, or more than
18 40 percent higher than proposed by the
19 applicant. Clearly, a reasonable and prudent
20 owner would want to pay as little in real
21 estate taxes as possible. For this reason,
22 the record supports using the income approach
23 to project future taxes.

24 Therefore, in summary, the draft
25 resolution considers the Apartments Only and

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the Minimal Habitability scenarios with the following factors:

That the Apartments Only scenario can generate rents of at least \$35 a square foot and go as high as \$40 a square foot, if not more; and,

That the Minimal Habitability scenario can generate rents of at least \$869 a month or slightly more than \$28 a square foot;

That a five percent vacancy and collection loss should be subtracted from the rent roll;

That \$12,000 in income from laundry should be included in the income;

That operating costs after renovation should be 15 percent higher than the average for the Other Buildings in the complex;

That the cost of renovating 44 apartments vacated after designation is a self-created hardship and should not be included in the depreciation allowance;

That a 15 percent and 20 -- that a

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2 15 percent contingency and 22 percent soft
3 cost will be included;

4 That the post-renovation real
5 property assessment should be projected using
6 the income approach; and,

7 That future real estate taxes
8 should also be projected using the income
9 approach.

10 However, in addition, we
11 considered a fourth analysis, whereby 53
12 apartments were renovated pursuant to the
13 costs of the Apartments Only scenario and the
14 other 44 were renovated to the lesser Minimal
15 Habitability standards. And that was done on
16 the theory that the applicant might say we
17 can't get the cost of renovating the 44
18 apartments depreciated or included, we would
19 do that at a lesser level. So we looked at
20 that as well.

21 In addition, however, the
22 Commission also considered all these analyses
23 with a 20 percent higher than average
24 operating cost factor, and soft costs of 32
25 percent, as requested by the applicant.

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2 Finally, the resolution also
3 compares all of the outcomes to a
4 post-renovation assessed value based on the
5 cost approach, as advocated by the applicant.
6 The resolution applied the cost approach
7 using the cost of renovating 53 apartments
8 and 97 apartments. In all of these
9 scenarios, the rate of return exceeded six
10 percent of the assessed value after
11 renovation.

12 So that's my summary.

13 THE CHAIR: Okay. Okay. Believe
14 it or not, that was a concise summary.

15 (Laughter)

16 THE CHAIR: That is -- that truly
17 is a superb summary of a demonstrably complex
18 case. And hardship cases that come before
19 this Commission are rare, but they demand the
20 kind of attention and care and sifting of
21 facts and assertions and law that we have
22 brought to bear superbly in my judgment with
23 the staff of this Commission and Counsel to
24 this Commission over the last two and a half
25 years or three and a half years, however you

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measure it, with the first hearing being back
in January of 2012.

So without going over each and
every detail that Mark has just described,
let me jump to my own view of this, my
summary of some of the salient facts. And
I've reviewed not only the record in this
case, I've sat through the hearings, of course,
that demanded our attention, and the draft
resolution that's been alluded to here, and
I've thought, as we all have, about all the
aspects of the case and this application.
And I find that the owner here has not
carried its burden of demonstrating to the
satisfaction of this Chairman of this
Commission, and I believe or I hope that the
full Commission, that the property cannot
earn a reasonable return under the Landmarks
Law. Not met that burden.

Before I get to that substance, I
would -- we have been considering and have
already talked about that, let me go to the
threshold issue, which I believe that the
proper improvement parcel for this hardship

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2 is all of block 1459, not just lot 22, as the
3 applicant as argued. I think the record is
4 clear that the ownership has operated the
5 entire block as a single integrated unit with
6 shared mechanical system, maintenance, rental
7 services. And it appears that ownership, the
8 applicant, has voluntarily sought to file all
9 of the lots on block 1459, as well as the
10 adjacent lot 22 on block 1460, which it also
11 owns, for consolidated consideration in an
12 effort to reduce real estate taxes. And, has
13 ownership -- as the ownership has refused to
14 provide information, has not provided
15 information with respect to the entire
16 complex, I find they have not, one, that's
17 another reason they have not carried their
18 burden under the hardship provision.

19 My conclusion doesn't change, though,
20 even if we assume that only lot 22 on which the
21 two Subject Buildings sit is the improvement
22 parcel in question. Even under that rubric,
23 that test, that set of facts, if you will,
24 they still have not in my judgment
25 demonstrated hardship.

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2 The task before us is to see if,
3 under reasonably prudent management and
4 efficient management, the properties can earn
5 a net return of six percent of the assessed
6 value of the property as those terms are
7 defined in the law. To do this analysis we
8 have considered different scenarios, to
9 renovate vacant apartments, bring them back
10 online, and other things. Complicated, of
11 course, as the owner has legally begun the
12 process of vacating the buildings. In fact,
13 this process even began before they were
14 designated, with a view to demolishing them
15 and constructing a tall building.

16 Nobody's -- I'm not accusing and I'm
17 certainly not suggesting the owner did
18 anything inappropriate or improper in that
19 process, but just the facts as we have
20 compiled them and as we understand them.

21 At the time of designation then,
22 there were 53 vacant apartments out of 190 in
23 the building -- buildings. The owner
24 continued to vacate those apartments, such
25 that at the time of the application that was

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2 filed here that we are ruling on today, there
3 were 107 vacant apartments. So for purposes
4 of the various analyses, we are looking at
5 renovating only 97 of the apartments because
6 that's the number used by the most recent
7 economic analyses provided by the owner.

8 So, however, as 44 of that 97 were
9 vacated after designation, that in effect, in
10 my judgment, is a self-created hardship, and
11 the cost of renovating them should not be
12 included in depreciation. In a sense they've
13 tried to have it two different ways,
14 warehousing the apartments in the Subject
15 Buildings, not paying enough attention that
16 windows were broken and turned it into an --
17 a coop of sorts for pigeons, yet complaining
18 what poor shape they were in and how much it
19 would cost to fix them up, it can't be done.
20 They made a calculated business decision that
21 they would win the challenge to the
22 designation at the time we considered the
23 designation, but they lost that challenge and
24 this is the consequence that follows.

25 This Commission considered the

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Apartments Only scenario and the Minimum Habitability scenario. In the former the owner proposed to invest \$52,000 on average to fix up each apartment. The cost was slightly lower for the Minimum Habitability scenario, which cost more than 41,000 on average.

The question is how much would these apartments rent for after this investment. And I happen to agree with Stahl that in the Apartments Only scenario apartments could generate \$35 a square foot. But I think they would likely rent for more, based on what the applicant here, the owner, Stahl, has actually received for apartments during the relevant time period in the Other Buildings. While there may be some differences between the buildings and the apartments, the similarities outweigh these differences. They're all six story walk-ups, small apartments, minimal amenities, but they of course have wonderful designs and cross ventilation, light and air. So there are a lot of factors that go into the assessment,

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2 if you will, of these apartments. I think
3 that these apartments, which would be -- will
4 be substantially renovated, and if not -- if
5 not nicer than the building -- than the
6 apartments in the Other Buildings, then they
7 would command, my sense is they would command
8 prices similar to what Stahl has gotten,
9 which is at least \$40, if not more, per
10 square foot. I also point out that these
11 rents include heat and electricity, no
12 broker's fee, and making them even more
13 cheaper and even more attractive.

14 As for the Minimal Habitability
15 scenario, it belies my experience and as a
16 New Yorker for whatever, 45 years or more,
17 that the applicant could argue with a
18 straight face that minimally renovated
19 apartments could command a rent of slightly
20 more than \$600 a month. When I tell people
21 that, they always say give me two or maybe
22 three. And there is no support in the record
23 or basically intuitively or in common sense
24 for such a low rent for buildings in such a
25 desirable location.

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2 So what could they rent for, let's
3 be sensible about it, let's go to the real
4 world. The average legal rent of vacant
5 apartments is just over a thousand, as Mark
6 has pointed out, a thousand dollars a month.
7 The record shows that no apartment for that
8 amount required a preferential rent.
9 Nevertheless, to be conservative, our
10 analysis assumes a rent of \$869, still quite
11 low, which is the average rent being paid for
12 occupied apartments in the buildings.

13 As for the vacancy rate, there too
14 I think the record doesn't support using
15 anything but the average, less than five
16 percent for vacancy and credit loss. Stahl
17 has not shown that he's trying extremely hard
18 to rent the apartments in the Other
19 Buildings. There is something quite
20 illogical about a landlord who claims to
21 suffer from rents that are too low, yet
22 doesn't make any effort to advertise or rent
23 the apartments. This makes no sense on its
24 face, unless there is another motive or
25 intent or another intention at work to use

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2 the buildings to facilitate other plans, like
3 development plans or other use of these
4 buildings or this site.

5 Additional income. I find that
6 the owner has not demonstrated that the
7 buildings cannot generate more revenue. If
8 the apartments are too small, then provide for
9 rent storage, as we talked about. What about
10 renting the roofs to cell phone companies.
11 And I buy those -- I mean I adopt those
12 arguments, I think they were important and
13 valid. Most significantly, the unused
14 development rights have some value. They are
15 not worth zero, which is what has been
16 claimed in the application.

17 The owner here owns a full block
18 site with a six story building directly
19 across the street from the Subject Building.
20 Surely that site has development potential,
21 even if it may take some time.

22 Final few points, I'll get to the
23 end here.

24 With respect to the projecting
25 post-renovation assessed value against which

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2 the important six percent return will be
3 measured, I think that the record has
4 adequately demonstrated that the Department
5 of Finance has used the income approach when
6 valuing rental buildings, and this is the
7 most likely way the site would in fact be
8 valued. While the applicant has labored hard
9 to defend the cost approach, I note that the
10 Commission didn't use it in KISKA, as counsel
11 has pointed out.

12 I also note that it's -- it's
13 essentially counterintuitive in this case.
14 The applicant is asking us to use a method
15 that will guarantee a high assessment, which
16 in the normal course of things would generate
17 very high real estate taxes. No sensible
18 property owner wants to maximize their
19 property taxes. As a result, the applicant
20 is forced to ask that the cost approach be
21 used to protect assessed -- project, excuse
22 me, assessed value, but then proposes a
23 completely arbitrary method of projecting
24 real estate taxes to avoid being saddled with
25 exceptionally, extraordinarily high taxes.

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2 So I'm comfortable with, I think
3 it makes sense, with the income approach.
4 But I note that staff has also done the
5 calculations for the cost approach for both
6 53 and 97 apartments as well, and they also
7 show in either case that there's no hardship.

8 So a little -- on balance, without
9 restating any of it, you've heard now some of
10 this twice, but they're salient points, it's
11 important to my reasoning and our reasoning,
12 and I believe that the burden has not been
13 carried for a hardship.

14 Margery?

15 COMM. PERLMUTTER: Thank you.

16 I've reviewed the draft hardship
17 resolution that Mark Silberman read a
18 synopsis of. The analysis there is thorough
19 and addresses in detail the statutory
20 findings for hardship under the Landmarks
21 Law, as well as the application of the
22 hardship test established in KISKA
23 Developers, Inc. Given the complexity of
24 that analysis, which looked at every one of
25 Stahl's submissions over the four years that

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this application has dragged on, transcripts of all of the hearings, as well as written public testimony and materials provided by sister agencies, it is impossible for me to cover here all of the issues in any more than a very general manner.

I do want to start off with the issue that weighs most heavily in this case and a subject of which all of us have become extremely aware in the last few months, and that subject is affordable housing. The subject is both not a Landmarks Preservation issue and is one. Preservation is exactly that; the retention of existing structures to be used and renewed according to contemporary need and societal focus. Buildings of quality endure and neighborhoods change within and around them. Retained and reused historic structures have, for literally thousands of years, served the needs of generations of new users and occupants in cities around the world.

During the 1990s, the focus of my architectural office's work, along with many

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2 other offices at the time, was in the design
3 and construction of affordable housing in the
4 most neglected and decaying areas of the
5 Bronx, Brooklyn, the Lower East Side and
6 Harlem. Nearly all of the housing that I
7 worked on consisted of the renovation of
8 railroad flat old law tenement buildings, the
9 best of which resulted from the combination
10 into a single building of adjacent tenements
11 in order to improve interior layouts and
12 access to street and yard views, since the
13 long, narrow old tenement plan relied to a
14 large extent on narrow light shafts for
15 ventilation of the bedrooms. These renovated
16 buildings provided excellent and modern
17 studio, one, two and three bedroom apartments
18 that served with style the needs of working
19 families in the communities in which they
20 were located. Furthermore, renovated
21 tenements contributed to the renaissance of
22 those once decrepit, now highly desirable
23 neighborhoods.

24 All of this is relevant to the
25 instant application in many ways, the most

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2 important point of which is that the City and
3 Suburban new law tenement buildings, built
4 around extremely large interior courtyards
5 and providing every unit with at least two
6 exposures to either a street or the enormous
7 courtyard, are sun-drenched and airy,
8 enjoying the benefits of cross ventilation
9 that rival and even surpass in quality the
10 best Pre-War luxury Park Avenue courtyard
11 apartments. In fact, with their multiple
12 exposures and windows and kitchens and
13 bathrooms, the City and Suburban units are
14 better lit and ventilated than are many
15 apartments being built today, where since at
16 least 1968 building codes have permitted
17 construction of windowless, mechanically
18 ventilated bathrooms and kitchens.

19 Stahl argues that the buildings,
20 that the City and Suburban buildings are
21 walk-ups and the apartments are too small at
22 446 gross square feet, hence, are undesirable
23 and un-rentable. Yet, the city is filled
24 with literally thousands of walk-ups in the
25 form of row houses, brownstones, old and new

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law tenements, many, many of which are
located in historic districts. Somehow,
other landlords manage to rent these units
and earn reasonable returns on their
investments.

As to size, many of these row
houses and tenant apartments are the same
size if not smaller than the claimed average
size of the Subject Building apartments. In
2013 the Bloomberg administration, through
changes in legislation, enabled the
development of the new microunit, that ranges
in size from 250 to 370 square feet, aimed at
providing affordable housing to singles. The
City and Suburban units are considerably
larger than that.

When I was preparing this, I was
doing some research on the history of
tenement renovation, and I found this
excellent article from 1999 called "Making
Tenements Modern." And in '99 was when I was
working as a housing architect and so I was
renovating apartments, so every single person
mentioned in this article is a colleague or a

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2 property owner.

3 Most notably, there was an
4 interview of Robert Perl, who is still the
5 president of Tower Brokerage on East 10th
6 Street, and the owner of many, many tenement
7 buildings in the Lower East Side. And in
8 '99, when the economy looked nothing as good
9 as it looked in 2009, because that was sort
10 of after a very huge recession and the market
11 was just beginning to climb again, in 1999
12 Robert Perl said that he -- of the -- he had
13 renovated three 1880 tenements that he had,
14 and he had upgraded half of 70 apartments
15 over the last six years as tenants have
16 moved, and totally gutted, re-configured and
17 re-equipped them once the very long term
18 occupancy of the prior tenant was vacated.
19 He said that these -- that these apartments
20 were designed for singles, and he said
21 typically, two singles with incomes of 30,000
22 to 50,000 a year rent 450 square feet of
23 modern space, with a full three piece
24 bathroom, a sink, toilet and either a tub
25 with a shower or a shower stall -- stall,

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because these tenement buildings of course used to have tubs in the kitchen, and paying for them in 1999 on the Lower East Side, when that was not a chic and trendy place yet, a thousand to fourteen hundred dollars a month.

So, coming back. Today, as a land use lawyer -- I shifted paths -- I represent at least one very large national real estate investment trust company that entered the New York City market with the express purpose of acquiring fully tenanted tenement buildings for their upside potential. Many of these buildings contain rent control and stabilized units. In other words, given that real estate is for the long term, they see tenement buildings as profitable investments where, like Bob Perl, as tenants move out, renovated apartments bring increased rents, as do the addition of new penthouse units up on top of them.

Stahl's assertion that the City and Suburban buildings will continue to be unprofitable, whether or not individual apartments are renovated, simply defies logic

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and runs counter to the practice of other experienced property owners in the city.

I also have significant experience with the piecemeal gut renovation of individual apartments within walk-up tenements, where construction workers easily address the removal of debris with chutes that drop directly into containers, and delivery of material and equipment through street facing windows with simple boom hoists that lift supplies through window openings. With a good crew, renovation of these units is rapid and efficient, completed in not more than six weeks, including DOB inspections. With limited disturbance to neighbors, apartments along a single or adjacent lines can be renovated simultaneously without the need to vacate occupied units along the same line. Stahl's assertion that such renovations would require relocation of tenants, installation of elevator hoistways and two years worth of building-wide vacancy is unsupported by industry practice.

Stahl has submitted photographs of

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2 empty apartments in the building, in an
3 effort to persuade us that it is impossible
4 to ameliorate with any significant impact the
5 sad conditions depicted in the photographs.
6 This is simply untrue. In the first place,
7 on our visit to the occupied apartments of
8 the building's current tenants, every
9 apartment we visited proved Stahl's assertion
10 false. These apartments are a delight,
11 having been improved by the tenants
12 themselves, and filled with art, ingenious
13 built-ins, furnishings, personality and pride
14 of place. This is true of the smallest
15 apartments as well as the larger ones.

16 In addition, as noted above, the
17 empty units could be renovated. This is done
18 every day of the week in the thousands of old
19 and new law tenement buildings located
20 throughout New York City. I fail to see why
21 Stahl is unable to accomplish what so many
22 other building owners have been doing for
23 more than a century.

24 Stahl implies that, by being
25 permitted to demolish these buildings, and in

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2 their ideal version replace them with a new,
3 high-end luxury residential tower with
4 sweeping views of the East River, located
5 just steps from elegant Sutton Place, they
6 will be improving the city's housing stock.
7 In fact, though, Stahl will be destroying,
8 and not replacing, not less than 190 units of
9 quality affordable housing, including the 110
10 units that, due to Stahl's warehousing that
11 began in the 1990s, have been kept off-line.
12 Applying the standard 20 percent affordable
13 expectation in a newer development, with an
14 80/20 project, Stahl would have to construct
15 1,000 units of market rate housing on the
16 site to retrieve the 190 lost by the proposed
17 demolition. I doubt seriously that the plan
18 is to construct an as-of-right tower here
19 with 1,200 units in it. In fact, since the
20 project would require no special approvals
21 from either City Planning or the Board of
22 Standards and Appeals, there would be no
23 reason to expect any affordable housing at
24 all to come out of this project.

25 Stahl began taking these

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2 affordable housing units off-line in the
3 1990s, with the majority being removed from
4 the rental market after 2000. Stahl
5 continued to do this after the buildings were
6 designated in 2006, and now claims these
7 vacancies as a hardship. As noted above,
8 contrary to their claims, these units could
9 have been renovated and rented.
10 Consequently, the claimed vacancy and income
11 hardship is self-imposed and should not be
12 permitted.

13 As concerns the specifics of this
14 hardship application, the LPC has been
15 reviewing Stahl's submissions since 2010. By
16 the terms of the Landmarks Law hardship
17 statute, 2009 was, at the time of the
18 application, within the allowable time period
19 to serve as a valuation test year for market
20 rental values, vacancy rates, construction
21 costs, income and expense projections.
22 However, since October 2010, the date of the
23 application, Stahl took seven months, and
24 later more than eight months, to respond to
25 the LPC's request for information. Other

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submissions also took several months between the request and delivery. Each submission contradicted the last and set up entirely new criteria for the analysis being dealt with in that submission.

Now, nearly four years after the initial application, and burdened by stacks of contradictory and confusing studies, the LPC is asked to consider the viability of the buildings based on 2009 economic conditions as described in the most recently revised version of the studies. Even if we were to ignore Stahl's seemingly intentional efforts to confuse the facts, there is no question that 2009 was a period of major economic downturn. The entire country was in recession, as jobs were scarce, rents were lower, vacancies greater. Since 2012, however, New York City's economy has seen economic boom times with rents rising astronomically, housing shortages, reduced unemployment and higher incomes. It is nonsensical that LPC's review of this submission should be artificially restrained

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by 2009 data when the rate of return of investment in 2014 reality would show vacancy rates well below two percent, and average apartment rentals for apartments of this type at more than 1,800 per month, if not more than that.

By way of example, according to HPD's 2011 New York City Housing and Vacancy survey, the 2011 Manhattan vacancy rate was 2.8 percent. Stahl has claimed that in 2009 the vacancy rate of the City and Suburban complex was five to seven and a half percent. Even if those numbers were accurate, which for reasons stated below they cannot be, Stahl should not be rewarded for its failure to diligently prosecute the application, and should be required, in my view, to prove that it cannot make a reasonable return on investment based on 2014 data, not 2009 data.

Stahl has asked the Commission to ignore rental rates in its Other Buildings in the balance of the complex, and to accept its estimate of vacancy rates that are significantly higher than the Manhattan

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2 average. With respect to the latter, it is
3 clear from testimony and from my own
4 experience that Stahl has intentionally
5 avoided leasing apartments in the complex.
6 No information on how to go about renting an
7 apartment in the buildings is available on
8 the Internet unless one is aware that
9 Greenthal Management manages them. The
10 Greenthal Management Web site lists the
11 location as "Rock Properties," without an
12 address, indicating only that they are at
13 64th to 65th Street First Avenue, York
14 Avenue, without any further information other
15 than a telephone number. When a colleague of
16 mine called to ask about available one
17 bedrooms, he was told there were none, but to
18 call back in a couple of months. Another
19 colleague was unable to locate the rental
20 office when she visited the buildings in
21 person, because you have to know where to go.
22 Stahl admits that it does not list
23 the units with any rental agencies.
24 Consequently, Stahl's claimed vacancy rates
25 are not credible, and Stahl's behavior with

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2 respect to lease up and building management
3 does not demonstrate that it operates the
4 buildings "under reasonably prudent and
5 efficient management", as required by the
6 Landmarks Laws hardship statute.

7 With respect to rental rates in
8 the Other Buildings, Stahl's claim that the
9 units in those buildings are not comparable
10 to renovated units in the Subject Buildings
11 is also not credible, as floor plans show
12 that the unit layouts and unit mix in many of
13 the Other Buildings in the complex are
14 actually nearly identical to those in the
15 Subject Buildings. Stahl has never claimed
16 that it is unable to make a reasonable return
17 on investment in the Other Buildings. Hence,
18 it is impossible to comprehend how, with
19 proper renovation of the units, equivalent
20 rents to the neighbors and improved rent-up
21 techniques, they would not be able to make a
22 reasonable return on investment in the
23 Subject Buildings.

24 The Subject Buildings sit on a
25 zoning lot that encompasses the entirety of

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2 block 1459. The eastern 100 feet by 280 --
3 200 feet of the block on which the Subject
4 Buildings are located sit within an R10
5 zoning district. The R10 lines run from 100
6 feet in depth on both sides of York Avenue.
7 Two hundred eight -- 200,000 square feet
8 could therefore be developed on the site
9 under zoning. The buildings currently
10 contain approximately 80,000 zoning square
11 feet. Hence, 120,000 square feet are
12 available to be used on the site itself, or
13 transferred across 65th or 64th Streets, or
14 across York Avenue to the other development
15 sites within the R10 zoning district,
16 pursuant to section 74-79 of the zoning
17 resolution.

18 Stahl claims, without
19 substantiation, that these sites would not be
20 suitable receiving sites for these excess
21 development rights, rejecting the idea of
22 adding to its own property to the north of
23 the site, in spite of the fact that it is
24 common to construct enlargements on existing
25 buildings, even tenanted ones. During

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2 discussions of the major renovation
3 scenarios, Stahl did not consider the
4 possibility of adding floors to the Subject
5 Buildings or requesting relief from City
6 Planning or the BSA to be permitted to
7 distribute the excess floor area over the
8 Other Buildings in the complex, nor has it
9 ever requested that the LPC consider such a
10 proposal.

11 There is currently also a proposal
12 out there which has received general support
13 in the real estate community to allow the
14 excess floor area from individual landmarks
15 to travel greater distances than are
16 presently allowed under section 74-79 of the
17 zoning resolution. Excess floor area
18 development rights currently sell in the
19 marketplace for 200 to \$650 dollars,
20 depending upon location. That potential
21 income should be considered in this case.

22 I'm almost there.

23 The draft hardship resolution
24 breaks down the analysis of achievable rent
25 into square footage costs, and is in my view

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2 an accurate compilation of the data
3 presented. Simply applying knowledge and
4 logic to the real estate and rental market in
5 this domain, Stahl's claimed maximum rental
6 values of \$600 per month per apartment
7 following the renovations of kitchens and
8 baths is simply not credible. Particularly
9 in light of the much higher rents being
10 achieved in the Other Buildings in the
11 complex, and the simple reality that the
12 buildings are on the Upper East Side of
13 Manhattan, surrounded by upscale communities
14 and services.

15 Likewise, Stahl's estimate of
16 post-renovation maintenance costs is
17 unreasonably high, based on their claim that
18 Apartment Only renovations will leave the
19 balance of the buildings in poor shape, hence
20 requiring more intensive maintenance
21 programs. This belies the facts. In an
22 effort to thwart the landmarking of the
23 buildings, in 2006 the owner completely
24 stripped the buildings of their exterior
25 ornamentation and stuccoed the masonry walls.

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2 With the renovation of the kitchens and baths
3 in 97 apartments, cost estimates show that
4 bathroom and kitchen fixtures will be
5 replaced and would include rough-in. Other
6 than the replacement of the main risers, this
7 represents replacement of a significant
8 portion of the plumbing. Likewise, by
9 replacing the electrical panels in each unit,
10 which is included in the renovation costs,
11 outdated wiring will be, by code, need to be
12 replaced as well. In addition to upgrading
13 the units to meet or exceed the quality of
14 the units in the Other Buildings, for which
15 much higher rents were achieved, maintenance
16 costs should therefore be significantly
17 reduced.

18 In conclusion, Stahl's drawn out
19 application, confusing and contradictory
20 submissions, its neglectful management and
21 the data provided during this long review
22 process has not persuaded me that 190 units,
23 if properly renovated and maintained, would
24 be sun filled -- I'm sorry, 190 units of
25 properly renovated and maintained, sun

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2 filled, well-lit affordable housing should be
3 destroyed.

4 THE CHAIR: Michael.
5 Thank you, Margery.

6 MR. GOLDBLUM: Let me first say
7 that this was a very complex I think -- let
8 me first say that this was a -- this has been
9 a very complex and detailed technical
10 application, and my response will not address
11 anywhere near all of the aspects of it. But
12 I can say that I agree with many of the
13 things that have already been said, by both
14 Margery and by Bob, and certainly the legal
15 department's work on this has been
16 prodigious, taking into account every
17 challengeable assumption and giving it the
18 benefit of the doubt, and still having the
19 project come out as not meeting the hardship
20 criteria.

21 But let me start my testimony with
22 a quote that could sound ripped from the
23 headlines. Quote, "Private efforts have
24 proven to be ineffectual, given the magnitude
25 of the housing problem, causing officials to

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2 argue for a major new initiative." This
3 paraphrase from Richard Plunz's "A History of
4 Housing in New York" describes the 1896
5 Approved Housing Conference, the ideological
6 birthplace of the City and Suburban Homes
7 Corporation. Its First Avenue Estate, these
8 buildings that we are talking about today,
9 build -- built to the most progressive
10 standards of the day, elevated working class
11 housing to and sometimes beyond the standards
12 of middle class models, with ample light and
13 air, on-site amenities, and enlightened
14 apartment layouts. Its apartments are small
15 but efficient, practically designed. A fact
16 we observed when we visited the homes of
17 several long time residents, who have made
18 lovely, comfortable homes in spaces that many
19 would consider snug.

20 Today we are asked to determine
21 whether this landmark development can provide
22 its owners with a return sufficient to
23 justify its continued existence. Years of
24 effort by the owners and their opponents have
25 generated reams of testimony and scads of

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studies, piles of data. But it all boils
down for me to a simple question. At a time
of historically high occupancy rates, when an
apartment in Manhattan is more valuable than
ever, does this one complex possess such
remarkable deficits that it cannot yield its
owners a mere six percent return?

In my view the applicant has not
made this case. I have read the draft
resolution, and I agree with its detailed
conclusions regarding this application. Time
and again, the heaps of detail build
confident conclusions on assumptions that to
me seem incorrect. I think the applicant
understood the dissonance between our innate
sense of Manhattan real estate and their own
conclusions in this case. The underlying
premise of their case seems to be that the
First Avenue Estate so deeply defies
Manhattan real estate norms, norms that have
driven our economy for decades and changed
the face of this city for every one of its
inhabitants, that it justifies their
counterintuitive view of their building's

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2 value.

3 This case hinges on two
4 components, the cost of improving the units,
5 and the returns they will yield after
6 renovation in the markets. Regarding the
7 cost, the LPC staff has agreed with the
8 applicant's scope of work and the renovation
9 costs associated with it, producing renovated
10 apartments in their existing configurations,
11 restored to a basic market standard, nothing
12 fancy but clean, functional and sturdy.

13 My review of the applicant's
14 documents, talking about renovation costs,
15 come up with numerous assertions that I
16 disagree with. These disagreements relate
17 not to the overall costs but to the reduction
18 in scope that they blame on costs that are
19 later used to assert the buildings will still
20 yield a lower rent. Let me explain that a
21 little better. In other words, a lot of the
22 assumptions that were built into the
23 scenarios that were discussed here,
24 premised -- are premised on the fact that the
25 cost of the renovation will be so high

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because of these exigent conditions special
to the building that we can only do a little
bit, we can't do the normal amount. And
because we can only do a little bit, therefore,
the buildings will be substandard even when
we're done renovating them. And so it's that
aspect of this portion of the application
that I disagree with.

Further, the overall renovation
costs were exaggerated by the fact that some
of the defects in the buildings are
self-imposed, as we have discussed. Had the
applicant not held 50 percent of the building
empty for decade -- buildings empty for
decades, incremental maintenance would have
addressed many of the repairs that are now
needed. But this is not the core of the
case. The buildings, even after the
renovation, will, according to this
application, still present to the market a
substandard product, which will yield
substandard returns.

So how is the complex deficient?
The applicant puts forward two main reasons.

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First, the location on First Avenue is too far east for amenities and transit. And, second, the apartments are too small and the buildings are undesirable.

The location argument is ludicrous. Green Point, Red Hook, Williamsburg, Sutton Place, Jackson Heights, Throgs Neck, Staten Island, the list of fine neighborhoods further from transit than this site, perfectly adequate rents, goes on and on and on. This location, right across from a major hospital and research university, in fact gives the site considerable added value. And when the Second Avenue subway opens up, this value will only increase substantially.

The complex's condition is far better than many I have seen, certainly no worse than many other buildings of a similar vintage, virtually all of them occupied with strong rents. This is borne out by a careful examination of the comps. The applicant had to resort to Housing Authority apartments to find rents comparable to the applicant's projected rent here. Even if the renovated

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2 units remained under rent regulation, the
3 significant capital improvements to be made
4 should allow for their rent to rise
5 sufficiently to provide solid returns.

6 The apartments themselves are
7 small, but are well laid out and efficient.
8 The many residents whose homes we visited
9 were comfortable, livable, quite reasonable.
10 In fact, the 446 gross square foot average
11 unit size remains a feature that the City now
12 fosters, as Margery noted, in the adAPT NYC
13 Competition. Granted, those will have
14 elevators and cool built-in gizmos and Murphy
15 beds, but they will lack cross ventilation, a
16 convivial common courtyard and the creative
17 multi-room floor plans found here.

18 As evidence of its deficiencies,
19 the applicant notes the complex's
20 extraordinary vacancy rate. As Margery
21 detailed very vividly, this vacancy rate is
22 in large measure self-created. It would not
23 be expected to trouble newly renovated
24 buildings in this location, with even the
25 most rudimentary rental efforts.

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2 Time and again the applicant
3 struggles to identify how this complex is
4 saddled with unique detriments that reduce
5 its profitability, whose only solution is
6 wholesale demolition. But as a New Yorker
7 and an architect involved in real estate, I
8 cannot agree with that analysis. These
9 apartments will rent in a minute for a higher
10 rent than many of their neighbors, due in
11 large measure, through the visionary design
12 of its original creators. Destroying the
13 First Avenue Estate would be a significant
14 blow against affordable housing, trading its
15 190 relatively affordable, humanely designed
16 units with yet more upscale, market rate
17 condos or high-end developments. Maintaining
18 this landmark, which I believe the record
19 shows is both feasible and profitable, allows
20 for the continued habitation of one of our
21 city's most optimistic, altruistic efforts.
22 Its commitment to housing diversity and
23 housing equity, a commitment reconfirmed by
24 its citizens last year and spearheaded by the
25 new administration only weeks ago. By

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2 preserving this development, this Commission
3 proudly contributes to that promise.

4 THE CHAIR: Thank you, Michael.
5 Diana?

6 COMM. CHAPIN: Thank you. I
7 wanted to say first that I do agree with the
8 comments of -- of my other -- the other
9 Commissioners who have spoken so far. And I
10 want to point out I guess that the -- this
11 application really concerns a very important
12 set of buildings. They were built between
13 1898 and 1915, this block. It's one of the
14 two full block, light court model tenements
15 in the United States, the oldest extant
16 project of the largest and most successful
17 of the privately financed, limited dividend
18 companies that attempted and succeeded in
19 developing model affordable housing for the
20 working poor. And I think, as other
21 Commissioners have stated, it's very
22 important to consider that in terms of the
23 preservation of this -- this (inaudible).

24 The applicant has applied to
25 demolish the Subject Buildings on the grounds

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2 that they were incapable of earning a
3 reasonable return, stating that it intends to
4 demolish the buildings and construct a new
5 building on the site. I really cannot
6 support this application for hardship, and
7 principally because the evidence presented
8 does not substantiate that these apartments
9 are not capable of being rented or that
10 they're not able to generate a reasonable
11 rent. Moreover, it has not been demonstrated
12 that these vacant apartments will not be
13 profitable if renovated. In addition, I
14 believe that there are potential other sources
15 of income for the property that the applicant
16 has not explored.

17 In the matter of vacancy,
18 according to the testimony and documents
19 filed by the owner at the time of
20 designation, there were 53 vacant apartments.
21 Since designation, the owner has continued
22 its policy of not re-renting apartments as
23 they became vacant. At the time the hardship
24 application was filed, 107 apartments were
25 vacant, and there are currently 110 vacant

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2 apartments. In this case, because the owner
3 wanted to demolish these Subject Buildings,
4 it appears that they intentionally did not
5 re-rent apartments as they became vacant.

6 At the time of designation -- I'm
7 sorry. For anyone seeking apartments in
8 Manhattan, it beggars belief that these
9 continued to be vacant and the number of
10 vacancies doubled. The vacancy rate for the
11 Upper East Side averaged approximately 1.5
12 percent over the five year period from 2007
13 to '11, yet Stahl's vacancy rate in the Other
14 Buildings exceeds 20 percent. The fact that
15 there are -- these apartments are walk-ups or
16 small is not something that deters those who
17 right now are renting New York -- are renting
18 apartments all over New York City.

19 It is also not demonstrated that
20 the condition and layouts of vacant
21 apartments are in any substantive way
22 inferior to the Other Buildings, that the
23 overall condition of the common areas in the
24 Other Buildings is materially different from
25 the conditions of the Subject Buildings, or

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that they are much less convenient to public transportation. And while some apartments in the Other Buildings are larger than the average buildings in the landmark building, many apartments in the Other Buildings are of similar size to apartments in the Subject Buildings, or even smaller.

Moreover, the applicant presented no compelling evidence that reasonable efforts were made to advertise the availability of these apartments. Stahl maintains an on-site rental office, but does not advertise vacancies, keep records of how many people have inquired, nor does it maintain a record of applications for apartments. The owner has not advertised apartments in other media, such as social media or newspapers, or listed it with multiple brokers. And the online broker, Greenthal, merely lists the phone number of the on-site rental office. It does not provide floor plans, virtual tours or other information on apartments in the Other Buildings, nor does it say whether there are

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2 any vacancies.

3 For anyone who has looked for
4 vacancies in New York City, obviously you
5 would expect to find these assist in order to
6 establish your interest -- the availability
7 of the apartments in question and are they --
8 they are available and what the condition of
9 them is and what the opportunity is that
10 exists, and so on. And this just isn't
11 outlined by the online.

12 This leads me to the conclusion
13 that the decision by Stahl to continue its
14 policy of not renting apartments vacated
15 after designation was a conscious business
16 decision and a voluntary assumption of risk,
17 and that any costs associated with renovating
18 the 44 apartments vacated after redesignation
19 are a self-imposed hardship. Therefore, only
20 the renovation costs for the 53 apartments
21 should be included in the analysis.

22 The area of additional income.
23 The owner claims there is no opportunity to
24 raise additional income from the subject
25 properties, such as providing storage or

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2 laundry facilities, although the laundry
3 facilities are available in other comparable
4 buildings in the complex. And the storage
5 obviously. Just a week or so ago in
6 Globestreet.com they're talking about the
7 opportunity that storage offers for real estate
8 investment groups. And I just find it very
9 surprising that there is no opportunity for
10 storage or laundry facilities being additional
11 income for these properties, and an amenity.

12 And nor has it -- have they
13 explored leasing roofs to cell phone
14 companies. And finally, the owner has never
15 really tried to sell its development rights,
16 and stated there is no site to which it
17 could sell its development rights. I do not
18 find that credible.

19 In the area of the income level
20 that might be anticipated. In order to
21 estimate what income the Subject Buildings
22 could generate if operated in a reasonably
23 efficient and prudent manner, the applicant
24 provided different development scenarios to
25 estimate how much it would cost to renovate

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2 the vacant apartments and how much the
3 renovated apartments could rent for. After
4 considering all of the testimony and
5 information that was provided, it appears
6 that moderately renovated apartments could
7 command rents of at least \$35 or at least --
8 per square foot, and likely generate rents of
9 at least \$40 per square foot, if not more.
10 While even those renovated to a Minimum
11 Habitability level could rent for at least,
12 according to the -- could rent for at least
13 \$869 a month, or \$28 per square leasable
14 foot, which is the current average -- average
15 current rent for occupied buildings in the
16 Subject Building. According to the owner,
17 the mean average of occupied apartments is
18 approximately \$840 a month. The median last
19 listed rent for vacant apartments is
20 approximately \$857. It was not demonstrated
21 that these rental levels were not possible for
22 the currently vacant apartments, even with no
23 moderate renovation.

24 Based on all the information and
25 testimony provided, I find the applicant has not

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demonstrated that the subject properties, if operated in a reasonably efficient and prudent manner, could not generate a net return of six percent of the post-renovation assessed value of the subject properties. And I therefore cannot support this hardship application.

THE CHAIR: Thank you, Diana.
Fred Bland, please.

COMM. BLAND: You know, I'm a -- I feel I'm a reasonably well educated man. I'm a licensed architect, I'm a certified planner, eight years of graduate and post graduate education, as well as completing two years of course work at NYU's Real Estate Institute. Yet also, I have at home in my study a tall stack of position papers, testimony, counter testimony, expert witness testimony and counter testimony, overflowing with facts and figures. This way of calculating assessed valuation, that way of calculating assessed valuation. This percentage for soft costs, that percentage for calculating soft costs, and so on. The mind boggles, at least my mind boggles.

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All we need to do is one simple bit of long division, divide a numerator by a denominator, and have a result that is less than six percent. But the disparity at arriving at what each of those two numbers is, is what constitutes the bulk of those documents piled high in my study. So even with my graduate level education in architecture, planning and real estate, I have trouble parsing all the various facts and figures. So I will leave it to my other commissioners to comment, and they have beautifully already in detail, on the veracity of those facts and figures, methodologies of calculations and the like. Rather, I will take a more general approach. An approach which my 42 years of architectural and planning practice in my firm has perhaps uniquely prepared me for.

My firm was founded in the late 1960s with a pro-Jane Jacobs, anti-Robert Moses vision of urbanism. We believed in conserving the city's fabric wherever possible, working with many local, state and

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2 national housing preservation programs,
3 for-profit and non-for-profit developers. We
4 have been the architects for literally
5 thousands of rehabilitated tenement housing
6 units across the city. We believe -- and I
7 love Margery's testimony in the same way, we
8 were doing the same thing at the same time I
9 think -- we believed in this approach for two
10 essential and perhaps opposite reasons or
11 rationales. One, we preserved streetscapes
12 and kept neighborhoods and their residents
13 intact. Perhaps a social goal. Two, it made
14 simple economic sense, as it was less
15 expensive to keep and renovate than to
16 demolish and build new, clearly an economic
17 goal, which fosters affordable housing. This
18 approach has guided our practice and me for
19 42 years, and it is no less true now than it
20 was when we started out nearly two
21 generations ago.

22 So from that perspective let me
23 offer six random thoughts about the case
24 which the applicant is making.

25 One. Although the applicant is

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2 preparing its case on the basis of only two
3 lots on block fourteen fifty- -- or one lot on
4 block 1459, I cannot separate that lot from their
5 buildings and their buildings from the entire
6 block, which was built as a unified whole of
7 thirteen like model tenement buildings,
8 unique in the nation. Therefore, they must
9 be thought of and analyzed, in my judgment,
10 for any hardship as one block, not piecemeal.

11 Number two. Small dwelling units,
12 rather than a burden, offer a distinct market
13 advantage in an important niche of the New
14 York City's residential real estate market.
15 Indeed, our recent mayor recognized this and
16 sponsored a widely acclaimed design
17 competition for micro units, which were even
18 smaller than these that we're considering
19 today. The lack of an elevator, like
20 thousands of other buildings in this city,
21 certainly does not make them unrentable.

22 Number three. It is hard for me
23 to believe that in the highly desirable Upper
24 East Side there can be a true hardship
25 regarding housing projects, unless it is a

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self-inflicted one, which I believe this case
to be. A vacancy rate of over 20 percent is
self-imposed warehousing.

Number four. I cannot believe
that located across the street from one of
the world's great research universities,
filled with budding Nobel prize winners,
there is not a thriving market as
dormitory -- as micro unit and dormitory
rooms for students and staff.

Five. I find it hard to believe
that there is no value whatsoever to the
excess development rights on block 1459, at
least some of which could be sold using
section 74-79 to underwrite a least a portion
of the renovation costs.

Six. Finally, for a hardship
application to be successful, the owner must
show that it seeks in good faith to demolish
such improvement immediately for the purpose
of constructing on the site a new building or
an income producing facility. In this case,
for success -- if this case were successful
and the LPC were presented with an application

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2 for the design of a new building on lot 22,
3 I find it hard to believe I could ever find
4 a new building to be appropriate unless it
5 has -- unless it maintained the general
6 height and mass of the historic buildings
7 to which it would be adjacent and on the
8 same block.

9 Therefore, for me this is a sad
10 and cynical case of a self-inflicted hardship
11 in order to demolish a portion of a
12 nationally important historic complex and
13 affordable housing units with it, to be
14 replaced by a new tower. I don't think the
15 case for hardship has been made.

16 THE CHAIR: Thank you, Fred.
17 Michael Devonshire.

18 MR. DEVONSHIRE: If I may briefly
19 first thank the staff at the LPC for an
20 amazing amount of research and work in
21 developing the resolution. And then I would
22 say that in fact I support the resolution
23 that has been established by the staff.

24 First and foremost, I have to draw
25 only on the expertise that I have developed

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over my 35 year career, and it has not so much to do with real estate value or assessed value or establishing value of apartments as it has to do with essentially the process of renovation. And inasmuch as that is the area that I work in, those are the issues that I essentially have to address.

I would make one aside here that when I told one of my clients, who owns a gazillion six story walk-up buildings in the West Village, the amount that was purported to be the amount that they could get for the apartments in this building once they were renovated, it took me about five minutes to get him off the floor from his laughing, because most of his go from between 2,000 and \$3,000 dollars a month in the six story walk-ups.

That said, in this situation, again, this is the Landmarks Preservation Commission, and we are the advocates for historic sites and historic resources around the city. Thus, in my mind, it becomes the effort on the part of the applicant to

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2 satisfy this Commission and provide the
3 burden of proof that an application such as
4 this is appropriate. And in my mind, this
5 one is not. As I said, the assessed value of
6 the building is something that could go back
7 and forth ad infinitum depending upon the
8 point of view of the arguers. In this
9 particular case, for me what the issues have
10 been are these.

11 One. The lack of consistent and
12 logical cost information provided throughout
13 this process by the applicant.

14 A pronounced lack of accuracy with
15 regard to the construction approach and the
16 project costs, which I find to be
17 extraordinarily overvalued.

18 A lack of inclusion of correct
19 information with regard to the transfer of
20 development rights and additional income
21 possibilities for these buildings.

22 And unnecessarily high soft costs
23 assigned to the processes that they intend to
24 go through.

25 Thus, ultimately, and I really do

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want to be brief here, I find that there's a
consistent undervaluing of the apartments and
an overvaluing of the costs, and thus I
cannot support the demolition or the
hardship.

THE CHAIR: Thank you, Michael.
Roberta Washington.

COMM. WASHINGTON: The owner
claims the that apartments are so
substantial that even after renovation
they're not expected to generate a six
percent return. Much of my professional
experience is in the renovation of apartments
very similar to these apartments, in size,
without elevators, and not always near a
subway. But we had an opportunity to visit
the apartments that are being discussed here,
and I could see that physically they weren't
very different. And I know that from
experience with these apartments that
renovation, especially with a location like
the location for these buildings with these
apartments, that it is possible to rent them
for reasonable rents and even profitable

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2 rents. I believe that the owner has created
3 hardship conditions for himself by
4 warehousing available apartments and not
5 making an earnest attempt to rent or generate
6 income in other ways, as has been discussed
7 here.

8 The owner's apartments did not
9 successfully show -- the owners did not
10 successfully show how the subject apartments
11 should be considered or why they should be
12 considered substantially different from other
13 apartments that they own, its Other
14 Buildings -- in his Other Buildings. And why
15 the rental possibilities for that building,
16 these two buildings, should be considered
17 less than that of the Other Buildings.

18 I believe that overall the owner
19 did not prove that they were incapable of
20 attaining a reasonable return from the
21 Subject Buildings, and also, that the
22 buildings could only be profitable if they
23 were demolished. The projected cost of \$600
24 a month of rental was of course ridiculous.
25 And I think that there was no earnest attempt

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to look at what could reasonably be generated
under any of the scenarios that were
presented.

Overall I think that demolition
for these buildings are not an option, that
the request for consideration as a hardship
case was not actually proven, and that there
are yet many years of life in these
apartments, life that could clearly render a
return of more than six percent for its
owners.

THE CHAIR: Thank you very much.

Thank you, everyone, for a superb
discussion. And I think the discussion and
the length to which it's gone is appropriate
and important, and underlying the importance,
and is warranted by the importance of the
matter that's before us. I think it all
leads to the inescapable conclusion that
there's a -- the burden has not been met to
prove a hardship. And with that and I
think -- we are, as Michael Devonshire
pointed out, this is the Landmarks
Preservation Commission. Our job is

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2 preservation of historic resources in the
3 City of New York. But we are also mindful
4 and protective of the due process rights of
5 those who own those properties in the City,
6 people that come before us for, not only for
7 this hardship matter, which, as I said, is
8 rare, but that it is especially important in
9 those cases because they tend to -- they tend
10 to turn on important economic factors, in fact
11 that's the basis for the hardship, that we treat
12 it with the kind of care and thoroughness that
13 I believe has been done here, and fairness. So
14 with that I would take the motion myself to
15 deny this hardship application.

16 I recommend denial of the
17 application to demolish 429 East 64th Street
18 and 430 East 65th Street on the grounds that
19 they cannot make a reasonable return as
20 defined by the Landmarks Law section 25-309,
21 finding:

22 One, that under a variety of
23 scenarios to renovate and rent 97 vacant
24 apartments and using a number of different
25 assumptions, the improvement parcel appears

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2 capable of earning a net return equal to or
3 in excess of the six percent of the assessed
4 value of the improvement parcel in the test
5 year 2009.

6 Two, that this finding does not
7 include potential revenue from additional
8 sources, such as building storage facilities
9 in the basement or renting the roofs to cell
10 phone companies.

11 Three, that this finding does not
12 include the potential revenue from
13 transferring or otherwise selling the
14 considerable excess development rights on the
15 improvement panel.

16 And that for these reasons, as set
17 forth in the resolution dated May 20, 2014,
18 and with reference to the discussion here
19 today, the applicant has not established to
20 the satisfaction of this Commission that the
21 improvement parcel, whether that is defined
22 as all of block 1459 or only lot 22, is not
23 capable of earning a reasonable return.

24 MR. GOLDBLUM: Second.

25 THE CHAIR: All in favor? Aye.

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(Chorus of ayes)
THE CHAIR: Opposed?
(No response)
THE CHAIR: No opposed, it's
carried. Thank you.

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

I, KARI L. REED, a Registered
Professional Reporter (Stenotype) and Notary
Public with and for the State 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, by blood or marriage, to any of the
parties in this matter and that I am in no
way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 2nd day of June,
2014.

KARI L. REED, RPR

**Item 1, 429 East 64th Street
May 20, 2014**

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Item 1, 429 East 64th Street
May 20, 2014

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