Appendix 11 – Written Comments Received on the DEIS

5/13/2013

J. Michael Greeley
60 Thayer Street #3H
New York, NY 10040
jmichaelgreeley@msn.com

My name is Michael Greeley.
I am a Banquet cook at the Waldorf=Astoria Hotel for the past 13 years.
I am also a member of Manhattan Community Board 5, as well as a member of the Multi-Board Task Force on East Midtown.

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

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

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

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

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

From the July 2nd letter (Question #10):
"If more hotels are built, how will accommodations be made for the inevitable concomitant rise in tourist traffic?"

From the July 20th letter (Question #9):
"What will be the cost of administering the DIB fund", and
will the costs be capped at a fixed amount or at a percentage of the fund?

We are still waiting on an answer on that, as well as to the following question:
"What is the cost of each of the DIB projects that DCP has already identified?"– which was originally asked in that same July 20th letter (Question #4).

Yes, DCP has set a priority list of improvements as:
1. Grand Central–42nd Street Subway Station for the 4, 5, 6, and 7
2. Vanderbilt Ave Pedestrian Plazas
3. 53rd Street Subway Stations at 5th Ave and at Lexington Ave for the E, M, and 6
4. Widening of sidewalks along Madison, Lexington, & 53rd Street

The MTA did provide us cost estimates in October 2012 for:
Grand Central–42nd St Subway Station (4/5/6/7) improvements at $175–225 million; 5th Ave/53rd St Subway Station improvements at a cost of $50 million; and for Lexington Ave/53rd St/51st St Subway Stations: $40 million.

However, DCP still has not provided cost estimates for the pedestrianization of Vanderbilt Ave or for the sidewalk widening on Lexington or Madison Avenues.

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

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

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

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

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

The Multi-Board Task Force has a principle that infrastructure improvements should precede development. The city should use the revenue from the sale of city land in the improved Times Square to fund at least 80-100% of the cost of rehabilitating the Grand Central–42nd Street Subway Station – the most used subway station in East Midtown.

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

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

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

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

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

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

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

I ask both Community Boards 5 and6; please include these ideas in their respective resolutions.

Thank you.

From: MEHDI AMJADI
To: DIANE MCCARTHY
Subject: RE: East Midtown - transportation planning factors
Date: Tuesday, June 04, 2013 10:21:32 AM

That is what we show also in trip generation analysis-more truck trips in EMT.

From: DIANE MCCARTHY
Sent: Tuesday, June 04, 2013 9:13 AM
To: MEHDI AMJADI
Subject: FW: East Midtown - transportation planning factors

See below

From: Joseph Greeley [mailto:jmichaelgreeley@msn.com]
Sent: Monday, June 03, 2013 10:02 PM
To: FRANK RUCHALA
Cc: DIANE MCCARTHY
Subject: RE: East Midtown - transportation planning factors

Frank,

Thank you for responding.
I do hope that my questions are answered in the Final EIS.
Just for context with my Truck Trip Generation question: In 1981, hotels in general had less items in the rooms and more services were done on-premises (including laundry).
Compared to now with more items are available to hotel guests and more service are done off-premises (especially laundry);
thus more trucks coming to a hotel district.

All the best.

Mike

Subject: RE: East Midtown - transportation planning factors
Date: Mon, 3 Jun 2013 15:21:05 -0400
From: FRUCHAL@planning.nyc.gov
To: jmichaelgreeley@msn.com
CC: DMCCART@planning.nyc.gov

Hi Mike,
I spoke with our environmental review division regarding your more-detailed questions. Since we are in the Draft EIS comment period for the environmental review of the East Midtown project, we're going to treat your questions as comments that will be addressed in the 'response to comments' section of the Final EIS.

Let us know if you have any questions,
Frank

Frank Ruchala Jr CITY PLANNER | URBAN DESIGNER

NYC DEPT. OF CITY PLANNING
22 READE STREET • NEW YORK, NY 10007
t 212.720.3436 • f 212.720.3488
www.nyc.gov/planning

From: Joseph Greeley [mailto:jmichaelgreeley@msn.com]
Sent: Wednesday, May 22, 2013 11:02 PM
To: FRANK RUCHALA
Subject: RE: East Midtown - transportation planning factors

Thank you Frank.
I did find Table 12-6, but I did not find any mention of private/charter buses, especially with hotels. The buses that are mentioned seemed to be only public & commuter buses. Are there numbers for charter buses?

Also the data for Truck Trip Generation for hotels that is partly based on The Curbside Pickup/Delivery Op & Arterial Traffic Impacts, FHWA from 1981: how much is the 0.06 per room based on that 1981 data vs. 2009 Western Rail Yard FEIS?

Mike

Subject: East Midtown - transportation planning factors
Date: Wed, 22 May 2013 22:16:26 -0400
From: FRUCHAL@planning.nyc.gov
To: jmichaelgreeley@msn.com

Hi Michael,
At the public hearing last week, you asked about the trip generation factors for different uses. I told you I would find the info in the DEIS, but unfortunately misplaced your email address until now.

So, the data you requested is in chapter 12 (transportation) of the DEIS in table 12-6, which is on page 12 of the pdf.

you can access the deis here:

http://www.nyc.gov/html/dcp/html/env_review/east_midtown.shtml

let me know if you have any questions,
frank

August 7, 2013

J. Michael Greeley
60 Thayer Street #3H
New York, NY 10040
jmichaelgreeley@msn.com

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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COMMUNITY BOARD #1 – MANHATTAN
RESOLUTION

DATE: MAY 28, 2013

COMMITTEE OF ORIGIN: PLANNING

COMMITTEE VOTE:	14 In Favor	1 Opposed	0 Abstained	0 Recused
BOARD VOTE:	31 In Favor	1 Opposed	0 Abstained	0 Recused

RE: N 130247 ZRM
C 130248 ZMM
East Midtown Rezoning

WHEREAS: The proposed East Midtown Rezoning for 78 blocks around the Grand Central District would increase the maximum allowable Floor Area Ratio (FAR) for developers, which would immediately create incentives for new office development in East Midtown, and

WHEREAS: As a result of the terrorist attacks on the World Trade Center on September 11, 2001, 14 million square feet of commercial office space in Lower Manhattan was destroyed or damaged, 65,000 jobs were lost or relocated, and more than 20,000 residents were displaced, and

WHEREAS: Now, almost twelve years after the attacks of 9/11, Lower Manhattan is in the middle of a renaissance as more residents and businesses have come to the area than were lost during the attacks, and

WHEREAS: By 2012, Lower Manhattan had 8,484 companies, 186 more than were here on the day of the attacks. Employment is also on an upward trend with a current total of 309,500 employees[1], a trend that is expected to continue to grow as office space comes on line at the World Trade Center site, and

WHEREAS: The 4, 5 and 6 train lines are currently at 116% capacity[2]. Currently utilized by many residents, workers and students, they are expected to draw even more riders after the build-out of the World Trade Center site, and

WHEREAS: Remarkable and steady progress has been made at the 16-acre World Trade Center site as construction continues on 10 million square feet of world class, LEED certified office space, including almost 500,000 square feet of retail space, and

WHEREAS: The 105-story 2.6 million square foot World Trade Center Tower 1 is approximately 55 percent leased and is expected to open in Q1 2014. The 72-story

[1] Downtown Alliance: Lower Manhattan Fact Sheet, Q3 2012
[2] Straphangers Campaign: Letter to Mayor Bloomberg & Chairman Ferrer of the Metropolitan Transit Authority, 2013

2.3 million-square-foot World Trade Center Tower 4 is 50 percent leased and will also open in Q1 2014, and

WHEREAS: The rebuilding of Lower Manhattan is a long-term process and is vital to the restoration and revitalization of our neighborhood and redevelopment of the World Trade Center site is on track. CB1 wants to make sure that the positive momentum continues, and

WHEREAS: The proposed East Midtown Rezoning would result in a projected increment of approximately 4.4 million square feet of commercial office space in the next 20 years, and it is this net increase that drives most of the negative impacts of the proposed rezoning, including increased load on public transportation and increased road traffic loads, some of which are described as unmitigatable, and

WHEREAS: The proposed East Midtown Rezoning contains a "sunrise" provision under which building permits could not be issued until July 1, 2017, and the final build-out of the World Trade Center site will extend beyond 2019, according to the World Trade Center Campus Security Plan Draft Environmental Impact Statement released on April 8, 2013, now

THEREFORE BE IT RESOLVED THAT: CB1 strongly urges the City Planning Commission to conduct a comprehensive review of how the proposed East Midtown Rezoning would affect Lower Manhattan, with a particular emphasis on the extent to which an up-zoning of office and commercial space in Midtown would adversely impact the ongoing redevelopment of Lower Manhattan, and

BE IT FURTHER RESOLVED THAT: CB1 believes that the City of New York and the MTA must resolve subway capacity issues in advance in order to accommodate the expected increase in ridership as a result of the East Midtown zoning change, and

BE IT FURTHER RESOLVED THAT: While CB1 supports the concept that zoning changes may be necessary to permit the commercial office space in the East Midtown area to be upgraded and maintained as 21st Century Class A commercial space, CB1 believes that a 4.4 million square foot net increase in commercial office space in the East Midtown area would place an unsustainable and unmitigatable burden on the transportation infrastructure that serves not only East Midtown, but Lower Manhattan as well, and accordingly CB1 strongly urges the City Planning Commission to adjust the proposed zoning changes such that development in accordance with the new zoning would not result in a net increase of commercial office space in the East Midtown area, and

BE IT FURTHER RESOLVED THAT: CB1 strongly urges that the sunrise provision of the proposed East Midtown Rezoning be extended to a later date on which certain meaningful World Trade Center site development milestones could be accomplished, such as completion of a fixed number of buildings and square feet of space completed and leased, before the proposed rezoning is adopted, and

THEREFORE BE IT FURTHER RESOLVED THAT: CB1 recommends disapproval of proposed Zoning Text Amendment N 130247 ZRM and proposed Zoning Map Amendment C 130248 ZMM for the proposed East Midtown Rezoning because these amendment would adversely affect Lower Manhattan as well as East Midtown.

MULTI-BOARD TASK FORCE ON EAST MIDTOWN

MANHATTAN COMMUNITY BOARDS
ONE, FOUR, FIVE, & SIX

Lola Finkelstein, *Chair, Multi-Board Task Force*

Catherine McVay Hughes, *Chair, Community Board One*
Corey Johnson, *Chair, Community Board Four*
Vikki Barbero, *Chair, Community Board Five*
Sandro Sherrod, *Chair, Community Board Six*

Department of City Planning Zoning Text Amendment (N 130247 ZRM) and Zoning Map Amendment (C 130248 ZMM) to amend the Special Midtown District of the NYC Zoning Resolution.

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MULTI-BOARD TASK FORCE ON EAST MIDTOWN

MANHATTAN COMMUNITY BOARDS
ONE, FOUR, FIVE, & SIX

Lola Finkelstein, *Chair, Multi-Board Task Force*

Catherine McVay Hughes, *Chair, Community Board One*
Corey Johnson, *Chair, Community Board Four*
Vikki Barbero, *Chair, Community Board Five*
Sandro Sherrod, *Chair, Community Board Six*

June 11, 2013

Department of City Planning proposed Zoning Text Amendment (N 130247 ZRM) and Zoning Map Amendment (C 130248 ZMM) to amend the Special Midtown District of the NYC Zoning Resolution.

WHEREAS, The Department of City Planning seeks to rezone a 70-block area surrounding Grand Central Terminal including parts of Park Avenue, together known as East Midtown; and

WHEREAS, The goal of the rezoning is to preserve East Midtown's global competitiveness in the 21st century; and

WHEREAS, Although CB5/CB6 agree that East Midtown should be studied and the goals of the rezoning are worthy of consideration; and

WHEREAS, The timeline for this rezoning has been beholden to a political calendar and needlessly rushed despite multiple requests from elected officials, community boards, and advocacy groups to slow the process down and allow for a more thorough, complete plan for the future of this vital office district; and

WHEREAS, A truly world-class district must have a truly world-class transit system; and

WHEREAS, A commitment to infrastructure as represented by Grand Central Terminal is what allowed East Midtown to become the premier business district it is today; and

WHEREAS, The proposed rezoning relies entirely on the speculative possibility of future payments into a District Improvement Fund (DIF) to finance infrastructure upgrades that are known and needed today; and

WHEREAS, The proposal's plan to use the DIF, which is unpredictable and unreliable, to fund critical infrastructure needs does not represent a commensurate commitment to infrastructure that will solidify East Midtown as a globally competitive office district in the 21st century; and

WHEREAS, If a DIF is created as a supplementary revenue source it needs to include an appraisal process for development rights to ensure market pricing and to include a floor which increases over time as well; and

WHEREAS, This proposal would allow a drastic increase in density in an area the City deemed built-out in a 1982 downzoning which sought to encourage development elsewhere in Manhattan; and

WHEREAS, East Midtown is already one of the densest areas of the developed world with a transit system that is currently overcapacity yet this proposal seeks to add ***more*** density with the prospect of future transit improvements coming only ***after*** said density has been added; and

WHEREAS, The proposed densities will overwhelm the already overcrowded streets and sidewalks of the area and therefore must be reduced in order to better reflect a coherent and contextual urban design strategy; and

WHEREAS, Although public review is essential for any building in the proposal area above 18FAR (which still represents a 20% increase over the allowable base FAR), this proposal marginalizes the public's critical role in the review of land use matters by allowing extremely high FAR as-of-right; and

WHEREAS, Improvements to the public realm meant to be part of this proposal are exceptionally vague with no detailed plan for how, what, and when improvements will be made; and

WHEREAS, The Multi-Board Task Force and others have repeatedly asked for a comprehensive public realm strategy; yet the commissioning of such a plan has only just been announced and is not included in the ULURP application, preventing Community Boards and the Borough President from having the opportunity to comment on it, or to provide meaningful input as a part of their recommendations; and

WHEREAS, The proposal has a narrow and outdated conception of use regulations for a 21st century office district; and

WHEREAS, An allowance for residential and community facility use in all new buildings (capped if necessary) would promote the 21st century paradigm of mixed-use that cities around the world have embraced; and

WHEREAS, A retail or public use requirement for the rooftop of these new buildings would allow greater public interaction with our city's skyline; and

WHEREAS, Streetwall requirements discourage innovative and architecturally distinctive building design; and

WHEREAS, Although designed to ensure that new buildings resulting from these new zoning rules will be models of sustainable development, building code and environmental guidelines included in this proposal are insufficient; and

WHEREAS, More rigorous and inventive requirements that promote 21st century environmental concerns are included in the attached document; and

WHEREAS, Several eligible landmarks lie within the rezoning area and are either projected or potential development sites and therefore under threat of demolition and, in fact, the very prospect of landmarking these buildings has already prompted some owners to deface them or strip their façades in an effort to prevent landmarking; and

WHEREAS, Although air rights were conceived by the City to provide a secure funding stream for existing landmarks to maintain the city's historic resources, landmarks in the area will unduly face increased competition for selling these air rights as a result of the underpriced DIF; and

WHEREAS, The Task Force and others have called for the study of a landmarks transfer alternative that would allow landmarks in the area outside of the Grand Central Subdistrict to float their air rights more broadly; and

WHEREAS, By encouraging new development in East Midtown the City is putting at risk the significant investments it has made in other office districts, including Hudson Yards and Lower Manhattan, investments the taxpayers are still paying for as developers fail to achieve anticipated occupancy goals; therefore be it

RESOLVED, Community Boards Five and Six recommend denial of the Department of City Planning's proposed Zoning Text Amendment (N 130247 ZRM) and Zoning Map Amendment (C 130248 ZMM), as the amendments may be counterproductive in addressing many of the challenges of East Midtown and as they represent an incomplete and unworthy proposal ill-suited to meet their most basic goal: to ensure East Midtown's competiveness in the 21st century; and be it further

RESOLVED, Community Boards Five and Six also call for greater study and review to produce a more comprehensive, thoughtful strategy to strengthen the city's most important business district and in the attached statement outline all of the critical issues that need to frame a more civically inspired vision.

MULTI-BOARD TASK FORCE ON EAST MIDTOWN

MANHATTAN COMMUNITY BOARDS
ONE, FOUR, FIVE, & SIX

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Department of City Planning Zoning Text Amendment (N 130247 ZRM) and Zoning Map Amendment (C 130248 ZMM) to amend the Special Midtown District of the NYC Zoning Resolution.

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Multi-Board Task Force on East Midtown

Manhattan Community Boards
One, Four, Five, & Six
Lola Finkelstein, *Chair, Multi-Board Task Force*

Catherine McVay Hughes, *Chair, Community Board One*
Corey Johnson, *Chair, Community Board Four*
Vikki Barbero, *Chair, Community Board Five*
Sandro Sherrod, *Chair, Community Board Six*

June 5, 2013

Department of City Planning Zoning Text Amendment (N 130247 ZRM) and Zoning Map Amendment (C 130248 ZMM) to amend the Special Midtown District of the NYC Zoning Resolution.

The Multi-Board Task Force consisting of Community Boards 1, 4, 5, and 6, and CB5 and CB6 specifically, have met with the Department of City Planning for over one year to discuss this far reaching plan. Early on, in November of 2012, the Task Force voted to approve the "Principles for a New East Midtown" as a guiding document on which to evaluate this rezoning plan and it was promptly shared with the administration[1]. While we appreciate the Department of City Planning's regular meetings with the community, the final text and associated actions fall significantly short of achieving the principles established by the Task Force. Critical elements which have underpinned New York's economic success have simply been ignored. In an effort to "seed" Midtown with a handful of new 21st century buildings, the City has missed an opportunity to create a truly 21st century <u>district</u>. In the absence of a proposal which balances private gain with public good, we respectfully recommend the denial of this ULURP application. In the following document we outline many of the critical issues that constitute a more civically inspired vision. If the plan were focused on these principles we believe we will ultimately unlock far greater value for the City over the long term.

The following statement is broken down into the critical issues the Task Force has raised throughout the process and anchored by the specific principles in our Statement of Principles.

[1] See Attachment A

This statement is informed by hundreds of meetings and conversations with a diverse group of stakeholders, in particular our elected officials and their extraordinary staffs. Specifically, Councilmembers Dan Garodnick, Gale Brewer, and Jessica Lappin, State Senators Liz Krueger and Brad Hoylman, Assemblymember Dan Quart, Congresswoman Carolyn Maloney, Borough President Scott Stringer, Public Advocate Bill de Blasio, Speaker Christine Quinn and US Senator Charles Schumer have been invaluable throughout the process. Many of them have raised some or all of the issues outlined in this document in correspondence to Deputy Mayor Steel and Chair Burden and all have provided thoughtful feedback and advice[2]. We have also met with real estate developers, REBNY, preservation groups, transportation experts, union representatives, environmentalists, landmark owners, journalists, academics, residents, visitors, and workers in East Midtown. All of their ideas have helped inform our position.

Rationale for Proposed Rezoning:

A major purpose for the East Midtown rezoning is given as preserving New York City's competitiveness against such other major cities as Shanghai, London, Tokyo and Chicago. The term "competitor cities" is often used. E.g., pp. DEIS, 1-9. However, no evidence whatsoever is given that there is any competition between New York and these other cities based on the building stock. A map displaying the age of buildings across cities is offered as a piece of analysis. However, a large number of economic, geopolitical, and other factors determine what economic activity occupies major office buildings. No evidence is presented that the nature of the building stock is a cause rather than an effect. In a somewhat different context, page 3-14 in the DEIS states that the amount of office development that would be allowed by the rezoning "would not be enough to alter or accelerate existing economic trends." That runs counter to the claim that the rezoning would make New York more competitive with these other cities. The Department of City Planning is stating that East Midtown is in competition for tenants with Tokyo but not with Lower Manhattan or Hudson Yards – an extraordinary leap of logic.

The underlying need for reliable transit investment, public realm investment and careful preservation is clear but these issues have been neglected in favor of a development agenda where there is far less consensus. Fundamentally, any planning effort for East Midtown needs to

[2] See Attachments B-K

focus on many of these responsibilities that lie with the public sector instead of the proposed approach which abdicates public sector responsibility and transfers it squarely to the private sector to fund critical pieces of our future infrastructure. This is not an appropriate planning framework, this is a speculative gamble on the future of our infrastructure contingent on the market producing the needed returns. We cannot and should not solely rely on real estate development to fund our present and future needs.

Infrastructure

Infrastructure lies at the heart of the economic success of Midtown and a longer term strategy for what is required to serve a modern 21st Century East Midtown is essential. We cannot build a 21st Century Midtown with early 20th Century infrastructure and expect to remain competitive. Yet, the proposed rezoning relies entirely on the speculative possibility of future payments into a District Improvement Fund to finance infrastructure upgrades that are overdue today, as articulated to the Task Force by the MTA in a presentation from October 2012.

East Midtown is already one of the city's most congested areas and the proposed rezoning will inevitably bring thousands of new workers into the community. Unless the infrastructure expands to keep pace with the added demand, East Midtown will become increasingly overcrowded and congested. This congestion will impact traffic, sidewalks, mass transit, open space and all essential services. New development will outpace infrastructure improvements unless the city adopts a mechanism to fund improvements before development occurs. With the infrastructure in place we're also more likely to see development as the private sector responds to the improvements in infrastructure and the pubic realm. Many including Senator Schumer have suggested that the City could issue bonds against the Fund in order to enable anticipated improvements to move forward more quickly. The Board and others have articulated similar approaches over the course of several months and additional work and study is needed to ensure we don't fall behind other cities as they make significant investments in their transit networks. As Mayor Bloomberg said on April 10, 2013, just two months ago: "The lack of new transit investment is creating a serious and urgent threat to New York City's economic competitiveness." We couldn't agree more but this proposal totally fails to create a predictable and reliable framework for this urgent investment.

Despite the concerns raised from all of the elected officials representing this neighborhood, as well as transit advocates, planning advocates and the Multi-Board Task Force, over the past year there has been no modifications to the planning framework to ensure that infrastructure is in place before development occurs.

In order for this plan to be compatible with the long-term health of Midtown a number of modifications are essential:

- A long term strategy must be created to establish goals for what is essential to ensure a 21st Century infrastructure in East Midtown, both below- and at-grade.

- Adequate sources of funding need to be identified and described. We believe it is essential for the City, in close coordination with the MTA, to develop a long term transit strategy for Midtown, looking at a range of additional investments over the course of a number of decades to ensure New York City is keeping up with our global competitors when it comes to infrastructure investment. This study should lay the groundwork for additional investment over the course of the coming decades. Please see below for an outline of an alternative funding approach.

- The sunrise provision should be contingent on infrastructure investment. Instead of setting an arbitrary date – July 2017 – after which development can occur, a sunrise mechanism needs to be developed based on a set of milestones. Triggers for any new development should be tied to:

    - Development milestones in Hudson Yards and Lower Manhattan
    - Infrastructure milestones such as the completion of Phase 1 of the 2nd Avenue Subway
    - Completion of improvements the MTA has identified in its presentation on October 2012
    - Completion of improvements to be identified in the public realm plan

- The DIB is a totally inappropriate mechanism for funding essential infrastructure given its lack of reliability and predictability. We will not know how much money the fund will accrue or when it will accrue it. By relying on the DIF to fund essential transit investment, we are beholden to the whims of the private market. As has been clearly established in Hudson Yards[3], there is tremendous uncertainty as to when development will occur and, despite our best intentions and analysis, we will not be able to accurately predict the market. Large fortunes are lost by far more sophisticated real estate analysts in getting the market wrong and we should not gamble our transit future on educated speculation. While leveraging private investment for public purposes is a worthy goal and makes sense to mitigate the adverse impacts of a specific development, it is unwise public policy to adopt this approach to mitigate our current problems. Moreover, it cannot be the only mechanism for making long term investments.

- A DIB might be more realistically used to provide a <u>secondary revenue source</u> to supplement capital commitments. If so, it should include an appraisal process for the pricing of air rights at the time of each transaction. The City does this as a matter of course in other contexts – for example, the sale of air rights from City controlled buildings. This same process should be followed for any City-created air rights as a result of the East Midtown zoning. The appraisal for the sale of air rights does not impose a burden on developers that outweighs the public need to ensure the highest possible price. The City's current approach does not ensure that the value of the DIB is maximized. The City has already taken a step in this direction by providing a floor for the DIB price. However, the initial value of that floor is lower than prevailing prices of development rights in the current market, and there is no stated mechanism for adjusting it as opposed to adjusting the DIB price. The City has said that the $250 per square foot price is not a subsidy for development but the current framework provides little assurance for that claim. One price for all air rights in a 70 block area runs counter to a common sense understanding of the value of real estate – it varies dramatically by location. In addition, if the City were to permit some residential development as is described later in this statement, this will raise the cost of air rights and therefore create additional DIF revenue. Finally, setting a price in 2013 for a sale to occur in 2017 at the earliest requires a level of prediction that is totally unnecessary. Why should we try to predict the value

[3] WSJ on Hudson Yards: http://online.wsj.com/article/SB10001424127887324874204578441223686072506.html

of air rights four years from now when we can do an appraisal at that time to make sure we have an accurate number? The only conclusion we are left with is that this is a direct subsidy to the real estate industry that ultimately undercuts the amount of money generated for needed improvements. The DIB, if created, has to have an independent appraisal at the time of the sale of City-controlled development rights, otherwise the public will potentially lose out on tens if not hundreds of millions of dollars in revenue.

- The Department of City Planning staff has informed us that this does not create "predictability" for developers. The City has continued to place predictability for developers over the public benefit. Furthermore, developers in East Midtown are some of the most sophisticated anywhere in the world. They should be able to understand the market value of air rights and plan accordingly, they do it all the time in the context of negotiating zoning lot mergers which we have seen produce almost a new skyline over the course of the last five years. We should worry less about their need for "predictability" and more about the public's need for a transparent and market-based mechanism for the sale of development rights we control.

- The proposed governance structure for the District Improvement Fund is unacceptable. The Department of City Planning proposes a board of five representatives, all appointed by the Mayor. This panel should be evenly balanced between the City Council and the Mayor, with required representation from both Community Board Five and Six. The mayoral appointees should be required to include representatives from the MTA and DOT in addition to the Chair of the City Planning Commission. A more diverse constituency which better understands the issues in East Midtown will help ensure transparency, accountability and needed insight into the kinds of improvements that should be prioritized.

- A clear timeline for mitigation measures the City committed to make in East Midtown for projects that are already underway, such as East Side Access and Hudson Yards, needs to be described and fully funded, as was promised by the City of New York and MTA during the public review for those projects. The City cannot use this current proposed rezoning to fund prior obligations. The City needs to honor those mitigation agreements separately. It is profoundly troubling that the approach the City seems to be taking is to use this rezoning to fund past commitments. Many of the mitigation measures identified as a result of additional transit passengers from the East Side Access project and Hudson Yards were to the Grand Central subway station and many of these same “improvements” are now being funded through the East Midtown rezoning DIF. This double dipping, using the East Midtown rezoning to pay for prior commitments, is totally inappropriate and sets a dangerous precedent. The City needs to ensure a better structure for delivering on promised mitigation; in Hudson Yards for instance, there are many pieces that after 8 years remain unaddressed including but not limited to those listed below. A persistent failure to address mitigation and follow through in a timely way has compromised the integrity of public statements about the benefits of rezonings. Given that the administration only has a few months left, the commitment to follow through on any mitigation measures outlined for East Midtown is a source of real concern.

1). The City needs to secure a replacement site for Site M (west side of Tenth Avenue, West 40th and West 41st Streets), 155 units of affordable housing for moderate and middle income. The site has not been acquired by Hudson Yards Development Corporation as originally planned.

2). Hudson Park & Boulevard, an approximately 4 acre system of broad tree-lined parks and open space, will run between Tenth and Eleventh Avenues from West 33rd to West 39th Streets. The Park will extend from West 33rd to West 39th Streets. The Boulevard will extend from West 33rd to West 38th Streets on the east side of the Park and from West 35th to West 38th Streets on the west side, and will be approximately 30 feet wide. The Park & Boulevard will be built in two phases. The first phase, presently under construction, is located between West 33rd and West 36th Streets. The second phase, located between West 36th Street and West 39th Street, has not begun construction. The second phase consists of Blocks 4, 5 and 6. Block 4 (West 36th - West 37th Street) will soon be constructed and completed by the end of 2014. However, there are no plans yet for Blocks 5 (West 37th to West 38th Street) and 6 (West 38th to West 39th Street).

3). Restart and finalize efforts to develop affordable housing on the NYCHA Harborview site at West 56th Street, west of Eleventh Avenue.

4) Greening of Dyer Avenue between West 34th and West 41st Street.

- Improvements specific to this East Midtown proposal should be described in detailed plans and should be accompanied by a budget. Thus far, the MTA has not studied carefully improvements to the bus network, cross-town circulation on 42nd Street, improved ferry service on East 42nd Street (or other locations) or the E/M/6 stations in East Midtown, among many other improvements. A real transit strategy needs to be developed, not simply a re-statement of commitments that need to be done as a result of prior projects.

- Specific transit connections to new buildings that are located on top of transit access need to be identified and required for those sites. These requirements need to be clearly described in the zoning text so that the public has a clear sense of what the public amenities of these new buildings will be at the time they are built. These entrances should be appropriately sized with clear visibility from the street and appropriate materials and signage. The existing zoning requires "a major improvement of the … pedestrian circulation network" at Grand Central as part of the special zoning permit that allows increased density. The proposed zoning allows substantial increases in density without an on-site circulation improvement. This should continue to be a requirement for those sites which afford opportunities to connect to transit – which include LIRR in addition to the subway network. LIRR intended to create more entrances to East Side Access than they can afford to build today, requiring new entrances instead of simply an easement would help to address this funding shortfall.

- One of the principles for a better East Midtown identified by the Multi-Board Task Force is that there needs to be a comprehensive strategy for the public realm. Unfortunately, in its proposal to rezone East Midtown, the City has the cart before the horse. There is not yet an agreed upon plan for the public realm as a foundation for the rezoning. The City could have prepared a plan to improve the public circulation system of Terminal City, identified the improvements each development should make to better connect the new building to streets, transit and other buildings and then drafted zoning to implement that plan. Instead the City prepared a plan to collect money from developers and to use that money to make improvements which have yet to be fully identified or budgeted. The logic of incentive zoning is that there is a nexus of proximity and purpose between what is granted and what is required. A plaza is a classic example: an open space for circulation and repose on the site of a building which is granted additional density in return for an amenity that ameliorates that density. The proposed zoning for East Midtown weakens the nexus of proximity and purpose: funds from DIBs sold in one corner of East Midtown could be used in an opposite corner; funds could be used for work that might more appropriately be paid for out of MTA or City capital budgets; and considerable density could be added to the parcel without it providing a significant improvement to the public circulation system. It is symptomatic that the proposed zoning text for East Midtown deletes Map 4: Network of Pedestrian Circulation (below).

The existing text, Section 81-635, makes a transfer of development rights by special permit conditional on a major improvement to Terminal City's pedestrian circulation system:

"As a condition for granting a special permit pursuant to this Section, the design of the #development# or #enlargement# shall include a major improvement of the surface and/or subsurface pedestrian circulation network in the Subdistrict (as shown on Map 4 in Appendix A of this Chapter). The improvement shall increase the general accessibility and security of the network, reduce points of pedestrian congestion and improve the general network environment through connections into planned expansions of the network. The improvement may include, but is not limited to, widening, straightening or expansion of the existing pedestrian network, reconfiguration of circulation routes to provide more direct pedestrian connections between the #development# or #enlargement# and Grand Central Terminal, and provision for direct daylight access, retail in new and existing passages, and improvements to air quality, lighting, finishes and signage."

The problem this presents is that by not showing what pedestrian circulation improvements would be expected on which parcels, the developer must negotiate improvements with the MTA and the City. The more appropriate approach would be to supplement the existing map with specific improvements, providing predictability for the developer, the MTA, the City and the public. Especially given the new East Side Access network, where fewer entrances are being built that were originally proposed, new development might address this deficiency by providing new connections. A clear set of transit connections needs to be required where connections can be made and needs to be carefully described in the zoning text, providing both developers and the public a clear understanding of what is required on each site.

- The City should work with building owners that have closed the connections to the transit network to re-open those connections to improve access to the below-grade network. More broadly, the City needs to work with owners of privately owned public space in a far more collaborative way to ensure that improvements can be made to these public spaces in a timely fashion. The City also needs to enforce existing requirements for public accessibility; in some cases, building owners have inappropriately closed off access to spaces which should be public.

- As with other kinds of changes and improvements to the public realm, the City and the MTA need to identify a clearer process for soliciting public input moving forward to ensure the public is well educated and informed of changes being contemplated.

- Currently, the proposed texts in 81-621 says that an increase in FAR is permissible when "<u>either a contribution has been deposited in the #East Midtown District Improvement Fund#, in the amount set forth in paragraph (b) of this Section, or a contribution in–kind has been made in accordance with the provisions of paragraph (c) of this Section."</u> This use of "either…or" as opposed to just "or" precludes the combined use of paying into the DIF *and* a contribution in-kind for a specific project. Zoning Resolution 12-01 states that "'or' indicates that the connected items, conditions, provisions or events may apply singly or in any combination" while "'either...or' indicates that the connected items, conditions, provisions or events shall apply singly but not in combination." We support the inclusive "or" as opposed to the exclusive "either….or" and ask that "either" be stricken from the proposed 81-621 so that a development be able to combine both mechanisms to achieve maximum public benefit within the framework of the proposed new regulations.

Alternative Funding Strategies

[10]

While we believe developers should be required to mitigate the various impacts identified in the EIS, we consider DCP's proposed approach to be unwise. Under the proposed DIF mechanism, there is no assurance that the above- and below-grade infrastructure investment that is needed to address current, impending (impacts of East Side Access, extension of the 7 line, background population growth) and potential (East Midtown growth due to rezoning) problems will precede development and increased density. While DCP has repeatedly emphasized the fact that dollars will be placed in DIF before a building permit is issued, those dollars would likely be insufficient to fund the totality of the transit improvements essential to mitigate against the increased density of new development. Furthermore, given the time needed to agree on improvements, develop construction drawings, bid the project out and finally construct it and given the MTA's flexible relationships with deadlines, there is little reason to believe these improvements will be delivered before the building (which contributed funds and therefore density) is constructed.

Calculating a scenario vividly demonstrates how the DIF is an inadequate way to fund infrastructure. Mary Ann Tighe, former chairperson of REBNY and one of the principal supporters[4] of this rezoning, said "we would be lucky if, in a 10-year period, we got three buildings out of this." If we take this real estate expert's opinion as a reasonable possibility, basic arithmetic demonstrates why DCP's approach fails to bring sufficient funds for below-grade transit infrastructure improvements. Since sites #4 (Block 1277), #7 (Block 1279) and #9 (Block 1281) are projected by DCP to be developed in the next 20-year period, it's conceivable that these could be the three buildings to be built in the next ten years.

Site #	Lot Sq Ft	Built Sq Ft	Built FAR	Future Sq Ft (with 30 FAR)	Discounted DIB # Sq Ft	Regular DIB # Sq Ft	TDR # Sq Ft
4	43,291	688,488	15.90	1,298,730	0	389,619.00	259,746
7	43,261	700,346	16.19	1,297,830	51,480.59	337,868.41	259,566
9	43,313	598,248	13.81	1,299,390	0	389,817.00	259,878
Total	129,865	1,987,082		3,895,950	51,480.59	1,117,304.41	779,190

Type DIB Sq Ft	# Sq Ft	$ per Sq Ft	Total $
Regular	1,117,304.41	$250	$ 279,326,102.50
Discounted	51,480.59	$125	$ 6,435,073.75
			$ 285,761,176.25

For each site, we show the lot sq ft, the built sq ft on the site, the FAR that built sq ft represents and the # of sq ft that can be built with 30 FAR.

4 Please see REBNY video on East Midtown with Department of City Planning.

Discounted FAR for Site #7's Non-Complying FAR:

Since site #7 is overbuilt by 1.19 FAR, the # of discounted sq ft that would be purchased is calculated by multiplying the lot sq ft by 1.19.

15 FAR→ 18 FAR & 24→30 FAR through DIB:

To go from a base of 15 FAR to 18 FAR and then from 24 FAR to 30 FAR, developers must purchase DIB FAR. Consequently, the regular DIB sq ft is calculated for each site by multiplying the lot sq ft by 9. For site #7 however, the regular DIB sq ft is calculated by taking the lot sq ft multiplied by 9 and then subtracting the discounted DIB sq ft #.

18 FAR→24 FAR through TDR:

To go from 18 to 24 FAR, developers can either purchase TDRs from a landmark or purchase DIB FAR. Since the DIB FAR price is statutorily set under the proposed rezoning, the TDR sellers will most probably price their sq ft under the DIB price and a developer therefore will purchase TDR sq ft before DIB sq ft. Consequently, we assume (and DCP agreed with this assumption previously) that FAR between 18 and 24 will not come through DIB purchases until all available TDRs have been purchased.

To recap, in this scenario three properties in the proposed Grand Central Core have been built to maximum FAR and the DIF generates $286 million. Estimates for the Grand Central Subway Station and the Intermodal Connection in GCT projects are $375 million. This reasonable scenario proves that over a ten year period we can have over 1.1 million new sq ft of commercial office space with insufficient DIF revenue to fund the two Grand Central infrastructure projects the MTA presented as critical to alleviating current and impending demand with East Side Access and the 7 train extension.

Estimated Project Costs

Project	Est. Cost (millions)
Grand Central Subway Station	$ 175-225
5 Av/53 St	$ 50
Lexington Av/51-53 St	$ 40
Intermodal Connection in GCT	$ 75-150
Total	**$ 340-465**

New York City Transit 33

It should be further noted that under this scenario, no improvements to the public realm would necessarily come about with these three developments. This scenario would see no on-site improvements and no additional in-kind transfers to the pedestrian or transit networks. This scenario also assumes the MTA will not exceed the cost they are currently projecting for construction, which is a significant, and dubious, assumption. If the project costs were to increase because of inflation or cost overruns then this analysis only further illustrates the insufficiency of the City's approach more dramatically.

As we have shown, based on REBNY's estimates of development, the proposed DIF is an inadequate mechanism to ensure that new density resulting from a rezoning will be adequately mitigated by 2027 (10 years after the sunrise, the time REBNY suggests three new buildings will be complete). Irrespective of increased density, there is an urgent need for this transit infrastructure given both current overcrowding and the impending strains that will come with East Side Access and the extension of the 7 line. By failing to predictably address the existing infrastructure issues (mitigation for Hudson Yards & East Side Access) and the extraordinarily congested 4/5/6 lines (116% of transit capacity) and by failing to predictably fund infrastructure, we are not creating the kind of 21st century office district New York City needs.

A further problem with the proposed DIF is its structure. The flexibility desired by DCP necessarily means there is uncertainty as to what the DIF Committee will choose to fund. Funding could, in theory, be used for street resurfacing and other basic at-grade improvements that would normally be undertaken through general city maintenance. In addition, as is the case with the Penn Center Subdistrict Fund[5], the money may languish[6] and not be spent at all for a variety of political and bureaucratic reasons – as Dan Biderman noted at a ULI Forum on the rezoning, the money has been in an escrow account for over 10 years.

Furthermore, the existing TDR special permit allows a development to buy and transfer floor area from Grand Central Terminal to the development site. 5% of the purchase price goes to the maintenance of the landmark terminal; again there is little clarity or public understanding of how or if this money is being spent. Budget decisions that don't involve transparent processes and

[5] http://www.comptroller.nyc.gov/bureaus/audit/06-13-05_FM05-113A.shtm

[6] This issue was raised by Dan Biderman at a ULI Forum in March of 2013.
See 81-52 (b) 8 of the ZR: http://www.nyc.gov/html/dcp/pdf/zone/art08c01.pdf

public engagement are an invitation to poor decision making and seem to be more a reflection of negotiating position than a sincere attempt to solve these problems in a collaborative and constructive manner. Despite the original intent, there is little indication that these funds are well managed.

Potential Solution: Infrastructure Through Bonding

We have demonstrated that the MTA transit improvements need to be made now (as has been stated by the City and the MTA) and not at some later date contingent on the vagaries of future private sector development. Since these improvements are not part of the MTA Capital Plan, the City or a creature of the City should bond out the value of these improvements and enter into an agreement by which the MTA receives these funds for purposes of undertaking these East Midtown transit improvements, as was done with Hudson Yards.

Any financing mechanism in a proposed rezoning of East Midtown must include secured commitments for all the capital funds that are required to create a 21st Century infrastructure worthy of East Midtown. Further study is needed to identify the full scope of potential improvements but they could include: a river to river transit strategy for 42nd Street, Bus Rapid Transit, improved bus service on Midtown avenues, improved ferry service and completion of Phase II and III of the 2nd Avenue subway. However, in order to illustrate the point, let us use the figure the MTA identified in 2012 for required improvements - $465 million - and add to that figure additional costs associated with public realm investments of an additional $50-$75 million dollars.

Under a bonding scheme, either the City or a City-created creature like the Hudson Yards Infrastructure Corp would bond out approximately $540 million ($465 +$50-75 million) to make the needed improvements. The City would by local law create an assessment district coterminous with the lots included in the proposed East Midtown Subdistrict in which commercial property owners would pay debt service on these bonds in accordance with their assessed value. While we do not take a position on the length of bond maturity, the 40 year repayment period used for Hudson Yards could be a model. The $465 million in today's dollars represents about 1.6% of the value of all properties impacted by the proposed rezoning or 1.8% of the value of all the properties fully within the proposed rezoning borders. As revenue comes in from the DIB, the property owners could then be paid back through a similarly discounted tax mechanism if needed.

Is world-class transit access worth 2% of the property value of East Midtown property owners? Better said—would it be worth it for property owners to ensure world-class transit through paying less than 2% of their value amortized over 40 years—to prevent further degradation of neighborhood transit conditions? We think so. The bonding out of an improvement and collection of debt service from property owners who most acutely benefit is fully authorized by New York State's "General City Law"

> *§ 20. Grant of specific powers. Subject to the constitution and general laws of this state, every city is empowered:*
>
> *11. To construct and maintain public buildings, public works and public improvements, including local improvements, and assess and levy upon the property benefited thereby the cost thereof, in whole or in part.*

When comparing a bonding / assessment with the DIF plan there are three principal differences:

1. With bonding-assessment, funding is sufficient for transit. With the DIF, it is not.

2. With bonding-assessment, investment comes now to alleviate current problems and mitigate future density. With the DIF, there is no such guarantee.

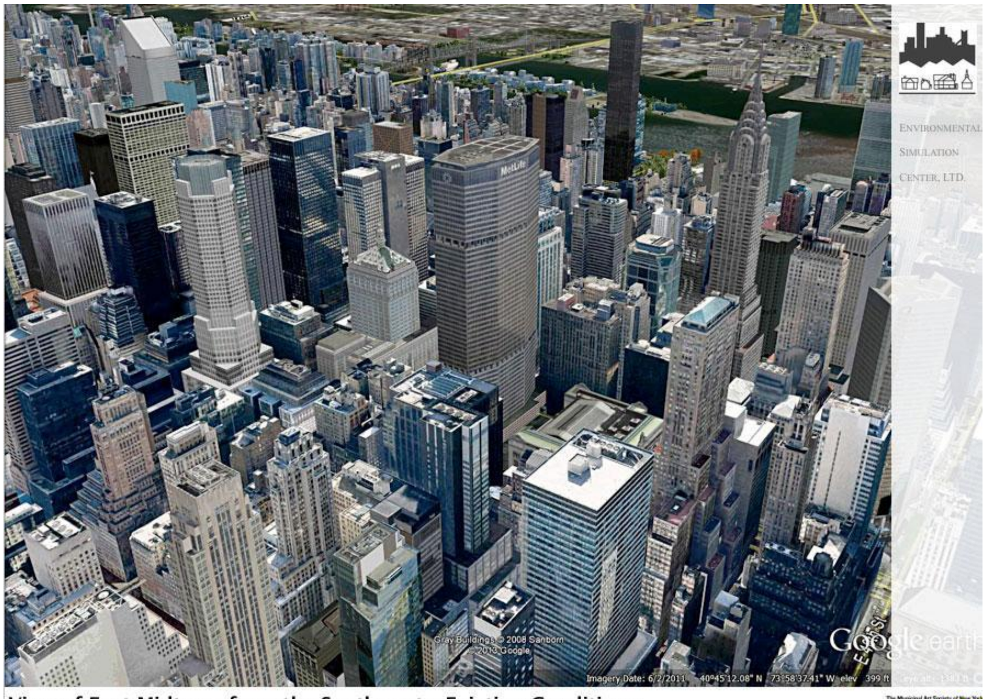
3. With bonding-assessment, we ask all those commercial property owners whose bottom line dips with inadequate transit and rises with world-class transit—to contribute to improving their district. This is the same principle as a BID. With the DIF, we ask for a handful of new developments to pay for all of the cost of fixing today's problems and mitigating parts of the East Side Access and 7 Train extensions. In both cases, we're asking the private sector to pay for important transit improvements that benefit their neighborhood; in the bonding/assessment approach however, these improvements can commence immediately and will be fully funded with the burden distributed evenly with the benefit.

Urban Design/Bulk Rules

Density needs to be more carefully tailored to an urban design framework for the neighborhood and needs to include far more public oversight and review.

- Some density increases are appropriate but only to 24FAR in the GCT Subdistrict (which is still an increase over 21.6FAR) but should only apply to those sites that have potential connections to transit. Those sites that can provide meaningful connections to transit should be allowed to build larger buildings because of the benefit derived to the public from better transit access. A reduction in density to 21.6FAR in the Park Avenue corridor (still an increase in the allowable density) better reflects the context of the largest buildings along Park Avenue. There is no compelling reason to increase the density beyond this amount; these densities are consistent with the largest buildings in East Midtown. The MetLife building, for instance, is 18FAR; the former Bear Stearns building is approximately 21.6FAR. These densities would still be consistent with many of the goals of the rezoning and would better tailor the bulk of the buildings to many of the narrow streets on which they would be located. The Department is proposing 30FAR on sites which are incredibly narrow streets such as 43rd Street or 44th Street and Madison. This contradicts the underlying urban design rationale of the Zoning Resolution which allows the highest densities on wide streets. A reduction in the allowable FAR also reduces potential shadow impacts and limits the impact new buildings may have on the skyline. The other buildings the Department has cited in their presentations – the Bank of America building on 42nd Street & Sixth Avenue or the new Goldman building on West Street - are on corridors which are suitable for extraordinary density given the width and openness of the urban design context. The same cannot be said for the buildings along the cramped and narrow side streets of East Midtown. And even these buildings do not approach the 30FAR the Department is proposing in the GCT Subdistrict, which the Department has not been able to justify as an appropriate density.

- A special permit process <u>for all buildings over 18FAR</u> which allows the public an opportunity to evaluate transit connectivity, its relationship to the public realm strategy, its architectural relationship to Grand Central (if in the Grand Central Subdistrict) and the building's impact on the skyline. The following images developed by Michael Kwartler, an expert on NYC Zoning and one of the principal authors of the Special Midtown Zoning text, make clear that the urban design implications are profound and need to be considered as development occurs. The Department's insistence on as-of-right construction is not consistent with the planning framework in the rest of Midtown and the public has the right and responsibility to be engaged with the future of this neighborhood. The elimination of certain special permits, and the administrative granting of the right to purchase air rights, would result in an attendant decrease in the role of ULURP and an undermining of public engagement no matter how idealistic the stated goals. There is no substitute provided for the role that public process currently plays in these actions. It is being diminished and/or eliminated and, along with it, the role of public input in shaping our city. This will also address many of the concerns raised by the Hotel and Motel Trades Council about the need for a more careful review of new hotels in East Midtown because it will permit review for those buildings which from an urban design, streetscape and transit perspective require such a review. It is also unfair to allow as-of-right floor area increases for the DIB but require a landmark property owner to go through a special permit process. This poses an even greater burden on landmark buildings.

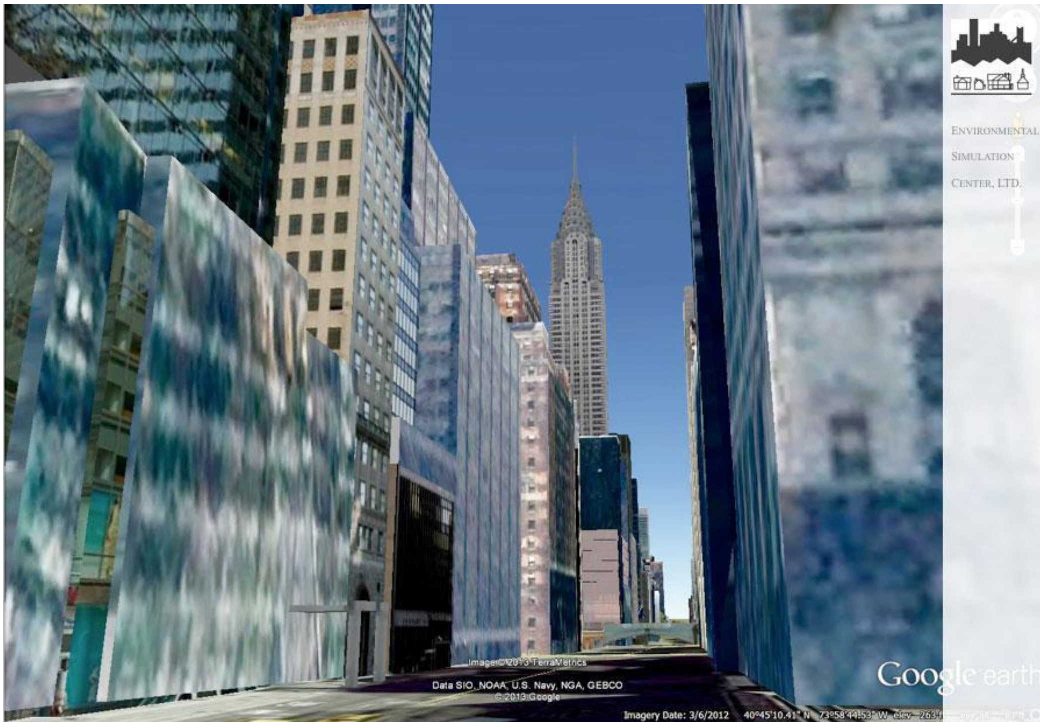


View of East Midtown from the Southwest – Existing Conditions

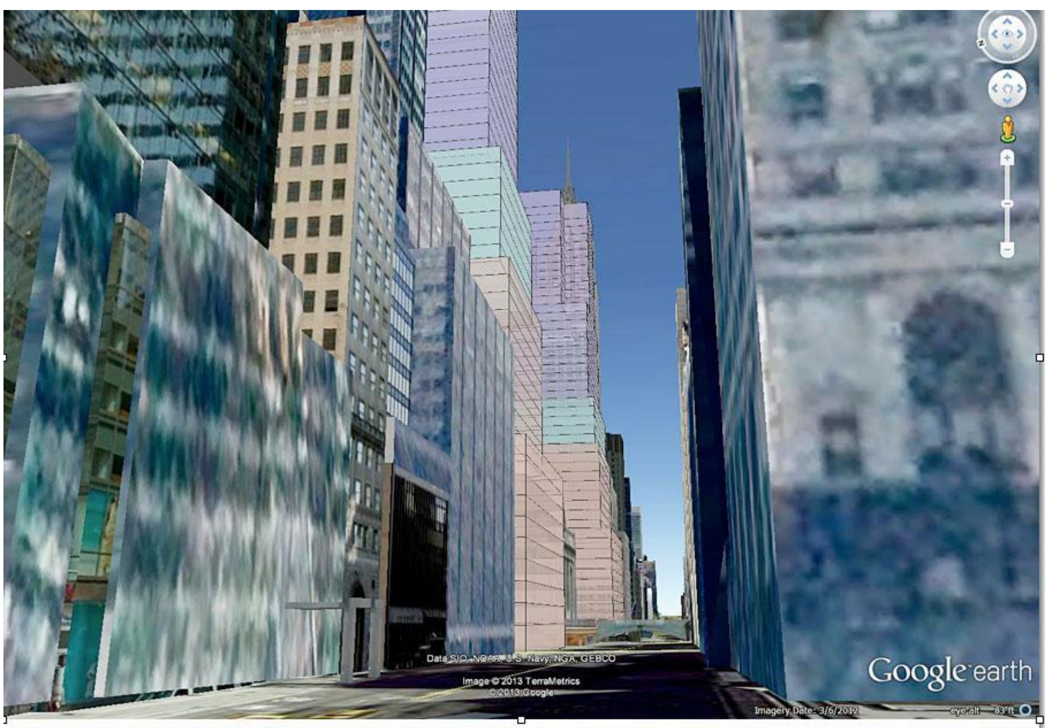
MASNYC

View of East Midtown from the Southwest– Potential build-out (30.0 FAR) under City's proposal
02/24/2013

[18]



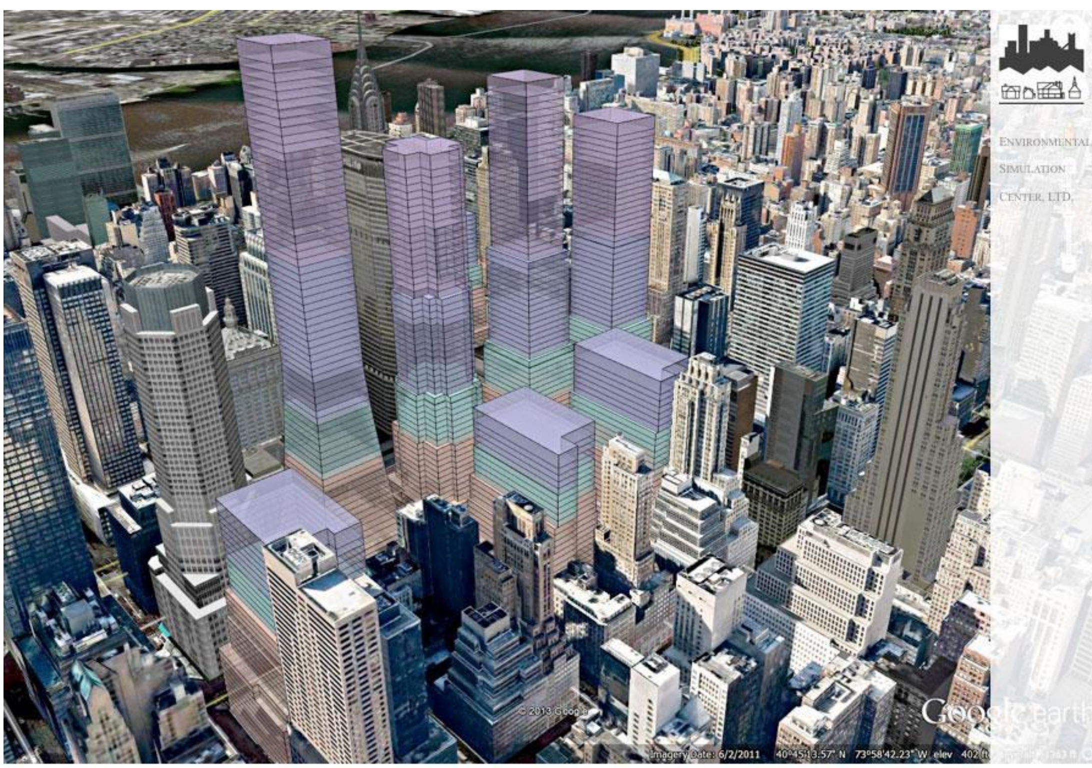
View of the Chrysler building from 42nd Street & Fifth Avenue – Existing Conditions



View of the Chrysler building from 42nd Street & Fifth Avenue – Potential build-out (30.0 FAR) under City's proposal [7]

[7] Views courtesy of MAS & the Environmental Simulation Center – developed using height & setback envelopes and a slightly modified version of the Reasonable Worst Case Development Scenario outlined in the DEIS.

View of East Midtown from the Northwest- Existing Conditions



View of East Midtown from the Northwest- Potential build-out (30.0 FAR) under City's proposal

[20]

- Bulk flexibility for Park Avenue. Given the lack of streetwalls on this corridor, a rigid streetwall requirement is not "contextual" nor will it create the kind of experimental and dynamic architecture Park Avenue has seen and could see. L&L Holding's design for 425 Park Avenue is an example of a site that would benefit from a more dynamic set of rules and where the public would gain a new signature open space on Park Avenue. The Park Avenue context above East 46th Street is not one of the substantial street wall uniformity that characterizes Park Avenue north of East 57th Street. 30% of the block fronts on the west side of the street and 70% of the block fronts on the east side of the street (where 425 Park is situated) have buildings that do not provide the street wall required by the proposed text. More flexibility should be permitted.

- View Corridors. The street wall orthodoxy is applied too rigidly in the East Midtown zoning, as discussed above. Park Avenue is a location where bulk flexibility should be encouraged. 42nd Street, given the location of two of the most iconic buildings in New York City - Grand Central Terminal and the Chrysler Building - deserves a more finely calibrated urban design study which is absent from the proposed rezoning. The Department should put in place bulk rules which seek to pull buildings back from 42nd Street in order to allow east/west views of Grand Central and Chrysler. This will not only serve tourists and New Yorkers alike as a clear wayfinding mechanism, but it will allow for the kinds of views which inspire us and create an incredible connection to the City. The kinds of views that have inspired generations of New Yorkers - artists, filmmakers, tourists - and that create a unique visual identity (the kind of identity other cities like Shanghai and Tokyo are searching for but New York already has), is in danger of being lost if we don't consider the urban design context more carefully. This approach is used along the waterfront and is no less important here to help with wayfinding, to protect architectural context and to allow new development which is compatible with the existing built form.

- An environmental requirement that mandates new buildings exceed the energy code by 20% at the time of the building's construction. Given that building codes undergo intense scrutiny from the private sector and represent the absolute minimum that all buildings must achieve, and given that LEED certified buildings must, at a minimum, beat this code by 10% or more when including all building loads in the calculation, it is entirely reasonable to expect that a handful of new, iconic buildings designed to make East Midtown a globally competitive, 21st century commercial district can exceed code requirements by 20%. It is especially important to ensure that buildings are required to exceed the energy code in place *at the time the buildings are constructed*. For example, a building built in 2017 would need to exceed the 2017 energy code requirements by 20%. The rationale for this provision is that as time passes and technology advances, building codes will require greater and greater efficiency; these new buildings should be expected to exceed the standards of the time, not the energy code of 2013. In fact, based upon analysis by the US Department of Energy, the new New York State energy code that will go into effect this fall will require energy savings of about 20% *more* than the current code for large office buildings. Therefore, the 15% improvement suggested by City Planning in the zoning text amendment will become irrelevant, since it will require less improvement than will be already required by code. Tying the 20% mandate to the code in effect *at the time the building is constructed*, thus keeping the requirement "evergreen," is the simplest way to avoid being overtaken by events. If this is not done, the energy performance portion of the zoning text amendment will be outdated almost as soon as it is adopted. In addition, a minimum façade performance requirement should also be introduced. This requirement will ensure that the facades of buildings, which over time will account for a more significant piece of a building's energy footprint, will be regulated more tightly.

- A retail or public use requirement for the top floors of new buildings – one of the elements of these buildings historically is that the public is allowed some measure of access, whether on observation decks or restaurants/bars. For all buildings over 18 FAR public access to the skyline should be evaluated. The Department has noted the need to build more "iconic" buildings in NYC and this is indeed a feature of many of these iconic buildings worldwide including Renzo Piano's Shard, a building that the Department has often cited in their presentations. It's also been a part of the development history of many buildings from the Windows on the World, to the Cloud Club, to the Rainbow Room etc. By allowing some form of public access, whatever views and experiences are lost of the NYC skyline will be replaced by new ones which the public can enjoy. It would be a missed opportunity for these towers to only have corporate board rooms on top of the buildings instead of a more public use.

Public Realm

The Multi-board Task Force Principles for East Midtown assert that a Comprehensive Public Realm Strategy is needed as part of this zoning plan. Although a plan to create a plan was announced at the start of ULURP, after the Multi-Board Task Force and others have requested it for over one year, such a plan is not included in the ULURP application, and we will not have the opportunity to comment on it, or to provide meaningful input as a part of our recommendation on the ULURP actions. In addition, Community Boards were not involved in the development of the scope of work or the selection of a consultant – gestures that would have suggested some real interest and concern for engaging with the community in these conversations. This lack of transparency has plagued the process from the beginning and continues to erode trust in the process moving forward.

The text amendment as written in the ULURP documents addresses public realm improvements very specifically for "qualifying sites," while the remainder of the public realm is either unaddressed or vaguely identified as a possible improvement utilizing District Improvement Funding. The zoning text amendment is not a plan - it does well with zoning increases while providing little specificity for the public realm.

Examples of the type of analysis and planning that should take place include:

1) Sidewalk widening along Madison, Lexington and Third Avenues as well as 42nd and 53rd Street. While not easy, we would expect at least a study of pedestrian and vehicular traffic along these major avenues and streets to generate creative ideas to improve the already over-congested pedestrian network on existing sites. Ideas could include some kind of hierarchical pattern of street use, such as "through streets," which the City has implemented already. This may offer the opportunity to narrow the right-of-way through "bulb-outs" at corners in strategic areas and on strategic frontages in East Midtown. This could also include reducing the vehicular right of way.

2) An expansion of Pershing Square a block to the south to 40th Street.

3) The possible expansion of the Park Avenue median.

4) Traffic calming on 42nd Street in front of Grand Central to create a more vehicular/pedestrian shared space.

5) The inclusion of required public space on particular development sites.

6) The reprogramming of existing Privately Owned Public Space to better serve the needs of East Midtown.

During the last DCP presentation, streetscape improvements were discussed with little specificity in terms of location. Further study of creative strategies such as those suggested would allow urban design improvements to the pedestrian network and greatly enhance the experience of pedestrians in East Midtown.

- Transparency and consultation for the public realm study needs to be a critical priority of the work otherwise it will not enjoy the support of community members and will therefore be very difficult to implement. A clear plan for consultation and collaboration needs to be developed immediately. It is unfortunate that the public outreach for the plan only begins after the Community Board has offered its recommendation on the rezoning.

- Just as with infrastructure, a complete funding plan (not completely dependent on the DIB) should be developed which does not rely on development happening in order to produce funding for investments needed immediately (please refer to discussion above on alternate funding strategies in the infrastructure discussion).

- Mandatory building setbacks on 42nd Street to widen the sidewalk along 42nd Street and to improve the view corridors to Grand Central from the east and the west as those buildings adjacent to Grand Central are redeveloped on those qualifying sites.

- Vanderbilt Avenue is not a priority - remove reference in the ZR text. The Task Force has indicated to the Department of City Planning that a comprehensive strategy is the priority and the explicit inclusion of Vanderbilt Avenue in the zoning text prior to the completion of a public realm plan by the consultants and contrary to the stated desire of the Task Force is not productive. How can we prioritize prior to the completion of a plan/study?

- The consultant team should include a landscape architect in order to ensure that any planting strategy would be carefully developed, given the extraordinary density and limited sunlight in much of this area. Moreover, a clear strategy for implemention and maintenance needs to be described, there is little to no information on either.

- A clear strategy to connect the new East Side Access Concourse to new developments and sidewalks, East Side Access will drop people in a terminal which is deep below-grade (approximately 140’ below sidewalk level) and the public realm plan needs to include a clear understanding of how those people will be able to get to the sidewalk or subway levels and which new buildings will provide new connections.

<u>Use Regulations</u>

We appreciate the City's interest in maintaining New York's economic vitality through the proposed East Midtown Rezoning; however, we regret that the proposal is not more forward looking and that a stronger effort is not made to comprehensively consider East Midtown as a place.

In particular, we are concerned about the emphasis on commercial development, at the expense of residential or community facility development. The proposal establishes special floor area provisions for three categories of sites within the new Subdistrict: qualifying sites, sites retaining non-complying floor area and all other sites.

Those first two, qualifying sites and those sites retaining non-complying floor area, are allowed to build above the base floor area ratio as-of-right under the proposal - but, the buildings' floor area on both types of sites must be composed entirely of commercial uses.

This narrow focus in the proposal and in the Draft Environmental Impact Statement on expanding commercial use without allowing for the possibility of residential use is antiquated and not reflective of the trend toward mixed-use development seen in other cities' model business districts. The Financial Times recently ran an article about the City of London, which is rapidly building residential units in a heavily commercial district because city officials have found that people want to live and socialize where they work.

The proposed rezoning would be more cohesive in the short term and more successful in the long term if it accounted for the pivotal role mixed-use development has on the vitality of a desirable and successful business district.

The proposed text should be strengthened by removing the requirement that buildings be composed entirely of commercial uses in order to achieve the qualified site designation or to retain non-complying floor area.

- An allowance for residential use in all new buildings. If the Department continues to be concerned with residential outcompeting commercial space then a cap on the residential percentage of the building would be appropriate. Based on other precedents and buildings (Time Warner & Bloomberg), 25% is an appropriate restriction. In addition, if the Department really believes that residential conversion is a threat to the future of Midtown – a concern that the Task Force does not share – then the Department should include a restriction on the ability to convert to residential. This kind of requirement is in place in other neighborhoods and could readily be applied in East Midtown. Residential floor plates also allow for more flexibility with respect to building design and will create a more varied skyline and will support the creation of the kind of architecturally “iconic” or “superior” buildings the Department is seeking. This mixed use provision enjoys the support of the community boards, civic planning groups, elected officials, and the real estate industry.

- A retail requirement for all avenues that permit building lobbies but require a certain percentage (no less than 60%) of a building’s street frontage should have <u>active</u> retail uses.

Landmarks

One over-riding concern with the DEIS is the lack of protection for historical buildings in the proposed rezoned area identified by LPC as possible designations. While the designated landmarks in the area will continue to be protected from the wrecking ball, the real challenge is how to preserve the eligible historic resources.

According to the EIS, of the 56 eligible resources in the area, 14 are in projected or potential development sites. Of these, 11 are LPC eligible and three are New York State eligible. A list of the 11 LPC eligible buildings is below. The EIS states that these buildings could be partially or completely demolished and will not be protected under the proposed rezoning. Just by listing these buildings in the EIS, the problems have already started. One of the endangered resources, the American Encaustic Tile Company Building at 16 East 41st Street, is currently having its façade stripped. Also, the former Hoffman Auto Showroom by Frank Lloyd Wright, at 430 Park Avenue, after receiving a letter from LPC that it was interested in a possible interior landmark designation, was demolished within days.

Unless something is done immediately, the remaining non-designated historic resources are in danger of being altered or demolished.

- LPC should immediately calendar the remaining buildings it considered for possible designation.

- LPC should consider using standstill agreements to protect the remaining 10 buildings. Such agreements provide that the owner agrees not to alter or demolish the building and LPC agrees not to calendar the building during the term of the agreement. In the past, LPC has successfully used this method to provide continuing protection for possible eligible buildings.

- DCP and LPC should meet with the Department of Buildings and work out a procedure for the remaining 10 buildings so that if any permits are requested, DOB will give LPC notice and will not issue any permits for an agreed period of time.

- We would also urge that LPC reconsider the remaining 40 buildings that were listed by several preservation organizations as potential eligible landmarks in the proposed rezoned area and to respond in writing, as we have repeatedly requested, with an explanation as to why these buildings are not being pursued for designation.

The 11 Endangered Buildings:

- 22-24 East 41st Street
- 100 East 42nd Street
- Six East 45th Street
- 45 East 45th Street
- 509-511 Lexington Avenue
- 525 Lexington Avenue
- 250 Park Avenue
- 830 Third Avenue
- 50 Vanderbilt Avenue
- 16 East 41st Street
- 18-20 East 41st Street

- A broader landmark transfer alternative which allows landmarks in the non-Grand Central Subdistrict the ability to transfer their air rights within the Park Avenue corridor through a special permit process which will require LPC and CPC approval. This provision is only needed if a DIB is created which will compete with landmark air rights. Adoption of the proposal in its present form will greatly disadvantage those who are responsible for the landmarks' preservation. These landmarks will have a much smaller set of sites to sell to and in order to sell to all but adjacent sites will need to go through a ULURP (74-79), unlike the as-of-right DIB mechanism.

Few developers will choose to go through ULURP when they can proceed as-of-right by contributing to the DIF. It is unreasonable to treat landmarks located within the Grand Central Subarea differently and better than landmarks located in the Park Avenue Subarea.

While we support desperately needed improvements to the transit infrastructure, it is inherently unfair to put landmarks at a disadvantage – we need to find appropriate mechanisms for funding transit (see infrastructure discussion) and protecting landmarks. These two goals cannot and do not have to compete against one another. Preserving and upgrading landmarks is also an important public policy goal that can easily co-exist with revenue generation for transit improvements.

There are several ways to achieve this:

1. Give landmarks outside the GCT Subarea the ability to transfer air rights within the Park Avenue Subarea. The allowance of some additional density on Park Avenue is appropriate and allowing landmarks like St. Patrick's, St. Bart's or Lever House the ability to transfer their development rights there will address the serious concerns they have rightfully raised with the proposal.

2. Permit developers in the Park Avenue Subarea to mix DIB and 74-79 air rights from Landmarks.

Citywide Planning

- Based on reporting by the NY Times, the sunrise provision was introduced to ensure that rezoning East Midtown does not compete with developments happening elsewhere in New York City at the request of the Office of Management and Budget. Rather than setting an arbitrary date of July 2017 for development, the sunrise provision should be tied to development goals being met in Lower Manhattan and Hudson Yards and to key infrastructure milestones such as the completion of necessary improvements to the 4/5/6/7 and E/M stations the MTA has identified.

- Though many people commented on the draft scope that the DEIS should examine how the East Midtown rezoning would affect development of Hudson Yards and Lower Manhattan, the DEIS has almost no analysis of this issue. Page ES-3 states, "The level of development projected for the 2033 analysis year is based on long-term projections of the area's potential to capture a proportionate share of the City's new office development over the next 30 years," but there is no discussion of what "a proportionate share means" or which neighborhood gets what. One of the goals of the proposal is to "complement ongoing office development in Hudson Yards and Lower Manhattan to facilitate the long-term expansion of the City's overall stock of office space" (pp. ES-9, 1-11), but no clue is given as to what "complement" means. The DEIS states that "tenants of Class A office space, who have been attracted to the area in the past, would [in the absence of this rezoning] begin to look elsewhere for space" (p. 1-10). The "elsewhere" is likely to be Hudson Yards or Lower Manhattan – not Shanghai or London.

- The closest the DEIS gets to a market analysis is the reference on p. 1-31 to a study prepared by Cushman and Wakefield with regard to the 2011 Hudson Yards financing. Scoping comments called for an independent market analysis, but the Response to Comments again relied on the Cushman and Wakefield study (Comment B1.23 p. 11; Comment B2.1 pp. 17-18). The study is only briefly summarized and a copy is not provided. When considering such a central issue as the effect of the proposed action on two other important neighborhoods, such complete and uncritical reliance should not be placed on a study prepared by a different entity for an entirely different purpose, especially a study that did not itself undergo public review. This is an inappropriate delegation of analysis. It is ironic that while the DEIS speaks of competition from Shanghai and London (but provides no evidence of that), there is no mention of competition between East Midtown and these other parts of Manhattan (where it is clear that the competition is quite real).

- The rebuilding of Lower Manhattan is a long-term process and is vital to the restoration and revitalization of that neighborhood. Currently, the redevelopment of the World Trade Center site is on track. As a result of the terrorist attacks on the World Trade Center on September 11, 2001, 14 million square feet of commercial office space in Lower Manhattan was destroyed or damaged, 65,000 jobs were lost or relocated and more than 20,000 residents were displaced. Now, almost twelve years after the attacks of 9/11, Lower Manhattan is in the middle of a renaissance as more residents and businesses have come to the area than were lost during the attacks. By 2012, Lower Manhattan had 8,484 companies, 186 more than were there on the day of the attacks. Employment is also on an upward trend with a current total of 309,500 employees, a trend that is expected to continue to grow as office space comes on line at the World Trade Center site. The 4, 5 and 6 train lines are currently at 116% capacity. It is currently utilized by many residents, workers and students, and is expected to draw even more riders after the build out of the World Trade Center site. We strongly urge the City Planning Commission to conduct a comprehensive review of how the proposed East Midtown Rezoning would affect Lower Manhattan, with a particular emphasis on the extent to which an upzoning of office and commercial space in Midtown would adversely impact the ongoing redevelopment of Lower Manhattan and Hudson Yards.

Comments on the DEIS

Worst case – Sec. 1.5.1 of the DEIS presents what it calls the Reasonable Worst-Case Development Scenario (RWCDS) and bases much of its analysis on that scenario. The RWCDS does not reflect the new special permit for "superior development" (p. 21-1).

Unmitigatable impacts – The DEIS projects a large number of impacts, proposes mitigation measures for them and identifies several impacts that cannot be mitigated. These fall into four categories: shadows; destruction of architectural resources; some transportation congestion (traffic, transit, pedestrians); and construction impacts.

The third of the unmitigatable impacts – transportation congestion – for the most part results from the cumulative effect of all of the projected development. Thus reducing them would largely involve reducing the scale of the overall rezoning. The fourth impact – construction – is temporary, and serious construction impacts are generally accepted as the price of development.

On the other hand, the first two – shadows and the destruction of significant architectural resources – are permanent, and they tend to be tied to specific new buildings. (The shadow impacts are summarized in Sec. 5.2; the historic resource impacts are summarized in Sec. 6.2.). To address this and other issues the City should require special permits for every new building that would have one of these kinds of permanent unmitigatable impacts. That would mean that a building-specific analysis would be required of whether the benefits of a new building are worth the impacts. This analysis would be conducted at the time when the proposed building is being actively contemplated, rather than possibly decades in advance.

The DEIS contains a very detailed shadows analysis that finds numerous impacts. But the rezoning is so large that any given shadow impact gets lost in the overall consideration of the proposal. Likewise, the DEIS says the rezoning could lead to the partial or complete demolition of 14 historic resources that are eligible for New York City Landmark designation and/or inclusion on the State and/or National Register of Historic Places (pp. ES-56, 6-2).

Creating today the ability to construct a large number of massive as-of-right buildings will tie the City's hands for the next generation or two and will limit future officials to merely ensuring that building code requirements and the like are met. We are now seeing the unanticipated phenomenon of a proliferation of luxury residential towers. They are as-of-right; if the City had the ability now to think through whether all these towers are in the best interests of the city, it is quite possible that not all of them would be allowed, at least in their current configuration. It is not clear why the City should agree now to bind its own hands through a massive rezoning that will allow unmitigatable adverse impacts with no opportunity for further reflection on whether these impacts are worth enduring.

<u>The DEIS needs to analyze an additional alternative of requiring a special permit for any building over 18FAR</u> – the framework in place for most of Midtown and a provision that would allow for the evaluation of unmitigatable impacts related to shadows or historic resources. The DEIS states that "special permits are utilized under the Zoning Resolution where a use should be permitted only where it meets findings and conditions necessary to avoid potential land use impacts which have been identified as associated with the use" (p. 20-5). This proposal fits well within that criterion.

Underlying purpose – A major purpose for the East Midtown rezoning is given as preserving New York City's competitiveness against such other major cities as Shanghai, London, Tokyo and Chicago. The term "competitor cities" is often used. E.g., pp. ES-8, 1-9. However, no evidence whatsoever is given that there is any competition between New York and these other cities based on the building stock. A large number of economic, geopolitical, and other factors determine the locus of the sort of economic activity that occupies major office buildings, but no evidence is presented that the nature of the building stock is a cause rather than an effect. In a somewhat different context, page 3-14 states that the amount of office development that would be allowed by the rezoning "would not be enough to alter or accelerate existing economic trends," which seems to run counter to the claim that the rezoning would make New York more competitive against these other cities.

Impact on Other Areas – Though many during the scoping discussion that the DEIS should examine how the East Midtown rezoning would affect redevelopment of Hudson Yards and Lower Manhattan, the DEIS has scant analysis of this issue. Page ES-3 states, "The level of development projected for the 2033 analysis year is based on long-term projections of the area's potential to capture a proportionate share of the City's new office development over the next 30 years," but there is no discussion of what "a proportionate share means" or which neighborhood gets what. One of the goals of the proposal is to "complement ongoing office development in Harlem Yards and Lower Manhattan to facilitate the long-term expansion of the City's overall stock of office space" (pp. ES-9, 1-11), but no clue is given as to what "complement" means. The DEIS states that "tenants of Class A office space, who have been attracted to the area in the past, would [in the absence of this rezoning] begin to look elsewhere for space" (p. 1-10). The "elsewhere" is likely to be Hudson Yards or Lower Manhattan – not Shanghai or Tokyo.

The closest the DEIS gets to a market analysis is the reference on p. 1-31 to a study prepared by Cushman and Wakefield with regard to the 2011 Hudson Yards financing. We believe an independent market analysis is needed, but the Response to Comments again relied on the Cushman and Wakefield study (Comment B1.23 p. 11; Comment B2.1 pp. 17-18). The study is only briefly summarized and a copy is not provided. When considering such a central issue as the effect of the proposed action on two other important neighborhoods, such complete and uncritical reliance should not be placed on a study prepared by a different entity for an entirely different purpose, especially a study that did not itself undergo public review. This is an inappropriate delegation of analysis.

It is ironic that while the DEIS speaks of competition from Shanghai and London (but provides no evidence of that), there is no mention of competition between East Midtown and these other parts of Manhattan (where it is clear that the competition is quite real).

The "Sunrise" provision is the proposal's principal method of protecting these other neighborhoods. However, the DEIS (pp. ES-22, 1-24) provides only that no building permits may be issued under the new zoning mechanisms until July 1, 2017. This has little meaning; if the rezoning is approved in late 2013, it is unlikely that the land assembly, planning, architectural designs and building plans would be ready for many new buildings to seek building permits much before July 1, 2017 anyway. The DEIS lacks any analysis of how that date was chosen or how it fits with the construction sequence, the planning for the other neighborhoods, etc. The discussion of how that date was selected is extremely brief and unilluminating,[8] and it relies on inappropriate benchmarks, such as the scheduled opening of the extended Number 7 line (p. 20-8). However, the East Midtown rezoning would have an impact on the prospects for development in Hudson Yards and Lower Manhattan as soon as it is adopted (if not already) as proposed tenants would immediately see the prospect of alternative locations that will soon be available. The Response to Comments (Comment B1.22 p. 11) states that "the relationships among various city initiatives need to be coordinated," but the DEIS does not reflect or describe such coordination.

"Superior development" – DEIS chapter 21 is devoted to the "Special Permit for superior development." The impact of this device is obscured. It is not included in the RWCDS (as acknowledged on p. 21-1). The DEIS contains tables (p. 21-15) comparing trips under the proposed rezoning with and without the special permit scenario but nowhere do we see trips without the proposed rezoning as compared to trips with the proposed rezoning plus the special permit scenario. Likewise, there is a table (p. 21-17) showing the number of intersections and approaches with significant adverse traffic impacts under the rezoning, with and without the special permits, but we are not told the magnitude of traffic disruptions (e.g. delay times) without the rezoning as compared to the rezoning plus the special permit scenario. The discussions of transit and pedestrian impacts have the same deficiency. (Some additional information that may be useful for such analysis is found in Appendix 7.)

The special permit mechanism itself is set forth only vaguely. The proposed zoning text amendment is printed in Appendix 1 to the DEIS. The "Special permit for superior development" is the subject of Sec. 81-624 (starting on p. 25 of Appendix 1). The introductory text says the special permit's purpose is "to facilitate the development of exceptional buildings that substantially contribute to the East Midtown Subdistrict through urban design excellence and architectural distinctiveness, outstanding energy performance, the provision of high-quality public space and streetscape amenities and significant enhancements to the pedestrian circulation

[8] The Response to Comments is similarly unilluminating – Comment B1.19, p. 10. See also Comment B21.20 p. 61.

network." Some detail is provided on the desired kinds of pedestrian circulation improvements, but not the other characteristics. Issuance of a special permit requires a finding by the Commission that "the public benefit derived from the proposed development merits the proportional amount of additional floor area being granted pursuant to this Section," Sec. 81-624(c), but that is terribly vague.

District improvement bonus – The DEIS relies heavily on funds from the DIB mechanism to pay for necessary mitigation measures (e.g., the improvements to the Grand Central subway station complex, pp. 12-5, 12-164). However, there is very little discussion of how much money the DIB will generate and when, or how the cash flow from the DIB will correspond to the need for funds for the improvements that are counted toward mitigation. Nor is there a discussion of contingency plans in case the DIB falls short.

Many of those who submitted comments on the Draft Scope called for disclosure of quite a few specified details about the DIB. The Response said that details would be provided in the DEIS. (Response to Comments, Comment B1.29 p. 13.) However, few such details were provided in the relevant pages of the DEIS (pp. 1-19 – 1-20). The call for a contingency plan in case the DIB falls short was specifically rejected (Response to Comments, Comment B1.30 p. 14). The comments about constructing improvements before new density is introduced received only a vague response (Comment B1.36, p. 16).

<u>Miscellaneous comments</u>

P. ES-4 – "buildings in London's City district, a comparable historic office core, have an average age of approximately 40 years." – This is presumably in part because many of the older buildings there were destroyed during World War II.

P. ES-68 – With reference to mitigation of certain kinds of historic impacts, the DEIS states, "DCP, as lead agency, will explore the viability of these mitigation measures between the Draft EIS and Final EIS." This method deprives the public of a meaningful opportunity to comment on the results of this exploration.

P. 1-11 – One of the rezoning's goals is to "improve the area's pedestrian and built environments to make East Midtown a better place to work and visit." The increased pedestrian congestion that the DEIS projects (Sec. 19.7) casts doubt on whether this goal will be achieved.

P. 2-1 – "No significant adverse impacts on land use, zoning, or public policy would occur due to the Proposed Action." We could not disagree more.

P. 2-23 – The DEIS states that "a project is generally considered consistent with PlaNYC's water quality goals if it includes" one or more of several listed elements. It is not clear that the proposed rezoning has any of them. Page 2-43 states, "All development facilitated by the Proposed Action would comply with the City's laws and regulations. Therefore, the Proposed Action is consistent with PlaNYC's water quality goals." But the elements listed on p. 2-23 go well beyond compliance with the City's laws and regulations; the "therefore" on p. 2-43 is inappropriate.
As a related matter, calls for a detailed review of the Proposed Action's consistency with PlaNYC have been met with a perfunctory response. Comment B2.6 pp. 19-20. Likewise very brief were the responses to the extensive comments about reducing energy demand, Comments B12.1 – B12.11 pp. 39-42; Comment B21.24 p. 62, and about climate resilience, Comments B15.1-B15.2 p. 51.

P. 4-35 – The open space ratios are calculated and compared to the CEQR benchmark and "the With-Action deficiency would be only slightly larger than that in the No-Action condition." This seems contrary to the claim that the rezoning would improve the quality of the pedestrian experience. More importantly, there is no discussion of the consequences of falling so far short of the benchmark. The benchmark for passive open space is 0.187 acres per thousand people; the "With-Action Condition" has a ratio of 0.064 acres per thousand people, or one-third of the benchmark. (The figures are only very slightly different under the special permit scenario – Appendix 7 p. 5.)

P. 13-24 – The air quality analysis concludes that for 35 development sites, it will be necessary to use Con Edison utility steam; the buildings cannot generate their own heat and hot water without causing air quality problems. However, the Energy section of the DEIS (Chapter 11) does not discuss the adequacy of the Con Edison steam system to handle this load.

In chapter 9 of the Draft Environmental Impact Statement on East Midtown Rezoning and Related Action, the New York City Planning Department (DCP) draws a number of "principal conclusions" that the Proposed Action would not result in a significant adverse impact on the city's water and sewer infrastructure. The DEIS further states in section 9.2.3 (Stormwater Drainage and Management) that "due to the New York City Department of Environmental Protection's (DEP) new storm water management requirements established in July 2012, stormwater runoff from new developments is expected to substantially decrease as compared to existing conditions." That conclusion is inaccurate; in fact, the opposite is most likely the case for the following reasons:

- The conclusion is based on the implementation of DEP's new stormwater management requirements established in July 2012 for new developments. DEP's "Guidelines for the Design and Construction of Stormwater Drainage and Management Systems" (page two) requirement applies to "proposed developments that require a New Building permit from DOB ('new development') and for proposed redevelopments in combined sewer areas of the city. A different requirement applies to 'alterations,' as defined in the Construction Codes and related requirements, for any *horizontal building enlargement* (italics added) or any proposed increase in impervious surfaces." Many alteration (redevelopment) projects would be excluded because they do not increase the foot print, as per DEP's requirements. However, these redevelopments that would add office floors would increase the number of people utilizing the building and thereby likely increase water consumption and the burden on the city sewer system.

- New development projects that would be subject to DEP's new stormwater management requirements would not significantly reduce stormwater runoff into the city's sewer system. That is because the new projects in the proposed rezoning area could not physically implement fully the most important features of the requirements to help reduce stormwater runoff. The most important features stated in the Guidelines for the Design and Construction of Stormwater Drainage and Management Systems are:
  - Water storage systems
  - Gravel bed systems
  - Perforated pipe systems
  - Stormwater chamber systems

- Rooftop systems
  - Blue roofs
  - Green roofs
  - Multilevel green roofs
  - Uni-directional sloped roof

Most new development projects could only accommodate rooftop systems since all other systems would require a great deal of ground space to be effective. The increased density, water and sewage usage resulting from developments that take advantage of increased FAR to increase office space and density would more than overcome whatever reductions resulted from having a rooftop system that complies with DEP requirements. DCP's own Table 9-8 (Water Consumption and Wastewater Generation in the Future Without and With the Proposed Action) on page 9-14 of the DEIS indicates that the proposed action would generate an additional water consumption of 1,057,071 gallons per day.

The DEIS, at the top of page 9-10, acknowledges that as many existing "buildings in the area most likely pre-date DEP requirements, it is expected that there is little or no on-site detention of stormwater on any of the projected development sites."

Therefore, it is our conclusion that the proposed action stated in the DEIS would increase runoff to the city's sewer system and worsen existing conditions such as street flooding, surcharging sewers downstream, sewer back-ups or combined sewer overflows in surrounding water bodies, all of which are public health and natural resources concerns. Such concerns were made evident by Hurricane Sandy when as much as ten billion gallons of raw and partially treated sewerage gushed into waterways and bubbled up onto streets (*New York Times*, April 30. 2013). In addition, many sewerage pumps lost power due to utility power failures, forcing sewerage backups. Newtown Creek was inches away from overflowing during Hurricane Sandy. The pumping station on Canal Street was overwhelmed, allowing 143 million gallons of sewerage to overflow into the Hudson River.

The Newtown Creek Water Pollution Control Plant (WPCP) is controlled by the State Pollution Discharge Elimination System (SPDES) which permits a total up to 310 million gallons per day (mgd) of wastewater. According to Table 9-3 (Monthly Average Dry

Weather Flows from the Newtown Creek WPCP) page 9-6, on a dry day during July of 2011, Newtown Creek WPCP treated 276 mgd of wastewater and, for the six-month period between July and December of 2011, treated 241.5 mgd. This represents 77% of capacity for the Newtown Creek facility leaving only 23% of capacity for wet days, before even considering the increased wastewater generated by the proposed action.

Energy

On page 11.1 the DCP cites a conclusion that the proposed action would only result in a "minor" increase in demand on the city's electrical system. The DEIS further states that since new development under the Proposed Action would have to comply with the New York City Energy Conservation Code (NYCECC) of 2010 (Local Law 48), the proposed action would "not result in a significant adverse impact on (the city's) energy systems". This conclusion is overly optimistic because it does not take into consideration the code non-compliance elements for redevelopment of existing buildings.

New York City Energy Conservation Code of 2010 allows exemptions for:

- National- or State-designated historic buildings
- Contributing buildings in National or State designated historic districts
- Temporary structures
- Existing buildings that undergo alterations that require a replacement of less than fifty percent of its building system or subsystem

As a result of these loopholes in the building code, the city would not reap the full benefits from energy improvements to conserve energy.

According to Con Edison's Online Sustainability Report, on July 22, 2011 New York City's peak demand was about 13,189 megawatts (MW) of electrical energy, breaking the previous high mark of 11,209 megawatts set on July 24, 2010. The peak demand would have soared higher if not for the Load Curtailment Program in place, under which Con Edison pays customers to cut back on power use during heat waves resulting in a reduction of about 500 MW or 3 percent of demand. In addition, appeals were made to the public to reduce electrical energy usage. Despite these efforts, 71,000 customers experienced outages as a result of the heat wave. According to Con Edison's report, peak demand is projected to increase by about 25 percent over 20 years.

According to New York State Energy Research and Development Authority (NYSERDA), The New York Independent Operator (NYISO) and NYC Economic Development Corporation (EDC) projections indicates that NYC peak demand will soon overtake current capacity. New York City has 9,000 MW installed electrical generating capacity (within the city) and 4,000 MW of imported electrical generating capacity into the city's power grid but, due to transmission constraints, it can be increased to 5,000 MW maximum. NYSERDA estimates that NYC will require between 6,000 and 8,000 MW of increased capacity over the next 20 years just to keep up with demand. This does not account for 54 MW of projected peak demand by the year 2030 for electric vehicles. Con Edison's report, "*Electrical System Long Range Plan Assessment Document,*" forecasts that about 380,000 residential electrical vehicles will be registered in New York City. In addition, NYISO calls for "18 percent of reserve capacity above demand, which is not currently being met."

The assumption that there will be a net decrease of residents is questionable. The recent proposal to convert the SONY Building into a mixed-use building to include residential, the extension of the City's rent control law due to "an emergency housing shortage" and the unrelenting demand for residential dwellings are all proof that the market will continue to develop housing in East Midtown. And finally – because the assumption that the neighborhood demographic could not shift upward by such a small number as 50 residents in this underserved area is flawed – it is unquestionable that a residential analysis should have been undertaken and its exclusion undermines conclusions presented with respect to open space.

ATTACHMENTS

A. Multi-Board Task Force's "Principles for a New East Midtown" **November 8, 2012**

B. Councilmember Garodnick letter to Chair Burden **August 16, 2012**

C. Councilmember Lappin letter to Chair Burden **September 7, 2012**

D. Public Advocate de Blasio scoping testimony

E. Borough President Stringer scoping testimony **September 27, 2012**

F. Councilmember Brewer scoping testimony **October 9, 2012**

G. State Senators Krueger and Hoylman, Assemblymember Quart and Congresswoman Maloney letter to Mayor Bloomberg **January 9, 2013**

H. State Senators Krueger and Hoylman, Congresswoman Maloney and Councilmember Garodnick letter to Deputy Mayor Steel **March 13, 2013**

I. Transportation Advocates letter to Mayor Bloomberg and Chairman Ferrer **March 29, 2013**

J. Preservation Advocates letter to Chair Tierney **April 29, 2013**

K. Senator Schumer letter to Deputy Mayor Steel **May 6, 2013**

L. JPMorgan Chase Letter to Multi-Board Task Force **June 12, 2013**

Attachment A:

MULTI-BOARD TASK FORCE ON EAST MIDTOWN

MANHATTAN COMMUNITY BOARDS
ONE, FOUR, FIVE, & SIX

Lola Finkelstein, *Chair, Multi-Board Task Force*

Catherine McVay Hughes, *Chair, Community Board One*
Corey Johnson, *Chair, Community Board Four*
Vikki Barbero, *Chair, Community Board Five*
Sandro Sherrod, *Chair, Community Board Six*

November 8th 2012

PRINCIPLES FOR A NEW EAST MIDTOWN

From the beginning we, as Community Boards, have aspired to be partners in planning the future of East Midtown. We are open to considering new development but it needs to be in the context of a carefully developed plan. As we have stated several times, the issues involved are too important to hastily reach conclusions that will affect New Yorkers for decades to come.

Unfortunately, the approach the Department of City Planning has taken thus far sends a clear signal that a political timetable is guiding this work, not an effort to study the issues carefully and reach a consensus on Midtown's many challenges and opportunities. More time is needed to consider the implications of the issues we and others have raised and we continue to urge the City to carefully address these questions before putting forward a ULURP application.

A class "A" Office District is not just about Class "A" Office *buildings*. It's about efficient, comfortable, and convenient transportation options. It's about diversity of tenants, populations, and ideas. It's about having a civic experience that is worthy of the grandeur of Grand Central Terminal. It's about protecting critical buildings. The focus of this proposal is overwhelmingly on facilitating real estate development. Instead, we should start from what we want to see in East Midtown, what kind of experience we want office workers, tourists, and residents to have, and *then* determine the kind of development that can provide this experience and how best to encourage it.

In order to help frame our vision of Midtown and guide the work of the Department of City Planning, we have developed the following principles that we believe should guide a more careful and comprehensive plan.

These principles will, in part, help shape our response to future land use applications.

- **Infrastructure should precede development**
  - The MTA made clear in their presentation that even in the absence of any new development there is an overwhelming need for transit improvements in this area. Given the overcrowded subway platforms, the train delays, and poor rider circulation, the additional density that would be added as a result of the City's proposal would only exacerbate the need for improvements. There is no clear commitment that sufficient funds will be available to address this infrastructure need which the MTA has estimated to be approximately $350-500 million in 2012 dollars. We need to explore alternate funding sources to ensure that East Midtown gets the <u>comprehensive</u> improvements to the

infrastructure network it needs in order to be a competitive Class A office district before additional density is added. Among the options we believe merit consideration include the creation of a tax increment finance mechanism which we understand from the Department would require modifications to state legislation, the creation of a PILOT mechanism, the creation of a special assessment district, or a mixture of New York City capital funding, MTA funding, and federal funding. We trust the Department, in conjunction with the MTA, could develop even more sophisticated approaches to garner the financial resources required. In a neighborhood that is competitive because of the historic commitment to infrastructure represented by Grand Central, we need to continue to innovate. The need to study these possibilities provides a clear rationale for taking more time before moving to ULURP.

- **A comprehensive public realm strategy**
  - We support the concept of incentivizing developers to make public improvements. However, the public realm improvements are simply too vague. How can we begin to assess the virtues of a zoning plan when one of the plan's principle objectives is left completely undefined? Without a clear concept of what we're trying to accomplish with this rezoning, we may lose a critical opportunity to reshape East Midtown for the better. In addition to the reconfiguration of Vanderbilt Avenue, we believe studies should be done to examine the following: potential improvements to Pershing Square; widening sidewalks along 3rd Avenue, Lexington, and Madison; widening the Park Avenue Malls; and improving key crosstown streets including 42nd, 47th, 48th, and 53rd Streets. We would welcome the opportunity to have a more detailed conversation with DOT, DCP, and DPR about how to think more creatively and ambitiously about open space. Furthermore, we believe that incentivized zoning can be used to address not only mass transit and pedestrian needs, but also to mitigate adverse impacts of a rezoning and support community initiatives more broadly.

- **A mixed use future**
  - We have seen numerous areas of the city shift toward mixed use with great success. The financial district is an example of how injecting a variety of uses (residential, hotel, cultural, etc.) into a primarily office-dominated area can enliven and improve it. Mixed use can be and has been an effective tool within buildings - the Bloomberg building and the Time Warner Center are examples of buildings that have proved successful without compromising their commercial character. It is time to recognize that a diverse mix of uses supports rather than impedes the development of a Class A office district.

- **Protecting potential landmarks**
  - We are concerned that the proposal's process does not protect historically valuable buildings. While landmarked buildings are protected, potential landmarks are not. There are scores of buildings throughout the proposed area that are not landmarked (e.g. The Graybar Building and the Roosevelt Hotel) that contribute greatly to the legacy and wonder of East Midtown. A clear preservation plan needs to be described before ULURP to understand what resources will be protected. One method of preservation is to carve out certain sites in order to protect important buildings from development pressure created by this re-zoning. We strongly believe that the preservation of key buildings will enhance this vibrant, uniquely New York commercial district.

- **An environmentally class "A" district**

  - We believe the proposal fails to clearly layout an environmental agenda for Midtown. We need to continue to push the boundaries of what is possible and show the world that a successful partnership between private and public interests can create a responsible legacy for future generations. If the existence of aging building stock is truly problematic, there should be incentives for developers to reach energy efficiency targets and minimize their negative environmental impact. There are no particular features of this proposal which exhibit an innovative approach to thinking about the environment, such as net-zero construction or co-generation.

- **Careful citywide planning**
  - This proposal, while aimed at addressing the purported needs of East Midtown, lacks cohesion with any development plan for the rest of New York. The effect this proposed development would have on the growth and ongoing change in newer office districts such as downtown Brooklyn and Long Island City should be studied and taken into consideration. We need to meaningfully support a strategy that capitalizes on the underutilized transit capacity of other parts of our city through a comprehensive five borough economic strategy. We cannot afford to move backward by upending our policy of encouraging development in places outside of East Midtown.

- **Protecting public investments**
  - The City (and indeed the State and Federal government) has made a large investment in office development in both Lower Manhattan and Hudson Yards. The structure and timing of this proposal has the potential to threaten those investments. If new development falters at Hudson Yards, the City could face higher interest rates on bonds that were floated to pay for the number 7 line transit improvements, increasing the project's cost and delaying its completion. During a time of slow economic growth, when many of these new office developments are having trouble finding tenants, we fail to see the urgency to redevelop East Midtown. The "sunrise" provision is designed to prevent this sort of harmful competition, however with such an uncertain economic future ahead of us, a three and half year sunrise after the adoption of the proposal is hardly enough time to predict with certainty that Hudson Yards and Lower Manhattan will be on their feet. We should not put tax payers at such risk.

- **How about our skyline?**
  - This proposal encourages the development of buildings that will be among the tallest and largest buildings in New York City. Does this proposal consider the effect on our skyline? Does the Chrysler or Empire State Building deserve any special protections? The creation of the extraordinary or iconic building special permit raises many profound concerns about the role (or lack thereof) of design review. Furthermore, the lack of public review for most of the buildings that will result from this proposal will ensure that the public has no role in shaping the future of our skyline. The proposal needs to be re-thought to allow for additional discretion in the review of these extraordinarily large buildings and needs to carefully consider the implications for our skyline.

We firmly believe that meaningful engagement with all the challenging questions we have outlined here must come before a full-fledged proposal is certified.

Attachment B:

DANIEL R. GARODNICK
COUNCIL MEMBER, 4TH DISTRICT

DISTRICT OFFICE
211 EAST 43RD STREET, SUITE 1205
NEW YORK, NY 10017
(212) 818-0580
FAX: (212) 818-0706

CITY HALL OFFICE
250 BROADWAY, ROOM 1880
NEW YORK, NY 10007
(212) 788-7393
FAX: (212) 442-1457

garodnick@council.nyc.gov

THE COUNCIL
OF
THE CITY OF NEW YORK

CHAIR
CONSUMER AFFAIRS

COMMITTEES
LAND USE
EDUCATION
TRANSPORTATION
PUBLIC SAFETY
ZONING & FRANCHISES

Via Electronic Mail and U.S. Mail

August 16, 2012

Amanda Burden
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Chair Burden:

Yesterday I received a copy of the August 10 letter from Edith Hsu-Chen to Vikki Barbero, the Chair of Manhattan's Community Board 5 on the subject of the rezoning of East Midtown. Thank you for your office's detailed responses to a number of issues raised by the Community Board. While we will review all of your responses carefully, I write today to express my continued concern about the speed of this application.

Not only are you putting out your draft scope a week before Labor Day – when many New Yorkers are totally disengaged from the political process – but you also have signaled an accelerated overall timeframe for this project which I believe is unnecessary. Accordingly, I ask you to slow this process down by postponing the date of your scoping session for six months, to March 27. This will give the community sufficient time to review your most recent responses, to react to them intelligently and to adequately prepare for their testimony at the scoping session.

I could not agree more with City Planning's argument that in order to stay competitive, the area around Grand Central needs to develop new office space and to improve the pedestrian network above and below grade. But to say that acting in late 2013, as opposed to early 2014, is "a necessary precursor for investment decisions to be made" overstates the case, especially when you have indicated that this is a build out that will take one or more decades. I understand that the Mayor's term has only 502 days remaining, but that should not be the prime factor driving the timeframe for such an important proposal. Indeed, there is no harm in having this proposal be initiated by the Bloomberg Administration and finalized by the next Mayor, whoever it may be, and for it to be a shared legacy.

I appreciate that the Department of City Planning (DCP) is considering the potential impacts of this rezoning on other emerging commercial areas by proposing a five-year "sunrise" clause. At the same time, it troubles me that the measuring date for the sunrise provision has started well before the public review even begins. Furthermore, the care that DCP is exhibiting in slowing down the applicability of the zoning changes undercuts the claim that we need to formally start the process a mere thirteen days from today. The substance of these changes is already years away, arguably even decades away, and there is no reason to move at this pace.

Thank you for your staff's willingness to work with the community boards and my office thus far, and I hope that this continues for the duration of the proposal. In that vein, I hope that you will allow the community, and all affected stakeholders in the ULURP process, the opportunity to evaluate your plans thoughtfully and give us more time. We do not want to postpone this to "some unknown future date," as suggested in the most recent letter. I think it would be prudent to simply slow down this process by six months, and feel confident that the local Community Boards would agree with this approach.

Thank you for your attention to this matter. Should you have any questions about this request, please do not hesitate to contact me directly, or to call Ilona Kramer in my district office at (212) 818-0580.

Sincerely,

Daniel R. Garodnick

CC: Christine Quinn, Speaker, The New York City Council
Jessica Lappin, Member, The New York City Council
John Liu, New York City Comptroller
Scott Stringer, Manhattan Borough President
Bill de Blasio, Public Advocate for The City of New York
Joseph Lhota, Chairman and Chief Executive Officer, Metropolitan Transit Authority
Vikki Barbero, Chair, Community Board Five
Mark Thompson, Chair, Community Board Six
Terrence O'Neal, Chair, Land Use & Zoning, Community Board Six
Corey Johnson, Chair, Community Board Four
J. Lee Compton, Co-Chair, Chelsea Land Use Committee, Community Board Four

Attachment C:

JESSICA S. LAPPIN
COUNCIL MEMBER • 5TH DISTRICT

DISTRICT OFFICE
330 EAST 63RD STREET, SUITE 1K
NEW YORK, NY 10065
(212) 980-1808
FAX (212) 980-1828

lappin@council.nyc.gov

THE COUNCIL
OF
THE CITY OF NEW YORK

CHAIR - COMMITTEE ON
AGING

COMMITTEES
LAND USE
EDUCATION
TRANSPORTATION
CULTURAL AFFAIRS
ZONING & FRANCHISES SUBCOMMITTEE

September 7, 2012

Ms. Amanda Burden
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Chair Burden:

I am writing regarding the proposed rezoning of East Midtown. While I embrace your goal of modernizing our increasingly outdated commercial office space in that area, I would like to share some of my concerns with you.

First and foremost, I am troubled by your timetable. While I understand the desire to get this done before the end of the Bloomberg administration, I do not think expediting the rezoning is in our collective best interest. I join with Council Member Garodnick in requesting a delay of your scoping session for 6 months from September 27, 2012 to March 27, 2013. The best argument for this delay is illustrated in your agency's comprehensive responses of August 10, 2012, to the extensive list of complex questions put forth to you by Community Board 5. The letter is 22 pages long and illustrates that the issues are many and complex. They require due diligence and thoughtful review. Affected stakeholders deserve more time to analyze and respond to the data.

As you are undoubtedly aware, this rezoning will have a significant impact on those who live, work, and visit the area. I understand that an extensive environmental review will be undertaken. However, those who live in the area are deeply concerned about specific issues, including: the affect on city services such as sanitation, sewer and water; on open space - of which there is very little in this area; on their quality of life, including construction impacts, air quality, light, shadows and the changing streetscape.

Residents of the Turtle Bay area are also determined to maintain the existing residential and mixed use aspects of Second Avenue. The Sutton Area Community (SAC) at the northern tip of the area shares that concern. And last, and perhaps most importantly, residents are worried about traffic and public transportation.. Moving forward, a continuing, open dialogue must be maintained among stakeholders, elected officials and City Planning in order to effectuate a plan that will enable us to compete on a global stage without ignoring the needs of current residents.

I appreciate the extensive outreach your staff has provided to the community, including the substantive presentations, frank discussions and thoughtful feedback. I look forward to continuing these discussions as we go forward on a rezoning for East Midtown that will help make the world's greatest city better than ever.

Sincerely,

Jessica Lappin

JESSICA LAPPIN
Council Member
5th District – Manhattan

CC: Mark Thompson, Chair, Community Board Six
Terrence O'Neal, Chair, CB 6 Land Use and Waterfront Committee
Vicky Barbero, Chair, Community Board Five
Bruce Silberblatt, Vice President, Zoning/Land Use/Transportation Chairman

[51]

JESSICA S. LAPPIN
COUNCIL MEMBER • 5TH DISTRICT

DISTRICT OFFICE
330 EAST 63RD STREET, SUITE 1K
NEW YORK, NY 10065
(212) 980-1808
FAX (212) 980-1828

lappin@council.nyc.gov

THE COUNCIL
OF
THE CITY OF NEW YORK

CHAIR - COMMITTEE ON
AGING

COMMITTEES
LAND USE
EDUCATION
TRANSPORTATION
CULTURAL AFFAIRS
ZONING & FRANCHISES SUBCOMMITTEE

September 12, 2012

Ms. Amanda Burden
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Chair Burden:

I am writing with an addendum to the letter that I sent to you last week regarding the proposed rezoning of Midtown East. In that letter I outline a number of issues that concern area residents. I would also like to express a desire to see hotel uses allowed by special permit rather than as-of-right.

Zoning that allows hotels only by special permit seems obvious for the area. The proposed rezoning is likely to encourage more hotel development. New York has long been in the midst of a hotel room boom, recovering from the recession faster than other cities. Hotel financing is some of the easiest real estate financing to obtain, and obtaining it is much easier than financing for office buildings, especially since hotels do not have the burden of finding anchor tenants. As building owners find themselves newly able to redevelop their buildings, I am concerned that many of them will choose to build hotels instead of office space.

While nobody disputes that hotels are a commercial use that should be allowed in commercial zones, it is important that hotels do not dominate the redevelopment of the area. The City needs office space, with current vacancy rates being half the national average, and we must make sure we do not lose office space at the expense of hotels as buildings renovate. The stated goal of the rezoning is to create office space that makes New York more competitive with other global cities, and so it makes sense for the City to have more control over competing uses like hotels. Requiring hotels only by special permit in the new zone would allow the community and the City to guide the type and quality of future hotel development in the area.

I am also concerned about the strain additional hotels might pose on residential communities in the area to be rezoned. Hotels have a greater impact on the nearby area and put a greater strain on services than virtually any other use. Hotels are designed to be densely occupied. They operate 24 hours a day and generate an enormous amount of both pedestrian and vehicular traffic at both peak and non-peak hours. Laundry and catering services, if any, require substantial truck traffic at most hotels. And hotels larger than 100 rooms are entitled to "no standing" zones in front of the hotel, which reduces available parking or loading zones in the area. If the rezoning creates an influx of new hotels, as I believe it will, the community should have a voice in their development.

Allowing hotels only by special permit will help ensure that Midtown East becomes a real office destination. As such, I hope they will be included in any modified proposal.

Thanks for your attention to this matter.

Sincerely,

Jessica Lappin

JESSICA LAPPIN
Council Member
5th District – Manhattan

Cc. Deputy Mayor Howard Wolfson
Deputy Mayor Robert K. Steel
Mark Thompson, Chair, Community Board 6
Vikki Barbero, Chair, Community Board 5
Bruce Silberblatt, Turtle Bay Association

Attachment D:

THE PUBLIC ADVOCATE FOR THE CITY OF NEW YORK
Bill de Blasio – PUBLIC ADVOCATE

My name is Bill de Blasio and I am the Public Advocate of New York City. I would like to thank the Department of City Planning for the opportunity to testify on the proposed scope of the East Midtown Rezoning.

The rezoning area between Second and Fifth avenues, and East 39th to East 57th streets contains more than 70 million square feet of office space, more than 200,000 jobs and hundreds of business. The area is home to many of the City's most important assets; Grand Central Terminal, the Chrysler Building and some of the most recognized streets like Park and Madison Avenues. The area will also be home to future important assets with the completion of the East Side access and the 2nd Ave subway line.

Even with these assets this area is in danger of falling behind as a premier office district. Many of these buildings are over 50 years old and have high vacancy rates compared to other areas of the City. There has been lack of development of the Class A, high-tech office space that is in demand.

City Planning understands the long-term development challenges which threaten the area's attractiveness of being a world-class business district. The rezoning looks to address the challenges of an aging office building stock, a crowded and burdened pedestrian network and limited development potential. City Planning has created a rezoning that provides the Floor Area Ratio (FAR) to allow for the development of Class A office space and tailored zoning districts to reflect the neighborhood character. And the District Improvement Bonus (DIB) unlocks additional square footage at the same time, using these funds to improve public amenities for the area. I believe that this rezoning will help address the challenges currently facing East Midtown and promote more development and job growth in an area that can and should compete on a global scale.

In this testimony, I would like to raise several questions and areas for concern that are critical in order to optimally accomplish this rezoning. The specific issues I raise today will focus on the proposed scope of the project, the District Improvement Bonus plan, the impact on local businesses, and the use of hotel special permits.

First, the additional FAR and creation of iconic buildings will surely impact the surrounding community. A thorough and fair analysis of the plan in the Environmental Impact statement will allow Community Boards 5 and 6 to fully understand the impact this rezoning will have on their neighborhoods. I am concerned that the proposed scope of the EIS too narrowly defines qualifying sites, excluding sites within the area that may be attractive to new development. I urge City Planning to consider broadening the scope of the EIS, enabling the community to better understand how the rezoning may affect open space, infrastructure and other important considerations.

Second, I ask that City Planning describe the District Improvement Bonus plan in greater detail, including a plan on how the DIB would be implemented and structured and how funds will be allocated.

Third, I want to make sure we are protecting existing local businesses and jobs in East Midtown. City Planning should conduct a thorough analysis on businesses that may be forced to leave because of the loss of Class B and C space, and the City should make every possible effort to protect against the displacement of local businesses.

Finally, the current rezoning areas contain 1.7 million square feet of hotel space which are located primarily along Lexington Avenue. Even without the rezoning City Planning recognizes that this area is attractive for the development of hotels. While nobody disputes that hotels are a commercial use that should be allowed in commercial zones, hotels should not dominate the redevelopment of the area, placing a greater strain on services than virtually any other use. Allowing hotels only by special permit will help ensure that East Midtown develops the Class A office space it needs and will give the community a say in local development. City Planning should study an alternative scenario in which there is a Special Permit for hotels all hotels in the rezoning.

Thank you for considering these recommendations, and I invite further discussion on these important issues.

1 CENTRE STREET NEW YORK NY 10007 TEL 212 669 7200 FAX 212 669 4701 PUBADVOCATE.NYC.GOV

Attachment E:

THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

**Testimony at Scoping Session for East Midtown Rezoning
Before the Department of City Planning**

September 27, 2012

I would like to thank the Department of City Planning for the opportunity to testify on the proposed scope of work for environmental review on the East Midtown Rezoning. I would also like to thank and commend the members of Community Boards 4, 5 and 6, and their respective chairs, Corey Johnson, Vikki Barbero and Mark Thompson, for their diligent work in thoughtfully and thoroughly responding to the Department of City Planning's ("DCP") proposal.

The existing Midtown special permits granting the transfer of development rights from landmarks and allowing new density in exchange for mass transit improvements have proven to be too cumbersome to generate new construction and associated public realm improvements. The special permits are rarely used and, as a result, new development in the area has been slow. The building stock averages more than 70 years of age and there is concern that aging office buildings could undermine East Midtown's prestige as a premier central business district. Midtown Manhattan is advantaged by exceptional transit connectivity and will benefit from new local and regional transit improvements such as East Side Access and the extension of the 7 subway line. The proposed rezoning aims to fortify the commercial center; introduce modern, sustainable office buildings; improve the pedestrian and built environment; and complement the growth of New York's other central business districts.

Today's hearing offers the public an opportunity to comment on the scope of the East Midtown Rezoning's environmental study. Scoping hearings are essential for determining a framework that will ensure fair disclosure of potential environmental impacts and identifying appropriate alternative development scenarios. As a participant in the ULURP process, I will not issue a formal position until the project is before me for review. However, I believe any potential rezoning must balance citywide goals with potential impacts. Over the past several months, I have heard concerns from community members, many of which will be voiced today. The matters raised have informed the comments that follow and I, therefore, ask that the study be modified as outlined below.

Alternatives

While many alternatives may be offered through the course of this hearing, the community and the Community Boards have explored several variations of the proposed plan. In order to ensure that these modifications remain feasible through the ULURP process, they should be studied as alternative development scenarios in the Environmental Impact Statement (EIS). Based on community feedback, I

MUNICIPAL BUILDING ❖ 1 CENTRE STREET ❖ NEW YORK, NY 10007
PHONE (212) 669-8300 FAX (212) 669-4305
www.mbpo.org bp@manhattanbp.org

ask DCP to study these alternative development scenarios in the EIS: the incorporation of mixed uses in the study area; the addition of a hotel special permit in the text; the inclusion of a Landmark Transfer mechanism in subareas other than the Grand Central Subarea; and the potential inclusion of additional findings in the special permit for "superior" buildings.

One aim of the East Midtown Rezoning is to safeguard the vitality of the commercial district by only allowing the bonus structure to apply to commercial development. Office-dominated neighborhoods often become deserted after 5:00 pm, with vacant shop fronts, few pedestrians and a stark lack of activity to keep the streets safe and integrated into the functioning of the city. As a result, commercial uses often lack the amenities associated with residential districts, like 24-hour retail. It is therefore important to consider the potential benefits of introducing limited residential uses to East Midtown as has been successfully done in other commercial districts. Most notably, Lower Manhattan is one of New York's fastest-growing residential areas, while maintaining its central role as a commercial core. The inclusion of residential uses has benefited these commercial districts by promoting activity essential to the streetscape, safety and economic health of this area. As the potential impacts of adding new residential uses are not known, it should be studied as a potential alternative. Specifically, a development scenario should be examined to incorporate mixed-use buildings in the bonus structure.

To further balance the land use composition in East Midtown, the inclusion of a hotel special permit in the zoning text should be examined. Due to the relative ease of financing for hotels, there is a risk that they may out-compete other commercial uses, resulting in unintended consequences and a proliferation of hotels on large sites. A hotel special permit should be considered as an alternative development scenario.

The proposal includes increased flexibility to transfer development rights from landmarks. However, the Landmark Transfer is only available in the Grand Central Subarea. The remaining subareas only allow the DIB bonus mechanism. The East Midtown study area is rich with New York City-designated landmarks and many are not located in the Grand Central Subarea. Several representatives of landmarked buildings have raised concern that they lack receiving sites to transfer their density and have requested that the Landmark Transfer is expanded to subareas beyond Grand Central. While the potential impact of the proposal is not known, it may have several positive benefits. Applying the Landmark Transfer would not only give developers increased flexibility, but could assist landmark owners in maintaining these historic structures to the standard that befits the neighborhood. The city should study applying the Landmark Transfer to the entire Special Midtown District to understand the potential impacts and benefits.

The only discretionary component of the proposed East Midtown Rezoning is the special permit for superior buildings. The criteria and findings for such a permit have not been established. As the proposed rezoning moves forward, many stakeholders will suggest appropriate criteria for determining the qualities of a superior building. As such, it is important to create a framework now that allows these criteria to be included in the special permit. One such criterion, green standards, should be included in this framework. New York's building stock emits 75% of the city's greenhouse gases.[1] Constructing without concern for energy consumption creates further local and global environmental impacts. Recent development trends in New York City have demonstrated that superior buildings can meet exceptional environmental performance standards. The inclusion of high performance criteria should remain in scope as the special permit is analyzed throughout the ULURP process.

Reasonable Worst-Case Development Scenario

The Reasonable Worst-Case Development Scenario identifies projected and potential development sites

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[1] New York City. Office of Long-Term Planning and Sustainability. *PlaNYC 2030*. New York City: 2011.

in calculating the amount of expected new development. Several criteria are applied to determine which sites are most likely to be affected by the proposed actions.

Five criteria were applied to exclude sites from analysis. Among these, buildings with six or more rent-stabilized units were excluded. There are relatively few residential buildings in the study area. Still, many are on or near avenues. As the proposed development scenario is over a 20 year period, the Reasonable Worst-Case Development Scenario should acknowledge that buildings with rent-stabilized units may be vacated through attrition or legal buy-outs. Therefore, likely development sites should not exclude residential buildings.

Additionally, the qualifying site identification criteria have excluded newer buildings – those constructed after 1982 and those built between 1961 and 1982 to maximum allowable bulk. As a result, non-landmarked buildings built before 1961 are included among likely development sites. The proposal is meant to allow for the redevelopment of buildings with archaic configurations, low floor-to-ceiling heights and awkward columns that prove disadvantageous in leasing these spaces. However, as the proposal aims to redevelop buildings built before 1960, it risks targeting many historic buildings. Unfortunately, historic buildings are typically considered for landmark status outside of the ULURP process, which strains preservation efforts. DCP should work with the Landmarks Commission not only to study individual, potential landmarks, but to complete a comprehensive analysis of potential impacts on the area's historic fabric and how it relates to economic development goals.

District Improvement Bonus

The District Improvement Bonus ("DIB") is proposed in the Special Midtown District as a mechanism for allowing increased floor-area-ratios ("FAR"), while generating funds dedicated to public realm improvements, both over- and underground. The second mechanism for achieving higher FARs, currently applicable in just the Grand Central Subarea, is the Landmark Transfer, which is a private market transaction with no direct contribution to public funds.

The DIB has not been assigned a value. It is uncertain, based on the 4.4 million net square feet of new development identified in the scoping documents, how much funding this growth would generate. It is imperative that the DIB is valued before certification. Scoping documents present that public realm improvements funded by the DIB will mitigate potential adverse impacts. To determine the extent of the improvements and the extent of mitigation, it is necessary to clarify the amount of financing expected to be generated by the DIB bonus structure.

Another factor that obscures the amount of contribution available through the DIB is the availability of the Landmark Transfer. The transfer of development rights from landmark buildings will be negotiated in the private market. Where an option between the two bonus mechanisms exists, the Landmark Transfer risks competing with the DIB. A reduced DIB reduces the money available for public improvements, thereby limiting potential mitigation.

The public realm improvements to be funded by the DIB are yet to be determined, but DCP has suggested pedestrian circulation upgrades in the Grand Central Terminal and the mapping of Vanderbilt Avenue as a public place. This scale of projects can be costly and depends on a reliable flow of money to be efficiently completed. Financing these public realm improvements should be made a priority by New York City if they are necessary to mitigate potential impacts. Therefore, the city should create a conservative account of DIB funds in order to determine what mitigation is feasible. Further, if mitigation is not achievable with a conservative DIB estimate, then the city should consider alternative mitigation strategies. Such mitigation could include, but is not limited to, alternative financing, bond structures or a threshold for total funds that must be generated by the DIB before permitting use of

Landmark Transfer for additional FAR.

Finally, the scoping documents suggest the availability of a "payment-in-kind" option for developers to finance and construct their own public improvements in lieu of a contribution to the DIB. Such an option impacts the effectiveness of DIB funds and affects the mitigation of impacts. The City should create criteria for this option that ensure that any payment-in-kind serves as mitigation for adverse impacts.

Conclusion

I look forward to seeing the results of this Environmental Impact Statement and urge that all potential impacts be examined carefully and thoroughly. In the meantime, I encourage DCP to continue working closely with the community to ensure that any future development properly balances the needs of the community and the need for East Midtown to remain strong. Thank you again for the opportunity to testify.

Attachment F:

GALE A. BREWER
COUNCIL MEMBER, DISTRICT 6
MANHATTAN

DISTRICT OFFICE
563 COLUMBUS AVENUE AT 87TH STREET
NEW YORK, NY10024
(212) 873-0282
FAX (212) 873-0279

CITY HALL OFFICE
250 BROADWAY, SUITE 1744
NEW YORK, NY10007
(212) 788-6975
FAX (212) 513-7717

gale.brewer@council.nyc.gov
www.council.nyc.gov

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TESTIMONY ON THE PROPOSED EAST MIDTOWN REZONING
COUNCIL MEMBER GALE A. BREWER, 6[TH] DISTRICT, MANHATTAN
OCTOBER 9, 2012

My name is Gale A. Brewer and I represent the residents of the upper West Side and the northern part of Clinton in the City Council. I am commenting on the scope of the proposal to rezone East Midtown that is before the City Planning Commission in preparation for the Environmental Impact Statement.

This is the largest area of midtown Manhattan to be proposed for rezoning in modern times. Proposals of comparable scale and impact, and many of lesser impact, have been subject to far more lengthy discussion and professional and community input prior to scheduling the certification and scoping process. I recommend slowing down this process- political concerns cannot push aside your obligation to due diligence on behalf of the people of the city.

Millions of people use the public transportation, sidewalks, and streets of the Grand Central area now. During business hours it is one of the city's densest concentrations of pedestrians and traffic. With the planned opening of the LIRR connector into Grand Central Terminal, this immediate area will see further influx of pedestrians, and heightened demands on subways, buses, and taxis. Just to the West is the even busier corridor of Fifth Ave and Bryant Park. A plan to sharply increase densities in this area needs extensive review of infrastructure needs, traffic management, and street level services. None of this can or should be done hastily.

As the Landmarks Conservancy and other preservation groups have testified, the East Midtown area is home to some of our most iconic landmarked buildings, as well as many architecturally significant buildings whose character should not be dismissed cavalierly. It would be a pyrrhic victory for the city if hastily planned development blotted out the views and world-famous silhouettes of the Chrysler Building, Waldorf Astoria, RCA Building, Chanin and Lincoln Buildings, the Ford Foundation, and many others. These towers, like the Empire State Building and Rockefeller Center, are defining of New York. We diminish them at our peril.

By contrast, no one believes that the city is defined by the scores of generic post-modern office buildings that have sprouted around Midtown and Grand Central. To sacrifice our iconic buildings to more generic development- or any development- would be profoundly self-defeating. Surely it is possible to create many new, valuable development sites in East Midtown without endangering our heritage, and surely we can reimagine New York for a new century without degrading the city we have and love.

This plan, if it goes forward, should begin with careful and creative thinking about these legacy issues. I would point to the redevelopment around Bryant Park as a useful model: new, spectacular buildings like those being imagined for Midtown East, older buildings handsomely repurposed and re-cladded and landmarks preserved. The result is a landscape of immense aesthetic value, one that expresses the mix of function and form, new and old, that New York alone provides. Looking a little farther afield, a great deal of effort and public infrastructure investment is now going into the development of the Hudson Yards and lower Manhattan. Will the rezoning of Midtown East hurt the chances of building successful communities in these two areas? We as a city take on large scale projects, but can we actually manage this amount of planning and foresight?

To accomplish anything like the planned re-scaling and increased density of East Midtown, we will need the close collaboration of our planning, preservation, community, and development interests. All around Manhattan we have examples of successes in these endeavors, and also many failures. At the scale being proposed, failure to plan appropriately cannot be an option, and to avoid mistakes adequate time for reflection will be needed.

There are ways to accomplish a positive outcome, including setting aside time to analyze a mixed use alternative which would allow for some new residential development while still protecting the commercial character of the area. The other alternative that Community Board 5 and others have requested is to look at allowing landmarks to transfer their development rights in a broader area so landmark air rights aren't undercut by the air rights the City is creating through the District Improvement Bonus. Finally, the need for a hotel special permit needs to be part of the discussion and final resolution, but that too takes time.

For these reasons, and many more, I urge you to withdraw the East Midtown rezoning as proposed at this time, and take a long, sensible look at your options, to think and plan creatively, and to listen to all of the stakeholders. This is a hundred year legacy. Let's get it right.

Attachment G:

[64]

State Senator Liz Krueger
State Senator Brad Hoylman
Assemblymember Dan Quart

Congresswoman Carolyn B. Maloney

Mayor Michael Bloomberg
City Hall
New York, NY 10007

January 9th, 2013

Dear Mayor Bloomberg:

As the state and federal elected officials who represent East Midtown, we have been closely following the East Midtown Rezoning plan that was proposed by the Department of City Planning earlier this year. We fully understand that it is essential to New York City's economic health to maintain East Midtown's position as a premiere business district for companies across the globe. However, we share the concerns expressed by our colleagues in the City Council, Daniel Garodnick and Jessica Lappin, as well as Community Boards 4, 5, and 6, that this proposed rezoning is moving too quickly and fails to comprehensively plan for the many infrastructure and open-space needs of the community.

We are aware that some of East Midtown's current building stock is out of date and is eroding East Midtown's status as the neighborhood with the most sought-after business addresses in the world. We support zoning changes that will be helpful in encouraging the development of new world-class office buildings and the jobs that will come with them. However, we are also concerned about today's businesses, workers and residents. Because this rezoning is so important, it is critical that it is done correctly the first time and is responsive to the concerns of the area's current stakeholders even as it lays the groundwork for the area's future. To accomplish this, we ask that your office and the Department of City Planning allow more time for the community to understand and respond to these plans. As the City's Uniform Land Use Review Procedure imposes a strict timeline for the consideration of applications, we believe that it may be necessary for the Department of City Planning to withdraw the application it submitted this August in order to permit sufficient time for community input.

Indeed, we share the "Principles for a New East Midtown" recently set forth by the Tri-Board Task Force on East Midtown Rezoning. These include: the need for a comprehensive, detailed vision of the public realm improvements which will be completed by the City and developers; a clear preservation plan for potential landmarks within the rezoning area; a special review process for buildings that could disrupt iconic features of New York's skyline such as the Empire State and Chrysler buildings; and careful study of the potential adverse impact this rezoning could have on demand for office space in the City's emergent business districts, including the Hudson Yards and Lower Manhattan as well as downtown Brooklyn and Long Island City.

In the long term, a particularly important component of this plan will be the City's ability to require developers to increase their commitment to environmental sustainability. New York City building codes are among the greenest in the world, but developers that take advantage of the rezoning to build beyond the limits of as-of-right construction must be held to higher standards of design and community contributions. Similarly, they should be expected to create exceptionally sustainable developments, buildings that model best practices over and above what our building codes require.

We are also extremely concerned that the City's current proposal fails to adequately protect the many historically and architecturally important buildings in East Midtown that have not yet been landmarked. There are 21 non-landmarked buildings in the proposed rezoning area that the New York State Historic Preservation Office has determined are eligible for listing on the State and National Registers of Historic Places. The New York Landmarks Conservancy recently completed a survey of the area and found an additional 17 historic buildings that it plans to submit to State Historic Preservation Office for consideration. Of this total group of 38 historically significant buildings identified by the Landmarks Conservancy, 16 have been identified as projected or potential development sites in the scoping document prepared by the Department of City Planning. As the Department of City Planning lays the groundwork for the future of East Midtown, it must ensure that the historically important buildings that add to the community's vibrancy and diversity are preserved.

While we support the concept of encouraging the development of more iconic Class A office buildings in East Midtown, we ask that your office and the Department of City Planning heed the community's request to allow more time for deliberation and consideration of the community's questions and recommendations to ensure that this plan serves the neighborhood, both current and future.

Sincerely,

Carolyn B. Maloney

Dan Quart
Assemblymember

Carolyn Maloney
Congresswoman

Liz Krueger

Brad Hoylman

Liz Krueger
State Senator

Brad Hoylman
State Senator

Attachment H:

State Senator Liz Krueger
State Senator Brad Hoylman

Congresswoman Carolyn B. Maloney

Council Member Daniel R. Garodnick

March 13, 2013

Robert Steel
Deputy Mayor for Economic Development
City Hall
New York, NY 10007

Dear Deputy Mayor Steel:

We write to you regarding the proposed rezoning of East Midtown.

A little more than a year after this proposal was first mentioned in the Mayor's 2012 State of the City address, and with just a month remaining before the project's target certification date, we want to make clear a few fundamental points that will be critical for us before we can even consider this proposal.

First, we need a commitment to infrastructure improvements in the Grand Central neighborhood today, not simply an offer to attempt to start them more than five years in the future. We cannot build a 21st century Midtown with early 20th century infrastructure. If the City is serious about our global position with respect to other world cities, serious infrastructure investment should be at the center of any plan for Midtown.

We should be thinking far more ambitiously about potential infrastructure investments and investigating other sources of funding. The MTA has identified $340 to $465 million in basic improvements (in 2013 dollars) that will be needed – not desired, but needed – over the next ten years. These are particularly critical in light of the projected completion of East Side Access at the end of the decade, which is projected to add approximately 80,000 additional people each day to the Grand Central area's already-overtaxed pedestrian network and subway and intermodal connections. We can work with the City and the MTA to prioritize needed improvements, but the funding and timetable must be predictable, stable, and not substantially dependent on the hope of development and attendant contributions to the proposed District Improvement Fund. Moreover, we believe it is unacceptable for the MTA and the City of New

York to rely on a local rezoning to fund critical capital transit improvements that will benefit (and should be paid for by) the whole region.

Second, in an area as congested as East Midtown, we need a comprehensive public realm plan, which addresses the area's needs block by block. A rezoning plan must result in more walkable and well-designed streets, open spaces, and seamless connections between the buildings and Grand Central. With the exception of closing off several blocks of Vanderbilt Avenue to car traffic, we do not believe that the City has adequately studied these questions. This is of particular importance given the fact that open space on Vanderbilt Avenue is not, and has never been, a priority for the three affected community boards, as the Tri-Board Task Force has reiterated in correspondence with the Department of City Planning.

In many other places across New York City, the Department of Transportation has made improvements to our streets without adding density – most prominently in Times Square. This administration has demonstrated that making streets into open spaces does not necessarily depend on more density, but it does require more planning than what we have seen in this process thus far. Improvements should be district-wide and not confined to a few blocks.

Simply put, there needs to be much more predictability for the public about the benefits of this rezoning proposal. Just as we hope to make it very clear to the development community what they can expect from the new rules, and what their benefits and obligations will be, we need to do the same for the public.

We note and appreciate that the City has brought in experts to analyze and recommend the fair market value of contributions to the District Improvement Fund, but join community members in questioning the study's premise that one market price should be applied across the entire district. Still, we appreciate that expert scrutiny has been brought to bear on the question of valuation, and we believe at minimum that this same level of scrutiny should be brought to the issue of above-grade pedestrian improvements. Additionally, the City should proactively identify public and private spaces where connections to the transit system can be made, and make it clear to developers that these connections, where possible, will be required for new designs.

Finally, in light of the short timeframe that we are operating under, we strongly recommend that you conduct the broadest possible environmental review. That means that it is critical that you study:

1. The environmental impacts of a mixed-use development alternative – one which allows for residential growth in buildings that are permitted additional density.
2. A broader landmarks transfer alternative outside of the Grand Central Subdistrict.
3. Alternative financing structures to the DIB to fund essential transit and streetscape improvements now, when they are needed.
4. An examination of how the City could allocate or raise funds now and be repaid later (ex: an auction, bonding with repayment to the DIB, tax assessment district, etc.).
5. Alternatives to the proposed, single-number set for the DIB price to allow maximum returns to the City with each sale and transparency for each transaction.
6. A special permit requirement for hotels.

7. A longer or shorter sunrise provision.

Let us be extremely clear: we will reject any proposal that we feel does not adequately address the infrastructure and public realm needs of the area. These are complicated issues that will take decades to come to fruition, and we are not operating on a 2013 timetable.

We look forward to continued discussions.

Sincerely,

Council Member Daniel R. Garodnick

Congresswoman Carolyn B. Maloney

State Senator Liz Krueger

State Senator Brad Hoylman

Attachment I:

New York City Transit Riders Council
NYPIRG Straphangers Campaign
Riders Alliance
Transportation Alternatives
Tri-State Transportation Campaign

March 29, 2013

Hon. Michael Bloomberg
Mayor
City of New York
City Hall
New York, New York 10007

Hon. Fernando Ferrer
Acting Chairman
Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017

Dear Mayor Bloomberg and Chairman Ferrer:

We are writing you to express several of our views about the transportation aspects of the proposal to rezone the East Side of Manhattan:

Riders and pedestrians in the Grand Central area are already suffering intolerable crowding on local subway stations and city streets. For example, the Lexington Avenue line (4, 5 and 6 trains) operates at 116% of capacity during the rush hour. Amazingly, the three routes carry 1.3 million people, nearly one-third of all daily riders in the MTA system.

Long dwell times – caused by crowding – reduce the entire Lexington Avenue line capacity. During the AM peak, only 26 of 29 scheduled trains get through the Grand Central subway station.

Riders don't need these statistics to understand these problems. Anyone who regularly uses the Grand Central subway station or walks in the area knows these conditions from bitter daily experience.

Crowding should be addressed in the very near future. For example, the MTA should proceed as quickly as possible on its delayed capital project to build a new entrance to the Grand Central subway station.

The narrative for the project **–** identified as T6041405 in the MTA's current 2010 - 2014 capital plan – reads like music to the harried midtown Lexington Avenue subway-area ride: "This project will provide improved access at Grand Central Station on the IRT Lexington Avenue Line located in the borough of Manhattan. Work will include the installation of an additional stair on the west side of the 42nd Street entrance, platform improvements and improvements to a fare control area."

Spending on that project was to have been completed this year. But the MTA now says: "The schedule has been delayed to allow for additional time to review alternatives and address constructability issues."

The proposed funding method to accommodate the rezoning is too uncertain and unproven, and will unnecessarily put off desperately needed subway and street improvements. These vital fixes should be made now and in the near future, rather than waiting for developers to begin projects. Great transit helped make New York City's premier business district what it is today; building the needed subway, bus and pedestrian repairs and improvements are critical to the midtown CBD's future.

The MTA has identified $340 to $465 million in basic improvements needed over the next ten years. Our groups strongly agree with the views of area officials, who wrote in a March 13th letter to Deputy Mayor Robert Steel: "The funding and timetable [for transit and pedestrian projects] must be predictable, stable, and not substantially dependent on the hope of development and attendant contributions of the proposed District Improvement Fund."

Several of our groups are also concerned that the proposed "DIF committee" – charged with identifying and prioritizing projects – does not include a representative of the Metropolitan Transportation Authority.

We appreciate your consideration of our views.

Sincerely yours,

Andrew Albert
Chair
NYC Transit Riders Council

Gene Russianoff
Senior Attorney
NYPIRG Straphangers Campaign

John Raskin
Executive Director
Riders Alliance

Paul Steely White
Executive Director
Transportation Alternatives

Ryan Lynch
Associate Director
Tri-State Transportation Campaign

CC:
Hon. Robert K. Steel, Deputy Mayor for Economic Development
Hon. Amanda M. Burden, Chair, Department of City Planning
Mr. Stephen J. Morello, Counselor to the MTA Chairman and CEO

Attachment J:

HISTORIC DISTRICTS COUNCIL

THE NEW YORK LANDMARKS CONSERVANCY

The Municipal Art Society of New York
MASNYC

April 29, 2013

Honorable Robert B. Tierney
Landmarks Preservation Commission
One Centre Street, Ninth Floor North
New York, NY 10007

Re: Midtown East

Dear Chair Tierney:

We are pleased that the Commission has identified 32 buildings as potential landmarks as part of the City's Midtown East Zoning proposal.

While our organizations individually submitted numerous buildings for landmark consideration that do not appear on your list, we feel strongly that the Landmarks Preservation Commission should move swiftly on those buildings that the agency has identified.

As you are aware, the owners of the former Hoffman Auto Showroom at 430 Park Avenue, a property in the project area destroyed it after they were alerted to LPC's interest in designation. We have just received notice that another building noted in your list, the American Encaustic Tile Company building at 16 East 41st Street, is having its façade stripped. Given the extreme development expectations that the proposed rezoning places upon the buildings in the area, we urge LPC to act quickly to protect these buildings by calendaring them as soon as possible.

We would greatly appreciate an opportunity to discuss preservation strategies in this important area in greater detail. We will call your office shortly to see if we can schedule a meeting.

Sincerely,

Simeon Bankoff
Executive Director
Historic Districts Council

Peg Breen
President,
New York Landmarks Conservancy

Vin Cipolla
President,
Municipal Art Society

One Whitehall Street, New York NY 10004
tel 212.995.5260 fax 212.995.5268 nylandmarks.org

Attachment K:

CHARLES E. SCHUMER
NEW YORK

United States Senate
WASHINGTON, DC 20510

COMMITTEES:
BANKING
FINANCE
JUDICIARY
RULES

Robert K. Steel
Deputy Mayor for Economic Development
Office of Operations
253 Broadway
10th Floor
New York, NY 10007

May 6, 2013

Dear Deputy Mayor Steel:

I write to offer my support for the needed rezoning of Midtown East and ask that key provisions regarding transportation infrastructure and landmark intuitions are incorporated in the plan. I applaud Mayor Bloomberg's and the City of New York's vision to recognize that New York is an ever-evolving, ever-expanding city that must adapt and grow to stay competitive. Commercial office buildings are the factories of the twenty-first century and we must allow them to modernize and meet the need of today's – and even more importantly, tomorrow's – workers.

Midtown East is one of the preeminent business districts in the world. Seventy million square feet of office space is home to headquarters of fourteen Fortune 500 companies and houses a quarter of a million jobs. This is the greatest density of such companies in the US and one of the greatest in the world. It is one of New York's most storied and oldest commercial districts.

Unfortunately, in the world of commercial office space old is usually not a good thing. Right now, the average age of a Midtown commercial building is 73 years. In comparison, the average age of London office buildings is 43 years. Future development of this aging building stock is constrained by zoning restrictions that limit the construction of new buildings with modern amenities, such as fully wired broadband, column-free floors, greater floor-to ceiling heights and energy-efficient features needed to attract world-class tenants. These issues strike at the heart of Midtown's competitiveness and the Bloomberg Administration's rezoning plan is a proactive way to keep this key district as a place where businesses want to locate.

Midtown East's status as a world-class business district not only relies on world class office-buildings but, as with any business district, the ability of surrounding transportation infrastructure to move people in-and-out and of the district. In the case of Midtown East, there's no question that Grand Central Station, one of the world's greatest transportation hubs, provided the core for development in the district years ago. Currently, massive transportation investments are being made to move even more workers to and from the district, making it a prime target for rezoning. At Grand Central, East Side Access will finally create a much-needed link between the Long Island Railroad and the East Side of Manhattan and it is expected these new tunnels will serve 179,000 daily commuters. On the Upper East Side, the first phase of the 2nd Avenue subway that will reduce overcrowding on the Lexington Avenue line and is projected by the MTA to carry over 200,000 weekday riders is expected to be completed by 2016. To its credit, the Bloomberg Administration had the vision to see that this added transportation capacity be followed by new office capacity.

Midtown East's increasing capacity to move people makes it a prime candidate for rezoning, however more must be done to support and expand infrastructure, particularly pedestrian and commuter upgrades, prior to and concurrent with adding new office density. As someone who has championed game changing transportation projects like East Side Access, 2nd Avenue Subway and the 7 Line Extension, I recognize the need to continue infrastructure upgrades. Currently, Grand Central faces severe overcrowding in the passageways, stairways and escalators. Exiting from the Grand Central subway platform of the Lexington 4/5/6 lines to the street level during rush hour can be a time-consuming challenge. Improvements to platforms, stairways, passageways and escalators need to be made at Grand Central and other stations in the district (the 4/5/6 at 51st, the E/M at 53rd, the E/M at 5th Ave and 53rd). At grade level, street and sidewalk improvements to relieve congestion and crowding at intersections, especially along Lexington Ave, and new open spaces that don't negatively affect pedestrian flow or building operations are also needed.

The current rezoning plan includes a District Improvement Fund (DIF) that will provide funding for infrastructure upgrades paid for by the purchase of air rights from the City. Privately financed infrastructure improvements are a thoughtful and welcome plan, however the problem is timing. Since the DIF is funded by the sale of air rights to private developers, these needed upgrades would not get funded until new buildings were already rising – meaning more workers without adequate upgrades. We simply can't wait for funding from new buildings to start making needed infrastructure improvements. Instead the reverse must occur – begin investing in infrastructure improvements now so we are prepared for bigger buildings and more workers in the future. A number of potential sources for raising revenue sooner should be examined. Bonding, specifically against the District Improvement Fund, is one example source. Why not bond against the future fund of private revenue to raise the resource before buildings go up? Another option would be charging a transfer fee on the sale of air rights that would also allow for bonding. As always, I am open to other well-grounded financing ideas, as well as using this new source of revenue to leverage more federal resources. These are some options worth exploring to provide up front funding for infrastructure upgrades that the increase density of rezoning demands. Making sure some of these needed transportation upgrades are done prior to new buildings opening is the key to making this plan a success.

The rezoning plan should also reexamine its treatment of all landmark institutions in the district, such as St. Patrick's Cathedral, St. Bart's Church, Central Synagogue and Lever House, among others. The current plan does not provide specific provisions for these institutions and therefore they are put at a competitive disadvantage with the other two entities that can sell air rights, the City via the DIF and Grand Central. There are two points that would improve their competitiveness:

> 1 – Allow landmarks to transfer air rights within a greater geographic area, as Grand Central is allowed with the Grand Central subdistrict. Currently landmarks would only be able to transfer to a development site immediately adjacent to the institution. In the case of St. Patrick's, there would be no opportunity to sell air rights as they are surrounded by sites – Rockefeller Center, Saks Department Store, New York Palace Hotel – which are landmarked themselves or have no requirements for additional space. Transfer of development rights within a larger geographic zone is not unprecedented. Similar zones have been created not just for Grand Central, but also the Theater District, South Street Seaport and the High Line Districts.
>
> 2 – Allow air rights purchased from landmarks in the East Midtown District to be utilized in the same manner as DIF or Grand Central air rights, requiring a special permit only for 'Superior Development'

above the 'Earned as of Right' FAR limits. All air rights purchased from landmarks currently require a special permit to allow them to be transferred more broadly.

These changes would adequately support existing landmarks in the district, which, in turn, is a substantial public benefit. There has also been discussion about landmarking additional buildings in the district, including the Yale Club, among others. Before moving forward there should be a second look at existing buildings in the district so we are sure to preserve those deserving.

With these changes, this can be the plan Midtown needs. New York is a city that is ever evolving and we must always reinvent ourselves. While we are working so hard on improving current infrastructure and opening Midtown up to so many more commuters, it naturally follows that commercial real estate stock should also be given the chance to modernize and move New York forward.

Sincerely,

Charles Schumer

Charles E. Schumer
United States Senate

[79]

Attachment L:

[80]

JPMORGAN CHASE & CO.

William C. Viets
Managing Director
Global Head of Transactions
Global Real Estate

June 12, 2013

Lola Finkelstein, Chair
Multi-Board Task Force on East Midtown
450 Seventh Avenue
Suite 2109
New York, NY 10123

Dear Ms. Lola Finkelstein,

Thank you for the opportunity to raise before the Multi-Board Task Force on East Midtown JPMorgan Chase's concerns with respect to the treatment of matters affecting it in the Draft Environmental Impact Statement (DEIS) and Uniform Land Use Review (ULURP) application issued by the New York City Department of City Planning regarding the East Midtown Rezoning and Related Actions project.

It is axiomatic that a closure of Vanderbilt Avenue to vehicular traffic and the creation of a pedestrian mall will have a significant impact on the immediate and surrounding areas, the safety and security of those who work in Vanderbilt Avenue buildings, and potentially the general public that uses Grand Central Terminal. While the intent to affect this closure is plainly a key element of the East Midtown Rezoning plan, the impacts of such a closure are neither disclosed nor studied in the DEIS because the City has positioned the City Map amendment designating Vanderbilt Avenue a "Public Place" as something the City "may" do in the future.

JPMorgan Chase submits that the Vanderbilt Avenue conversion to a pedestrian mall is not something that can properly be viewed in isolation at a later time and is clearly a key part of the overall scheme and its impacts, individually and synergistically with the other impacts of the rezoning plan, and should be disclosed and fully studied in the DEIS.

JPMorgan has one major office building, 383 Madison Avenue, on Vanderbilt Avenue, as well as its headquarters at 270 Park Avenue, which abuts the northern terminus of Vanderbilt Avenue. Even today, without the impacts of the rezoning, the traffic on 47th Street between Madison Avenue and Park Avenue (which is adjacent to both buildings) is highly congested. This is compounded by the MTA claiming one lane for a cement pouring station for the Eastside access project. Vanderbilt Avenue runs the length of the west side of Grand Central Terminal, which the DEIS characterizes as one of New York City's busiest transportation hubs (about to be more so with the Eastside access), and provides an access route for emergency vehicles and the Fire and Police Departments which is not only critical on a day-to-day basis, but would be essential in the event of a major emergency or terrorist attack.

NY1-R065, 237 Park Avenue - Floor 12, New York, New York 10017-3140
Telephone +1 212 648 1076 Mobile +1 203 610 3031 bill.viets@jpmorgan.com

JPMorgan Chase Bank, N.A.

Between the two properties referenced above, JPMorgan Chase has over 12,000 employees. JPMorgan Chase is very concerned about the safety and security of its employees in an already access constrained environment. The DEIS should provide information to assess these concerns, such as the impact on emergency response times, traffic impacts or other impacts to this environment. The lack of analysis in the DEIS is particularly concerning because our security consultants suspect that emergency response times will be materially impacted. Moreover, the failure to study the impact of a fundamental element of the City's plan by relegating it to the future is counter to the very object of the ULURP process and DEIS report which is structured to holistically view and assess the impacts of a major project.

JPMorgan Chase also takes issue with the identification and discussion in the DEIS of its headquarters building at 270 Park Avenue as a historical resource. Not only is the DEIS erroneous as to the current state of the building and site, but fails to undertake any meaningful analysis which, if conducted, would demonstrate that the building is not appropriate for consideration as a landmark. The building should remain the productive, efficient and secure office facility that JPMorgan Chase has made it and allowed to change and adapt as the business and security environment in Midtown East evolves.

The very features of the building which the DEIS cites in support of its view of the property as a historical resource, in fact no longer exist. First, it talks about an arcade which formerly existed and extended from 47th Street to 48th Street. That arcade was enclosed in a renovation. Second, it cites the setback of the property from Park Avenue to "create a plaza." There have been material changes to the property brought about by security concerns which have essentially eliminated any plaza. Indeed, the open concept of the lower-level of the building, including the plaza, the arcade and a recess of the first floor glazing have all been eliminated by renovations to the property. The DEIS even cites "bright red paneling" on the lower level of the building, a feature which was eliminated years ago.

Thus, the DEIS fails to take account of the significant changes that have been made to this building over time. That is just part of the lack of meaningful analysis. The DEIS should have taken into account the following factors before forming a view of the property as a historical resource.

- The loss of significant design integrity in the nearly total redesign of the site, changes to the building form, both exterior and interior and removal of an important building material;
- The derivative character of the design and its lesser importance in the architect's career - it's design is derivative of the Seagram Building and Lever House, both of which are already landmarks;
- Its historical position after the critical era of Skidmore, Owings & Merrill's work and skyscraper development;
- The general lack of acclaim or professional recognition for the design and generally negative and even hostile views of historians and critics.

JPMorgan Chase has invested a significant amount of capital and time to develop 270 Park Avenue into a first class, modern, efficient and secure workplace. This renovation earned the building LEED Platinum recognition as the largest renovation project to date. JPMorgan Chase should be free to continue to utilize and adapt this asset free of constraints which are plainly unwarranted.

As one of the largest private employers in New York City, employing nearly 30,000 people in New York City, 15,000 who are located in Midtown East in our global headquarters as well as other locations, and serving over 4,000,000 customers, our firm is invested in the betterment of New York City. We appreciate the consideration of Community Boards One, Four, Five and Six on this matter.

Sincerely,

William C. Viets
Managing Director
JPMorgan Chase Bank, N.A.

cc: David Arena, Global Head of Real Estate, JPMorgan Chase Bank, N.A.
Karen Keogh, Director of State and Government Relations, JPMorgan Chase Bank, N.A.
Michael Regan, Global Head of Security, JPMorgan Chase Bank, N.A.

Borough Board Recommendation

City Planning Commission
22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application: **C 130248 ZMM and N 130247 ZRY**

Docket Description:

(C 130248 ZMM) In the Matter of an application submitted by the New York City Department of City Planning pursuant to Section 197-c of the New York City Charter for the amendment of the Zoning Map, Section No. 8d:

1. change from a C5-2 to a C5-2.5 District property bounded by East 43rd Street, a line 100 feet Westerly of Second Avenue, a line midway between East 43rd Street and East 42nd Street, and a line 200 feet easterly of Third Avenue;
2. changing from a c5-2 to a C5-3 District property bounded by East 43rd Street, Second Avenue, East 42nd Street, a line 200 feet easterly of Third Avenue, a line midway between East 43rd Street and East 42nd Street, and a line 100 feet westerly of Second Avenue; and
3. establishing a Special midtown District (MiD) bounded by East 43rd Street, Second Avenue, East 42nd Street, and a line 200 feet easterly of Third Avenue;

Borough of Manhattan, Community Districts 5 and 6.

(N 130247 ZRY) In the Matter of a text amendment to the Zoning Resolution submitted by the New York City Department of City Planning pursuant to Section 200 and 201 of the New York City Charter to establish a New East Midtown Subdistrict through the modification of Section 81-00 (inclusive), 81-20 (inclusive) and 81-60 (inclusive)

COMMUNITY BOARD NO: 5 and 6 BOROUGH: Manhattan

RECOMMENDATION

☐ APPROVE

☐ APPROVE WITH MODIFICATIONS/CONDITIONS (List below)

☐ DISAPPROVE

☒ DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

16 Approved 1 Disapproved 1 Abstain — Present but not voting

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached Resolution

CHAIRPERSON OF BOROUGH BOARD

7-18-13
DATE

THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

MANHATTAN BOROUGH BOARD RESOLUTION
REGARDING EAST MIDTOWN REZONING

WHEREAS, The Department of City Planning seeks a zoning text amendment (N 130247 ZRM) and a zoning map amendment (C 130248 ZMM), which would alter the zoning regulations for over 70 blocks surrounding Grand Central Terminal in East Midtown, located within the boundaries of Community Boards 5 and 6, in the Borough of Manhattan; and

WHEREAS, The City intends to preserve and enhance East Midtown's competitiveness in the growing global economy by permitting greater densities that encourage redevelopment of new, world-class office space; and

WHEREAS, Community Boards 1, 2, 4, 7, and 8 have determined that their districts are also affected by the rezoning pursuant to New York City Charter section 197-C(m); and

WHEREAS, When multiple community boards are impacted by a zoning action, the Manhattan Borough Board is empowered to issue a recommendation to the Department of City Planning pursuant to New York City Charter section 197-C(f); and

WHEREAS, As part of a multi-board taskforce, Community Boards 1, 4, 5, and 6 produced an 80-page document outlining in detail specific issues with the proposed rezoning, focusing in particular on infrastructure, urban design and bulk rules, the public realm, use regulations, landmarks, citywide planning, the Draft Environmental Impact Statement (DEIS), and energy standards; and

WHEREAS, While several community boards passed identical resolutions, other community boards focused on individual issues or specific recommendations; and

WHEREAS, Several boards expressed a general agreement with the goals of the multi-board resolution, but desire further careful study; and

WHEREAS, The Manhattan Borough Board remains committed to improving our city's transit infrastructure; and

WHEREAS, Several impacted community boards have expressed that these new "qualifying" buildings, which will be the largest buildings in Midtown, should not be able to entirely bypass the process of public review; and

WHEREAS, The impacted community boards have expressed concern that the proposed rezoning relies entirely on the speculative possibility of future payments into a District Improvement Fund (DIF) to finance critical infrastructure upgrades and improvements that are known and needed today; and

MUNICIPAL BUILDING ❖ 1 CENTRE STREET ❖ NEW YORK, NY 10007
PHONE (212) 669-8300 FAX (212) 669-4305
www.mbpo.org bp@manhattanbp.org

WHEREAS, If a DIF is created as a supplementary revenue source it needs to include an appraisal process for development rights to ensure market pricing and to include a floor which increases over time; and

WHEREAS, The impacted community boards have raised concern that the proposed DIF Committee of five mayoral appointees is not representative of various public interests; and

WHEREAS, East Midtown is one of the densest areas in New York City with a transit hub - Grand Central Terminal - that is currently over capacity; and

WHEREAS, The proposed rezoning would allow owners of qualifying sites to demolish current structures in order to rebuild to a higher Floor Area Ratio; and

WHEREAS, The impacted community boards have expressed concern that the proposed rezoning seeks to add density and with it, a sizable population of new workers, with the prospect of future transit improvements being made only after the addition of said density; and

WHEREAS, The impacted community boards have expressed concern over adding additional density to the affected streets; and

WHEREAS, The impacted community boards view the proposed improvements to the public realm associated with this rezoning to be vague and insufficient in details of how, what, and when improvements will be made; and

WHEREAS, The impacted community boards expressed concern that while the zoning regulations are designed to ensure that new buildings will be models of sustainable development, building code and environmental guidelines included in this proposal do not reflect the highest standards; and

WHEREAS, Several eligible landmarks lie within the rezoning area and are:

1) either projected or potential development sites at risk of demolition, or
2) may unduly face increased competition for the sale of air rights as a result of the what the impacted community boards view as an underpriced District Improvement Bonus (DIB); and

WHEREAS, Several impacted community boards expressed concern regarding the sunrise provision and use provisions; and

WHEREAS, Several impacted community boards have expressed concern that by encouraging new development in East Midtown, the City may hinder the significant investments it has made in other office districts including Hudson Yards and Lower Manhattan; and

WHEREAS, Nothing in this resolution is intended to supplant or supersede any individual resolution or opinion by an affected community board and each affected community board retains the right to advocate for its own individual priorities; and

WHEREAS, Some members of the Borough Board will issue recommendations or vote on the proposed actions after this resolution is issued and therefore reserve the right to elaborate, refine, or resolve any issues raised here or as may come up in the due course of review;

THEREFORE, the Manhattan Borough Board recommends disapproval of zoning text amendment (N 130247 ZRM) and a zoning map amendment (C 130248 ZMM) unless remaining unresolved issues related to infrastructure, urban design and bulk rules, the public realm, use regulations, landmarks, citywide planning concerns, the DEIS, and energy standards are satisfactorily addressed by the City.

Statement of Jerome Haims Realty Inc.
to the New York City Planning Commission
Regarding the East Midtown Rezoning
August 7, 2013

I am Jerome Haims, the President of Jerome Haims Realty. I've prepared an appraisal of the East Midtown Rezoning's commercial Transferable Development Rights associated with the East Midtown rezoning proposal.

In addition to the appraisal, I've prepared a letter explaining why our appraisal shows a value of between $400 per square foot and $445 per square foot, rather than the $250 per square foot proposed by Landauer Valuation & Advisory that has been incorporated in the proposed zoning text.

I believe there are three reasons for the different values. **First,** we have made a clear distinction between the higher potential value of floating air rights versus non floating air rights relative to underlying land values. Landauer's appraisal ignores this distinction, suggesting that the subject floating air rights should be valued at 60% of underlying land values. In our appraisal, we document a value for floating air rights which is 80% of the underlying land values.

Second, to establish land values we have focused on commercial land sales no more than 4 years old. The Landauer appraisal was based on commercial sales that were up to 16 years old. Not surprisingly, the sales over 10 years old averaged under $300 psf, while the sales less than 10 years old averaged over $500 psf.

Third, we do not believe a single value adequately represents the true value of floating development rights for receiving sites spread over 70 blocks in Midtown. The values we have assigned range from $445 psf along Park Avenue to $400 psf in the areas farthest east.

In the simplest form, our appraisal multiplies a land value of $500 per square foot times 80% to come up with a value of $400 per square foot, which we adjust up slightly for the better locations. The Landauer appraisal uses a land value of $410 per square foot times 60% to come up with a value of $250 per square foot for the entire subdistrict.

PROPOSED EAST MIDTOWN SUBDISTRICT

DISTRICT IMPROVEMENT FUND BONUS TDRS

NEW YORK, NEW YORK

Prepared for

Midtown Trackage Ventures LLC
551 Fifth Avenue, 34th Floor
New York, New York 10176

Prepared by

JEROME HAIMS REALTY, INC.
630 Third Avenue, 22nd Floor
New York, New York 10017

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

July 23, 2013

Midtown Trackage Ventures LLC
551 Fifth Avenue, 34th Floor
New York, New York 10176

Re: District Improvement Fund
Bonus TDRs For the Proposed
East Midtown Subdistrict
(Of the Special Midtown District)

To Whom It May Concern:

We are submitting this letter in connection the commercial transferable development rights (TDRs) associated with the District Improvement Bonus mechanism of the proposed East Midtown rezoning. This letter is intended to accompany our July 23, 2013, appraisal in which we opine as to the reasonable and appropriate average contribution rates, or market values, of the proposed East Midtown Rezoning's District Improvement Bonus (DIB) commercial Transferable Development Rights (TDRs) to be sold by the City to commercial use developers within the proposed East Midtown Subdistrict. The DIB TDRs are comparable to "floating" development rights in that they may be used on any qualifying site in the Subdistrict.

The City's stated goal has been to set the DIB contribution rate at a level that reflects the market for commercial transferrable development rights in the East Midtown Subdistrict. To determine the price of these rights, the City commissioned a development rights valuation study from Landauer Valuation & Advisory ("Landauer"), a subsidiary of Newmark Grubb Knight Frank. The City has tentatively established a contribution rate of $250 per square foot for the DIB TDRs based on the Landauer valuation study (with a valuation as of December 2012). This rate represents a generic overall average that would be applicable regardless of the location of the receiver site for the DIB TDRs.

In contrast, our opinions of the average values of the East Midtown DIB commercial transferable development rights, as of July 1, 2013, are:

VALUATION SUMMARY

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

We have carefully reviewed the February 28, 2013, Landauer Report and we disagree with the analyses and opinions reported therein. We are of the opinion that Landauer has understated the market value of TDRs located within the Subdistrict.

In this letter, we aim to summarize the reasons for the differences between our opinions of value and Landauer's valuation of the DIB TDRs.

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

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

Direct Approach

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

- Landauer presents five TDR sales that occurred between 1997 and year-end 2012. The TDR sales selected by Landauer actually transpired between 1997 and 2008. The TDR sales in Landauer's valuation are simply too old to produce a reliable and realistic opinion of a contemporary market value of the DIB TDRs.

- Landauer's TDR sales are limited to development rights that were specifically acquired for commercial office use development. This restriction is not necessary when there are many more recent TDR sales that involved development rights in zoning districts which permit commercial office use, as well as other commercial uses (such as hotel and retail) and residential uses. Landauer should have considered such sales.

- Landauer fails to make adjustments to the TDR sales (except for time) to account for differences in location. East Midtown is Manhattan's premier Central Business District environment with distinct subareas (as the proposed zoning itself acknowledges by defining these areas and establishing different rules for each). The differences in these subareas must be reflected in the valuation of the DIB TDRs.

- Landauer's TDR sales reflect TDR discounting that is typical for zoning lot merger TDRs transfers. It is crucial to distinguish TDRs sold via a zoning lot merger from TDRs sold as "floating" TDRs. Typical TDR transfers are achieved through zoning lot mergers, where the donor site must be contiguous (for at least 10 feet) with the receiver site for the TDRs. When TDRs are sold though a zoning lot merger, the number of potential buyers is severely limited and the bargaining power of the seller is weak. Thus the value of the TDRs is artificially depressed. Landauer only considers TDR sales that involved a zoning lot merger. Therefore, Landauer's TDR sales are not comparable to the DIB TDRs.

Despite being inapplicable, Landauer's Direct Approach valuation lacks adequate data and analysis to be relied upon.

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

- Landauer fails to utilize recent land sales to arrive at a reliable conclusion of value for development land in the Subdistrict. This is the result of Landauer limiting their sales selection to development sites that were specifically purchased for commercial office use. Landauer should have considered more recent sales of sites that are zoned to permit commercial office use, as well as other commercial uses (such as hotel and retail) and residential uses.

- Landauer also fails to recognize the various subareas within the district and the differences in land values that each subarea could command. The East Midtown Subdistrict is actually a diverse commercial neighborhood with unique areas (as evidenced by the City's division of the Subdistrict into subareas). It is unrealistic for Landauer to assign a generic unit land value to the entire Subdistrict.

- Landauer presents two sets of comparable land sales. The first set is comprised of sales within the East Midtown Subdistrict and the second set is comprised of sales outside the East Midtown Subdistrict. The most recent sale occurred in November 2011. The next most recent sale occurred in March 2007. The rest of the comparable land sales occurred across a very wide timeframe of 1997 to 2007. Landauer's use of very old sales, despite their best effort to adjust for changing market conditions (or time), results in a questionable and unreliable valuation. In contrast, the comparable land sales in our appraisal transpired between 2010 and 2012. Therefore, our valuation is more indicative of current market realities.

Midtown Trackage Ventures LLC
Re: **East Midtown Subdistrict TDRs**
New York, New York 4.

- The most significant flaw in Landauer's Indirect Approach valuation is in their opinion of the TDRs to fee land value ratio. Landauer concludes that TDRs should be valued at 60% of the value of the receiving site fee land. That ratio is largely representative of ratios achieved for TDRs acquired via a zoning lot merger. Acquisition of TDRs via a zoning lot merger is not the same as the acquisition of "floating" TDRs, like the East Midtown DIB TDRs. Zoning lot mergers typically include only one buyer. As such, that buyer has significant bargaining leverage and, therefore, the price paid for TDRs is at a significant discount to the fee land value of the receiver site. Floating TDRs have a multitude of potential buyers and are not restricted to an adjacent receiver site. Therefore, floating TDRs can achieve, and where they are permitted have achieved, prices at a lesser discount to the fee land value of the receiver site.

  In our appraisal, we demonstrate how an 80% ratio is appropriate for the valuation of floating development rights.

- Landauer supports their $250.00 per square foot conclusion of value for the East Midtown DIB TDRs via the Indirect Approach by developing two separate value indications. The first value indication is based on the time adjusted average fee land sales price based on the comparable land sales within the East Midtown Subdistrict ($504.00 per square foot of FAR) and a 60% TDR to fee land value ratio. The indicated value of the TDRs is $302.40 per square foot of FAR.

  $504.00/sq.ft. of FAR x 0.60 = $302.40/sq.ft. of FAR

  The second value indication is based on the time adjusted average fee land sales price based on the comparable land sales outside the East Midtown Subdistrict ($351.25 per square foot of FAR) and a 60% TDR to fee land value ratio. The indicated value of the TDRs is $210.75 per square foot of FAR.

  $351.25/sq.ft. of FAR x 0.60 = $210.75/sq.ft. of FAR

  Landauer reconciles these two value indications to support their ultimate $250.00/sq.ft. of FAR conclusion of value for the East Midtown DIB TDRs.

  Despite the use of a TDR to land value ratio that is too low, it is evident that the value indication based on land sales outside the Subdistrict lead Landauer to understate the value of the DIB TDRs. There is no need to consider the value indication from land sales outside the Subdistrict, especially when those land sales are obviously much lower than land sales within the Subdistrict.

  Landauer should only consider the $302.40/sq.ft. of FAR indication of value via the Indirect Approach.

JEROME **HAIMS** REALTY, **INC.**

Midtown Trackage Ventures LLC
Re: **East Midtown Subdistrict TDRs**
New York, New York **5.**

- The average land value reported by Landauer for sites within the Subdistrict is $504.00 per square foot of FAR. Despite the use of different land sales, we arrive at land values within the district that are within the same realm.

VALUATION SUMMARY				
East Midtown Subarea	**Fee Land Value/SF**	**TDR:Value Ratio**	**TDR Value**	**Rounded**
Grand Central	$520.00	80%	$416.00	$415.00
Park Avenue	$555.00	80%	$444.00	$445.00
Other - West	$535.00	80%	$428.00	$430.00
Other - East	$500.00	80%	$400.00	$400.00

The TDRs to fee land value ratio is the primary factor that differentiates the Landauer valuation from our valuation. If one were to consider both valuations, the two valuations should be reconciled through the TDRs to fee land value ratio. However, Landauer's value indication of $302.40/sq.ft. of FAR is what should be compared and reconciled with our value opinions for the DIB TDRs ranging from $400.00 to $445.00 per square foot of FAR.

In summary, our valuation of the East Midtown DIB TDRs utilizes a higher ratio that correctly reflects the floating nature of the subject TDRs and the various land values of the subareas of the East Midtown Subdistrict based on recent comparable sales that are zoned to permit commercial uses (hotel, office, etc.). In doing so, we believe that we have developed a reliable opinion of market value that reflects current market realities and is more specific to the East Midtown Subdistrict than Landauer's valuation.

Very truly yours,

JEROME HAIMS REALTY, INC.

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

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

JEROME HAIMS REALTY, INC.

APPRAISAL OF DISTRICT IMPROVEMENT FUND BONUS TDRS FOR THE PROPOSED EAST MIDTOWN SUBDISTRICT (OF THE SPECIAL MIDTOWN DISTRICT) NEW YORK, NEW YORK

VALUATION AS OF JULY 1, 2013

Prepared for

Midtown Trackage Ventures LLC
551 Fifth Avenue, 34th Floor
New York, New York 10176

Prepared by

JEROME HAIMS REALTY, INC.
630 Third Avenue, 22nd Floor
New York, New York 10017

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

July 23, 2013

Midtown Trackage Ventures LLC
551 Fifth Avenue, 34th Floor
New York, New York 10176

Re: District Improvement Fund
Bonus TDRs For the Proposed
East Midtown Subdistrict
(Of the Special Midtown District)

To Whom It May Concern:

As requested, we have valued commercial transferable development rights (TDRs) associated with the District Improvement Bonus mechanism of the proposed East Midtown rezoning.

The purpose of this appraisal is to provide our client with an opinion as to the reasonable and appropriate average contribution rates, or market values, of the proposed East Midtown Rezoning's District Improvement Bonus (DIB) commercial Transferable Development Rights (TDRs) to be sold by the City to commercial use developers within the proposed East Midtown Subdistrict. The intended use of the appraisal is for presentation purposes in connection with the public review process of the proposed East Midtown Rezoning. The intended user of the appraisal report is our client, Midtown Trackage Ventures LLC.

The East Midtown Rezoning is a City-sponsored rezoning of a 73-block portion of Midtown Manhattan surrounding Grand Central Terminal. The rezoning area is generally bounded by East 39th Street to the south, East 57th Street to the north, Second and Third Avenues to the east and a line 150 feet east of Fifth Avenue to the west.

The subject of this appraisal is not represented by any specific property in the proposed East Midtown Subdistrict of the Special Midtown District. Rather, our valuation analysis focuses on average potential qualifying development sites that would utilize the District Improvement Fund Bonus of the East Midtown Subdistrict. As such, an inspection of a specific property or group of properties is not relevant to the appraisal problem at hand. Rather, we have inspected the subareas that make up the proposed subdistrict. Our inspections of the subareas occurred on July 1, 2013. The date of value is July 1, 2013.

The subject of this appraisal is comprised of commercial transferable development rights that will be available for purchase by developers of qualifying sites located within the proposed East Midtown Subdistrict through the District Improvement Bonus (DIB) mechanism of the proposed East Midtown Rezoning. The DIB TDRs are comparable to "floating" development rights in that they may be used on any qualifying site in the Subdistrict.

The City's proposed zoning amendment would establish an East Midtown Subdistrict (the "Subdistrict") within the Special Midtown District. This new Subdistrict would supersede and subsume the existing Grand Central Subdistrict. While most existing zoning would remain in place, the amendment would focus new commercial development with the greatest as-of-right densities on large sites with full block frontage on avenues around Grand Central Terminal, with slightly lower densities allowed along the Park Avenue corridor and elsewhere.

In order to encourage appropriate development in different areas of the new Subdistrict, it would be divided into three areas: the Grand Central Subarea, the Park Avenue Subarea, and Other Areas. The "Other" areas are comprised of areas west of the Park Avenue Subarea and areas east of both the Grand Central and Park Avenue subareas.

The City's stated goal has been to set the DIB contribution rate at a level that reflects the market for commercial transferrable development rights in the East Midtown Subdistrict. To determine the price of these rights, the City commissioned a development rights valuation study from Landauer Valuation & Advisory ("Landauer"), a subsidiary of Newmark Grubb Knight Frank. The City has tentatively established a contribution rate of $250 per square foot for the DIB TDRs. This rate represents a generic overall average that would be applicable regardless of the location of the receiver site for the DIB TDRs.

We have carefully reviewed the February 28, 2013, Landauer Report and we disagree with the analyses and opinions reported therein. We are of the opinion that Landauer has understated the market value of TDRs located within the Subdistrict.

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

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

JEROME HAIMS REALTY, INC.

Midtown Trackage Ventures LLC
Re: **East Midtown Subdistrict TDRs**
New York, New York **3.**

For the appraisal problem at hand, we are of the opinion that the Direct Approach is not applicable and that Landauer's use of the Direct Approach results in an unreliable opinion of market value for the East Midtown DIB TDRs. Landauer's Direct Approach valuation has several flaws. The TDR sales included in Landauer's valuation analysis are too old (transpiring between 1997 and 2008), no adjustments are made to the TDR sales (except for time) to account for differences in location, and the TDR sales reflect TDR discounting that is typical for zoning lot merger TDRs transfers. Despite being inapplicable, Landauer's Direct Approach valuation lacks adequate data and analysis.

Landauer's Indirect Approach is also flawed. We believe that the Indirect Approach is most appropriate for the valuation of the East Midtown DIB TDRs. Due to the inextricable connection between the value of the receiver site and the value of the TDRs, a careful analysis of land values in the Subdistrict is warranted. However, Landauer fails to utilize recent land sales to arrive at a reliable conclusion of value for development land in the Subdistrict. Landauer also fails to recognize the various subareas within the district and the differences in land values that each subarea could command. The East Midtown Subdistrict is actually a diverse commercial neighborhood with unique areas (as evidenced by the City's division of the Subdistrict into subareas). It is unrealistic for Landauer to assign a generic unit land value to the entire Subdistrict.

The most significant flaw in Landauer's Indirect Approach valuation is in their opinion of the TDRs to fee land value ratio. Landauer concludes that TDRs should be valued at 60% of the value of the receiving site fee land. That ratio is largely representative of ratios achieved for TDRs acquired via a zoning lot merger. Acquisition of TDRs via a zoning lot merger is not the same as the acquisition of "floating" TDRs, like the East Midtown DIB TDRs. Zoning lot mergers typically include only one buyer. As such, that buyer has significant bargaining leverage and, therefore, the price paid for TDRs is at a significant discount to the fee land value of the receiver site. Floating TDRs have a multitude of potential buyers and are not restricted to an adjacent receiver site. Therefore, floating TDRs can achieve, and where they are permitted have achieved, prices at a lesser discount to the fee land value of the receiver site.

The TDRs to fee land value ratio is the primary factor that differentiates the Landauer valuation from our valuation. If one were to consider both valuations, the two valuations should be reconciled through the TDRs to fee land value ratio.

Our valuation of the East Midtown DIB TDRs utilizes a higher ratio that correctly reflects the floating nature of the subject TDRs and the various land values of the subareas of the East Midtown Subdistrict based on recent comparable sales that are zoned to permit commercial uses (hotel, office, etc.). In doing so, we believe that we have developed a reliable opinion of market value that reflects current market realities and is more specific to the East Midtown Subdistrict than Landauer's valuation.

JEROME HAIMS REALTY, INC.

The appraisal and the report are in complete compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Foundation and the laws of the state of New York. This is considered to be a summary appraisal report. Therefore, all data and analysis not contained herein is located in our work file.

We refer the reader to the "Scope of Work" section of the appraisal report, which includes, but is not limited to: 1) the extent to which the property is identified, 2) the extent to which the tangible property is inspected, 3) the type and extent of data researched, and 4) the type and extent of analyses applied to arrive at opinions or conclusions.

Midtown Trackage Ventures LLC
Re: **East Midtown Subdistrict** TDRs
New York, New York **5.**

Based on the analysis and conclusions presented herein, our opinions of the average values of the East Midtown DIB commercial transferable development rights, as of July 1, 2013, are:

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

We must stress that our opinions of TDR value represent the average value of the TDRs in each Subarea, as of a current point in time. Our average TDR values do not reflect site specific locational characteristics or site-specific issues (including environmental issues) that would affect the value of the DIB TDRs used at a particular site. While it is the intent of the proposed East Midtown Rezoning to provide a "one size fits all" DIB TDR contribution rate, such a singular rate can never accurately reflect market conditions at any given point in time without verification of a receiver site's market value (land value) at the time when the TDRs will actually be purchased. Therefore, the average values presented above would require updating on a regular basis or on a transactional basis.

We are pleased to provide this appraisal report and will be available to respond to any questions pertaining to the data and analysis contained herein.

Very truly yours,

JEROME HAIMS REALTY, INC.

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

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

JEROME HAIMS REALTY, INC.

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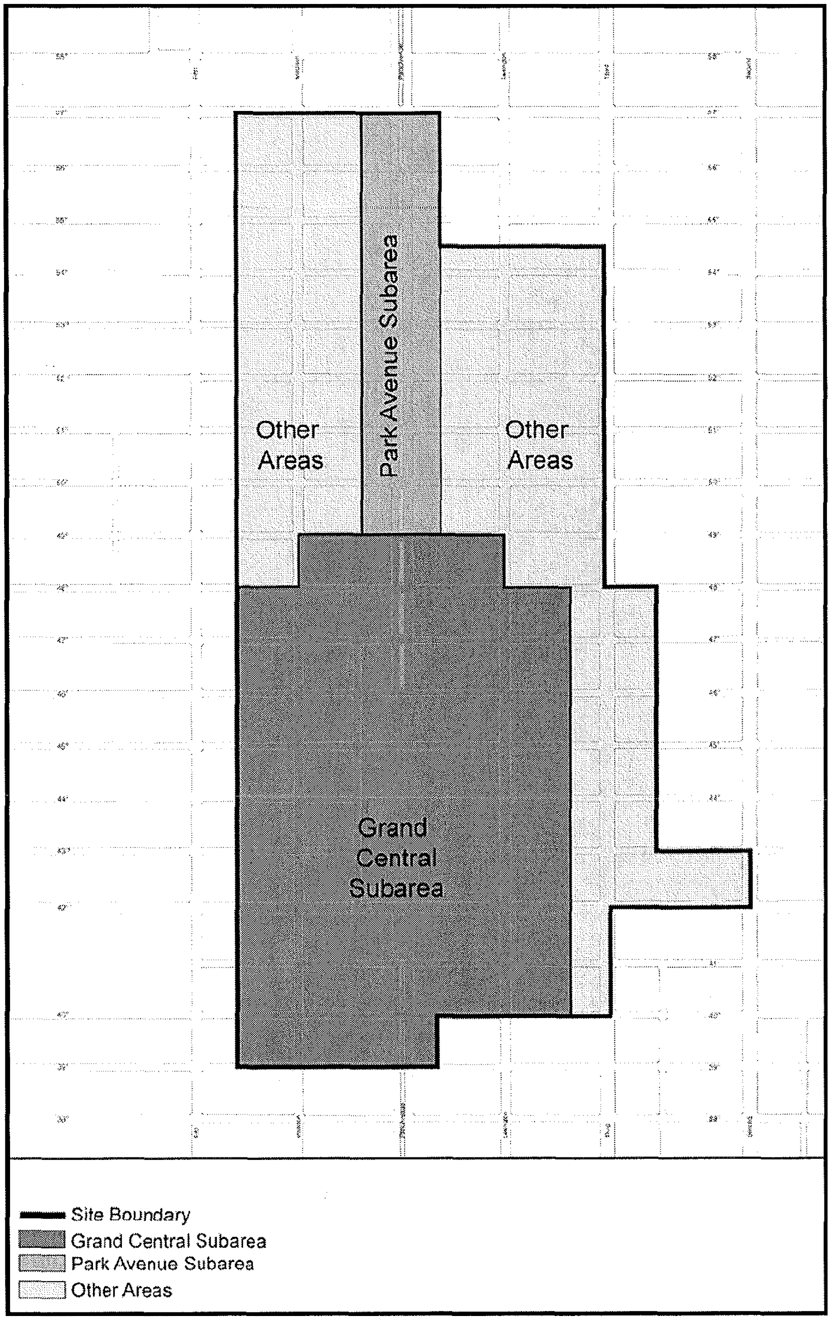


Proposed East Midtown Subdistrict and Subareas

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Description:	The subject of this appraisal is comprised of commercial transferable development rights that will be available for purchase by developers of qualifying sites located within the proposed East Midtown Subdistrict through the District Improvement Bonus (DIB) mechanism of the proposed East Midtown Rezoning. The DIB TDRs are comparable to "floating" transferable development rights in that they may be used on any qualifying site in the Subdistrict.
Location:	The East Midtown Rezoning is a City-sponsored rezoning of a 73-block portion of Midtown Manhattan surrounding Grand Central Terminal. The rezoning area is generally bounded by East 39th Street to the south, East 57th Street to the north, Second and Third Avenues to the east and a line 150 feet east of Fifth Avenue to the west.
Interest Appraised:	Transferable development rights
Effective Date of Appraisal:	July 1, 2013
Inspection Date:	July 1, 2013
Date of Report:	July 23, 2013
Opinions of Market Values:	
Grand Central Subarea:	$415.00 per square foot of FAR
Park Avenue Subarea:	$445.00 per square foot of FAR
Other – West Subarea:	$430.00 per square foot of FAR
Other – East Subarea:	$400.00 per square foot of FAR

UNDERLYING ASSUMPTIONS AND LIMITING AND QUALIFYING CONDITIONS

This appraisal is subject to the following Underlying Assumptions and Qualifying and Limiting Conditions:

1. The appraisal covers the property as described in this report, and the areas and dimensions as shown herein are assumed to be correct.

2. The appraisers have made no survey of the property and assume no responsibility in connection with such matters. Any sketch or identified survey of the property included in this report is only for the purpose of assisting the reader to visualize the property.

3. Responsible ownership and competent management are assumed.

4. No responsibility is assumed for matters involving legal or title considerations.

5. This report has been prepared in accordance with the requirements of the Appraisal Institute.

6. The information identified in this report as being furnished by others is believed to be reliable, but no responsibility for its accuracy is assumed.

7. That the appraisal report will not be utilized in any present or proposed, public or private syndication of any of the interests in the property unless prior written agreement has been obtained from the signatories to this report.

8. The Bylaws and Regulations of the Appraisal Institute require each member and candidate to control the use and distribution of each appraisal report signed by such member or candidate. Therefore, except as hereinafter provided, the party for whom this appraisal report was prepared may distribute copies of this appraisal report, in its entirety, to third parties as may be selected by the party for whom this appraisal report was prepared; however, selected portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report. Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of advertising media, public relations media, news media, sales media or other media for public communication without the prior written consent of the signatories of this appraisal report.

9. The appraisers are authorized by the client to disclose all or any portions of this appraisal report and the related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraisers to comply with the Bylaws and Regulations of the Institute now or hereafter in effect.

10. The appraisers are not required to give testimony or attendance in court by reason of this appraisal unless arrangements have been previously made therefore.

11. Unless stated otherwise, the appraisers have not learned of any asbestos, hazardous waste or toxic material in existence at the subject property. In any event, the appraisers are not qualified to detect such substances and urge that a qualified expert be employed for this procedure. The appraisal and indicated value, therefore, do not consider any costs to correct that may arise from hazardous material continued at the property, unless separately noted herein.

12. Unless stated otherwise in the appraisal, the appraisers have not considered compliance with the requirements of the Americans With Disabilities Act of 1990 (ADA) in the estimate of value in this appraisal. The appraisers are not qualified to determine such compliance and recommend a qualified expert to be employed for this procedure. Failure to comply with the requirements of the ADA, including the costs to cure any non-complying items, can negatively affect the value estimated herein.

IDENTIFICATION OF THE SUBJECT PROPERTY

The subject of this appraisal is comprised of commercial transferable development rights that will be available for purchase by developers of qualifying sites located within the proposed East Midtown Subdistrict through the District Improvement Bonus (DIB) mechanism of the proposed East Midtown Rezoning. The DIB TDRs are comparable to "floating" transferable development rights in that they may be used on any qualifying site in the Subdistrict.

PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to provide our client with an opinion as to the reasonable and appropriate average contribution rates, or market values, of the proposed East Midtown Rezoning's District Improvement Bonus (DIB) commercial Transferable Development Rights (TDRs) to be sold by the City to commercial use developers within the proposed East Midtown Subdistrict.

INTENDED USE AND USER OF THE APPRAISAL REPORT

The intended use of the appraisal is for presentation purposes in connection with the public review process of the proposed East Midtown Rezoning. The intended user of the appraisal report is our client, Midtown Trackage Ventures LLC.

DATE OF REPORT

The date of this summary appraisal report is July 23, 2013.

DATES OF INSPECTION AND VALUE

The subject of this appraisal is not represented by any specific property in the proposed East Midtown Subdistrict of the Special Midtown District. Rather, our valuation analysis focuses on average potential qualifying development sites that would utilize the District Improvement Fund Bonus of the East Midtown Subdistrict. As such, an inspection of a specific property or group of properties is not relevant to the appraisal problem at hand. Rather, we have inspected the subareas that make up the proposed subdistrict. Our inspections of the subareas occurred on July 1, 2013, and involved a tour of the general environs of each subarea. Therefore, the date of value is July 1, 2013.

DEFINITION OF INTEREST APPRAISED

We have appraised a transferable development rights. A Transferable Development Right (TDR) is defined as:

> *"A development right that cannot be used by the landowner, or that the owner chooses not to use, but can be sold to land owners in another location; generally, used to preserve agricultural land; may also be used to preserve historic sites or buildings and open space or to protect scenic features."* [1]

DEFINITION OF FEE SIMPLE ESTATE

Fee Simple Estate as used herein is defined as:

> *"Absolute ownership of real property unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."* [2]

[1] The Dictionary of Real Estate Appraisal, 5th ed., Appraisal Institute, Chicago, Illinois, 2010, page 199
[2] The Dictionary of Real Estate Appraisal, 5th ed., Appraisal Institute, Chicago, Illinois, 2010, page 78

SCOPE OF WORK

According to the Uniform Standards of Professional Appraisal Practice and Advisory Opinions (USPAP), scope of work is defined as "the type and extent of research and analyses in an assignment." The scope of work in this appraisal assignment included:

- An inspection of the East Midtown Subdistrict conducted on July 1, 2013;
- A review of the proposed East Midtown Rezoning (Overview, Background and Existing Conditions, Proposal, and Environmental Impact Study) in order to gather information about the physical and legal characteristics of the properties in the area that are relevant to the valuation problem;
- An analysis of the area's local characteristics and trends as of the date of value, July 1, 2013;
- Research and confirmation of data on sales of commercially-zoned development sites that are located within the Subdistrict and surrounding areas, which have transpired prior to July 1, 2013;
- Application of the Sales Comparison Approach to arrive at an opinion of the market value of a typical receiver site for each of the East Midtown subareas, which involved a comparative analysis of relevant factors that influence value to adjust the comparable land sales information gathered to the likely receiver parcel for the subject transferable development rights based upon the likely actions and preferences demonstrated by participants in the marketplace;
- Application of the Indirect Approach to value TDRs, which involved the application of a TDR value to land value ratio to the average receiver site value, reflecting the likely actions and preferences demonstrated by participants in the marketplace; and
- The reporting of our opinions and conclusions in a summary report format, as requested by our client.

All three traditional approaches to value, the Income Capitalization Approach, the Sales Comparison Approach and the Cost Approach have been investigated. The Sales Comparison Approach has been relied on solely to determine the value of the East Midtown Rezoning's District Improvement Bonus (DIB) TDRs. Since the valuation of unused development rights is based on land value, neither the Cost Approach nor the Income Capitalization Approaches were used to value the subject TDRs. These approaches to value are not typically used to value land or transferable development rights.

DEFINITION OF MARKET VALUE[3]

Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined.

1. The most widely accepted components of market value are incorporated in the following definition: the most probable price that the specified property interest should sell for in a competitive market after a reasonable exposure time, as of a specified date, in cash, or in terms equivalent to cash, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest, and assuming that neither is under duress.

2. Market value is described in the Uniform Standards of Professional Appraisal Practice (USPAP) as follows: A type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal. USPAP also requires that certain items be included in every appraisal report. Among these items, the following are directly related to the definition of market value:

    - Identification of the specific property rights to be appraised.
    - Statement of the effective date of the value opinion.
    - Specification as to whether cash, terms equivalent to cash, or other precisely described financing terms are assumed as the basis of the appraisal.
    - If the appraisal is conditioned upon financing or other terms, specification as to whether the financing or terms are at, below, or above market interest rates and/or contain unusual conditions or incentives. The terms of above- or below-market interest rates and/or other specific incentives must be clearly set forth; their contribution to, or negative influence on, value must be described and estimated; and the market data supporting the opinion of value must be described and explained.

[3] The Dictionary of Real Estate Appraisal, 5th ed., Appraisal Institute, Chicago, Illinois, 2010, pages 122-123

3. The following definition of market value is used by agencies that regulate federally insured financial institutions in the United States: the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus, implicit in this definition is the consummation of a sale of a specified date and the passing of title from seller to buyer under conditions whereby:
   - Buyer and seller are typically motivated;
   - Both parties are well informed or well advised, and acting in what they consider their best interests;
   - A reasonable time is allowed for exposure in the open market;
   - Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
   - The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

4. The International Valuation Standards Council defines *market value* for the purpose of international standards as follows: The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion.

5. Market value is the amount in cash, or on terms reasonably equivalent to each, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

PROPOSED EAST MIDTOWN REZONING

The East Midtown Rezoning is a City-sponsored rezoning of a 73-block portion of Midtown Manhattan surrounding Grand Central Terminal. The rezoning area is generally bounded by East 39th Street to the south, East 57th Street to the north, Second and Third Avenues to the east and a line 150 feet east of Fifth Avenue to the west. The purpose of the rezoning is to ensure the area's future as a world-class central business district and a major employment generator for New York City. The rezoning will provide zoning incentives to promote the development of a handful of new, state-of-the-art commercial buildings over coming decades so that East Midtown's office stock remains attractive to a broad range of businesses, including major corporate tenants. The expectation is that development under the rezoning will expand the City's tax base, add thousands of permanent jobs in East Midtown and fund improvements to the subway and pedestrian network in the area.

The East Midtown Rezoning encompasses certain discretionary actions (a zoning text amendment, a zoning map amendment, and a city map amendment) that are subject to review under the Uniform Land Use Review Procedure (ULURP), as well pursuant to Section 200 of the City Charter.

While East Midtown has performed strongly as an office district, and continues to do so, the City identified a number of long-term challenges that must be addressed in order to ensure that East Midtown remains one of the region's premier job centers. Long-term challenges affecting the East Midtown office district include:

- Aging Office Building Stock
- Limited Recent Office Development
- Pedestrian Network Challenges
- Challenges of Current Zoning

Existing zoning regulations are not appropriate for East Midtown's current needs and may impede the area's continued status as a premier office district. The current zoning for the area is a mix of 15.0 FAR districts with floor area bonuses for public plazas increasing the permitted FAR to 18.0, as-of-right.

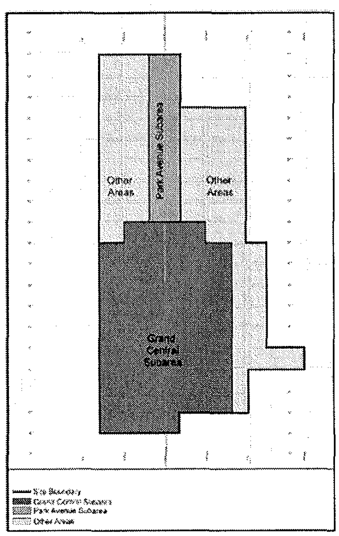
East Midtown Subdistrict TDRs
New York, New York **16.**

In the early 1980s, the City concluded that development in Midtown should be encouraged to the west beyond Sixth Avenue. In 1982, the Special Midtown District was created. Since the adoption of the Special Midtown District, the major change to the zoning regulations of the area was the creation of the Grand Central Subdistrict within the Special Midtown District in 1992 to allow the transfer of development rights from Grand Central Terminal and other area landmarks to surrounding development sites in the vicinity of Grand Central and the creation of an improved pedestrian realm in the area. It has become evident that these bonus mechanisms do not provide enough incentive to replace existing, obsolete buildings with new construction.

The City has proposed a zoning amendment that would establish an East Midtown Subdistrict (the "Subdistrict") within the Special Midtown District. This new Subdistrict would supersede and subsume the existing Grand Central Subdistrict.

The new Subdistrict would be divided into three areas: the Grand Central Subarea, the Park Avenue Subarea, and Other Areas. The "Other" areas are comprised of areas west of the Park Avenue Subarea and areas east of both the Grand Central and Park Avenue subareas.

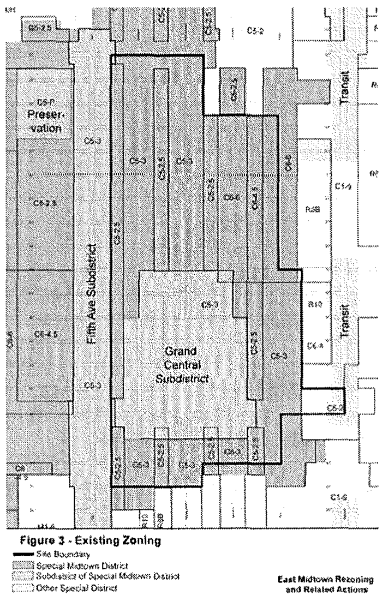
<u>Proposed East Midtown Subareas</u>

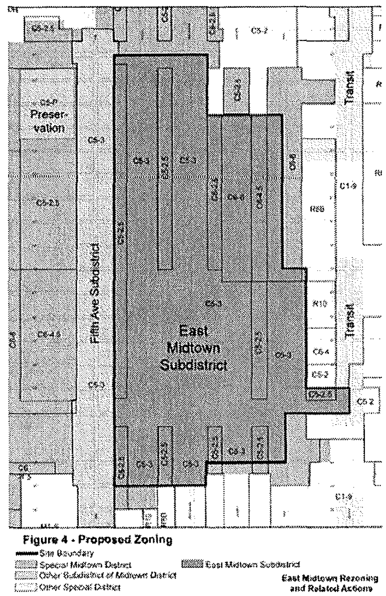


Source: NYC Department of City Planning

East Midtown Subdistrict TDRs
New York, New York **17.**

Existing Zoning **Proposed Zoning**





Source: NYC Department of City Planning

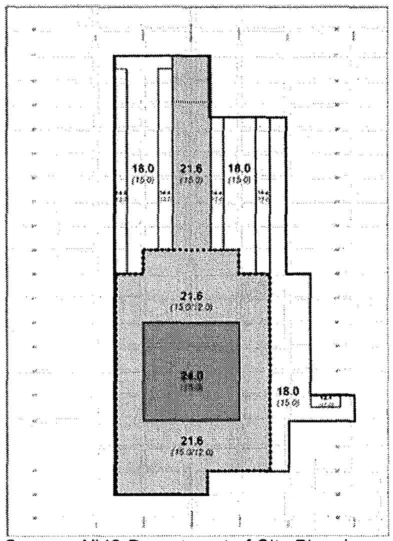
This East Midtown Rezoning is a targeted plan. Development at increased FARs would only be permitted on "Qualifying Sites" of a minimum size. Within the Subdistrict, these Qualifying Sites are defined as sites with the full frontage along most avenue blockfronts or 200 feet of frontage along 42nd Street, as well as a minimum site size of 25,000 square feet. New commercial buildings on Qualifying Sites could exceed the base 15 FAR in exchange for monetary contributions to a proposed District Improvement Fund. The fund would be dedicated to critical transit and pedestrian improvements throughout the area.

The maximum FARs that major new developments on Qualifying Sites could achieve under this earned as-of-right framework are:

- Directly around Grand Central Terminal – 24 FAR
- Along Park Avenue – 21.6 FAR
- Other areas to the east and west – 18/14.4 FAR

East Midtown Subdistrict TDRs
New York, New York **18.**

Sites that do not meet "qualifying criteria" would be governed by existing maximum FARs.



Source: NYC Department of City Planning

The proposed rezoning allows two ways to increase above today's allowable densities on Qualifying Sites that provide all their floor area as commercial use:

- District Improvement Bonus (DIB): New commercial buildings on Qualifying Sites could exceed the base 15 FAR in exchange for contributions to a proposed District Improvement Fund dedicated to critical transit and pedestrian improvements throughout the area.
- Landmark Transfer: In the Grand Central Subarea, only after contributing into the District Improvement Fund for a minimum of 3 FAR, Qualifying Sites could purchase additional floor area from Grand Central subarea landmark buildings through an expedited process without special permit review.

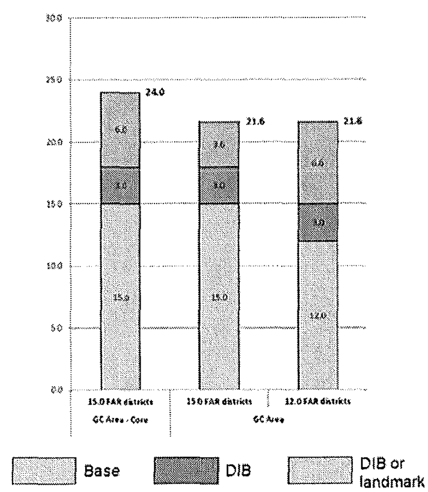
Through these two mechanisms, developers could increase the FAR of qualifying sites within the Grand Central Core up to 24.0 FAR from the 15.0 base maximum FAR. For Qualifying Sites within the remainder of the Grand Central Subarea, floor area increases would be permitted up to 21.6 FAR from the existing base maximum FAR of 15.0/12.0.

East Midtown Subdistrict TDRs
New York, New York **19.**

Use of the District Improvement Bonus would be required in order to increase FAR from 15.0 to 18.0. Above 18.0 FAR, Qualifying Sites could reach the maximum 24.0 FAR through utilization of either or both of the District Improvement Bonus and the new Landmark Transfer mechanism.

For Qualifying Sites within the remainder of the Grand Central Subarea, floor area increases would be permitted up to 21.6 FAR from the existing base maximum FAR of 15.0/12.0. To achieve this maximum FAR would require utilization of the District Improvement Bonus for the first 3.0 FAR (from 15.0 to 18.0 FAR or from 12.0 to 15.0 FAR, respectively). Above the first 3.0 FAR, Qualifying Sites could reach the maximum 21.6 FAR through additional utilization of either or both of the DIB and the new Landmark Transfer mechanism.

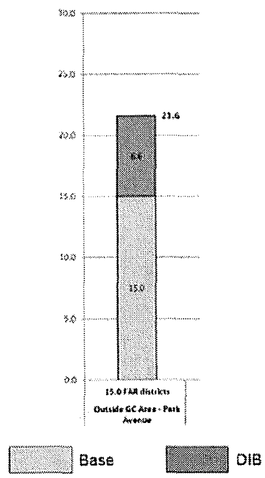
The foregoing incremental increases to base FAR are illustrated in the following chart.



Source: NYC Department of City Planning

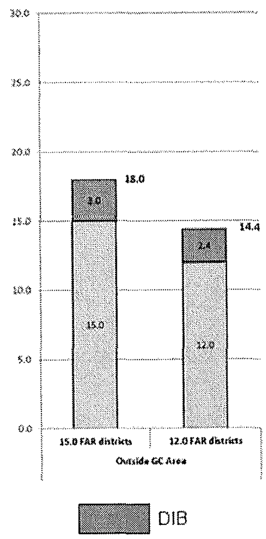
East Midtown Subdistrict TDRs
New York, New York **20.**

The proposed Park Avenue Subarea would encompass the frontage along Park Avenue between East 46th and East 57th streets, for the area within 125 feet of Park Avenue. For the limited number of Qualifying Sites within the Park Avenue Subarea, as-of-right floor area increases would be permitted up to 21.6 FAR from the existing base maximum FAR of 15.0. Utilization of the DIB will be required to achieve this maximum FAR.



Source: NYC Department of City Planning

Lastly, "Other" areas within the East Midtown Subdistrict include the Madison Avenue and Lexington Avenue corridors, north of the Grand Central Subarea and adjoining midblock areas. For the limited number of Qualifying Sites within these Other Areas, as-of-right floor area increases would be permitted to increase from existing maximum base FAR of 15.0 FAR to 18.0 FAR along avenues, and from existing maximum base FAR of 12.0 to 14.4 in midblock areas. Achieving this maximum FAR would require utilization of the DIB. The foregoing incremental increases to base FAR in the Other Areas are illustrated in the following chart.



Source: NYC Department of City Planning

A more detailed overview of the proposed East Midtown Rezoning is included in the *Addenda* of this report.

VALUATION PROBLEM – DIB CONTRIBUTION RATE

We have been asked to develop an opinion, based on the market value of transferable development rights, as to the appropriate average contribution rate, or rates, for the acquisition from the City of the East Midtown Rezoning's proposed District Improvement Bonus ("DIB"). The DIB is proposed to be available for use by commercial developers to increase the size of their new commercial buildings. The DIB will provide moneys to the District Improvement Fund ("DIF"), which will be dedicated to the implementation of critical transit and pedestrian improvements throughout the area. Developers of Qualifying Sites cannot exceed a site's base maximum FAR without first purchasing DIB TDRs. Within the Grand Central Subarea, purchase of DIB TDRs is required before a developer can take advantage of the Landmarks Transfer mechanism.

In connection with the adoption of the East Midtown Subdistrict, the City has undertaken to establish an initial, baseline contribution rate (in the form of dollars/square foot of zoning floor area) as the price that developers of Qualifying Sites must pay the City for the DIB development rights. The City's stated goal has been to set these rates at a level commensurate with prices paid for commercial development rights in the marketplace.

The City, as it did in the Hudson Yards Rezoning, has established a single level of DIB contribution for the entire East Midtown Subdistrict. However, this decision ignores a critical difference between the two areas. The Hudson Yards area was almost in its entirety an industrially zoned neighborhood that was characterized by obsolete uses and underutilized land. East Midtown is, by contrast, Manhattan's premier Central Business District environment with distinct subareas (as the proposed zoning itself acknowledges by defining these areas and establishing different rules for each). As such, the subject area presents a complex Central Business District environment with distinct subareas (as evidenced by the subareas identified in the proposed rezoning). Given the differing characteristics of East Midtown's subareas, a single contribution rate for the DIB would not reflect market realities and would under- or overstate the values that the DIB TDRs would create in the various subareas. Rather, each of the subject subareas should have a unique average DIB contribution rate to reflect the development opportunities and values achievable in each subarea.

We have analyzed the East Midtown Subdistrict as four distinct subareas: the Grand Central Subarea, the Park Avenue Subarea, the Other Subarea – West, and the Other Subarea – East.

Methodology

TDRs sellers are typically theaters, churches or schools, structures that might be landmarked, or tenanted improvements, such as apartment buildings, that would be difficult or impossible to vacate for redevelopment of the site using the full zoning envelope. The selling properties' inability to use their own excess development rights creates an incentive to sell the TDRs, often at a discount relative to full land value.

The valuation of transferable development rights can follow either of two alternative courses. The most straightforward course involves the compilation and unit analysis of similar transfers of TDRs utilized at developments similar to those possible at the subject receiver parcel.

An alternative, indirect approach involves the isolation of a market-based ratio, between TDRs and fee (land value) rights that can be applied to an opinion of the receiver parcel's land value to infer an opinion of the subject development rights value.

The direct approach is an undeniably sound, reasonable methodology, when employed correctly. However, the key to the success of this approach is to ensure that the TDR sales utilized in the valuation analysis are truly comparable to the TDRs being valued (the subject TDRs). The context of the TDR sales used in the Direct Approach must be similar to the context of the TDRs being valued. For this appraisal problem, it is crucial to distinguish TDRs sold via a zoning lot merger from TDRs sold as "floating" TDRs. Typical TDR transfers are achieved through zoning lot mergers, where the donor site must be contiguous (for at least 10 feet) with the receiver site for the TDRs. When TDRs are sold though a zoning lot merger, the number of potential buyers is severely limited and the bargaining power of the seller is weak. Thus the value of the TDRs is artificially depressed.

The East Midtown DIB development rights do not originate from a donor site; rather, they are "created" or "minted" by the City pursuant to the proposed East Midtown Rezoning. And, like floating TDRs, they can be used on any Qualifying Site within the Subdistrict. They are in every respect different in the way they work than TDRs in a zoning lot merger – most importantly, in that they have a greater number of potential buyers and, therefore, their value relative to the value of land is less heavily discounted.

Within the current development cycle, the purchase of TDRs by lot merger is a relatively commonplace aspect of development in Manhattan. Despite the presence of recent TDR sales in Midtown Manhattan, those sales almost exclusively involved zoning lot mergers. Therefore, a direct comparison of such TDR sales to the East Midtown floating TDRs is inappropriate. The dynamics of zoning lot transfer TDR sales are not the same as the dynamics of floating TDR sales.

We have searched the market for recent sales of floating TDRs (limited to floating TDRs in the Theater Subdistrict and the floating Highline TDRs in the West Chelsea District). Our research did not uncover an adequate number of floating TDR sales to develop a meaningful and reliable valuation analysis via the Direct Approach. Regardless, we do not believe that floating TDR sales from the West Chelsea District reflect the development opportunities and locational characteristics of the East Midtown Subdistrict.

For the foregoing reasons, we have elected to not utilize the Direct Approach to value the East Midtown DIB commercial TDRs.

The second, Indirect Approach gains validity in the absence of comparable TDRs transfers. The indirect approach's immediate tie to the receiver's land value acknowledges the critical importance of the proposed development's basic land component to value – which influences the value of any subset of its total development rights package (such at TDRs). We have used only the indirect approach in order to arrive at our conclusions of value of the East Midtown DIB TDRs.

We have uncovered an adequate number of recent sales of development sites in Midtown Manhattan, allowing for a reliable Indirect Approach to be developed for the subject commercial TDRs.

Since we are valuing TDRs that will be available to a number of Qualifying Sites within the East Midtown Subareas (avenue blockfront sites with at least 25,000 square feet of lot area), the "subject site" assumed in our comparable fee land sales analysis of the Indirect Approach is comprised of the typical minimum Qualifying Site as described in the East Midtown Rezoning. Our analysis is not site specific and we only consider the general location characteristics of the typical Qualifying Sites found in each of the Subareas analyzed. Therefore, the resulting opinion of fee land value is an average for a given Subarea.

The DIB TDRs are limited by the East Midtown Rezoning to commercial uses (such as hotel and office use). Within the current development cycle, there have been few sales of development sites that are restricted to commercial use only. Virtually all of the recent sales in East Midtown have been for hotel development. Sales of land in Midtown Manhattan for office use have been infrequent, with few sales that have occurred being spread across 15 years. Such market transactions are simply too old and could not be accurately adjusted in order to develop a reliable opinion of value for East Midtown development land.

Rather, recent development land sales activity in the subject market has involved proposed residential and/or hotel developments. Despite the permissibility of residential development at the recent land sales, we are of the opinion that such sales are representative of land values in the East Midtown Subdistrict. This is because a developer seeking a site for a new office building in East Midtown would have to compete with other developers seeking sites for development with permitted residential or hotel uses. In that competitive environment, an office developer would have to pay at least as much as residential and hotel developers are willing to paying for properly-zoned development sites.

The Indirect Approach also requires the determination of an appropriate TDRs to fee land value ratio that is applied to the fee land value of the receiver site. This ratio is determined by examining historic TDR sales and a comparison of the TDR sales price with the price paid for the receiver site.

Again, it is crucial that the TDR sales considered are truly comparable to the subject DIB TDRs. To be truly comparable to the DIB TDRs, we must only consider sales of floating TDRs and disregard sales of TDRs from zoning lot mergers.

We have searched the market for recent sales of floating TDRs (limited to floating TDRs in the Theater Subdistrict and the floating Highline TDRs in the West Chelsea District). While the floating TDR sales uncovered through our research are not appropriate for direct comparison to the subject DIB TDRs (via the Direct Approach to value), those same sales are useful for the TDRs to fee land value ratios they demonstrate.

VALUATION OF THE EAST MIDTOWN DIB DEVELOPMENT RIGHTS

Comparable Fee Land Sales Analysis (Indirect Approach)

The DIB TDRs are limited by the East Midtown Rezoning to commercial uses (such as hotel and office use). Recent development land sales activity in the subject market has involved proposed residential and/or hotel developments. Despite the permissibility of residential development at the recent land sales, we are of the opinion that such sales are representative of land values in the East Midtown Subdistrict. A developer seeking a site for a new office building in East Midtown would have to compete with other developers seeking sites for development with permitted residential or hotel uses. In that competitive environment, an office developer would have to pay at least as much as residential and hotel developers are willing to paying for properly-zoned development sites.

The geographic scope of our comparable land sales search encompassed the Midtown section of the borough of Manhattan. We have uncovered seven comparable land sales ranging from 48,980 square feet of developable area to 294,367 square feet of developable area. All of the comparable land sales legally permit commercial uses, including hotel and commercial office.

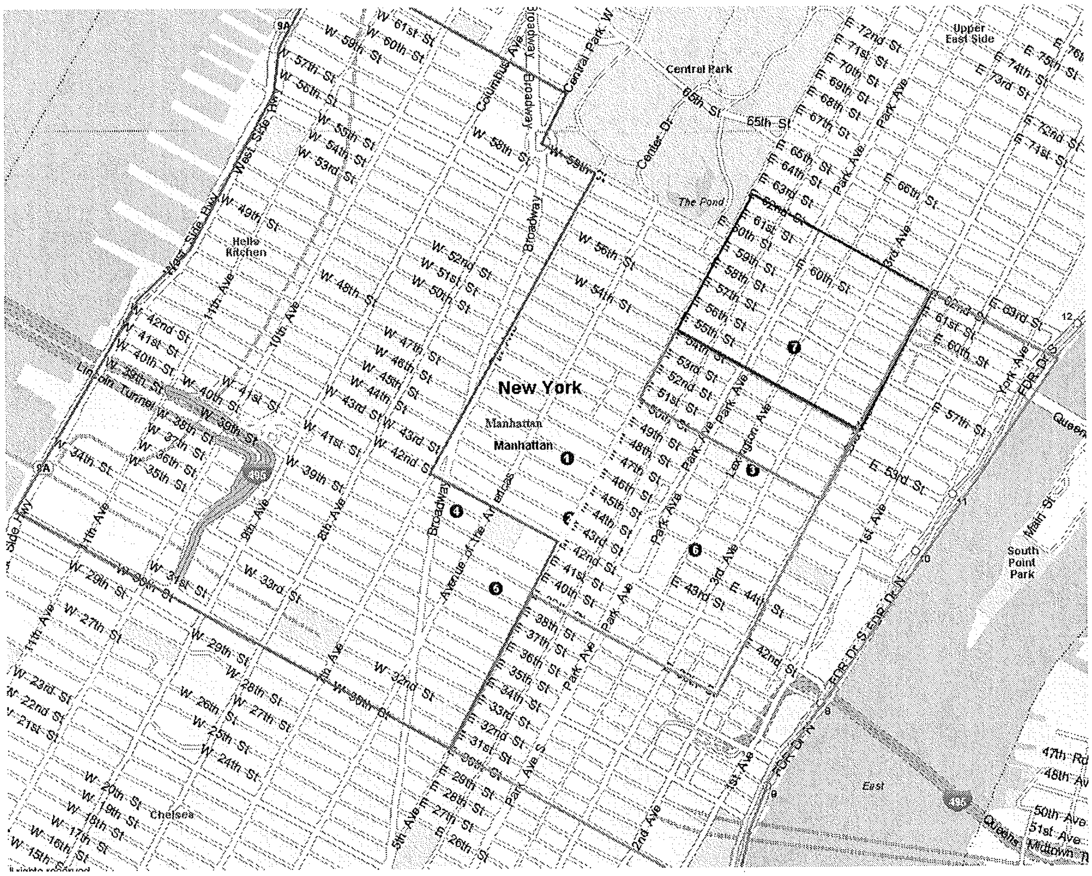
The seven selected comparable land sales transpired between March 2010 and December 2012. In our valuation of the typical qualifying receiver site, we have utilized the base maximum developable area of assuming a minimum lot area of 25,000 square feet and a basic maximum FAR of 15.0, for a total developable area of 375,000 square feet (25,000 square feet x 15.0 FAR).

The unadjusted range of unit prices represented by these seven comparable land sales is from $364.69 to $492.75 per square foot of developable area. The average unit price is $424.32 per square foot of developable area and the median unit price is $414.94 per square foot of developable area.

The selected comparable land sales are presented on the following pages with a land sales location map, a land sales summary chart, explanation of adjustments and comparable land sales adjustment grids for each East Midtown subarea.

28.

COMPARABLE LAND SALES LOCATION MAP



East Midtown Subdistrict
New York, New York

COMPARABLE LAND SALES SUMMARY: WITHOUT ADJUSTMENTS

COMP NO.	ADDRESS	BLOCK/LOT	CONTRACT DATE	DEED DATE	LOT AREA (SF)	ZONING	Use	FAR	DEV. AREA (SF)	SALE PRICE	PRICE/ SF FAR
1	**30 West 46th Street** (Btwn 5th & 6th Avenues)	1261/54	6/27/2012	12/24/2012	6,025	C6-4.5 (MiD)	Hotel	12.00	72,300	$30,000,000	$414.94
2	**516-520 Fifth Avenue** (NWC of 5th Avenue & West 43rd Street)	1259/33,34,35	11/1/2011	3/9/2012	10,625	C5-3 (MiD)	Mixed Use	15.0 + TDRs	294,367	$132,000,000	$448.42
3	**138-146 East 50th Street** (Btwn Lexington & 3rd Avenues)	1304/45,28	7/7/2011	12/1/2011	11,925	C6-4.5 (MiD)	N/A	12.00	143,100	$70,512,820	$492.75
4	**120-122 West 41st Street** (Btwn 6th & 7th Avenues)	993/43 and Theater TDRs	7/14/2011	11/10/2011	3,950	M1-6	Hotel	10.00	48,980	$23,542,000	$480.65
5	**45-47 West 38th Street** (Btwn 5th & 6th Avenues)	840/16,18	3/21/2011	8/24/2011	6,024	M1-6	Hotel	10.00	60,240	$23,000,000	$381.81
6	**447-451 Lexington Avenue** (SEC of Lexington Ave & East 45th Street)	1299/51,53	11/2/2010	11/30/2010	7,532	C5-3 (MiD-G)	N/A	15.00	112,973	$41,200,000	$364.69
7	**678-684 Lexington Avenue** (NWC of Lexington Ave. & East 56th Street)	1311/14,15,115,16,112,113,114	12/11/2009	3/1/2010	7,293	C5-2.5 (MiD)	N/A	12.00	87,516	$33,866,667	$386.98
Subject	Average Qualifying Site	N/A			25,000	East Midtown	Office/Hotel	15.00	375,000		

Minimum	$364.69
Maximum	$492.75
Average	$424.32

29.

The following subsections summarize the adjustment process that brings each of these individual land sales into line with the location and physical profile of the typical Qualifying Site of each of the four East Midtown Subareas.

Adjustment Process

Market Conditions:

Manhattan development market has experienced a surge in growth as the economy recovers post-recession. According to the Massey Knackal, Manhattan Property Sales Report, Year End 2012, the overall sales volume of development sites in Manhattan was \$3.12 billion in 2012, which is an increase of 128% from 2011. The Fourth Quarter of 2012 alone contributed to \$1.73 billion in sales of development sites. According to the same market report, 158 development sites were sold in 2012, an increase in 51% from the amount of sites purchased in 2011.

We have used the contract date as opposed to the deed date for trending purposes since we are of the opinion that the contract date better represents the "meeting of the minds". We have adopted an upward trend of 0.5% per month for the period between January 2010 and the July 1, 2013, date of value. Our selected rates are market-based, and confirmed as reasonable by our review and constant monitoring of sale and resale activity involving land within Manhattan.

Upward market conditions adjustments were applied to all seven of our comparable land sales and range from 6.0% to 21.5%.

Possession:

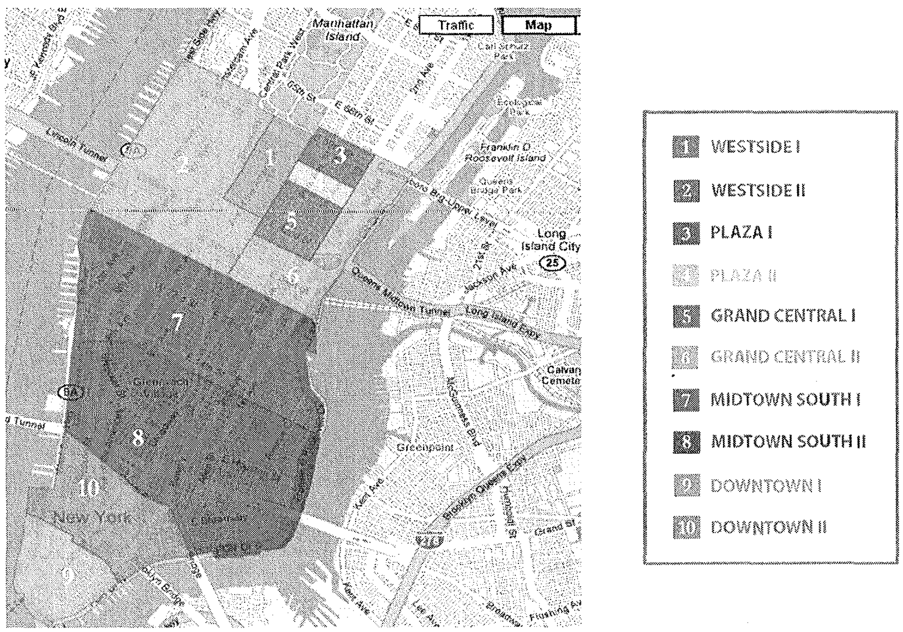
Possession adjustments reflect the additional costs required to pay for by a developer to obtain possession of a site, including tenant buyouts. In this case, Comparable Land Sales Numbers 2, 3, 6 and 7 were improved as of their sales dates. Although these transfers might have been subject to a leasehold interest that might have interfered with the purchaser's ability to re-develop the land, absent definite knowledge of such issues, we have not added possession adjustments to these comparable land sales.

Location:

Location adjustments are necessary to recognize the varying potential sales or rental values of residential or commercial developments undertaken at the different locations represented by our range of comparables when compared to the Grand Central Subarea, the Park Avenue Subarea, the Other Subarea – West, and the Other Subarea – East of the East Midtown Subdistrict. Our location adjustments are not site-specific for each Subarea. Rather, we have based our location adjustments on the general location characteristics of the subject Subareas.

As a guideline for our location adjustments, we have analyzed the differences in average office asking rents of the office submarket areas that comprise the Midtown Office Market. The Studley Office Market and Spacedata Report identifies six Midtown office submarkets. They are Westside I, Westside II, Plaza I, Plaza II, Grand Central I, and Grand Central II. (The corresponding office submarkets are delineated on our comparable sales location map.)

East Midtown Subdistrict TDRs
New York, New York **32.**



We have compiled the average asking rents for each of the six office submarkets as of 4th Quarter 2011, 4th Quarter 2012, and 1st Quarter 2013. We then created an array of the average asking rents in order to determine the percentage difference between any two of the submarkets. This is illustrated below.

		LOCATION OF COMPARABLE SALE					
	Average	**Westside 1**	**Westside 2**	**Plaza 1**	**Plaza 2**	**GC 1**	**GC 2**
LOCATION OF SUBJECT	**Westside 1**	0%	25%	0%	12%	16%	60%
	Westside 2	-20%	0%	-20%	-10%	-7%	28%
	Plaza 1	1%	26%	0%	12%	16%	62%
	Plaza 2	-8%	15%	-10%	0%	5%	46%
	Grand Central 1	-13%	8%	-14%	-3%	0%	39%
	Grand Central 2	-37%	-22%	-38%	-30%	-28%	0%

Note: Detailed rental data used to develop this chart is included in the Addenda of this report.

In order to utilize the array, we first determine which submarket (along the left side of the last chart) the "subject" property is located in. Then we look to the submarket in which the comparable land sale is located (along the top of the last chart). The percentage figure where the two submarkets converge is the implied adjustment for the comparable land sale. For example, if the subject property is located in the Westside II submarket and the comparable land sale is located in the Grand Central I submarket, the implied adjustment to the comparable sale would be -7%, demonstrating that the Grand Central I submarket is generally superior to the Westside II submarket.

We note that our location adjustments have been developed based on both the information represented in our office asking rent array and our professional experience and judgment.

Size

Size adjustments relate to the advantages created by a larger developable area in granting an economy of scale to new development. Each adjustment is based on a comparison of the developable area of the comparable site to the developable area located at the receiver site. All seven of the comparable land sales required upward size adjustments in order to account for their inferior smaller sizes (developable areas) in comparison to the average Qualifying Site's basic maximum developable area of 375,000 square feet. The size adjustments are limited to 10%.

Access:

Access adjustments consider the advantage of corner, avenue or blockthrough siting in granting beneficial exposure, and light and air to the new development on the site. The development option attributed to the typical Qualifying Site in our adjustment grid is deemed to have a 10% value increment over a single frontage side street lot. Upward access adjustments of 5% to 10% were applied to Comparable Land Sales Numbers 1 through 5 in order to account for their inferior access. Comparable Sales Numbers 6 and 7 did not require an access adjustment.

Configuration:

All seven of the comparable land sales have either a regular rectangular configuration (that presents the easiest opportunity for redevelopment), or a configuration that is basically the sum of rectangular components that are joined in a relatively easy configuration for new development. Qualifying Sites in the East Midtown Subdistrict must encompass an entire avenue blockfront (200 feet). As such, comparable land sales with frontage under 100 feet were considered to have inferior configurations when compared to the typical subject receiver site. Comparable Land Sales Numbers 1, 4 and 5 all have frontage less than 100 feet and, therefore, these three comparable land sales were adjusted downward 5% for their inferior configuration. The other four comparable land sales did not require an adjustment for configuration.

Demolition:

After the individual land sales are adjusted for all of the foregoing factors, a final dollar amount adjustment factor is considered. The demolition adjustment recognizes the cost to the comparable sites' purchasers of creating a vacant parcel, considering that the comparable development sites are often improved properties at the time of the "land" sale. The estimated demolition cost is converted into a land cost by dividing the total demolition cost by the developable area of the site that is the basis of all our calculations. Comparable Land Sales Numbers 2, 3, 6 and 7 required demolition adjustments of $3.21, $4.47, $1.14 and $2.28 per square foot of developable area, respectively. Comparable Land Sales Numbers 1, 4 and 5 did not require a demolition adjustment since they were vacant, unimproved lots when they were sold.

East Midtown Subdistrict TDRs
New York, New York 35.

SUBJECT: East Midtown Subdistrict - Grand Central Subarea
New York, New York

LAND SALES ADJUSTMENT GRID

DEVELOPABLE AREA: 375,000 Square Feet

COMP NO.	ADDRESS	PRICE SF FAR	COND. OF SALE	ADJ. UNIT	TIME ADJ.*	ADJ. UNIT	POSS	SUB-TOTAL	LOC.	SIZE	ACCESS	CONFIG	TOTAL ADJ.	ADJ. UNIT	DEMO.	FINAL ADJ.UNIT
1	**30 West 46th Street** (Btwn 5th & 5th Avenues)	$414.94	0%	$414.94	6.0%	$439.83	$0.00	$439.83	-13%	10%	10%	5%	12%	$492.61	$0.00	$492.61
2	**516-520 Fifth Avenue** (NWC of 5th Avenue & West 43rd Street)	$448.42	0%	$448.42	10.0%	$493.26	$0.00	$493.26	-13%	5%	5%	0%	-3%	$478.46	$3.21	$481.67
3	**138-146 East 50th Street** (Btwn Lexington & 3rd Avenues)	$492.75	0%	$492.75	12.0%	$551.88	$0.00	$551.88	-3%	10%	5%	0%	12%	$618.11	$4.47	$622.58
4	**120-122 West 41st Street** (Btwn 6th & 7th Avenues)	$480.65	0%	$480.65	12.0%	$538.32	$0.00	$538.32	8%	10%	10%	5%	33%	$715.97	$0.00	$715.97
5	**45-47 West 38th Street** (Btwn 5th & 6th Avenues)	$381.81	0%	$381.81	13.5%	$433.35	$0.00	$433.35	8%	10%	10%	5%	33%	$576.36	$0.00	$576.36
6	**447-451 Lexington Avenue** (SEC of Lexington Ave & East 45th Street)	$364.69	0%	$364.69	16.0%	$423.04	$0.00	$423.04	0%	10%	0%	0%	10%	$465.35	$1.14	$466.49
7	**678-684 Lexington Avenue** (NWC of Lexington Ave. & East 56th Street)	$386.98	0%	$386.98	21.5%	$470.18	$0.00	$470.18	-14%	10%	0%	0%	-4%	$451.37	$2.28	$453.65

Minimum	$453.65
Maximum	$715.97
Average	$544.19

Notes

* When available and deemed appropriate, we have used the comparable land sale's contract date for market trending purposes.

JEROME HAIMS REALTY, INC.

Conclusion of Average Land Value in the Grand Central Subarea

After adjustment for all of the factors discussed, the range in unit prices is from $453.65 to $715.97 per square foot of developable area, with an average unit value of $544.19 per square foot of developable area and a median unit value of $492.61 per square foot of developable area.

After careful consideration of the sales presented, an average unit land value of $520.00 per square foot of developable area has been selected for the typical Qualifying Site located within the Grand Central Subarea of the East Midtown Subdistrict.

East Midtown Subdistrict TDRs
New York, New York 37.

SUBJECT: East Midtown Subdistrict - Park Avenue Subarea
New York, New York

LAND SALES ADJUSTMENT GRID

DEVELOPABLE AREA: 375,000 Square Feet

COMP NO.	ADDRESS	PRICE SF FAR	COND. OF SALE	ADJ. UNIT	TIME ADJ.*	ADJ. UNIT	POSS	SUB-TOTAL	LOC.	SIZE	ACCESS	CONFIG	TOTAL ADJ.	ADJ. UNIT	DEMO.	FINAL ADJ.UNIT
1	**30 West 46th Street** (Btwn 5th & 6th Avenues)	$414.94	0%	$414.94	6.0%	$439.83	$0.00	$439.83	-5%	10%	10%	5%	20%	$527.80	$0.00	$527.80
2	**516-520 Fifth Avenue** (NWC of 5th Avenue & West 43rd Street)	$448.42	0%	$448.42	10.0%	$493.26	$0.00	$493.26	-5%	5%	5%	0%	5%	$517.92	$3.21	$521.13
3	**138-146 East 50th Street** (Btwn Lexington & 3rd Avenues)	$492.75	0%	$492.75	12.0%	$551.88	$0.00	$551.88	10%	10%	5%	0%	25%	$689.85	$4.47	$694.32
4	**120-122 West 41st Street** (Btwn 6th & 7th Avenues)	$480.65	0%	$480.65	12.0%	$538.32	$0.00	$538.32	20%	10%	10%	5%	45%	$780.57	$0.00	$780.57
5	**45-47 West 38th Street** (Btwn 5th & 6th Avenues)	$381.81	0%	$381.81	13.5%	$433.35	$0.00	$433.35	20%	10%	10%	5%	45%	$628.36	$0.00	$628.36
6	**447-451 Lexington Avenue** (SEC of Lexington Ave & East 45th Street)	$364.69	0%	$364.69	16.0%	$423.04	$0.00	$423.04	10%	10%	0%	0%	20%	$507.65	$1.14	$508.79
7	**678-684 Lexington Avenue** (NWC of Lexington Ave. & East 56th Street)	$386.98	0%	$386.98	21.5%	$470.18	$0.00	$470.18	0%	10%	0%	0%	10%	$517.19	$2.28	$519.47

Minimum	$508.79
Maximum	$780.57
Average	$597.21

Notes

* When available and deemed appropriate, we have used the comparable land sale's contract date for market trending purposes.

JEROME HAIMS REALTY, INC.

Conclusion of Average Land Value in the Park Avenue Subarea

After adjustment for all of the factors discussed, the range in unit prices is from $508.79 to $780.57 per square foot of developable area, with an average unit value of $597.21 per square foot of developable area and a median unit value of $527.80 per square foot of developable area.

After careful consideration of the sales presented, an average unit land value of $555.00 per square foot of developable area has been selected for the typical Qualifying Site located within the Park Avenue Subarea of the East Midtown Subdistrict.

SUBJECT: East Midtown Subdistrict - Other Subarea (West)
New York, New York

LAND SALES ADJUSTMENT GRID

DEVELOPABLE AREA: 375,000 Square Feet

COMP NO.	ADDRESS	PRICE SF FAR	COND. OF SALE	ADJ. UNIT	TIME ADJ.*	ADJ. UNIT	POSS	SUB-TOTAL	LOC.	SIZE	ACCESS	CONFIG	TOTAL ADJ.	ADJ. UNIT	DEMO.	FINAL ADJ.UNIT
1	**30 West 46th Street** (Btwn 5th & 6th Avenues)	$414.94	0%	$414.94	6.0%	$439.83	$0.00	$439.83	-10%	10%	10%	5%	15%	$505.81	$0.00	$505.81
2	**516-520 Fifth Avenue** (NWC of 5th Avenue & West 43rd Street)	$448.42	0%	$448.42	10.0%	$493.26	$0.00	$493.26	-10%	5%	5%	0%	0%	$493.26	$3.21	$496.47
3	**138-146 East 50th Street** (Btwn Lexington & 3rd Avenues)	$492.75	0%	$492.75	12.0%	$551.88	$0.00	$551.88	5%	10%	5%	0%	20%	$662.26	$4.47	$666.73
4	**120-122 West 41st Street** (Btwn 6th & 7th Avenues)	$480.65	0%	$480.65	12.0%	$538.32	$0.00	$538.32	15%	10%	10%	5%	40%	$753.65	$0.00	$753.65
5	**45-47 West 38th Street** (Btwn 5th & 6th Avenues)	$381.81	0%	$381.81	13.5%	$433.35	$0.00	$433.35	15%	10%	10%	5%	40%	$606.69	$0.00	$606.69
6	**447-451 Lexington Avenue** (SEC of Lexington Ave & East 45th Street)	$364.69	0%	$364.69	16.0%	$423.04	$0.00	$423.04	5%	10%	0%	0%	15%	$486.50	$1.14	$487.64
7	**678-684 Lexington Avenue** (NWC of Lexington Ave. & East 56th Street)	$386.98	0%	$386.98	21.5%	$470.18	$0.00	$470.18	-5%	10%	0%	0%	5%	$493.69	$2.28	$495.96

Minimum	$487.64
Maximum	$753.65
Average	$573.28

Notes

* When available and deemed appropriate, we have used the comparable land sale's contract date for market trending purposes.

JEROME HAIMS REALTY, INC.

Conclusion of Average Land Value in the Other Subarea - West

After adjustment for all of the factors discussed, the range in unit prices is from $487.64 to $753.65 per square foot of developable area, with an average unit value of $573.28 per square foot of developable area and a median unit value of $505.81 per square foot of developable area.

After careful consideration of the sales presented, an average unit land value of $535.00 per square foot of developable area has been selected for the typical Qualifying Site located within the Other Subarea – West of the East Midtown Subdistrict.

SUBJECT: East Midtown Subdistrict - Other Subarea (East)
New York, New York

LAND SALES ADJUSTMENT GRID

DEVELOPABLE AREA: 375,000 Square Feet

COMP NO.	ADDRESS	PRICE SF FAR	COND. OF SALE	ADJ. UNIT	TIME ADJ.*	ADJ. UNIT	POSS	SUB-TOTAL	LOC.	SIZE	ACCESS	CCNFIG	TOTAL ADJ.	ADJ. UNIT	DEMO.	FINAL ADJ.UNIT
1	**30 West 46th Street** (Btwn 5th & 6th Avenues)	$414.94	0%	$414.94	6.0%	$439.83	$0.00	$439.83	-8%	10%	10%	5%	17%	$514.61	$0.00	$514.61
2	**516-520 Fifth Avenue** (NWC of 5th Avenue & West 43rd Street)	$448.42	0%	$448.42	10.0%	$493.26	$0.00	$493.26	-8%	5%	5%	0%	2%	$503.13	$3.21	$506.34
3	**138-146 East 50th Street** (Btwn Lexington & 3rd Avenues)	$492.75	0%	$492.75	12.0%	$551.88	$0.00	$551.88	0%	10%	5%	0%	15%	$634.66	$4.47	$639.14
4	**120-122 West 41st Street** (Btwn 6th & 7th Avenues)	$480.65	0%	$480.65	12.0%	$538.32	$0.00	$538.32	15%	10%	10%	5%	40%	$753.65	$0.00	$753.65
5	**45-47 West 38th Street** (Btwn 5th & 6th Avenues)	$381.81	0%	$381.81	13.5%	$433.35	$0.00	$433.35	15%	10%	10%	5%	40%	$606.69	$0.00	$606.69
6	**447-451 Lexington Avenue** (SEC of Lexington Ave & East 45th Street)	$364.69	0%	$364.69	16.0%	$423.04	$0.00	$423.04	0%	10%	0%	0%	10%	$465.35	$1.14	$466.49
7	**678-684 Lexington Avenue** (NWC of Lexington Ave. & East 56th Street)	$386.98	0%	$386.98	21.5%	$470.18	$0.00	$470.18	0%	10%	0%	0%	10%	$517.19	$2.28	$519.47

Minimum	$466.49
Maximum	$753.65
Average	$572.34

Notes

* When available and deemed appropriate, we have used the comparable land sale's contract date for market trending purposes.

JEROME HAIMS REALTY, INC.

Conclusion of Average Land Value in the Other Subarea - East

After adjustment for all of the factors discussed, the range in unit prices is from $466.49 to $753.65 per square foot of developable area, with an average unit value of $572.34 per square foot of developable area and a median unit value of $519.47 per square foot of developable area.

After careful consideration of the sales presented, an average unit land value of $500.00 per square foot of developable area has been selected for the typical Qualifying Site located within the Other Subarea – East of the East Midtown Subdistrict.

Conclusions of Value of the East Midtown DIB Transferable Development Rights

TDRs are generally purchased to increase the size of new construction or to otherwise enhance the development, by guaranteeing permanent light and air above an abutting property, for example. Generally purchased at some discount relative to land values, the TDRs tend to make the land "package" more economical to the developer. However, significant discounts are mostly evident in TDR transfers achieved through zoning lot mergers, where the donor site is contiguous with the receiver site for the TDRs. As such, TDR transfers observed in the market place effectively involved a buyer that was the only buyer and a seller that was the only seller. A discount relative to full fee land value is the result of a negotiation where the buyer has strong bargaining leverage to demand a lower price. For many donor sites with TDRs, the sale of their TDRs, even at a discount, is found money. This is not the case for the East Midtown DIB TDRs.

The East Midtown DIB development rights do not originate from a donor site; rather, they are "created" or "minted" by the City pursuant to the proposed East Midtown Rezoning. And, like floating TDRs, they can be used on any Qualifying Site within the Subdistrict. They are in every respect different in the way they work than TDRs in a zoning lot merger – most importantly, in that they have a greater number of potential buyers and, therefore, their value relative to the value of land is less heavily discounted.

In order to determine what TDRs value to land value ratio is appropriate for the East Midtown DIB TDRs, we have searched for sales of TDRs that specifically involved the transfer of floating TDRs. To use sales of TDRs from zoning lot mergers would not be appropriate for determining an accurate ratio for the subject TDRs.

There is limited market data involving floating TDRs like the DIB TDRs. The only examples of floating TDRs that have sold in Manhattan include floating TDRs within the Theater Subdistrict and floating TDRs from the Highline in the Special West Chelsea District. We have identified eight sales of floating TDRs in these districts (four sales in the Theater Subdistrict and four sales in the Special West Chelsea District) that are relevant to the valuation of the East Midtown DIB TDRs.

For each sale, we determined the sales price per square foot paid for the floating TDRs and we then determined the sales price per square foot of developable area paid for the respective receiver site. In most cases, the floating TDRs were purchased subsequent to the receiver site (within 16 months). In order to compare the TDR price to the fee land price as of an equal point in time, we have adjusted the sales prices of the receiver sites to account for changes in market conditions (or time) between the receiver site's sales date and the TDR's sales date. The two sales prices were then converted into a ratio of TDR value to fee land value.

The following two charts summarize our analysis of the eight floating TDR sales.

THEATER SUBDISTRICT FLOATING TDR SALES RATIO ANALYSIS

No.		Address	Area (SF of FAR)	Sale Date	Sale Price	Price/SF	Adj. Price/SF	TDR-To-Land Ratio
1	Receiver Site	131-139 West 45th Street	89,920	3/3/2006	$13,766,946	$153.10	$166.88	120%
	Donor Site	Broadhurst Theater	54,820	6/21/2007	$10,964,000	$200.00	$200.00	
2	Receiver Site	131-139 West 45th Street	89,920	3/3/2006	$13,766,946	$153.10	$166.12	105%
	Donor Site	St. James Theater	9,489	5/17/2007	$1,661,000	$175.04	$175.04	
3	Receiver Site	131-139 West 45th Street	89,920	3/3/2006	$13,766,946	$153.10	$166.12	105%
	Donor Site	Hirschfeld Theater	8,483	5/17/2007	$1,485,000	$175.06	$175.06	
4	Receiver Site	120 West 41st Street	39,500	11/10/2011	$19,750,000	$500.00	$500.00	80%
	Donor Site	Broadhurst Theater	9,480	11/10/2011	$3,792,000	$400.00	$400.00	

SPECIAL WEST CHELSEA DISTRICT FLOATING TDR SALES RATIO ANALYSIS

No.		Address	Area (SF of FAR)	Sale Date	Sale Price	Price/SF	Adj. Price/SF	TDR-To-Land Ratio
5	Receiver Site	282-298 11th Avenue	333,281	12/1/2007	$173,346,017	$520.12	$520.12	77%
	Donor Site	Various	6,155	8/25/2008	$2,462,000	$400.00	$400.00	
6	Receiver Site	282-298 11th Avenue	333,281	12/1/2007	$173,346,017	$520.12	$364.08	63%
	Donor Site	Various	9,875	1/16/2009	$2,250,500	$227.90	$227.90	
7	Receiver Site	537 West 27th Street	123,438	8/2/2007	$42,000,000	$340.25	$340.25	91%
	Donor Site	Various	5,479	3/28/2008	$1,698,500	$310.03	$310.03	
8	Receiver Site	537 West 27th Street	123,438	8/2/2007	$42,000,000	$340.25	$340.25	91%
	Donor Site	Various	2,566	8/5/2008	$795,500	$310.06	$310.06	

The eight sales demonstrate ratios ranging from 63% to 120%. Of the eight sales, three TDR sales reflect TDR-to-land ratios over 100%. Those TDR sales were in the Theater Subdistrict. TDR Sales 3 and 4 in the Special West Chelsea District both demonstrated a TDR-to-land value ratio of 91%. On the other hand, TDR Sales 7 and 8 in the Theater Subdistrict demonstrated TDR-to-land value ratios of 105% and 80%. However, in Sales Numbers 1-7, the TDR purchase occurred approximately months after the purchase of the receiver site. Sale Number 8, with a ratio of 80% represents a contemporaneous purchase of the receiver site and the floating TDRs on the same date. Therefore, the 80% ratio demonstrated by that sale is more reliable than the ratios demonstrated by the other Sales.

Recognizing the historic ratios for floating TDRs, while mindful of the specific contribution of the East Midtown DIB transferable development rights to the various potential qualified development sites in the Subdistrict, we are of the opinion that the subject's unused development rights could achieve a value ratio of 80% of fee land value. Applying this value ratio to our conclusions of fee land value for each of the four East Midtown Subareas, we arrive at average TDR values ranging from $400.00 to $445.00 per square foot of FAR.

Based on the analysis and conclusions presented herein, our opinions of the values of the East Midtown Subdistrict DIB transferable development rights, as of July 1, 2013, are:

VALUATION SUMMARY				
East Midtown Subarea	Fee Land Value/SF	TDR:Value Ratio	TDR Value	Rounded
Grand Central	$520.00	80%	$416.00	$415.00
Park Avenue	$555.00	80%	$444.00	$445.00
Other - West	$535.00	80%	$428.00	$430.00
Other - East	$500.00	80%	$400.00	$400.00

We must stress that our opinions of TDR value represent the average value of the TDRs in each Subarea, as of a current point in time. Our average TDR values do not reflect site specific locational characteristics or site-specific issues (including environmental issues) that would affect the value of the DIB TDRs used at a particular site. While it is the intent of the proposed East Midtown Rezoning to provide a "one size fits all" DIB TDR contribution rate (such as the one developed in the Landauer Report), such a singular rate can never accurately reflect market conditions at any given point in time without verification of a receiver site's market value (land value) at the time when the TDRs will actually be purchased. Therefore, the average values presented above would require updating on a regular basis or on a transactional basis. Doing so would preserve the City's goal to have contribution rates commensurate with prices paid for commercial development rights in the marketplace at any given time and for specific receiver sites.

CERTIFICATION

We certify that, to the best of my knowledge and belief,

- The statements of fact contained in this appraisal report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.
- Our compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use, of this report.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, Jerome Haims has completed the requirements of the continuing education program of the Appraisal Institute.
- Yamil N. Arocho has made a personal exterior inspection of the property that is the subject of this report on July 1, 2013.
- We have performed no (or the specified) services, as an appraiser or in any other capacity, regarding the subject property within the three-year period immediately preceding this assignment.

Jerome Haims, MAI, CRE, FRICS President Certified New York State General Real Estate Appraiser Certificate No. 46000003369	Yamil N. Arocho Vice President Certified New York State General Real Estate Appraiser Certificate No. 46000045109

48.

OVERVIEW OF PROPOSED EAST MIDTOWN REZONING

The East Midtown Rezoning is a City-sponsored rezoning of a 73-block portion of Midtown Manhattan surrounding Grand Central Terminal. The rezoning area is generally bounded by East 39th Street to the south, East 57th Street to the north, Second and Third Avenues to the east and a line 150 feet east of Fifth Avenue to the west. The purpose of the rezoning is to ensure the area's future as a world-class central business district and a major employment generator for New York City. The rezoning will provide zoning incentives to promote the development of a handful of new, state-of-the-art commercial buildings over coming decades so that East Midtown's office stock remains attractive to a broad range of businesses, including major corporate tenants. The expectation is that development under the rezoning will expand the City's tax base, add thousands of permanent jobs in East Midtown and fund improvements to the subway and pedestrian network in the area.

The East Midtown Rezoning encompasses the following discretionary actions that are subject to review under the Uniform Land Use Review Procedure (ULURP), as well pursuant to Section 200 of the City Charter.

- **Zoning text amendment** – The East Midtown Subdistrict will be established within the Special Midtown District, superseding the existing Grand Central Subdistrict.
- **Zoning map amendment** – The existing C5-2 designation will be replaced on the block between East 42nd and East 43rd Streets, and Second and Third Avenues with C5-3 and C5-2.5 districts. The C5-3 and C5-2.5 districts will be mapped within the Special Midtown District.
- **City Map amendment** – The City may in the future amend the City Map to reflect a "Public Place" designation over portions of Vanderbilt Avenue between East 42nd and East 47th Streets.

49.

Background and Existing Conditions

The East Midtown office district contains approximately 70 million square feet of office space, more than 200,000 workers, and numerous Fortune 500 companies. Grand Central Terminal, one of the City's major transportation hubs, represents the core of the district. The district is home to many of the City's best-known office buildings (such as the Chrysler Building and the Seagram Building) and a mix of other landmarks, civic structures and hotels.

The area is made up of the large parts of two office submarkets: the Grand Central submarket, and the Plaza submarket. The Grand Central submarket, centered around the Terminal, generally, has an older inventory of office buildings, with a higher vacancy rate and lower rents than the overall Midtown market. The Plaza District, centered on the Plaza Hotel but including the northern portion of the East Midtown area, is one of the most expensive submarkets in the country and has newer office building inventory. One of the key strengths of East Midtown has been the wide range of office space that can be found there, including buildings of different sizes and ages allowing the area to meet the needs of diverse tenants at varying price points. Overall, East Midtown's office tenants have historically been financial institutions and law firms. Recent trends have both reinforced and altered this role. The area has also become home to the City's hedge fund and private equity cluster because of the area's cachet and easy access to the Metro-North commuter shed.

While East Midtown has performed strongly as an office district, and continues to do so, the City identified a number of long-term challenges that must be addressed in order to ensure that East Midtown remains one of the region's premier job centers. Long-term challenges affecting the East Midtown office district include:

Aging Office Building Stock

East Midtown (as defined herein) contains approximately 400 buildings, of which more than 300 are over 50 years old, with an average age of over 70 years. This is a relatively old age for an office district with that is competitive on a regional, national and global basis. Older office buildings tend to have lower rents and higher vacancy rates. This is due to constraints in the ability to provide up-to-date technology infrastructure and other amenities through renovation. Obsolete floor-to-floor heights and interior column spacing cannot be addressed through renovation. Tenants looking for office space in Midtown today desire large, column-free space to have flexibility in creating office layouts, which are trending toward more open organization.

Limited Recent Office Development

Since 2001, only two office buildings have been constructed in this area, which represents a significant drop from preceding decades. Whereas the area had an overall annual space growth rate of 1 percent between 1982 and 1991, the area's growth rate began to drop off in the next decade, with an annual growth rate of 0.14 percent. Over the last decade, this has continued to fall to an annual growth rate of only 0.06 percent between 2002 and 2011. The area's existing high density, relative to currently allowed zoning floor area, is an impediment to construction of new office stock. As a whole, the area contains approximately 2.3 million square feet more than what is permitted under the current zoning. Many of the "overbuilt" buildings in the area contain obsolete features that make them less marketable, but the lower amount of square footage that could be constructed in a new building on the site presents a significant disincentive to new construction. Under current zoning, up to 75 percent of the floor area could be removed and reconstructed as modern office space, but this would still leave a building with 25 percent of floor space below contemporary standards. Other obstacles to new office development include the difficulty of assembling development sites and vacating existing tenants.

Pedestrian Network Challenges

East Midtown is one of the most transit-rich locations in the City and the pedestrian network is one of the area's unique assets. However, the area faces a number of challenges to creating a pedestrian network commensurate with the area's role as one of the world's premier office districts. These challenges include"

- The Grand Central subway station experiences pedestrian circulation constraints, including platform crowding and long dwell times for the 4, 5 and 6 subway lines, creating a subway system bottleneck;
- The sidewalks of Madison and Lexington Avenues are narrow given the scale of pedestrian use they handle. The effective widths of these sidewalks are even narrower when subway grates and other sidewalk furniture are included. Side street sidewalks in the area are narrow as well;

51.

- East Midtown contains no significant publicly-controlled open spaces; and

- Vanderbilt Avenue, once the major taxi access point to Grand Central Terminal, has seen its use drop as taxis have been moved away from the building due to security concerns.

Challenges of Current Zoning

Existing zoning regulations are not appropriate for East Midtown's current needs and may impede the area's continued status as a premier office district. The current zoning for the area is a mix of 15.0 FAR districts with floor area bonuses for public plazas increasing the permitted FAR to 18.0, as-of-right. The 1961 zoning removed the incentive to keep ceilings low (although building practices adjusted gradually) and facilitated the development of many signature corporate towers in the area. However, the height and setback control, which permitted a tower covering a maximum of 40 percent of its lot, and required the tower to be set back from the surrounding streets, worked best on large sites (over 40,000 square feet). Due to the difficulty in assembling sites of this size, the City Planning Commission ("CPC") permitted towers to be built, by special permit, covering a higher percentage of the lot, located closer to the street or even at the street line. Planners and civic groups became dissatisfied with some of the buildings that resulted from these waivers.

In the early 1980s, the City concluded that development in Midtown should be encouraged to the west beyond Sixth Avenue. In 1982, the Special Midtown District was created. As part of this project, East Midtown was proposed as an area for "Stabilization" while the area west of Sixth Avenue was marked for "Growth." To accomplish this, parts of East Midtown were down-zoned. The FAR for several midblock areas was lowered from 15.0 to 12.0 and the area around Lexington Avenue in the vicinity of East 55th Street was rezoned to a mix of 10.0 and 12.0 FAR.

52.

Since the adoption of the Special Midtown District, the major change to the zoning regulations of the area was the creation of the Grand Central Subdistrict within the Special Midtown District in 1992 to allow the transfer of development rights from Grand Central Terminal and other area landmarks to surrounding development sites in the vicinity of Grand Central and the creation of an improved pedestrian realm in the area. In that subdistrict, the maximum permitted FAR by using the transfer is 21.6 and requires a zoning special permit from the CPC that finds that a significant pedestrian improvement is being provided as part of the project. To date, more than 1.2 million square feet of development rights remains unused on the Grand Central Terminal property since only one building (383 Madison Avenue) has taken advantage of this provision. Concerns have been raised about the complexity of the process required to achieve the full 21.6 maximum FAR, which includes lengthy case-by-case negotiation with the Metropolitan Transportation Authority (MTA) over the scope of the required pedestrian network improvements.

It has become evident that these bonus mechanisms do not provide enough incentive to replace existing, obsolete buildings with new construction.

<u>Modernization of Core Office Areas by Competitor Cities</u>

East Midtown's inventory of contemporary office space lags in comparison to office core districts in competing cities, such as London, Tokyo, and Chicago. Many competing cities have made it a major policy focus to encourage new office construction in their traditional office cores in order to replace outdated office space. Again, East Midtown's existing high density poses a unique challenge and disincentive to replace its aging office inventory in order to remain competitive with these other office core districts.

The City believes that the foregoing long-term challenges, as a whole, will result in a breakdown in the integrated and dynamic office market in East Midtown as the needs of the entire range of tenants the area serves today would be unmet. It is feared that East Midtown would become less desirable as a business district and the significant public investment in the area's transit infrastructure would fail to fulfill its full potential to generate jobs and tax revenues for the City.

53.

Proposed East Midtown Subdistrict Rezoning

The City lists the goals of the proposed rezoning as:

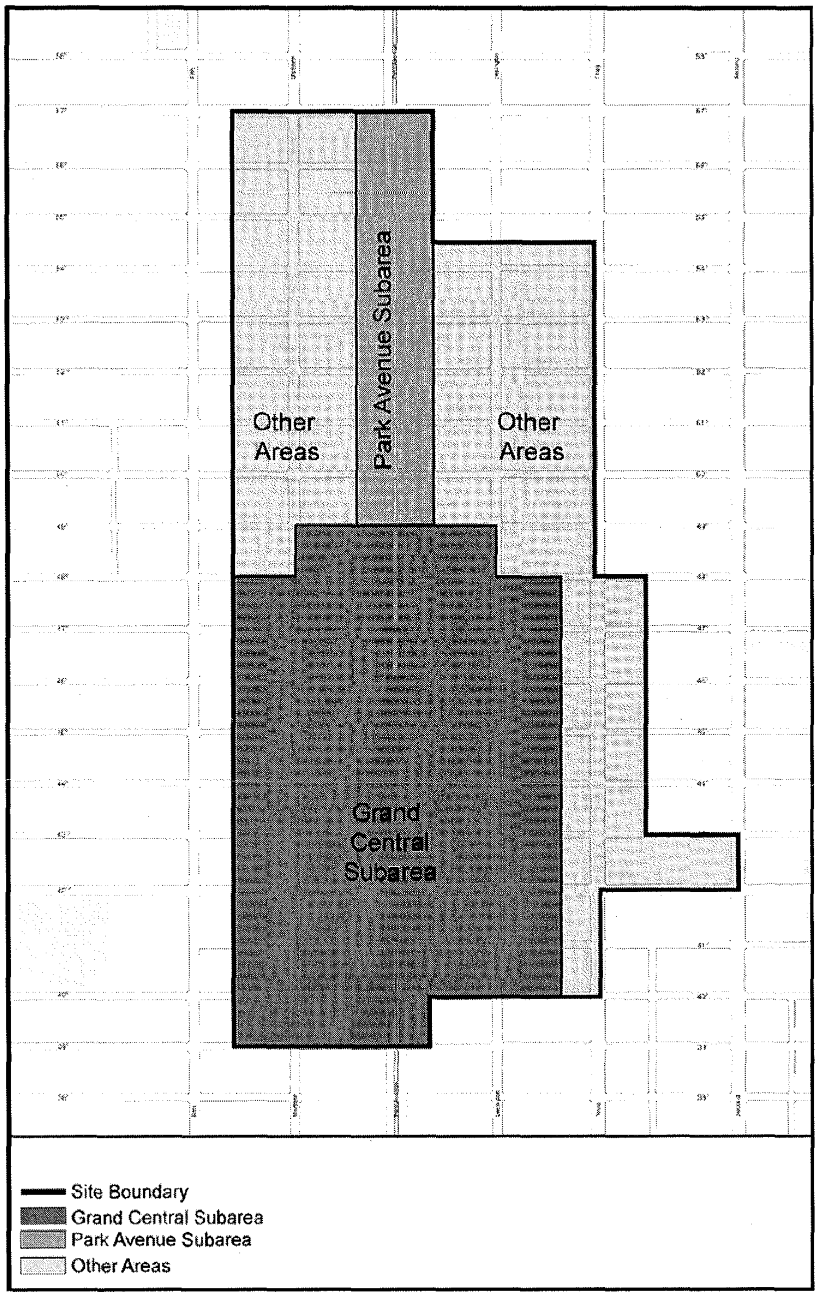
- Protect and strengthen East Midtown as one of the world's premier business addresses and key job center for the City and region;
- Seed the area with new modern and sustainable office buildings to maintain its preeminence as a premier office district;
- Improve the area's pedestrian and built environments to make East Midtown a better place to work and visit; and
- Complement ongoing office development in Hudson Yards and Lower Manhattan to facilitate the long-term expansion of the City's overall stock of office space.

The City has proposed a zoning amendment that would establish an East Midtown Subdistrict (the "Subdistrict") within the Special Midtown District. This new Subdistrict would supersede and subsume the existing Grand Central Subdistrict. While most existing zoning would remain in place, the amendment would focus new commercial development with the greatest as-of-right densities on large sites with full block frontage on avenues around Grand Central Terminal, with slightly lower densities allowed along the Park Avenue corridor and elsewhere. The rezoning would replace special permit requirements with an "earned as-of-right" zoning framework that provides both for a more efficient and predictable process for commercial development as well as an incentive for public realm improvements.

In order to encourage appropriate development in different areas of the new Subdistrict, it would be divided into three areas: the Grand Central Subarea, the Park Avenue Subarea, and Other Areas. The "Other" areas are comprised of areas west of the Park Avenue Subarea and areas east of both the Grand Central and Park Avenue subareas. A map of the Subdistrict's subareas is presented on the following page.

54.

Proposed East Midtown Subareas



Source: NYC Department of City Planning

55.

Existing Zoning

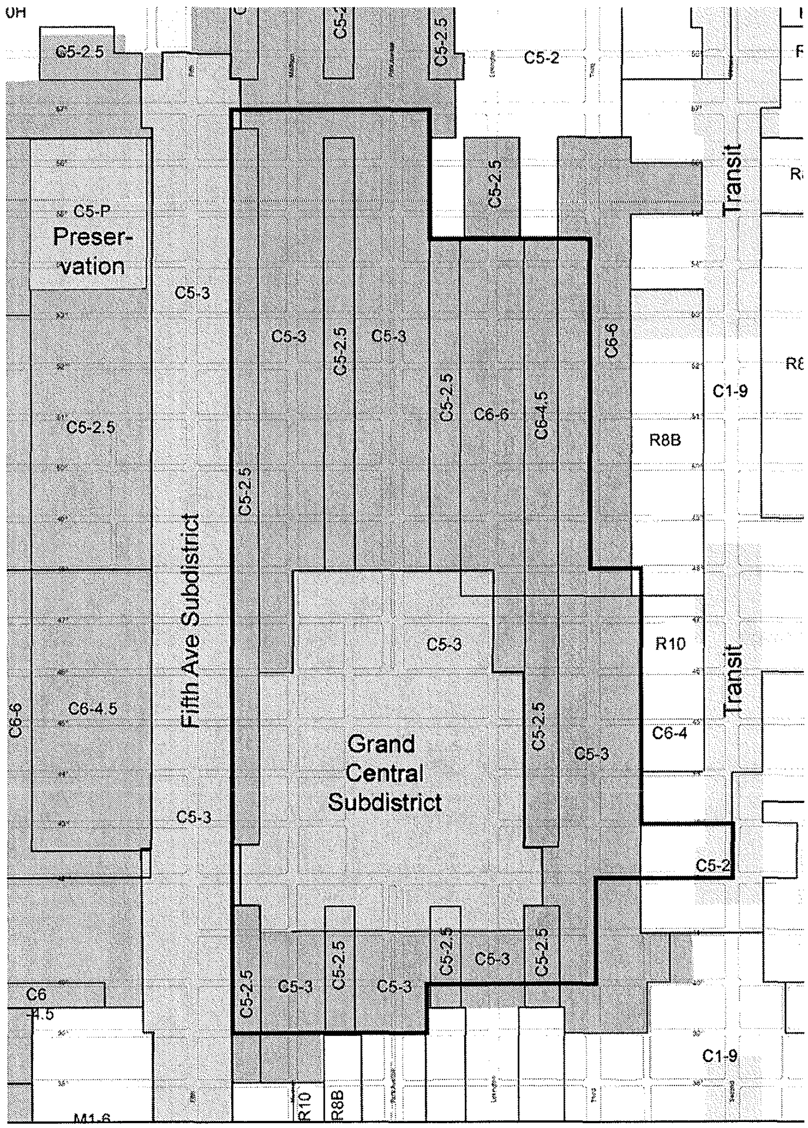


Figure 3 - Existing Zoning

Site Boundary
Special Midtown District
Subdistrict of Special Midtown District
Other Special District

East Midtown Rezoning and Related Actions

Source: NYC Department of City Planning

56.

Proposed Zoning

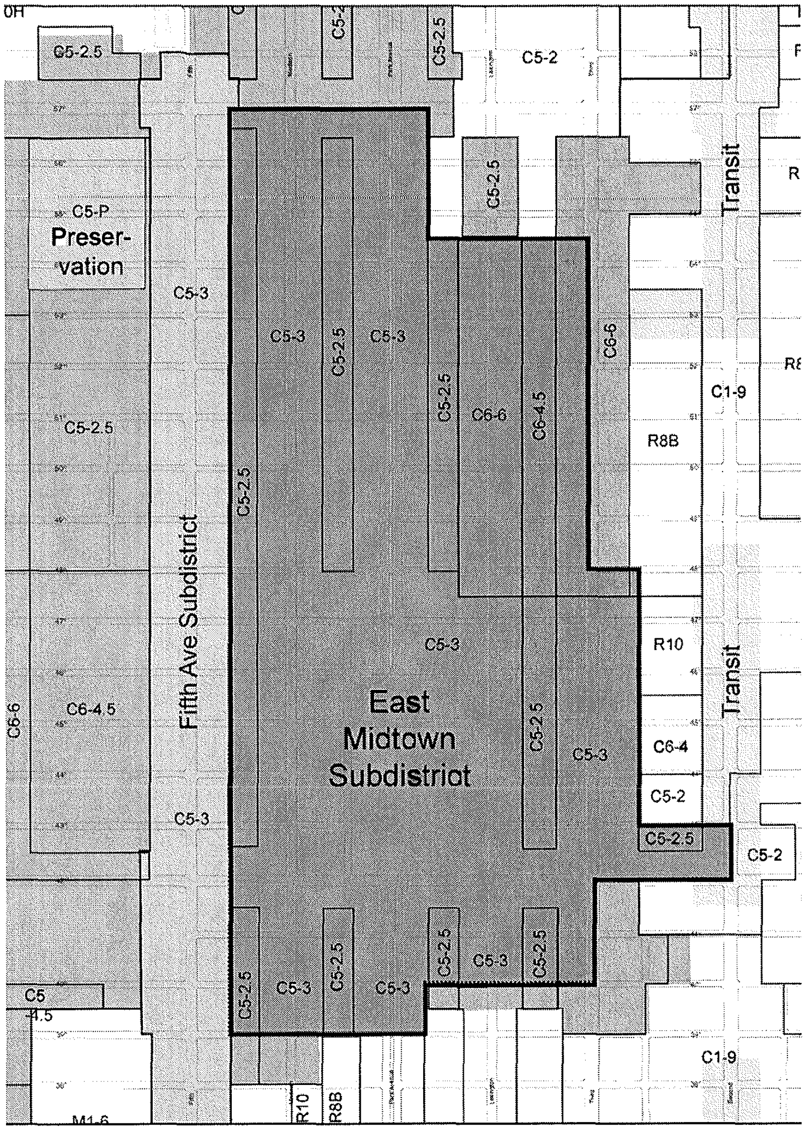


Figure 4 - Proposed Zoning

Site Boundary
Special Midtown District
Other Subdistrict of Midtown District
Other Special District
East Midtown Subdistrict

East Midtown Rezoning and Related Actions

Source: NYC Department of City Planning

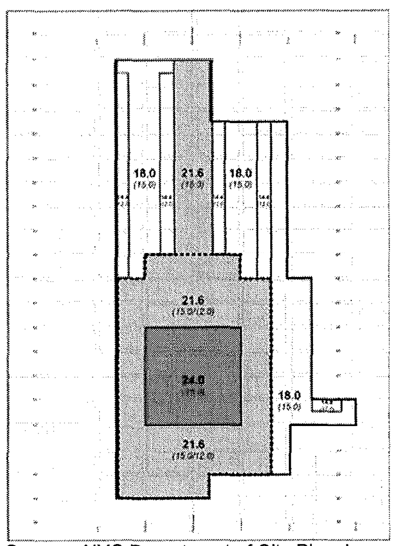
57.

This East Midtown Rezoning is a targeted plan. Development at increased FARs would only be permitted on "Qualifying Sites" of a minimum size. Within the Subdistrict, these Qualifying Sites are defined as sites with the full frontage along most avenue blockfronts or 200 feet of frontage along 42nd Street, as well as a minimum site size of 25,000 square feet. New commercial buildings on Qualifying Sites could exceed the base 15 FAR in exchange for monetary contributions to a proposed District Improvement Fund. The fund would be dedicated to critical transit and pedestrian improvements throughout the area.

The maximum FARs that major new developments on Qualifying Sites could achieve under this earned as-of-right framework are:

- Directly around Grand Central Terminal – 24 FAR
- Along Park Avenue – 21.6 FAR
- Other areas to the east and west – 18/14.4 FAR

Sites that do not meet "qualifying criteria" would be governed by existing maximum FARs.



Source: NYC Department of City Planning

58.

The proposed rezoning allows two ways to increase above today's allowable densities on Qualifying Sites that provide all their floor area as commercial use:

- District Improvement Bonus (DIB): New commercial buildings on Qualifying Sites could exceed the base 15 FAR in exchange for contributions to a proposed District Improvement Fund dedicated to critical transit and pedestrian improvements throughout the area.
- Landmark Transfer: In the Grand Central Subarea, only after contributing into the District Improvement Fund for a minimum of 3 FAR, Qualifying Sites could purchase additional floor area from Grand Central subarea landmark buildings through an expedited process without special permit review.

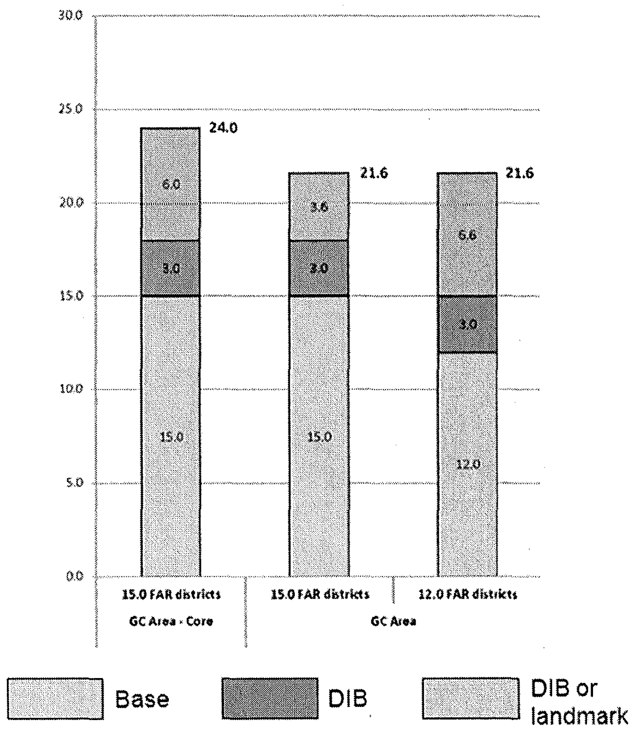
Through these two mechanisms, developers could increase the FAR of qualifying sites within the Grand Central Core up to 24.0 FAR from the 15.0 base maximum FAR. For Qualifying Sites within the remainder of the Grand Central Subarea, floor area increases would be permitted up to 21.6 FAR from the existing base maximum FAR of 15.0/12.0.

Use of the District Improvement Bonus would be required in order to increase FAR from 15.0 to 18.0. Above 18.0 FAR, Qualifying Sites could reach the maximum 24.0 FAR through utilization of either or both of the District Improvement Bonus and the new Landmark Transfer mechanism.

For Qualifying Sites within the remainder of the Grand Central Subarea, floor area increases would be permitted up to 21.6 FAR from the existing base maximum FAR of 15.0/12.0. To achieve this maximum FAR would require utilization of the District Improvement Bonus for the first 3.0 FAR (from 15.0 to 18.0 FAR or from 12.0 to 15.0 FAR, respectively). Above the first 3.0 FAR, Qualifying Sites could reach the maximum 21.6 FAR through additional utilization of either or both of the DIB and the new Landmark Transfer mechanism.

The foregoing incremental increases to base FAR are illustrated in the following chart.

59.

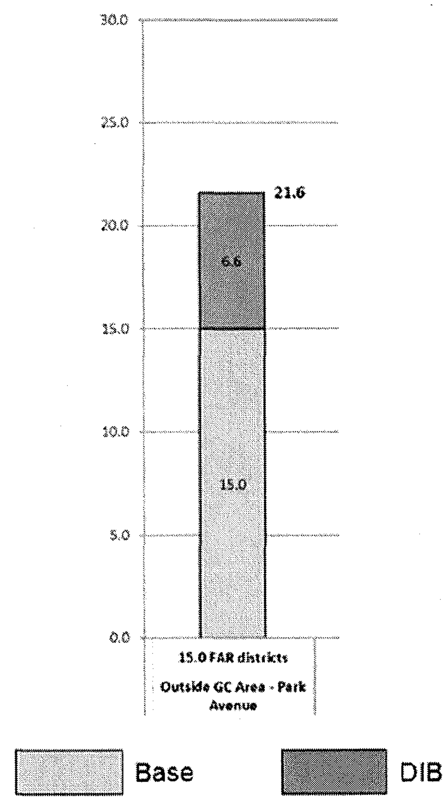


Source: NYC Department of City Planning

The existing Grand Central Subdistrict contains a number of additional zoning mechanisms and requirements, most of which would be maintained or amended in the new Grand Central Subarea. These include: FAR As-of-right Landmark Transfer (permits 1.0 FAR as-of-right transfers from the Subdistrict's landmark buildings via Chair certification), Existing Landmark Transfer Special Permit (permits a transfer of landmark rights within the area bounded by East 41st and East 48th streets, and Madison and Lexington avenues, up to a maximum of 21.6 FAR and modification of height and setback requirements by special permit), and other zoning controls (special street wall, pedestrian circulation space and loading requirements).

60.

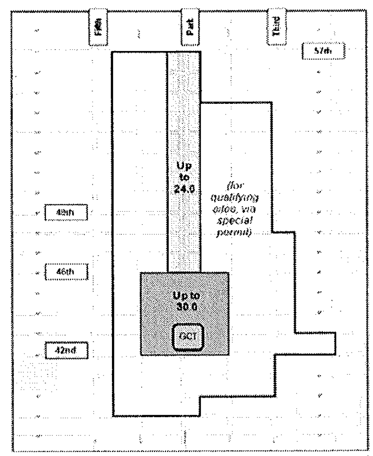
The proposed Park Avenue Subarea would encompass the frontage along Park Avenue between East 46th and East 57th streets, for the area within 125 feet of Park Avenue. For the limited number of Qualifying Sites within the Park Avenue Subarea, as-of-right floor area increases would be permitted up to 21.6 FAR from the existing base maximum FAR of 15.0. Utilization of the DIB will be required to achieve this maximum FAR.



Source: NYC Department of City Planning

61.

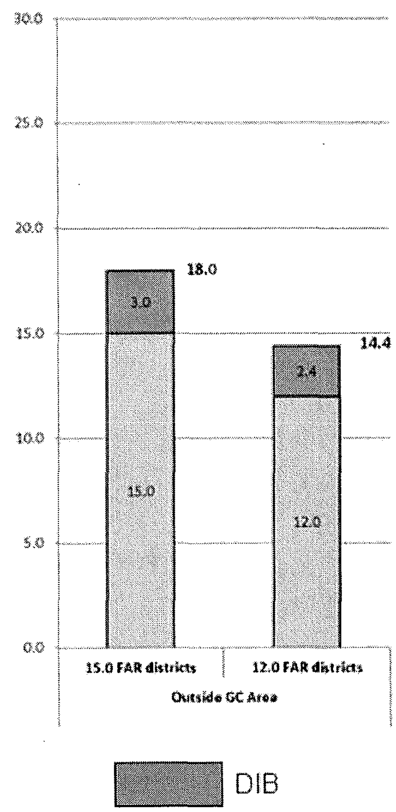
The plan also provides opportunities for new, extraordinary buildings at densities beyond those that would be permitted as-of-right on Qualifying Sites, provided they create significant public benefits. A Special Permit for Superior Developments would allow new skyline-piercing towers to be introduced into the East Midtown context.



To exceed the new as-of-right framework in East Midtown, a full public review process (ULURP) would be required for developments on Qualifying Sites. Up to 30 FAR around Grand Central Terminal and up to 24 FAR on the Park Avenue corridor could be granted through a discretionary review, only for "superior developments" that: make a significant contribution to the skyline, result in a superior site plan and massing, and make significant contributions to the pedestrian network. The buildings seeking additional FAR must also include extraordinary on-site public amenities such as a major new public space (indoor and/or outdoor) and, in the case of sites around Grand Central Terminal, incorporate direct and generous connections to the underground pedestrian network.

62.

Lastly, "Other" areas within the East Midtown Subdistrict include the Madison Avenue and Lexington Avenue corridors, north of the Grand Central Subarea and adjoining midblock areas. For the limited number of Qualifying Sites within these Other Areas, as-of-right floor area increases would be permitted to increase from existing maximum base FAR of 15.0 FAR to 18.0 FAR along avenues, and from existing maximum base FAR of 12.0 to 14.4 in midblock areas. Achieving this maximum FAR would require utilization of the DIB. The foregoing incremental increases to base FAR in the Other Areas are illustrated in the following chart.



Source: NYC Department of City Planning

63.

LOCATION ADJUSTMENT ANALYSIS

	1Q 2013	Comp->	LOCATION OF COMPARABLE SALE					
			Westside 1	Westside 2	Plaza 1	Plaza 2	GC 1	GC 2
	Subj. Location		$ 76.13	$ 59.93	$ 70.05	$ 60.06	$ 63.43	$ 48.44
LOCATION OF SUBJECT	Westside 1	$ 76.13	0%	27%	9%	27%	20%	57%
	Westside 2	$ 59.93	-21%	0%	-14%	0%	-6%	24%
	Plaza 1	$ 70.05	-8%	17%	0%	17%	10%	45%
	Plaza 2	$ 60.06	-21%	0%	-14%	0%	-5%	24%
	Grand Central 1	$ 63.43	-17%	6%	-9%	6%	0%	31%
	Grand Central 2	$ 48.44	-36%	-19%	-31%	-19%	-24%	0%

	4Q 2012		LOCATION OF COMPARABLE SALE					
			Westside 1	Westside 2	Plaza 1	Plaza 2	GC 1	GC 2
			$ 76.79	$ 63.11	$ 75.16	$ 61.92	$ 63.28	$ 47.00
LOCATION OF SUBJECT	Westside 1	$ 76.79	0%	22%	2%	24%	21%	63%
	Westside 2	$ 63.11	-18%	0%	-16%	2%	0%	34%
	Plaza 1	$ 75.16	-2%	19%	0%	21%	19%	60%
	Plaza 2	$ 61.92	-19%	-2%	-18%	0%	-2%	32%
	Grand Central 1	$ 63.28	-18%	0%	-16%	2%	0%	35%
	Grand Central 2	$ 47.00	-39%	-26%	-37%	-24%	-26%	0%

	4Q 2011		LOCATION OF COMPARABLE SALE					
			Westside 1	Westside 2	Plaza 1	Plaza 2	GC 1	GC 2
			$ 64.47	$ 51.11	$ 72.91	$ 74.34	$ 60.95	$ 40.46
LOCATION OF SUBJECT	Westside 1	$ 64.47	0%	26%	-12%	-13%	6%	59%
	Westside 2	$ 51.11	-21%	0%	-30%	-31%	-16%	26%
	Plaza 1	$ 72.91	13%	43%	0%	-2%	20%	80%
	Plaza 2	$ 74.34	15%	45%	2%	0%	22%	84%
	Grand Central 1	$ 60.95	-5%	19%	-16%	-18%	0%	51%
	Grand Central 2	$ 40.46	-37%	-21%	-45%	-46%	-34%	0%

	Average	LOCATION OF COMPARABLE SALE					
		Westside 1	Westside 2	Plaza 1	Plaza 2	GC 1	GC 2
LOCATION OF SUBJECT	Westside 1	0%	25%	0%	12%	16%	60%
	Westside 2	-20%	0%	-20%	-10%	-7%	28%
	Plaza 1	1%	26%	0%	12%	16%	62%
	Plaza 2	-8%	15%	-10%	0%	5%	46%
	Grand Central 1	-13%	8%	-14%	-3%	0%	39%
	Grand Central 2	-37%	-22%	-38%	-30%	-28%	0%

QUALIFICATIONS

JEROME HAIMS, MAI, CRE, FRICS

PROFESSIONAL BACKGROUND:

President, Jerome Haims Realty, Inc.
Former Vice President, Abbott & Adams Appraisal Co. Inc.
Former Vice President, Abbott & Adams, Inc.

PROFESSIONAL AFFILIATIONS:

Appraisal Institute with MAI designation:
Chair, National Bylaws Committee, 1993-1994
Regional Committee Representative, Northeast Region, 1991-1997
Former American Institute of Real Estate Appraisers with MAI designation: (now known as Appraisal Institute)
Former Member of Appraisal Standards Board
Former Chairman and Vice-Chairman, National Review and Counseling Division of the National Professional Standards Committee
Past President (1983), New York Metropolitan District Chapter No. 4
Former Regional Committeeman, Central Atlantic Region
Former Member of Governing Council
Former Society of Real Estate Appraisers with SRA and SREA designation (now known as Appraisal Institute)
American Society of Real Estate Counselors: International Activities Committee 1993
Fellow of the Royal Institution of Charted Surveyors (FRICS)
Qualified Valuation Surveyor
New York State Society of Appraisers
American Right-of-Way Association, Senior Member
The Real Estate Board of New York
American Arbitration Association:
Member of the AAA National Roster of Neutrals
Regional Plan Association
National Association of Real Estate Boards
Urban Land Institute

Recipient of the "1996 and 2008 Person of the Year" award from the Metropolitan New York Chapter of the Appraisal Institute. This honor represents service in the advancement of the appraisal profession and assistance toward the aims and purposes of this Association.

OTHER AFFILIATIONS:

Rho Epsilon Fraternity
International Fraternity of Lambda Alpha
NYU School of Continuing Education, Appraisal Advisory Council
Real Estate Institute Faculty Member

QUALIFICATIONS

JEROME HAIMS, MAI, CRE, FRICS (cont'd.)

LECTURING ACTIVITIES:

New York State Real Estate Appraisal Board,
  Qualified Instructor
New York University School of Continuing Education,
  Adjunct Faculty Member
State of New York Approved Real Estate Instructor,
  Certified and General
C. W. Post College
National Association of Real Estate Boards
Association of Governmental Appraisers
New York State Judicial Conference -1995
American Bar Association Convention - 2000
New York County Lawyers' Association
  Continuing Legal Education Program -1999/2000 and
  Condemnation Law Committee - 2004
Lorman Education Services Seminars - 2003 and 2004

EDUCATIONAL BACKGROUND:

B.A., New York University
New York University, Graduate School of Business
  Administration, Economics & Real Estate Valuation Major

EXPERIENCE:

Real estate appraiser and consultant and licensed Real Estate Broker. Have prepared over 5,000 appraisal and consulting assignments for private investors, lending institutions, pension funds, corporations, attorneys, estates, developers and governmental agencies, including Federal, State, City, County, Town and Village municipalities.

Real estate valuation expert, qualified to testify in various Courts, including the New York State Supreme Court, New York State Court of Claims, and Federal Courts, etc.

State of New York Certified Real Estate General Appraiser, No. 46000003369

State of New Jersey Certified Real Estate General Appraiser, No. 42RG00087800

State of Connecticut Certified General Appraiser, No. 0000265

State of Pennsylvania Certified General Appraiser, No. GA-001310-R

QUALIFICATIONS

YAMIL N. AROCHO

PROFESSIONAL BACKGROUND: Jerome Haims Realty, Inc., New York, New York
Vice President

Hunsperger & Weston, Ltd., Greenwood Village, Colorado
Appraiser

PROFESSIONAL AFFILIATIONS: Appraisal Institute – Associate Member

EDUCATIONAL BACKGROUND: University of Colorado at Boulder
B.A.: English Literature

Successfully completed real estate appraisal courses and examinations given by the University of Colorado, the Appraisal Institute, New York University, Baruch College and the Appraisal Education Network including:

Basic Appraisal Applications
Registered Appraiser
Standards & Ethics
National Ethics and Standards USPAP Course
Business Practices and Ethics
310 - Basic Income Capitalization
510 – Advanced Income Capitalization
620 - Sales Comparison Valuation of Small, Mixed-Use Properties
700 - The Appraiser as an Expert Witness: Preparation & Testimony
710 - Condemnation Appraising: Basic Principles & Applications
720 - Condemnation Appraising: Advanced Topics & Applications
AQ-1 Fair Housing, Fair Lending, and Environmental Issues
Principles of Income Property Appraising (G2)
Applied Income Property Valuation (G3)
Argus Real Estate Financial Analysis Software
Appraising Historic Preservation Easements Certificate Program

LICENSE: State of New York, Certified General Real Estate Appraiser
Certificate Number 46000045109

EXPERIENCE: Research and analysis of commercial, industrial and residential properties in New York City and the appraisal of properties in the Denver Metropolitan Area.

QUALIFICATIONS

REAL ESTATE APPRAISER FOR AGENCIES OF NEW YORK CITY

Department of General Services
Law Department - Corporation Counsel
Division of Real Property
Economic Development Corporation
Housing Preservation and Development
Housing Authority
Comptroller's Office - Pension Fund
Public Development Corporation
Department of Ports and Terminals
School Construction Authority
Department of Citywide Administrative Services
Primary Care Development Corporation
Lower Manhattan Development Corporation
Brooklyn Bridge Development Corporation
Brooklyn Bridge Park Corporation
Hudson Yards Development Corporation

REAL ESTATE APPRAISER FOR AGENCIES OF NEW YORK STATE

Power Authority
Department of Parks and Recreation
Department of Transportation
State University of New York
City University of New York
Empire State Development Corporation
(formerly known as Urban Development Corporation)
Queens West Development Corporation
Department of Environmental Conservation
Facilities Development Corporation
Metropolitan Transportation Authority
County of Nassau, Bureau of Real Estate
Dormitory Authority
Department of Law
The Port Authority of New York and New Jersey
Housing Finance Agency
Convention Center Development Corporation
Moynihan Station Development Corporation
Greater Jamaica Development Corporation
Roosevelt Island Operating Corporation

REAL ESTATE APPRAISER FOR AGENCIES OF THE FEDERAL GOVERNMENT

National Park Service
General Services Administration
Housing and Urban Development
Federal Home Loan Bank Board
Federal Deposit Insurance Corporation
Federal Savings Loan Insurance Corporation
Department of Justice
Department of the Navy
Postal Service
Federal National Mortgage Association
Federal Asset Disposition Association
Resolution Trust Corporation
Internal Revenue Service

QUALIFICATIONS

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Akin Gump Strauss Hauer & Feld LLP
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Alston & Bird, LLP
American Broadcasting Companies, Inc.
Amerimar Enterprises, Inc.
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Banif Mortgage
Bass Real Estate
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Benjamin Beechwood Tides LLC
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Boys Town Jerusalem Fndtn America, Inc.
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Children's Oncology Society of New York
Citi Urban Management Corporation
City of New Rochelle
Club Quarters
Coalition for the Homeless
Cohen Hennessey Bienstock & Rabin P.C.
Cohen Tauber Spievack & Wagner, P.C.
Colucci & Gallaher, P.C.
Columbia Presbyterian Medical Center
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Consolidated Asset Recovery Corporation
Consulate General of Japan in New York
Convermat Corporation
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CorporationGerosa, Incorporated
Crescent Equities, Inc.
CRT Asset Management, Inc.
Cynthia Broan Gallery
Danziger & Markhoff, LLP
De Forest and Duer
Denham Wolf Real Estate Services, Inc.
'21' Club Inc.
Aion Partners
Alan Fox, Esq.
Alfa Development Management, LLC
Alliance for Downtown New York
Alterman & Boop, LLP
American Telephone & Telegraph Co.
Amtrak
Arent Fox Kintner Plotkin & Kahn, PLLC
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Asher Dann
Atco Properties & Management, Inc.
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Baker Hostetler
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Bally Total Fitness
Barnard Charles Real Estate
Battery Park City Authority
Beatie and Osborn LLP
Ben Heller
Bernard Spitzer, P.E.
BLDG Management Company, Inc.
Bonjour Capital
Boulanger, Hicks & Churchill
Brack Capital Real Estate-USA
Bridge Business & Property Brokers, Inc.
Brown & Wood
Brown, Raysman & Millstein
Buckingham Hotel
C. Lawrence Paine, LLC
Calvary Baptist Church
CAN Continental Casualty Company
Carter, Ledyard & Milburn LLP
Center for Jewish History
Children's Aid Society
CIGNA Real Estate Investors
City Center Real Estate, Inc.
Clarendon Management Corporation
Coach, Inc.
Cohen Brothers Realty Corporation
Cohen Clair Lans Greifer & Thorpe LLP
Colonial Funding Corporation
Columbia Presbyterian Hospital New York
Columbia University
Conrail
Consolidated Edison Co. of New York, Inc.
Continental Assurance Company
Cooley Godward Kronish LLP
Coronet Capital Company
Credit Suisse First Boston/First Boston Corp
Crocco & Demaio
Cullen & Dykman
Cyruli Shanks Hart & Zizmore LLP
David Tarlow & Company
Dechert, LLP
Dewey Ballantine

JEROME HAIMS REALTY, INC.
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QUALIFICATIONS

DIA Art Foundation
Dickstein Shapiro LLP
Ditchik & Ditchik, LLP
DMJM Harris, Inc.
Dominion Management Company
Downtown Realty Management
Edge Principal Advisors, LLC
Eizen Fineberg & McCarthy
Elo Organization LLC
Emmes Asset Management Corporation
Empire Management
Equitable Life Assurance Society of U.S.
EURAM Management, Inc.
Fairway Operating Corporation
Federal Home Loan Mortgage Corporation
Fidelity National Title Group, Inc.
Fink Baking Corporation
First Pioneer Properties, Inc.
Fish & Richardson, PC
Forbes, Inc.
Ford Land Service Corporation
Forest City Ratner Companies
Friedman & Gotbaum, LLP
Friedman Management Company
Gandin, Schotsky & Rappaport
Garfield Development Corporation
Gerson Properties LLC
God's Love We Deliver
Goldberg Weprin & Ustin
Goldfarb & Fleece
Goldstein, Goldstein, Rikon & Gottlieb, P.C.
Goodstein Development Corporation
Grand Metropolitan, Inc.
Greater New York Mutual Insurance Company
Greenfield Eisenberg Stein & Senior
Greiner-Maltz Company, Inc.
Group Health Incorporated
H.R.H. Development Corporation
Hangley Aronchick Segal & Pudin
Harran Holding Corporation
Helen Hayes Theater
Helmsley Spear, Inc.
Hertz, Herson & company, LLP
Himmel Meringoff Properties
Home Holdings, Inc.
Hutner Klarish, LLP
Integrated Resources, Inc.
Inter-Continental Hotels, Inc.
International Business Machines Corp.
Interntnl Brotherhd of Teamsters, Local 810
J. E. Robert Company of New England
J. W. Mays, Inc.
Janet Yagoda Real Estate
Janvey, Gordon, Herlands, Randolph & Cox
Jazz at Lincoln Center, Inc.
Jeffries Morris, Inc.

Diamondheart, LLC
DiLorenzo Associates
DLA Piper US, LLP
Doggi U.S.A., Inc.
Dorsey & Whitney, LLP
Dreyer & Traub
Edward Isaacs & Company
EL Ad US Holding, Inc.
Emblem Health
Emmet, Marvin & Martin
Epstein Becker & Green, P.C.
Equitable Real Estate Management, Inc.
Extell Development Corporation
Fashion Institute of Technology
Ferragamo USA
Fifth Avenue Hotel Suites, LLC
Finkel Goldstein Berzow Rosenbloom & Nash, LLP
First Sterling Corporation
Florence Rostami-Gouran
Ford Foundation
Ford Models, Inc.
Fox Rothschild, LLP
Friedman LLP
Gallet Dreyer & Berkey, LLP
Ganter & Bloom, P.C.
Garson Brothers Development
Gibson, Dunn & Crutcher
Goelet, LLC
Goldberg, Rimberg & Friedlander, PLLC
Goldman & Stein
Golomb Sindel, PC
Goodwin Procter LLP
Graubard Mollen & Miller
Greenberg Traurig
Greenthal/Harlan Realty Services Company
Greystone Financial Group
Guess?, Inc.
Hamilton, Rabinovitz & Alschuler, Inc.
Harbor Point Development, LLC
Harry Otterman
Helmsley Enterprises, Inc.
Herrick Feinstein, LLP
Herzfeld & Rubin
Holland & Knight, LLP
HRO International Ltd.
Incorporated Village of Ocean Beach
Intercontinental Hotels and Resorts
International Bank Note Company
International Union AFL-CIO, CLC
Irwin, Lewin, Cohn & Lewin, P.C.
J. P. Morgan & Company, Inc.
Jack Kent Cooke (JKC Realty, Inc.)
Jankoff & Gabe, P.C.
Jaroslawicz & Jaros, LLC
Jeffrey Management Corporation
Jenkens & Gilchrist Parker Chapin, LLP

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QUALIFICATIONS

Jerald Rosenbloom, Esq.
John Hancock Mutual Life Insurance Co.
John P. Engel & Associates
Jonathan Marks, PC
Joseph Chetrit
K. Backus & Associates, Inc.
Kalkines, Arky, Zall & Bernstein, LLP
Kaufman Astoria Studios, Inc.
Kaye Scholer, LLP
Kellner Herlihy Getty & Friedman LLP
Kew Management Corporation
Kirkland & Ellis LLP
Kiska Developers, Inc.
Kocker & Bruh, LLP
Koeppel Tener Real Estate Services, Inc.
KR Capital Partners, LLC
Krass & Lund
Kronish Lieb Weiner & Hellman, LLP
L & L Holding Company LLC
L. B. Management Company & Affiliates
Lampf, Lipkind, Prupis & Petigrow
Law Office of Peter D. Hoffman, PC
LCOR Incorporated
Lester Epstein & Associates
Liberty Mutual
Loeb and Loeb
Lord Day & Lord, Barrett Smith
Lutheran Family Health Centers
Madison Equities
Maimonides Medical Center
Manatt Phelps & Phillips
Manhattan East Suite Hotels
Mann Realty Associates
Marcus Attorneys
Mark Perlbinder
Maryland Casualty Company
McCoyd, Parkas & Ronan LLP
McSam Hotel Group, LLC
Mel-Mar Development Corporation
Meringoff Properties
Metro Loft Management, LLC
Metromedia, Inc.
Meyer, Suozzi, English & Klein, P.C.
Milbank, Tweed, Hadley & McCloy
Milstein Properties Corporation
Mitchell Silberberg & Knupp, LLP
MJ Trimming
Montclare & Wachtler
Mound Cotton Wollan & Greengrass
Nathan Halegua
National Railroad Passenger Corp.(Amtrak)
Ness, Motley, Loadholt, Richardson & Poole
New School for Social Research
New York City Terminal Market
New York Legal Assistance Group
New York Medical College
Jewish Bd Family & Children's Services
John J. Curley, Esq.
Johnson, Matte & Hobgood LLP
Jonathan Woodner Company
K&L Gates
Kalikow Realty & Construction Corporation
Katten Muchin Rosemann, LLP
Kaufman Management Company
Kelley Drye & Warren
Kenrich Petrochemicals, Inc.
Kinney Systems, Inc.
Kirkpatrick & Lockhart
Koch Family Limited Partnership
Koeppel Management Company LLC
Kostelanetz & Fink, LLP
Kramer, Levin, Naftalis & Frankel LLP
Kraus Enterprises, Inc.
Kurzman Karelsen & Frank, LLP
L & L Wings, Inc.
Laboratory Institute of Merchandising
Law Office of Herbert H. Chaves, Esq.
LeClair Ryan
Leahy, Nyberg, Curto & D'Apice
Levy Holm Pellegrino & Drafth, LP
Loanzon Sheikh LLC
Loews Corporation
Lowe's Home Centers, Inc.
Maddin, Hauser, Wartell, roth & Heller, P.C.
Maidman & Mittelman, LLP
Mall Properties, Inc.
Manhattan East Hotels and Apartments
Manhattan Eye, Ear and Throat Hospital
Marathon Real Estate
Marcus Rosenberg & Diamond, LLP
Mark Stuart Goldberg & Associates
Matrix Develop, LLC
McDermott Will & Emory LLP
MDFC Loan Corporation
Mercedes-Benz USA, Inc.
Merrill Lynch & Company
Metro Terminal Corporation
Metropolitan Life Insurance Company
Midwood Management Corporation
Millennium Partners
Minskoff Equities, Inc.
Mitsubishi Estate Company, Inc.
Monroe Bus Corporation
Morrison, Cohen, Singer & Weinstein
Mount Sinai Medical Center
National Cold Storage Company, Inc.
Nelson Equities, Inc.
New Jersey Transit
New York City Builders Group
New York College of Podiatric Medicine
New York Life Insurance Company
New York Plaza Building Company

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QUALIFICATIONS

New York Telephone Company
New York University Hospital Center
Newmark Knight Frank
Norris McLaughlin & Marcus, PA
Nurture Nature Foundation
O'Melveny & Myers
Optimum Properties
P & J Joint Venture
PA Associates
Parker Chapin Flattau & Klimpl
Paul Weiss Rifkind Wharton & Garrison
Penn Central Transportation Corporation
Permanent Mission of Luxenberg
Philip A. MacTaggart (Western Mngmnt Corp)
Phipps Houses
Plaxall
Podell Schwartz Schechter & Banfield LLP
Pontegadea Florida, Inc.
Property Resources Corporation
Prudential Insurance Company of America
Queens West Development Corporation
Ralph Zirinsky Realty Company
Raymond, Parish & Pine
Related Affordable
Richard S. Wolkoff, Esq.
Richmond University Medical Center
Risk Entreprise Management Limited
Robert S. Katz, Esq.
Robinson Silverman Pearce Aronsohn & Berman
Rockrose Construction, LLC
Rodman Management
Romarco Realty Corporation
Roosevelt Island Operating Corporation
Rosenbloom, Hofflich & Feuer, LLP
Rosenthal Appraisal Company
Royal Charter Properties
Rudin Management Company, Inc.
S. Rudy Gatto & Associates Development Corp.
Saint Mary's Episcopal Center, Inc.
Samsung Texas Construction, Inc.
Scheichet & Davis, P.C.
Schulte Roth & Zabel
Sentinel Real Estate Corporation
Shatz Meier Franzino & Scher, LLP
Shearman & Sterling LLP
Sheraton Manhattan Hotel
Simone Development Company
Sive Paget & Riesel
Skidmore, Owings & Merrill
Smith, Buss & Jacobs, LLP
SNR Denton US LLP
Solomon R. Guggenheim Museum
Solow Realty Development Company, LLC
Sony BMG
Southern Farm Bureau Life Insurance Company
Spectra Energy
New York University
Newmark & Company Real Estate Inc.
Nixon Peabody LLP
Northcorp Realty Advisors, Inc.
OGS Div. of Financial Administration
Operating Engineers Local 825
Orient-Express Hotels, Inc.
P.E.F. Israel Endowment Fund
Paramount Group, Inc.
Patterson, Belknap, Webb & Tyler
Pavia & Harcourt
Perlbinder Realty Corporation
Peter Kimmelman Asset Management Co.
Phillips Nizer
Pillsbury Winthrop Shaw Pittman LLP
Plaza Realty Investors
Ponte Equities Incorporated
Pottish Freyberg Marcus & Velazquez
Proskauer Rose, LLP
PSEG Services Corporation
Quinlan Development Corporation
Rapaport Brothers, P.C.
Reboul MacMurray Hewitt Maynard & Kristol
Richard E. Talmadge
Richards & O'Neil
Rinzler & Rinzler
Robert Cronheim
Roberts & Holland LLP
Rockefeller Center Management Corp.
Rockrose Development Corporation
Rollinson Law Firm
Ronald McDonald House of New York
Rosen & Reade, LLP
Rosenman & Colin
Round Table Group, Inc.
Rubin and Rudman, LLP
S. J. Landau Corporation
Sabin, Bermant & Gould, LLP
Samson Management, LLC
Scala and Scala
Schenkman Jennings LLC
Schwartz & Blumert, LLP
Shapiro & Shapiro
Shea & Gould
Sheldon Solow
Silverstein Properties
Simpson Thacher & Bartlett
Skadden, Arps, Slate, Meagher & Flom LLP
Sloyer-Forman, Inc.
Snitow Kanfer Holtzer & Millus, LLP
SoHo Properties, Inc.
Solomon Zauderer Ellenhorn Frischer & Sharp
Sonneschein, Sherman & Deutsch
South Cove III Associates
Southgate Owners Corporation
Spengler Carlson Gubar Brodsky & Frischling

**JEROME HAIMS REALTY, INC.
REAL ESTATE APPRAISERS & CONSULTANTS**

QUALIFICATIONS

Squadron, Ellenoff, Plesent & Sheinfeld, LLP
Stadtmauer Bailkin, LLP
Starr & Company
Stein Riso Mantel, LLP
Stellar Management
Stoltz Real Estate Partners
Sun Life Assurance Company of Canada, SC
Swingline, Inc.
Takashimaya Fifth Avenue Corporation
Tashlik, Kreutzer, Goldwyn & Crandell P.C.
Texas Eastern Transmission, LP
The ADCO Group
The American Numismatic Society
The Churchill School
The Colley Group
The Cornerstone Group
The Doe Fund
The Feil Organization
The Jack Parker Corporation, Inc.
The Jerome L. Greene Foundation
The Macklowe Organization
The Moinian Group
The Riese Organization
The Salzhauer Company
The Sixteenth Street Synagogue
The Travelers Companies-Travelers Realty Invtmnt Co.
The Trust for Governors Island
The Zeckendorf Company
Theodore W. Kheel
Time Equities, Inc.
Toys "R" Us – Delaware, Inc.
Trader Joe's East, Inc.
Transamerica Insurance Group
Two Trees Management Company
U. S. Generating Company
UA Plumbers Local Number 1
Ultimate Realty New York, LLC
United American Land
United Nations Development Corporation
Van Alen Institute
Venable LLP
Wachtel & Masyr
Walker, Malloy & Company, Inc.
Walter & Samuels
Warshaw Burstein Cohen Schlesinger & Kuh, LLP
Wasserman Grubin & Rogers, LLP
Western Electric
Whitney Museum of Art
Wien Malkin, LLP
Williams Parker Harrison Dietz & Getzen
Willow Funding LP
Withers Bergman LLP
World-Wide Holdings Corporation
YMCA of Greater New York
Young & Rubicam Inc.
St. Thomas P.E. Church
Stafford Toner & Schwartz
Starwood Hotels & Resorts
Steinberg & Pokoik Management Corporation
Sterling Forest Corporation
Stroock & Stroock & Lavan, LLP
Sutton Hill Associates
Sylvan Corporation, N A
Target Corporation
Tennessee Gas Pipeline
The Abramson Law Group
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The Consolidated Edison Co. of New York, Inc.
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The Durst Organization
The Ford Foundation
The Leona & Harry Helmsley Charitable Trust
The Joyce Theater Foundation, Inc.
The McDonald's Corporation
The Related Companies
The Rockefeller Group
The Shubert Organization
The Stillman Group
The Trump Organization
THE Tunnel Partnership
Thelen Reid & Priest, LLP
Thor Properties, LLC
Tishman Speyer
Town of East Hampton
Trammel Crow Corporate Services, Inc.
Troutmann Sanders, LLP
U. S. Attorney's Office
UA Plumbers Local No. 1
UBS, AG
UNITE
United Management
United Nations, Scrtry-Gen. for Gen. Svcs
Vanlan Corporation, N.A.
Vornado Realty Trust
Wagner, Davis & Gold
Wall Street Realty Capital, Inc.
Wank Adams Slavin Associates
Washington Square Partners
Weil, Gotshal & Manges
White & Case
Why Partners, LLP
Williams Mullen
Williams Real Estate Company
Winthrop, Stimson, Putnam & Roberts
Wofsey Rosen Kweskin & Kuriansky LLP
YL Equities
York Resources, LLC
Zomba Recording Corporation

BRYAN CAVE

Judith M. Gallent
Partner
Direct: 2121 541-2389
Fax: 212 541-1389
jmgallent@bryancave.com

Bryan Cave LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Tel (212) 541-2000
Fax (212) 541-4630
www.bryancave.com

July 30, 2013

BY HAND

Hon. Amanda Burden
Chair
New York City Planning Commission
22 Reade Street
New York, NY 10007

Dear Chair Burden:

We represent the Yale Club of New York City (the "Club"), a not-for-profit membership club[1] that owns and occupies the land and building located at 50 Vanderbilt Avenue (Block 1279, Lot 28), between East 44th and 45th Streets in Manhattan (the "Site"). The Site is located within the boundaries of the proposed East Midtown Subdistrict in the Grand Central Subarea Core and the Department of City Planning's East Midtown Rezoning proposal (the "DCP Proposal") will have a significant impact on the Club.

The Club is the largest university club in the world. It is a thriving and bustling home for its members in Midtown. The 22-story Clubhouse includes 138 guest rooms, three restaurants, athletic facilities, and meeting and banquet rooms that can accommodate up to 350 guests. It employs more than 200 people. On any given day, over 1,000 people come in and out of the Club.

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[1] Although the Club was constructed in 1915, the first certificate of occupancy was not issued until 1953, and the most recent was issued in 1986 without zoning Use Group designation. According to Zoning Resolution Sections 22-14 and 32-15 a non-commercial club is either a Use Group 4A or a Use Group 6E use.

The Club has grown significantly since the Clubhouse opened on the Site in 1915, and today it serves more than 11,000 members. As the Club continues to grow it will have need of additional lodging, banquet and meeting space. Due to Club's massing and the fact that it is overbuilt, it has no possibility of expansion on its zoning lot. Adjacent to the Site are five lots, three of which (Lots 23, 24 and 48) are owned by the Metropolitan Transportation Authority (the "MTA Site"), some or all of which, we understand, are the subject of an MTA RFP for redevelopment. The MTA Site, together with adjacent Lot 25, has an aggregate lot area in excess of 25,000 square feet. The most likely and suitable expansion for the Club would be horizontally in a building developed on the 25,000 square foot site comprised of the MTA Site and Lot 25 and, possibly, the 43,000 square foot site comprised of the MTA Site, Lot 25, Lot 45, and the Yale Club Site.

As described below, in its current form, the DCP Proposal prohibits such horizontal expansion, and thus will prevent the Club from meeting the current and future needs of its members, while simultaneously limiting the development potential of the Site, the MTA Site and Block 1279.

1. <u>Allowing for Community Facility Uses and Use Group 6E on Qualifying Sites</u>

In its Statement on the DCP Proposal, dated June 5, 2013, the Tri-Board Task Force on East Midtown stated that "in particular, we are concerned about the emphasis on commercial development, at the expense of residential or community facility development" (see page 25). The Club fully supports the Task Force's position on this issue. The DCP Proposal's emphasis on commercial development will have a serious negative impact on the Club's ability to thrive in the future. Consequently, the Club proposes a modification to the DCP Proposal to allow community facility uses and Use Group 6E uses to be included in new developments in the East Midtown Subdistrict.

<u>a. Redefining the Qualifying Site</u>

The DCP Proposal requires that in order to take advantage of the District Improvement Bonus (the "DIB"), a site must meet the criteria of a Qualifying Site, which include, among other things, a minimum lot area of 25,000 square feet (or 40,000 square feet to qualify for a special permit to construct a larger building); at least 200 feet of frontage on a wide street; and a new building located within the minimum site geometry comprised entirely of specified commercial (Use Groups 5, 6A, 6B, 6C, 7B, 8A, 9A, 10A, 12A or 12B) and residential uses. The MTA Site and Lot 25 together (the "MTA/Lot 25 Site") meet the Qualifying Site minimum lot size and frontage requirements and are likely to be developed using the DIB, as projected in the Environmental Impact Statement on the DCP Proposal. Accordingly, under the DCP Proposal, any building constructed on the MTA/Lot 25 Site could contain commercial and residential uses exclusively. This would preclude the expansion of the Use Group 4A or 6E Club onto the MTA/Lot 25 Site, eliminating the Club's most logical location for expansion.

We note that as proposed, ZR 81-611 (the definition of "Qualifying Site") allows up to 20 percent of the floor area in a building developed on a Qualifying Site to be allocated to residential or hotel use as-of-right. ZR 81-626 allows for use modifications by special permit in the East Midtown Subdistrict to "allow any *use* permitted by the underlying zoning district regulations on *qualifying sites*" under certain conditions; however, the language in the text suggests that the special permit is intended to allow an increase in hotel floor area or an increase in residential floor area by up to 40 percent in a building developed on a Qualifying Site. It is not clear whether the special permit would allow community facility or Use Group 6E uses to be developed in a building on a Qualifying Site.

In order to meet the Club's needs for horizontal expansion, it proposes that the definition of a Qualifying Site be amended to permit up to 20 percent of the floor area in a building developed on a Qualifying Site to be allocated to community facility and Use Group 6E uses as-of-right in buildings constructed on such sites where there is an existing community facility or Use Group 6E use located on the Qualifying Site zoning lot or an adjacent zoning lot.

b. Allowing community facility and Use Group 6E uses on the same story or above residential uses on a Qualifying Site.

In addition, as proposed ZR § 81-614 permits under certain conditions the listed uses to be located as-of-right on the "same *story* as, or at any *story* above *residential uses*" in buildings developed on Qualifying Sites. Those uses include wedding chapels and banquet halls, squash and racquetball gymnasiums, eating or drinking establishments and swimming pools accessory to other permitted uses. These same facilities are presently located at 50 Vanderbilt Avenue and are accessory to the Use Group 4 community facility or Use Group 6E non-commercial Club. In order to facilitate the Club's horizontal expansion, it proposes that the list of uses in ZR § 81-614 that are permitted to be located on the same story as, or at any story above residential uses, be modified to include community facility and Use Group 6E uses and related accessory uses including guest rooms.

2. **Allowing For Existing Community Facility and Use Group 6E Buildings to Remain on Qualifying Sites**

The proposed amendments described above would allow the Club to expand into a new 24 FAR building developed on a 25,000 square foot site consisting of the MTA Site and Lot 25. They are not sufficient, however, to permit the Club to expand into the 30 FAR building envisioned by DCP for Block 1279.

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DCP's Environmental Impact Statement on the proposed rezoning identifies the eastern portion of Block 1279 (the MTA Site, Lots 25 and 45, and the Site) as a projected development site on which a 30 FAR building could be developed pursuant to the proposed ZR § 81-625 Special Permit for Superior Development. This location is uniquely suited to the dense development facilitated by the special permit given its location across from Grand Central Terminal.

Under the DCP Proposal, development of such a building would not be possible if the Yale Club building were to remain on the Site because pursuant to the definition of a Qualifying Site contained in ZR § 81-611, no existing buildings may remain within a Qualifying Site's minimum site geometry. To the members of the Yale Club, the Clubhouse building is an icon that represents the Club. The Club's intention, therefore, is to retain the Clubhouse building. Accordingly, in order to facilitate the development of the 30 FAR building envisioned for Block 1279 that would afford the Club the opportunity to expand and meet its current and future needs, the Club proposes that the definition of a Qualifying Site be amended to allow in the Grand Central Subarea Core existing community facility buildings and those containing Use Group 6E uses to remain within the minimum site geometry.

As the Yale Club is the only existing community facility or Use Group 6E building within the Grand Central Subarea Core, the effect of the proposed modifications described in paragraphs 1 and 2 above would be limited.

3. <u>Opposing Closure of Vanderbilt Avenue</u>

There has been much discussion of using the District Improvement Fund to create a partially-pedestrianized public space on Vanderbilt Avenue that would permit vehicular access only on crosstown streets and between 43rd and 44th Streets. This proposal would preclude vehicular access to the Club's only public entrance on Vanderbilt Avenue between 44th and 45th Streets, requiring Club members arriving by private car and taxi to be dropped off at the corner of 44th or 45th Streets. This would pose a hardship to many of the Club's guests, including those arriving with luggage to stay in one of the Club's 138 rooms, and those arriving in inclement weather or attending one of the many large events the Club frequently hosts, such as weddings. Furthermore, the Club's sizable elderly and disabled population would be unreasonably burdened, as the accessible elevator is located adjacent to the Club's main entrance on Vanderbilt Avenue. Accordingly, the Club strongly opposes this proposal as it would have a significant adverse effect on Club operations.

We welcome the opportunity to discuss these proposals with you and your staff further at your convenience. We look forward to working with you to insure that the East Midtown

Rezoning proposal responds to the needs of institutions like the Club, which are an integral part of the fabric of the neighborhood.

Sincerely,

Judith M. Gallent

Judith M. Gallent

cc: Richard Barth

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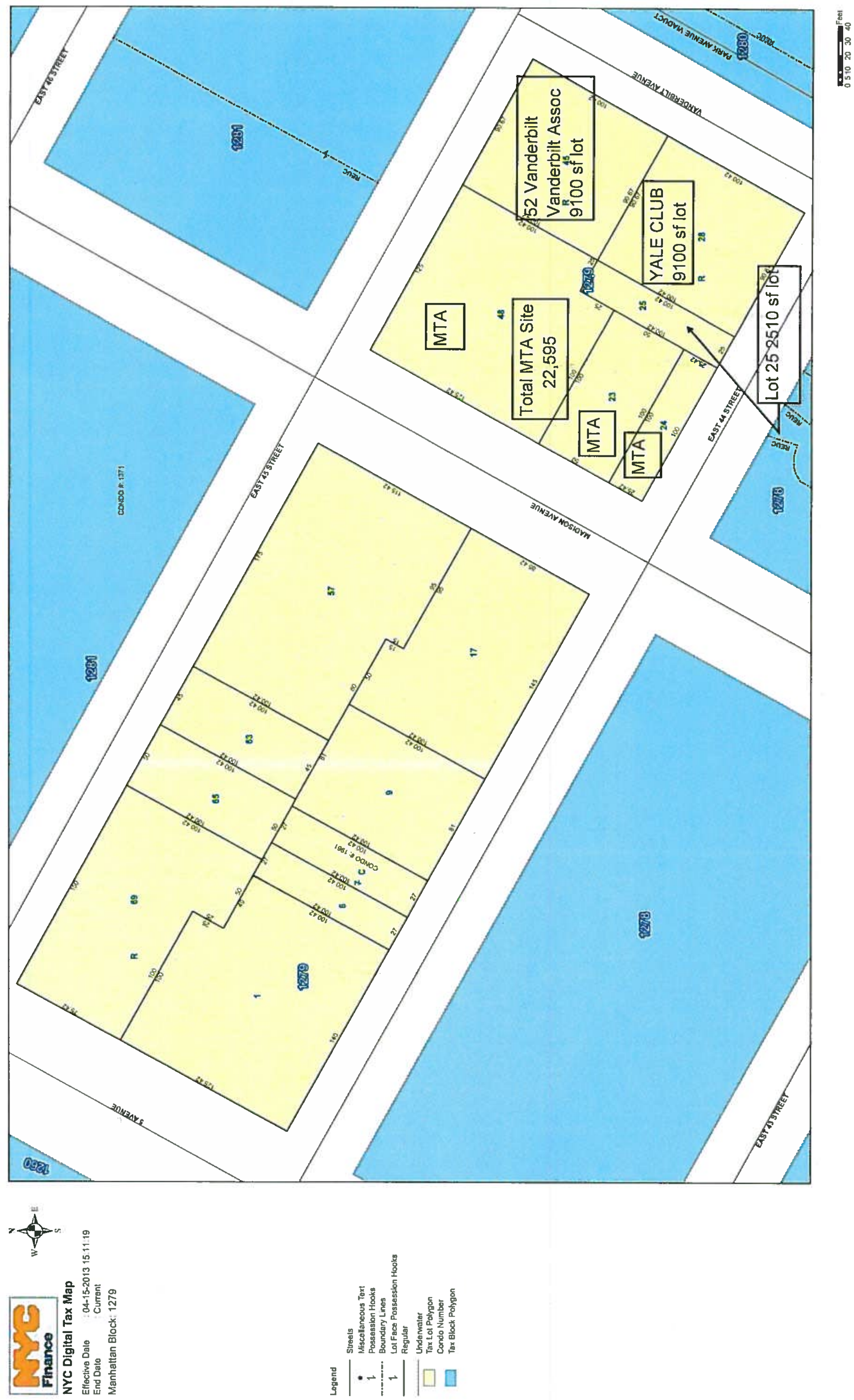
NYC Finance
NYC Digital Tax Map
Effective Date : 04-15-2013 15:11:19
End Date : Current
Manhattan Block: 1279
Legend
Streets
Miscellaneous Text
Possession Hooks
Boundary Lines
Lot Face Possession Hooks
Regular
Underwater
Tax Lot Polygon
Condo Number
Tax Block Polygon
EAST 46 STREET
EAST 45 STREET
EAST 44 STREET
EAST 43 STREET
VANDERBILT AVENUE
PARK AVENUE VIADUCT
MADISON AVENUE
5 AVENUE
52 Vanderbilt
Vanderbilt Assoc
9100 sf lot
YALE CLUB
9100 sf lot
MTA
Total MTA Site
22,595
MTA
MTA
Lot 25 2510 sf lot
1281
1280
1279
1278
Feet

BRYAN CAVE

Bryan Cave LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Tel (212) 541-2000
Fax (212) 541-4630
www.bryancave.com

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Testimony of Judith Gallent on behalf of the Yale Club of New York City before the New York City Planning Commission (N130247 ZRM C130248 ZMM) August 7, 2013

Good morning Chair Burden and Commissioners.

I am Judy Gallent from Bryan Cave. We represent the Yale Club of New York City, a not-for-profit membership club that owns and occupies the building at 50 Vanderbilt Avenue, between East 44th and 45th Streets, within the boundaries of the proposed East Midtown Subdistrict in the Grand Central Subarea Core. The Department's rezoning proposal, as currently drafted, would result in serious harm to the Club. As I will explain, modest changes to the proposal can address the Club's concerns and would be consistent with the policy objectives that the Department's proposal seeks to advance.

As Mr. Dutton, the Club's manager just testified, the Club has grown significantly since its facility opened on the Site in 1915, and today serves more than 11,000 members. It is in need of additional space so that it can continue to serve its members' needs and remain an important resource to the Midtown business community.

Adjacent to the Yale Club to the west are four lots owned by the MTA, which, we understand, are the subject of an MTA RFP for redevelopment. The MTA lots have an aggregate lot area in excess of 25,000 square feet. As Kevin Lichten has explained, the most likely and suitable expansion for the Club would be horizontally in a building developed on the 25,000 square foot Qualifying Site comprised of the four MTA lots, or the 43,000 square foot Qualifying Site comprised of the MTA Lots, Lot 45 (located just to the north of the Club lot), and the Yale Club lot itself.

In its current form, the proposal prohibits such horizontal expansion and will not only prevent the Club from meeting the current and future needs of its members, but will also preclude the development envisioned by the Department on Block 1279. Changes can be made to the text that would allow the Club to expand *and* that would encourage the kind of large scale office development that the Department seeks to facilitate. Under the Department's proposal, buildings on Qualifying Sites must contain only residential and certain commercial uses, precluding the development of buildings containing Use Group 4 and/or Use Group 6E uses such as the Yale Club. In order to meet the Club's needs for horizontal expansion, we propose that the definition of a "Qualifying Site" be amended to permit up to 20 percent of the floor area in a building developed on a Qualifying Site to be allocated to community facility and/or Use Group 6E uses as-of-right where there is an existing community facility or Use Group 6E use located on the Qualifying Site zoning lot or an adjacent zoning lot. We also propose that the text be modified to permit Use Group 4A community facility and Use Group 6E club uses to be located as-of-right on the same story as, or at any story above, residential uses in buildings developed on Qualifying Sites.

In addition, the proposed definition of Qualifying Site makes the development envisioned in the EIS for the MTA lots possible only if the Yale Club building were to be demolished.

The EIS identifies Block 1279 (consisting of the MTA lots, Lot 45, and the Yale Club lot) as a projected development site in excess of 40,000 sf on which a 30 FAR building could be developed pursuant to the proposed Special Permit for Superior Development (§ 81-625). This location is uniquely suited to the dense development facilitated by that special permit given its location across from Grand Central Terminal.

However, under the proposed definition of a Qualifying Site, which precludes existing buildings from remaining within the minimum site geometry, development of a 30 FAR iconic building would not be possible if the Yale Club building remains.

To the members of the Yale Club, the Clubhouse building is itself an icon and the Club intends to retain the building.

Accordingly, in order to facilitate the development of the 30 FAR building envisioned for Block 1279, the Club proposes that the definition of a Qualifying Site be amended to allow in the Grand Central Subarea Core existing community facility buildings and those containing Use Group 6E non-commercial club uses to remain within the a Qualifying Site's minimum site geometry.

As the Yale Club is the only existing community facility or Use Group 6E building within the Grand Central Subarea Core, the effect of these proposed modifications would be limited to Block 1279.

Only with these amendments would the proposed rezoning encourage the type of office development that the Department seeks to foster on Block 1279, while simultaneously securing the opportunity for the Yale Club to expand at its current location so that it can adapt to the needs of its current and future membership and remain a vibrant and vital resource to the business community in East Midtown.

Thank you for your consideration.

Borough President Recommendation

City Planning Commission
22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application: **C 130248 ZMM and N 130247 ZRY**

Docket Description:

(C 130248 ZMM) In the Matter of an application submitted by the New York City Department of City Planning pursuant to Section 197-c of the New York City Charter for the amendment of the Zoning Map, Section No. 8d:

1. change from a C5-2 to a C5-2.5 District property bounded by East 43rd Street, a line 100 feet Westerly of Second Avenue, a line midway between East 43rd Street and East 42nd Street, and a line 200 feet easterly of Third Avenue;
2. changing from a c5-2 to a C5-3 District property bounded by East 43rd Street, Second Avenue, East 42nd Street, a line 200 feet easterly of Third Avenue, a line midway between East 43rd Street and East 42nd Street, and a line 100 feet westerly of Second Avenue; and
3. establishing a Special midtown District (MiD) bounded by East 43rd Street, Second Avenue, East 42nd Street, and a line 200 feet easterly of Third Avenue;

Borough of Manhattan, Community Districts 5 and 6.

(N 130247 ZRY) In the Matter of a text amendment to the Zoning Resolution submitted by the New York City Department of City Planning pursuant to Section 200 and 201 of the New York City Charter to establish a New East Midtown Subdistrict through the modification of Section 81-00 (inclusive), 81-20 (inclusive) and 81-60 (inclusive)

COMMUNITY BOARD NO: 5 and 6 BOROUGH: Manhattan

RECOMMENDATION

☐ APPROVE

■ APPROVE WITH MODIFICATIONS/CONDITIONS (List below)

☐ DISAPPROVE

☐ DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached Recommendation

BOROUGH PRESIDENT

7-31-13
DATE

THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

July 31, 2013

Recommendation on
East Midtown Subdistrict
ULURP Application Nos.: N 130247 ZRM and C 130248 ZMM
by the New York City Department of City Planning

PROPOSED ACTIONS

The New York City Department of City Planning ("DCP" or "the applicant") is requesting zoning map and zoning text amendments (collectively, the "proposed actions") affecting an approximately 73-block area of Midtown Manhattan. The rezoning area located within Manhattan Community Districts 5 and 6, is generally bounded by East 39th Street, East 57th Street, Second and Third avenues and a line 150 feet east of Fifth Avenue to the west. The proposed actions would allow new density through as-of-right zoning mechanisms and a new special permit for large qualifying developments.

The following proposed land use actions are subject to review under the Uniform Land Use Review Procedure ("ULURP") required by Section 200 of the New York City Charter:

- A **zoning text amendment (N 130247 ZRM)** to establish the East Midtown Subdistrict superseding the existing Grand Central Subdistrict, within the Special Midtown District. The amendment would encourage targeted as-of-right commercial development, generate funding for area-wide pedestrian network improvements, and alter the process for landmark air rights transfers around Grand Central Terminal. Text amendments are proposed for the following sections of the Zoning Resolution: **ZR §§ 81-00** (General Provisions); **81-20** (Bulk Regulations); and **81-60** (Special Regulations for the Grand Central Subdistrict).
- A **zoning map amendment (C 130248 ZMM)** to replace the existing C5-2 districts on the block bounded by East 42nd and 43rd streets and Second and Third avenues with C5-3 and C5-2.5 districts that will be mapped within the Special Midtown District.

On July 17, 2013, the DCP proposed modifications to the original zoning text amendment application (**N 130247 ZRM (A)** – the "A-Text" application). The proposed A-Text application

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would expand the scope of the original application to include limited residential use, restricted hotel use, and an expanded area in which landmark air rights could be transferred.

PROJECT DESCRIPTION

The applicant seeks a zoning text amendment to establish the East Midtown Subdistrict (hereafter "the Subdistrict") that would replace the existing Grand Central Subdistrict within the Special Midtown District. While most of the underlying zoning would remain in place, the Subdistrict would feature new, as-of-right mechanisms that would allow additional density for commercial developments in areas around Grand Central Terminal and along Park Avenue. Only "Qualifying Sites" that meet certain requirements, to be defined and discussed further below, would be eligible for these new mechanisms. These Qualifying Sites would be afforded increases in developable floor area above the existing base floor area ratio ("FAR") by utilizing:

- a **District Improvement Bonus ("DIB")** that would allow greater FAR through contributions to a fund dedicated to area-wide pedestrian and transit improvements; and
- a streamlined **Landmark Air Rights Transfer** process to increase FAR through transfers of development rights from landmark buildings.

Area Context

The proposed rezoning area encompasses 73 blocks of Midtown Manhattan containing approximately 400 buildings with over 70 million square feet ("sf") of office space. East Midtown is home to a variety of commercial users, which include financial institutions, law firms, media companies, advertising agencies, hotels and some of the nation's large bank headquarters are located in the rezoning area. The office vacancy rates are quite low, hovering at around seven percent.[1] The area is marked by a wide variety of ground-floor retail, stores that mainly service daytime users, with the notable exception of Vanderbilt Avenue, which lacks significant retail presence. The commercial uses equate to over 200,000 workers in the area. Lastly, there a limited amount of residential uses, at a little over 334,000 sf (approximately 6 percent).[2]

Despite the concentration of one dominant use, a variety of building stock exists in East Midtown. The oldest buildings in the area were built as part of Terminal City following the construction of Grand Central Terminal in 1913. These are typically 20 to 25 stories and built to the lot line without any setbacks. This is the dominant building form in the area immediately surrounding the landmark Grand Central Terminal. Also in the immediate area of the Terminal are a few 1920s skyscrapers, such as the Chrysler Building, built up to their lot lines. Park Avenue, on the other hand, is home to 1950s and 1960s glass office towers some of which are set back and separated from the street by public plazas and arcades. Many of these were built under zoning that limited height but not floor area, regulations that resulted in a dense building form with relatively lower floor to ceiling heights.

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[1] East Midtown DEIS 13DCP011M – Project Description, 1-4.
[2] Ibid.

The northern half of the rezoning area includes sparse low scale buildings on large sites that mostly include historic religious institutions, such as St. Bartholomew's Church, St. Patrick's Cathedral and Central Synagogue. In addition to significant landmarks, the area has a rich history. It contains more than 300 buildings that are over 50 years old and the average age of buildings in the area is over 70 years.

Transit Infrastructure
The rezoning area is particularly rich in public transit options. Seven subway lines run through East Midtown: the 4, 5, 6, 7, E, M, and Times Square Shuttle. The B, D, F, M, N, Q, and R lines also run within two blocks of the Subarea. Additionally, the area is serviced by 14 local and 53 express bus lines. The most used transit facility in the area is Grand Central Terminal and its subway station is the second most used in the City. Grand Central Terminal connects the district via Metro North Railroad to the City's northern suburbs as well as parts of Connecticut. The Metro North Railroad brings over 80,000 daily riders into Grand Central, and the subway station is used by twice that amount; on an average weekday in 2012, the Grand Central Subway Station was used by 150,266 riders.[3] The Lexington Avenue (4/5/6) line is the only line that operates over the entire length of the east side of Manhattan, and is consequently one of the most crowded in the City.[4] The line carries over 1.3 million daily riders and operates significantly over capaCity.[5]

Transit service to Grand Central is currently being expanded by two major public works projects: East Side Access and the Second Avenue Subway. The Long Island Railroad's ("LIRR") East Side Access project will connect Long Island Railroad commuters to Grand Central and will likely bring an additional 65,000 new riders into Grand Central during the weekday morning peak. Simultaneously, the Second Avenue Subway, currently under construction, will partially alleviate congestion along the Lexington Avenue subway line and will, as a result, provide East Midtown commuters with more transit options.

Grand Central Pedestrian Network
At the center of the public realm is Grand Central Terminal. The Terminal's primary function is to circulate passengers to their next train or out onto the streets. It is a complex below-grade pedestrian network consisting of platforms, mezzanine levels, and vertical circulation cores. However, the network's inefficiency results in sub-par operations and significant congestion. For example, platform crowding on the Lexington Avenue lines increases the time that trains must stop at the station, creating a bottleneck that reduces the efficiency throughout the system. Several planned improvements to this network have been identified as mitigation for the LIRR East Side Access project and the No. 7 extension/Hudson Yards redevelopment project.

The streets surrounding Grand Central are the other component of the neighborhood's pedestrian network, and face similar challenges due to the high volume of pedestrians in the area. The sidewalks of major surrounding corridors, Madison and Lexington avenues, are often

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[3] MTA New York City Transit Ridership Data, 2012
[4] The Lexington Avenue line is the most used in the City and carries more than the combined ridership of San Francisco, Chicago, and Boston's entire transit systems.
[5] Second Avenue Subway FEIS, 2004.

overcrowded and the presence of subway grates further reduces usable area and compounds sidewalk congestion.[6] Narrow sidewalks on east-west side streets present additional problems.

Publicly Accessible Open Space
Another defining element of East Midtown's public realm is the publicly accessible open space throughout and surrounding the East Midtown Subdistrict. The DEIS for the proposed actions determines that the study area[7] contains 98 individual publicly-accessible open spaces, comprising 39.15 total acres.[8] Nearly all of these are considered passive open spaces, including City-owned plazas, pocket parks and larger parks, and a vast majority of the open spaces identified (87 percent—approximately half of the total acreage) are privately owned public spaces ("POPS") and other publicly accessible private plazas.[9] These POPS include covered pedestrian spaces or arcades, such as the Philip Morris sculpture gallery on Park Avenue and 42nd Street, the Blackrock Park Avenue Plaza on East 52nd Street, and the public seating area at the Sony Building at 550 Madison Avenue.

The substantial concentration of publicly accessible open spaces exists north of East 46th Street. The blocks to the immediate northwest of Grand Central Terminal noticeably lack such public spaces relative to the rest of the rezoning area. Park Avenue features a concentration of notable plaza spaces that have defined the character of the district and that both predated and inspired the POPS regulations, namely the Seagram Building and Lever House plazas. Despite their numbers and general concentration in East Midtown, the open space resources within the rezoning area are marginally or only moderately utilized, potentially reflective of available amenities and general visibility.[10]

Existing Land Use and Zoning

Most of the rezoning area is currently zoned C5-3, with C5-2.5 districts in the midblock areas. These districts carry an FAR of 15 and 12, respectively. North of 48th Street, Lexington Avenue and 3rd Avenue are zoned for a lower FAR at C6-6, with a C6-4.5 district in the midblocks between them. These districts also carry a maximum FAR of 15 and 12, respectively. The current zoning is the result of two distinct regulatory changes.

1982 Special Midtown District
The 1982 Special Midtown District established the district's built density. The Special Midtown District lowered allowable densities in an effort to stabilize development in East Midtown and encouraged larger developments in Times Square and other parts of Midtown. This approach

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[6] Sidewalk widths on Madison and Lexington avenues are between 12 and 13 feet.
[7] Per CEQR guidelines, the study area for the rezoning proposal encompasses an additional ¼ mile radius surrounding the boundaries of the proposed rezoning area.
[8] The major City parks or portions of parks and plazas within the CEQR study area but not within the East Midtown subdistrict account for approximately 16 acres toward this total.
[9] ZR §81-23 Floor Area Bonus for Public Plazas
[10] Other important City-owned public spaces are either in development within the East Midtown subdistrict or accessible to users within the area, including: Pershing Square (DOT plaza in development); Vanderbilt Avenue (proposed DOT plaza); Bryant Park; Central Park (9.83 acres are within the CEQR study area for this project); and Dag Hammarskjold Plaza.

East Midtown Rezoning- C 130248 ZMM and N 130247 ZRM
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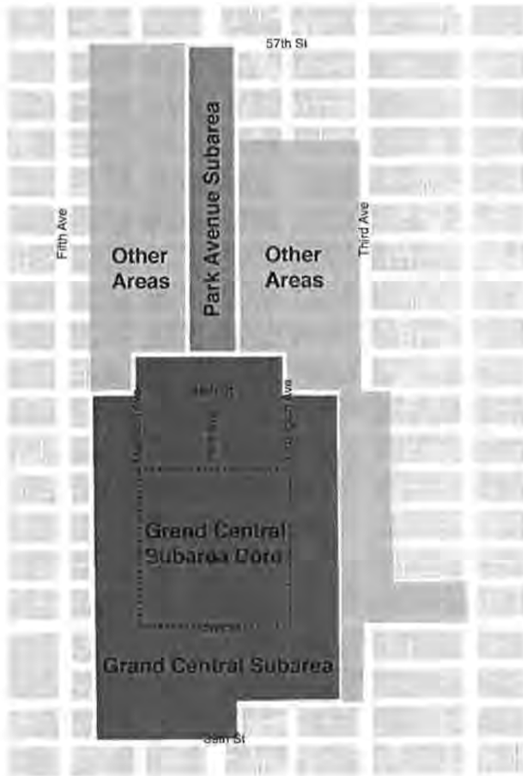
was particularly effective: since 1982, 75 percent of development in the Special Midtown District has occurred outside of the East Midtown area.[11]

Figure 1: East Midtown Subareas



1992 Grand Central Subdistrict
Adding to the Special Midtown District, the Grand Central Subdistrict was created in 1992 to allow the transfer of development rights from Grand Central Terminal and other landmarks to development sites in the area surrounding the station. The Grand Central Subdistrict consists of a core, which is bounded by Madison and Lexington avenues, from East 41st to East 48th streets. The full Subdistrict extends beyond the core for an additional width of 125 feet (220 feet at 42nd street) east of Lexington and west of Madison. Within the existing Grand Central Subdistrict, a 1.0 FAR transfer of air rights from New York City landmarks is allowed by City Planning Commission ("CPC") certification (ZR §81-634). In the core area, a special permit (ZR §81-635) provides a higher density of 21.6 FAR, with requirements for significant improvements to pedestrian areas and transit access points. Such improvements must be negotiated by developers with the MTA. Only one building, 383 Madison Avenue, has taken advantage of this special permit.

Existing Floor Area Transfer and Bonus Mechanisms
Three other provisions exist in the rezoning area to increase a site's allowable FAR. Development bonuses of 20 percent are available for subway station improvements on sites directly adjacent to subway entrances through a special permit (ZR §74-634). Also through a special permit, existing New York City landmarks can transfer their unused development rights to receiving sites that are adjacent or across the street, with no FAR limits on the receiving site (ZR §74-79). Finally, in areas not within the Grand Central Subdistrict, a 1.0 FAR bonus is permitted through the provision of a public plaza (ZR §81-23).

Proposed Actions

The applicant seeks to encourage the construction of new commercial space through the introduction of a zoning text amendment and an associated zoning map amendment. While the

[11] East Midtown DEIS 13DCP011M – Project Description, 1-8 and 1-9.

map amendment affects a limited area, the zoning text amendment would restructure the existing special district through the creation of a new East Midtown Subdistrict.

The proposed zoning text amendment and zoning map amendment aim to:

- Protect and strengthen East Midtown as a premier office district;
- Seed the area with new modern and sustainable office buildings;
- Improve the area's pedestrian and built environments; and
- Complement ongoing office development in Hudson Yards and Lower Manhattan.

Generally, the proposed zoning text amendment: defines the sites eligible for certain floor area bonuses; establishes a mechanism for funding improvements to the public realm; introduces a series of CPC approvals including a new special permit for superior development to encourage iconic architecture and Class A office space; and fine-tunes bulk and density requirements for certain new construction within the Subdistrict. In order to encourage development of the intended scale and density in particular areas within East Midtown, the Subdistrict is broken up into three subareas, each with individual rules for how these mechanisms can be utilized (see Figure 1).

DCP is also proposing a zoning map amendment for the block located between East 42nd and 43rd streets, and Second and Third avenues. The amendment would replace the existing C5-2 designation for the block with C5-3 and C5-2.5 districts. The C5-3 and C5-2.5 districts will be mapped within the Special Midtown District, and be incorporated into the East Midtown Subdistrict. The subject block is located in Manhattan Community District 6, and currently contains five commercial buildings.

The following sections will describe which sites are eligible for the new rules, what mechanisms are available to those sites for additional density, and bulk controls that accompany these new densities.

Qualifying Sites
Only certain development sites would be eligible for the new zoning mechanism created by the proposed actions. Qualifying Sites within the overall East Midtown Subdistrict must:

- have full avenue frontage;
- a minimum lot size of 25,000 sf.; and
- be fully cleared of all buildings, except for structures used for mass transit purposes.

Additional requirements apply within the Grand Central Subarea, which includes a Grand Central Subarea core. The core consists of the blocks immediately to the north and west of the Terminal. Qualifying Sites in the core must be at least 40,000 sf to apply for the Special Permit for Superior Development, described below. Developments on Qualifying Sites must be exclusively commercial uses and meet specific sustainability standards, also described below. Finally, a site is not considered a Qualifying Site until it has made contributions to the District Improvement Fund ("DIF").

No building permits could thus be issued for the densities afforded to Qualifying Sites unless the developer has met their financial obligation to the DIF. Since non-paying sites are not considered Qualifying Sites, none of the new rules would apply to a site, even if it met the lot size requirements. If a developer does not utilize the available incentives, then the district's underlying zoning still applies.

The District Improvement Bonus
The DIB mechanism would permit a higher maximum FAR through a financial contribution by a developer to the DIF, which would be dedicated to area-wide improvements to the transportation system and pedestrian network. The DIF is designed to provide improvements where needed, rather than on specific development sites. The proposed text amendment sets the contribution rate at $250 per sf, to be adjusted annually. This price is based on a 2012 study of air rights transactions in the area over the past 15 years.

Different areas within the proposed Subdistrict would be allowed various levels of density based on the width of streets and proximity to Grand Central Terminal. Density purchased from the DIF can be coupled with floor area purchased from New York City landmarks within the Grand Central Subarea, as described in Table 1.

Table 1: PROPOSED DENSITIES AND BONUS MECHANISMS

	Grand Central Subarea				**Park Avenue Subarea**	**Other Areas**	
	Core	*Non-Core*		*Park Avenue*			
	C5-3	C5-2.5 C6-4.5	C5-3 C6-6	C5-3	C5-3	C5-2.5 C6-4.5	C5-3 C6-6
Base FAR	15	12	15	15	15	12	15
FAR through DIB	3	3	3	3	6.6	2.4	3
Additional FAR through either DIB contributions or transfers from landmarks	6	6.6	3.6	3.6	0	0	0
Total as-of-right FAR	**24**	**21.6**	**21.6**	**21.6**	**21.6**	**14.4**	**18**
Additional FAR through Special Permit	6	0	0	2.4	2.4	0	0
Maximum permitted FAR	**30**	**21.6**	**21.6**	**24**	**24**	**14.4**	**18**

Source: DCP

Management: The DIF, as proposed, would be managed by a committee of five mayoral appointees, including the chairperson of CPC. The committee would identify and maintain a list of priority improvement projects, and would disperse funds for projects as contributions are made through the DIB. The proposed text provides that the DIF committee should adopt procedures for creating and adjusting the priority project list.

The zoning amendment also includes provisions to allow developers to make improvements themselves, with approval from the DIF committee, in lieu of payment into the DIF. Such in-kind contributions to the DIF would be projects that will have already been identified as priority projects by the DIF committee. Any in-kind projects would need to be completed before the issuance of temporary certificates of occupancy. These contributions would require negotiations between the developer and the DIF committee over the monetary equivalent of the in-kind contributions.

Any improvements or their prioritization would need to be ratified by the DIF committee once the committee has been created. The proposed zoning text identifies improvements to the Grand Central subway station as the top priority. As identified by the MTA, potential improvements to the station could include: additional connections between the subway and commuter rail facilities; a reconstructed mezzanine level; and reconstructed stairs, ramps and escalators between the platform and the mezzanine on both the Lexington Avenue line and the 7 line. Additionally, the City has identified Vanderbilt Avenue as a potential area for improvement as a pedestrian plaza.[12]

Overbuilt Provisions: The area has a number of existing, overbuilt office buildings and the text would permit owners to rebuild to existing densities. Through a CPC certification process, owners can purchase density above the allowable FAR for the underlying district at a rate of 50 percent of the DIB price. The regulations would only apply to overbuilt buildings that are either part of a Qualifying Site or a site that has full avenue frontage and a lot area of at least 20,000 sf. If the site is a Qualifying Site, additional floor area beyond the rebuildable FAR could be added through the mechanisms outlined in Table 1.

Energy Efficiency Standards: The zoning text would require sites that utilize the DIB to comply with higher energy performance standards than are currently required by the New York City Energy Conservation Code. Proposed buildings on Qualifying Sites would need to reduce energy cost by 15 percent more than is required by the 2011 energy code requirements. Compliance would be demonstrated to the Department of Buildings at the time of issuance of building permits. The proposed text provides that the CPC may, by rule, "modify the minimum percentage set forth in this Section, as necessary, to ensure that the performance standard required by this Section is maintained."

Special Regulations within the Grand Central Subarea
As in the existing Grand Central Subdistrict, the proposed Grand Central Subarea contains a number of provisions regulating bulk and urban design, including height and setback regulations (see Table 2). Additionally, all developments fronting Grand Central Terminal must receive a certification from the Landmarks Preservation Commission ("LPC") that it relates harmoniously to the landmark site. Along 42nd Street, buildings would be required to build all the way to the property line. For buildings that front directly on Madison or Lexington avenues, sites with full avenue frontage would be required to be set back to achieve a 20-foot sidewalk on that block.

[12] Were the City to pursue this in the future, the Department of City Planning has identified in the EIS that it would apply for a City Map Amendment to classify Vanderbilt Avenue as park land.

Table 2: SUMMARY OF BASE HEIGHT AND SETBACK PROVISIONS

Corridor	Street Wall Height Minimum (feet)	Street Wall Height Maximum (feet)	Setback Above Base (feet)
42nd Street	120	150	15
Madison	120	150	15
Lexington	120	150	15
Vanderbilt	90	100	15
Depew Place	90	100	60

Source: DCP

Additionally, the proposed zoning text has special regulations for Vanderbilt Avenue and Depew Place.[13] Building lobbies along Vanderbilt Avenue would be required to be 60 feet wide and ground level space would only be available to active retail, transit connections, lobbies, or enclosed, publicly accessible space. Sites fronting Vanderbilt Avenue also have specific transparency requirements dictating that 70 percent of the street wall façade up to a height of 60 feet be glazed with a transparent, untinted material. Further, the height and setback regulations for buildings fronting Vanderbilt Avenue are modified to allow measurements to be taken from the east side of the avenue instead of at the street line.

Special Regulations within the Park Avenue Subarea and Other Areas
Park Avenue is Manhattan's widest avenue, and the rezoning proposal includes provisions that target density along this corridor, though at a lower concentration than in the Grand Central Subarea. The Park Avenue Subarea would extend from East 46th Street to East 57th Street at a depth of 125 feet on either side of the avenue. Developers seeking to achieve the maximum FAR for the Park Avenue Subarea would be required to utilize the DIB.

Park Avenue Subarea and areas designated as Other Areas have specific density and bulk requirements under the proposed zoning text.[14] Much like in the Grand Central Subdistrict, buildings along Park Avenue would be required to have street walls ranging from 120 to 150 feet. Buildings with full avenue frontage could be built no more than 10 feet from the street line, and buildings that share avenue frontage must be built in line with the existing building.

Special Permit for Superior Development
The proposed zoning text also includes a special permit through which developers could achieve even higher FAR than afforded through the DIB. The Special Permit for Superior Development would be available only to Qualifying Sites in the Grand Central Core and along Park Avenue. In the Grand Central Core, developers granted a special permit could build up to 30.0 FAR, and up to 24.0 FAR on Park Avenue.

[13] Depew Place is a four-block corridor from East 42nd to East 46th Street between Vanderbilt and Lexington avenues. While not a City street or publicly accessible, the City owns a perpetual easement for the above-grade air space, and the eastern ramp of the Park Avenue Viaduct runs through the space. The Zoning Resolution treats Depew Place as a street, though not mapped as such. The setback required for Depew Place is intended to match those on Vanderbilt Avenue with respect the Grant Central Terminal airspace.

[14] Other Areas refer to areas not within the Grand Central or Park Avenue subareas. See Figure 1 and Table 1. Other Areas are subject to the underlying bulk regulations of the Special Midtown District.

The Special Permit for Superior Development allows for the waiver of street wall, setback, retail continuity, and transit connection regulations. In order to be granted the special permit, developments are required to:

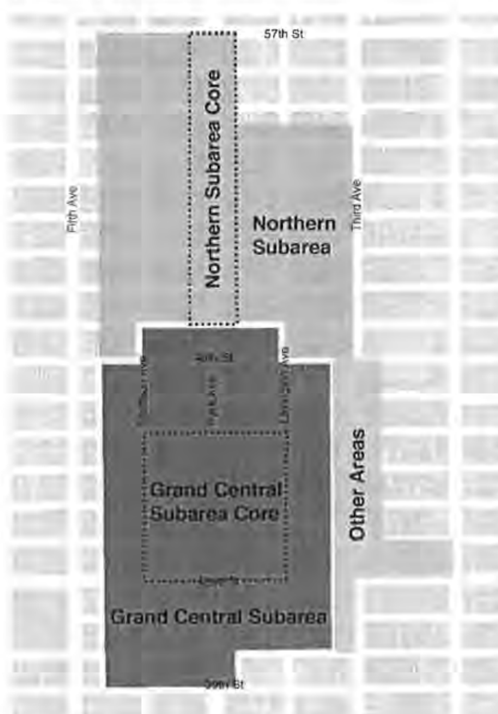
- provide major improvements to the above-grade pedestrian network and, where applicable, provide generous connections to Grand Central Terminal;
- provide major improvement to the below-grade pedestrian network for sites within the Grand Central Core; and
- exceed the energy performance standards set out in the proposed text.

Sunrise Provision
Included in the proposed text amendment is a sunrise provision for the proposed changes. No building permits would be issued under the new zoning mechanisms until July 1, 2017. Until then, permits could be issued under the current zoning, which would remain in place.

A-Text Modifications

In July 2013, DCP filed a modified text amendment application that would expand the scope of the rezoning proposal (known as the "A-Text"). These modifications allow residential uses on Qualifying Sites, expand opportunities for as-of-right transfers of landmarks' development rights, limit hotel development, and alter rules for Qualifying Sites.

Figure 2: Revised A-Text Subareas



Residential Uses on Qualifying Sites
Under the original proposal, only commercial buildings would be permitted on Qualifying Sites. The applicant now proposes an alternate plan to allow up to 20 percent of a building's floor area for residential use. This percentage is intended to provide for a mix of uses without undermining the proposal's chief goal of incentivizing office space development. The percentage of residential use could be increased up to 40 percent through a special permit (ZR §81-626).

The residential floor area will be charged a different DIB contribution rate from the commercial price (ZR §81-611), and the residential price will be established by a separate appraisal from that previously conducted for commercial floor area.

Limits to Hotel Uses on Qualifying Sites
Under the originally proposed zoning text, hotel use would be permitted to occupy the entirety of a new development. The modified proposal would restrict hotel use to 20 percent of the floor area of a new development. The remainder of the new building could be developed as a hotel only by special permit (ZR §81-626); the findings of which would determine that such a use would not conflict with the goals of fostering a district with office space as the predominant use.

In addition, the area currently contains a number of large, full-service hotels, which would be allowed, under the modified proposal, to fully rebuild the existing hotel floor area within a larger development on a Qualifying Site.[15]

Creation of a Northern Transfer Area
Under the originally proposed rules, transfers of air rights from landmarks and use of the DIB were mutually exclusive. Outside of the Grand Central Subarea, landmarks could only transfer unused floor area to adjacent lots[16] through a special transfer process. This would have limited the ability of the significant number of landmark buildings to transfer unused air rights. In recognition of this limitation, DCP proposes a Northern Subarea, which would replace the proposed Park Avenue Subarea (see Figure 2). Starting in 2019, landmarks in the Northern Subarea would be allowed to transfer unused development rights to Qualifying Sites up to their maximum permitted FAR. Like the Grand Central Subarea, developers can utilize this transfer mechanism after a minimum contribution to the DIF.

In addition to floor area transfers to Qualifying Sites, CPC authorization (ZR §81-636) would permit non-Qualifying Sites in the Northern Subarea to receive transfers of up to 3.0 FAR from a landmark in the district. Additionally, a special permit similar to the one in the Grand Central Subarea (ZR §81-637) would permit the same non-Qualifying Sites to receive up to 6.6 FAR.

Modifications to Qualifying Site Requirements
The modified proposal would allow a site of 25,000 sf but with only 75 percent of frontage to apply for an authorization that would permit it to be a Qualifying Site (ZR §81-624). This modification is intended to give flexibility to large sites with a few holdout buildings that would otherwise prevent development. The applicant would have to demonstrate that the site could still accommodate a viable office development utilizing the existing height and setback controls.

Further, the modified text clarifies that existing buildings would be permitted to remain on Qualifying Sites, as long as the minimum cleared site requirements are achieved. Additionally, Qualifying Sites would be able to maintain the bonus floor area from existing bonus plazas without proportional contribution into the DIF, as long as the plazas are maintained as part of a new development (ZR §81-613).

[15] ZR §81-611 – "Qualifying Site" Paragraph E.
[16] Adjacent lots are defined as lots that adjoin, are located across the street, or are located diagonally across an intersection from the landmark.

Other Changes
Park Avenue Bulk: The modified proposal adjusts height and setback controls along Park Avenue to account for the street's 140-foot width, rather than calculate bulk as if the street were 100 feet wide.

Stacking Rules: In order to allow publicly accessible uses on the top floors of buildings that have residential components, the A-Text eliminates rules that prohibit non-residential uses above residential uses on Qualifying Sites.

East 51st and 53rd Street Stations: Because the alternative proposal would change the mix of uses that was anticipated in the original proposal, further study of the 53rd Street/Lexington Avenue subway station would need to be undertaken to determine if improvements there warrant priority status. The station has thus been added to the list of potential priority DIF projects.

Anticipated Development Under the Reasonable Worst Case Development Scenario

The Draft Environmental Impact Study ("DEIS") analyzed anticipated development under the proposed actions as compared with development under a no-action condition. Under the Reasonable Worst Case Development Scenario (RWCDS), the DEIS identified 39 projected and potential development sites. The 19 projected sites are considered more likely to be developed within the next 30 years based on known development proposals, past development trends and other development site criteria. The DEIS identified significant adverse impacts in the following categories.

Shadows: The anticipated new development would cast shadows at times throughout the year on several open spaces and sunlight-sensitive features of historic architectural resources. A detailed shadow analysis identified significant adverse impact on three architectural resources: the sunlight-sensitive stained glass windows at St. Bartholomew's Church, the Lady Chapel at St. Patrick's Cathedral, and the stained-glass windows at Christ Church United Methodist.

Traffic: Potential significant adverse impacts are identified at 53 intersections during one or more peak hour period.

Transit: The analysis for the future with the proposed action condition at the Grand Central subway station incorporates the priority improvements that would be implemented under the DIB mechanism. The analysis is presented as both action-with-improvements and action-without-improvements. All of the significant adverse impacts identified under the action-without-improvements scenario would be eliminated by implementing the proposed DIF improvements.

Pedestrians: 165 street-level pedestrian elements were analyzed in key areas and around developments sites, and 36 elements would be significantly adversely impacted during one or more peak period hour.

Construction: The DEIS finds that construction would significantly impact traffic in the area during morning peak hours.

COMMUNITY BOARD COMMENTS

A Multi-Board Taskforce on East Midtown, consisting of representatives of Community Boards 1, 4, 5, and 6 released a report on June 5, 2013 recommending disapproval of this ULURP application, and advocating for a new rezoning proposal. In addition, Community Boards 2, 7, and 8 passed resolutions supporting the Taskforce's recommendation. The following is a summary of the Taskforce's major concerns.

Infrastructure and DIB: The Taskforce argues that the proposed rezoning relies on the speculative possibility of future payments to the DIF to finance infrastructure upgrades that are needed today. New development, therefore, will outpace infrastructure improvements unless the City adopts a mechanism to fund improvements before projects in the area begin. The group advocates for a secondary funding mechanism. The Taskforce further proposes an appraisal should be done for each DIB sale in order to maximize public benefit. They also oppose the proposed structure of the DIF committee as non-representative of community needs, and support a DIF committee that includes representation from the affected Community Boards, the City Council, and relevant City agencies.

A key concern raised is the uncertainty of transit improvements committed to mitigate adverse impacts identified in Hudson Yards rezoning and the MTA's East Side Access project. The Community Boards would like assurance that DIB contributions will not be used to fund these previously identified projects in order to maximize the amount of new public improvements that would result from developments of this rezoning. The Community Boards also argue that on top of district-wide improvements through the DIF, development sites above potential transit connections should be required to add and improve to those connections.

Urban Design/Bulk: The Taskforce argues that some density increases in this area are appropriate, but that they should be limited to 24 FAR in the Grand Central Core and 21.6 FAR in other areas. The Taskforce also recommends that any building over 18 FAR should go through a public review process.

The Taskforce further argues for more fine-tuned bulk controls and would like to see greater bulk flexibility on Park Avenue rather than a mandated street wall, as this corridor is marked by its variegated plaza setbacks and street walls. The Taskforce also argues for different street wall requirements throughout the district to protect key view corridors, especially along 42nd Street.

Use: The Community Boards recommend that the proposal be altered to include up to 25 percent of residential use on Qualifying Sites. The Community Boards would also like to eliminate some of the required ground-floor lobby space for retail to activate ground floor uses. The Taskforce recommendation proposes a skyline public use requirement, to extend public spaces and uses in the new buildings.

Public Realm: One of the Taskforce's priorities is for greater comprehensive planning for the public realm. While a community planning process for the public realm is currently under way, the Community Boards point out that the results of this process will not be able to be evaluated along with this ULURP proposal. For any future improvements to the public realm funded and planned through the DIF, the community would first like a comprehensive plan for the area and would like transparency and community participation in the making of that plan. The Community Boards list a number of projects that they would like to see studied for inclusion in such a plan.

Landmarks: Finally, the Taskforce recommends LPC to calendar the 11 buildings that are considered eligible for landmarking in the DEIS. Further, the Taskforce recommends landmarks located outside the Grand Central Subarea to be able to transfer their air rights. In general, the Multi-Board Taskforce would like the text to address the conflict between protecting landmark sites with the proposed DIB system.

BOROUGH PRESIDENT'S COMMENTS

As the City plans for the future of East Midtown, the neighborhood's past can serve as a valuable lesson. The ascendance of East Midtown as New York City's premier central business district was directly correlated to the expansion of the City's rail infrastructure in the late 19th Century. As Cornelius Vanderbilt's New York Central and Hudson Railroads grew, 42nd Street became the gateway for the majority of the City's travelers. At the turn of the century, the advent of electrified rails and the needs of a rapidly-growing City led to the construction of Grand Central Terminal, a truly modern, multi-level transportation hub. Lowering the tracks below-grade opened up a vast swath of real estate above, between Lexington and Madison avenues from 42nd to 50th streets. The railroads sold the development rights to build Terminal City and the proceeds went to construct what is today one of New York's most important landmarks and transportation facilities.

East Midtown has consistently served as a model for innovative development. The area around Grand Central is one of the earliest and most successful examples of transit-oriented development, where economic development was closely related to transit improvements. Terminal City led to a building boom in the 1920s, and spurred an incredible demand for office space. Demand continued to rise after the Second World War, leading to a series of mid-century glass office towers on Park Avenue that became models for modern office buildings around the world.

Development thrived so much in this district that in 1982, the City created the Special Midtown District to stabilize East Midtown and provide incentives for growth in West Midtown and Times Square. The special district has been very successful in achieving its goals; since its inception, 75 percent of development in the district has occurred outside of the East Midtown area.

The 1982 rezoning effectively downzoned the area, so much of the neighborhood is currently overbuilt and the roughly 400 buildings in the rezoning area contain approximately 2.3 million more square feet than what would be allowed by the underlying zoning. Owners of these overbuilt sites have little incentive to invest or rebuild their properties, as any new developments would be permitted less floor area. As a result, only two office buildings have been constructed in East Midtown since 2001. Consequently, East Midtown's building stock is aging out, and many of the area's older buildings come with frequent column spacing and low ceilings that make them less attractive in today's office market.

Over the same period during which development has slowed, the area's transit infrastructure has become overcrowded and is in need of improvement. New York's transit system utilization has experienced exponential growth over the past decades and the Lexington Avenue Line (4,5, and 6 trains)—the only subway line serving the East Side—operates well over capaCity. Overcrowding is particularly problematic at Grand Central Terminal, where commuters from Metro North Railroad and the Flushing Line transfer to already overcrowded trains. This Lexington Avenue Line bottleneck decreases the speed and reliability of transit along the entire line, and limits the ability of the neighborhood to grow.

The Future of East Midtown
The City's proposal would introduce new density in order to encourage commercial development, while generating funds for neighborhood-wide improvements. Density is generally appropriate for this transit-rich neighborhood, and a rezoning would create the opportunities for East Midtown to continue to grow as one of New York City's principal commercial districts. However, the potential Citywide ramifications of adding density to the already overloaded capaCity of the local transit infrastructure raise serious questions about a development-first approach.

The proposed plan could introduce over 15,000 new workers and thousands of commuters and visitors per day to the area. Unless properly mitigated, the projected 3.8 million sf of office space and a combined 600,000 sf of parking, retail, and hotels will have undesirable consequences for the City as a whole. Most significantly, nearly half of the projected new workers and visitors are anticipated to arrive in the neighborhood via the subway system, according to the DEIS. The City must take proper steps toward ensuring the proposed plan produces true public benefits for the City's pedestrian and transit networks.

In order to make East Midtown's plan a success, greater density in East Midtown should *follow* significant investments in its infrastructure. This requires ensuring the proposed financing mechanism would achieve its desired goals. Additionally, the City must take proper steps towards ensuring the proposed plan produces true public benefits for the City's pedestrian and transit networks.

A balanced plan for the future of East Midtown must carefully target new development sites that will result in the fewest negative impacts to the neighborhood. In order to minimize those impacts and add positive benefits, a new Subdistrict must encourage innovative architecture while guiding it towards an appropriate form. Supporting a diverse mix of uses, rather than an office space monoculture, will help achieve this goal. In this neighborhood that experienced exponential growth followed by prolonged stagnation, a special district must provide for sustainable development, both economically and environmentally, in a way that integrates the area's rich history.

District Improvement Bonus

As a zoning mechanism to create a new funding source, the District Improvement Bonus ("DIB") leverages private investment for the public good. The DIB allows the City to prioritize some of the more important area-wide projects, rather than focus benefits directly on individual, contributing sites. The proposed improvements to the subway station at Grand Central are incredibly important to the future success of all of East Midtown, and directly contribute to the goals of this rezoning. It is not just modern office space that attracts businesses to a neighborhood, but the qualities and amenities of a neighborhood as well. In order for East Midtown to be globally competitive, it needs increased transit capaCity and an improved public realm. The DIB is a necessary feature of this proposal, but as currently structured, it is insufficient in meeting the needs of the district.

Mass Transit in East Midtown
Permitting East Midtown rezoning to go forward without first addressing the urgent need for capital investment at Grand Central will have significant negative consequences on the neighborhood and the City at large. Today, the 4 and 5 trains operate at 103 and 102 percent of capaCity, respectively, during the morning peak hours. Ridership at Grand Central on the downtown 4 and 5 trains is anticipated to grow to 112 percent and 103 percent, respectively, capaCity by 2030, even without the proposed project. On the uptown lines, peak evening ridership on the 4 and 5 trains is anticipated to reach 104 percent and 90 percent over the same time period

If the proposed action is advanced without mitigation, utilization is anticipated to grow by an additional one percent. However, the MTA has released a preliminary plan—as shown in the DEIS—for improving Grand Central. The plan includes new stairways, exits, and a redesigned mezzanine. The net result of these improvements would be to reduce the platform crowding and bottleneck conditions currently experienced at Grand Central. The proposed improvements would allow one additional train to travel through Grand Central during peak hours, which would increase capaCity by 1,100 people per hour.[17] While this would not fully alleviate crowding conditions, it will improve 4 and 5 train line capaCity by seven percent in the morning, and eliminate overcrowding during the evening rush.

Funding Transit Improvements Today
While the proposed rezoning establishes a funding source in the DIF, the funding mechanism has been of significant public concern. Although successful implementation of the DIB would collect revenue prior to development, improvements will take time to realize. Impacts from this rezoning could therefore be felt before the funds are available for appropriate mitigation measures.

The City must think beyond zoning and towards comprehensive planning. The City should advance proactive funding mechanisms, which could include, but are not limited to, direct capital investment, bond financing, or a special tax assessment district. Such funding mechanisms can provide capital dollars today that could be paid back by the proposed source (i.e. the DIB) over time.

The people who rely on Grand Central Terminal and East Midtown's public transit lines cannot wait until 2017 or later for critical improvements. The City must commit to funding the

[17] DEIS Table 12-92

improvements to the Grand Central subway station proposed by the MTA today. The MTA and City need to develop a timeline for when these projects will be complete.

Honoring Past Commitments
Aside from the MTA's plan for Grand Central, the City and the Long Island Rail Road previously committed to improving to the subway station at Grand Central as mitigation for the increase in ridership expected as a result of the Hudson Yards 7 Line extension and East Side Access. These mass transit improvements include:

7 Line Mitigations[18]
- Four new stairways from the mezzanine to the Lexington Line
- A new high-speed escalator from the mezzanine to Grand Central Terminal
- A wider stairwell connecting the 7 Line to the mezzanine
- High-speed escalators to the 7 Line platform

East Side Access Mitigations[19]
- An enlarged fare control area including an additional turnstile bank
- Widened corridors
- A new stairway and a restoration of an existing stairway

As the scope of the MTA's plans to improve the station has changed in response to the desire for a more comprehensive plan related to this rezoning, these particular projects are no longer being pursued. Instead, new projects are being put forward that will achieve the same goals, but will go further at improving conditions. These previous commitments came with monetary obligations from the Long Island Railroad and the City, however, that should be met separate from new funding from the DIF.

The 7 Line extension will open next year and East Side Access will bring tens of thousands of commuters to Grand Central Terminal by the end of the decade. As a result, the City and the MTA need to explicitly determine the specific mitigation projects that have already been committed to by the City and the Long Island Rail Road, the cost of those projects, and how they are being funded as part of a larger plan.

Establishing a Fair Market Price for the DIB
Although infrastructure should be paid for in advance, the DIB is still an essential mechanism and valuable tool to generate funding to improve other aspects of the public realm and transit system. Because the DIB mechanism utilizes air rights transfers, the value of air rights in the district will directly determine the scope of feasible mitigations and improvements. To date, the City has established a price of $250[20] per square foot for the air rights associated with the DIB. If this rate is undervalued, then fewer improvements will be possible. Further, an undervalued DIB negatively impacts the area's landmarks as the DIB price would, to an extent, determine the price on the private market as well. It is therefore critical to ensure that the DIB price reflects a

[18] City Planning Commission Report on ULURP No. N 040500(A) ZRM, Hudson Yards Rezoning.
[19] Record of Decision, East Side Access Project.
[20] The $250 per square foot listed in the proposed text was established in 2012.

fair market value for development rights. The market for air rights is still poorly understood, however, as data collection on the topic is limited. The price is related to the value of land, but even that value can be difficult to separate from the specifics of individual developments. Appraisal of air rights is more of an art than a science.

For this rezoning, the City has attempted to place a fair value on development rights in Midtown through an appraisal from an outside consultant. The current value established by that appraisal, however, has been challenged by some critics as far too low and by others as far too high. This discrepancy in opinion is due to the fact that there are limited numbers of comparable sales, and there is no standard methodology for appraisal. For example, this particular appraisal examined a number of sales of air rights that took place through zoning lot mergers. Though the air rights transactions analyzed by the consultant occurred in the same neighborhood as the proposed rezoning, sellers of air rights have been previously very limited in the number of receiving sites to which they could transfer, a condition which creates a buyer's market. The appraisal also analyzed the value of the underlying land, and weighted air rights at 60 percent of value of the underlying land. Professional appraisers, however, do not agree on the precise relationship between air rights and land value, so this percentage does not represent a perfect measure. The value of the DIB and its associated air rights will be best understood over time as more developments utilize the mechanism.

There are several possible approaches to setting the DIB price. One approach to ensuring maximum value to the City would be an appraisal for each sale of air rights, which was a key concern of the Taskforce. This would ensure that each sale accounted for the particular location of the development site, and would be specific to the market conditions at the time of transaction. Typically, however, air rights transactions are negotiated using an appraisal from both the buyer and the seller. A negotiated sales price could result in one developer receiving a preferential price over another, due to their respective negotiating prowess or personal relationships. The process described in this scenario is not a transparent one, and therefore cannot guarantee that the City's long-term interests and public benefits are maximized.

Rather than an appraisal for each sale, periodic adjustments to the base DIB price should be mandated to reflect current market realities. To ensure fairness and transparency, the value should be determined by a public process. Specifically, the revaluation should require a CPC public hearing with mandatory community board referral on the required appraisal. This would provide the City the ability to not only evaluate the appraised price, but would also allow the community, elected officials, and relevant stakeholders to challenge any methodological or mathematical differences. This public process should first take place in 2017, just prior to the enactment of the proposed DIB and the first contributions to the DIF.

Precedents for such an approach exist within the Zoning Resolution. The Theater Subdistrict of the Special Midtown District has a similar DIB structure, though priced at a much lower value, and has provisions that the price be updated every three to five years. A similar provision would be appropriate for the East Midtown proposal.

Price Adjustment
The City proposes to adjust the DIB price annually. The Hudson Yards DIB provides a comparable model to the mechanism being proposed for East Midtown. New York City created the DIB in Hudson Yards in 2004 to pay for public realm improvements on the west side, and the City initially priced the DIB at $100 per sf. Each August, DCP updates this price based on the percentage change in the consumer price index ("CPI") for the previous 12 months. As of August 2012, the price of the DIB had increased to $120.61 per sf, roughly a 20 percent increase over a seven-year period.[21] The City created this method of price adjustment to make the DIB price responsive to changes in the market over time. The CPI, however, as a representative of increases in the price of a bundle of consumer goods, does not directly correspond to the value of land or development rights.

The City proposes to use a price adjustment mechanism for the East Midtown DIB that is much more closely tied to the value of the air rights being sold. The proposed indicator, Midtown Asking Rent, is published monthly by the Office of Management and Budget and tracks average rent in Midtown as compiled by the real estate service firm Cushman & Wakefield. Rent and the value of development rights have an intrinsic relationship, making this a much better indicator than general consumer prices. Furthermore, this indicator looks to provide larger increases in DIB price over time, which would provide more funding for transit and public realm improvements. Over the same period that CPI increased 20 percent, Midtown Asking Rent grew by 38 percent.[22]

Though this method of adjustment is appropriate, is not without its detractors. One of its biggest drawbacks is that it is a new approach. The City has never used this Midtown Asking Rent figure in any official capaCity, so it is untested and not as thoroughly vetted as CPI. However, if the adjustment process is coupled with the recommended process for regular reevaluation of the base price, then the proposed method is viable and can be used on an annual basis between DIB revaluation hearings.

Committee Structure
This rezoning will establish a DIF committee to determine how funds generated through the DIB will be spent. In order to ensure that the body is transparent and adequately represents community needs, the DIF committee needs to collectively represent administration priorities, transportation needs, and the needs of the local community. As proposed, the committee would be composed of mayoral representatives and therefore is not representative of the diversity of experts and stakeholders in the neighborhood.

Similar to the Hudson Yards Development Corporation, the DIF committee should include the following membership:

1. Chair, Community Board 5;
2. Chair, Community Board 6;
3. A representative of the City Council;

[21] IBO, City's Spending on Hudson Yards Project Has Exceeded Initial Estimates. April 2013.
[22] Calculated from raw data provided by the Department of City Planning. The average Midtown Asking Rent for 2005 was $51.27, which grew to $70.59 for 2012.

4. Manhattan Borough President;
5. New York City Comptroller;
6. Chair, City Planning Commission;
7. Budget Director, Office of Management and Budget;
8. Commissioner, Department of Transportation;
9. Commissioner, Parks Department;
10. Deputy Mayor for Economic Development;
11. Deputy Mayor for Operations; and
12. President, MTA.

In addition to a committee makeup that is more representative of community interests, the DIF should be managed by procedures that are more transparent than those outlined in the currently proposed text. ZR § 81-681(c) stipulates that "the committee shall adopt procedures for approving and amending such priority district list, as well as a procedure for public comment regarding the initial list and amendments thereto." The appropriate procedures need to be designed now for public review. Committee procedures should include requirements to annually update and publish a priority list of improvement projects. Prior to updating the list, the committee should hold a public hearing for people to comment on any proposed changes. Finally, the committee should publish a publicly available annual report to the Comptroller, the City Council, and CPC on fund value, current annual capital and programmatic expenditures, status of previously-initiated improvement projects, and pipeline projects or approved priorities.

In-kind Contributions
The DIF is set up to provide site-specific neighborhood benefits through in-kind contributions. This approach addresses the wide impacts that large developments can have, and helps to encourage further development through neighborhood improvement. The current proposal, however, includes the opportunity to build in-kind improvements, rather than provide a monetary contribution. This structure has the potential to undermine the DIB process.

The projects undertaken by the DIF would be vetted through a public process and prioritized in order of need. In-kind contributions to the DIF, however, would be the result of negotiations between the developer and the DIF committee. This adds self-interest on the part of the developer to an otherwise fair and transparent process. A developer of a favored project or site could propose a non-priority improvement to satisfy the in-kind requirement; in this way, in-kind improvements are more likely to offer specific benefits to the developer, and this provision could better serve private interest or convenience at the expense of a greater area-wide priority.

Further, it becomes difficult to quantify the value of an improvement that is built as part of a larger development, and would require negotiations over what the project is worth, and how many square feet of development rights they would receive in exchange. This price negotiation further erodes an otherwise transparent process.

Because of these issues, any agreement between the DIF Committee and a developer over an in-kind contribution should be ratified by a CPC authorization. A good model for such an authorization is ZR §93-32(b), associated with the Hudson Yards rezoning. The findings for that authorization stipulate that the CPC can determine the appropriate amount of density that should be provided for an in-kind contribution based on an evaluation of the cost.[23] Further, the authorization mandates that the proposed in-kind improvement be consistent with the comprehensive plans of the DIF committee, including design specifications. ZR § 93-32(b) is particularly well designed and serves as the ideal model for an authorization in this case.

Qualifying Sites

The proposed zoning is targeted to allow new development of larger buildings, but only on sites where such large developments are appropriate. The proposed Qualifying Site rules are crafted so that only large sites can be developed with the highest densities. The proposed rules guard against overly tall towers on lots that would strain to accommodate them, thereby helping to protect the character of the midblock areas in the district.

Further, there is a direct relationship between the size of the Qualifying Site requirements and the type of buildings that DCP aims to encourage through this rezoning. Column-free spaces and large, flexible floor plates are top requirements of contemporary companies, especially those seeking signature Manhattan office space. In addition, the required size of a building's core is larger than ever. Current safety standards require ample elevators and wide stairwells. Smaller lots, therefore, do not accommodate modern building needs where the building core area may take up a larger portion of each floor, lowering the value of the building. By requiring large lots, DCP is thus ensuring the construction of only quality office space at these higher densities.

Holdouts
While the desire to target development to the Subdistrict's largest lots is appropriate, it could result in unintended consequences. As originally proposed, the text would require a Qualifying Site to be fully clear of all buildings for an entire avenue frontage and 25,000 sf; in this scenario, holdout owners would have incredible power to derail development.

The proposed A-Text creates a necessary safety valve for reasonable development to occur on sites with holdouts, but ensures design review to prevent out-of-context development. Under the proposed A-Text, applicants can seek an authorization that would allow modification of the Qualifying Site requirements. This process would allow additional development, which would contribute more money into the DIF, on sites that may otherwise be blocked by a single or limited holdouts.

Landmarks on Qualifying Sites
While the proposed A-text accommodates potential holdouts, it does not do enough to ensure balance with landmarks regulations. The DEIS identified 31 eligible landmarks within the CEQR study area, 11 of which are associated with potential or projected development sites. While determination of landmark status falls under the purview of the LPC, appropriate zoning regulations could also serve to protect landmark and historic preservation interests. More

[23] ZR § 93-32(b) stipulates "the amount of increased floor area generated by the contribution-in-kind shall be as determined by the Commission, which shall determine the reasonable cost of such improvement, including any acquisition and site preparation costs, and shall permit a floor area bonus in relation thereto. In making such determination, the Commission may consult with an engineer at the applicant's expense."

specifically, the text needs to ensure zoning does not complicate potential new development where a landmark exists on a site.

Per DCP's initial proposal, the presence of a landmark building on a development site would preclude status as a Qualifying Site, as the site could not by definition be cleared. This provision could limit the ability to apply for building permits associated with this rezoning proposal, even if all other requirements could be met. This translates to lost DIB revenue. Additionally, the proposed regulations prevent a developer from receiving the height and setback waivers that are generally granted to development sites featuring a landmark (such as ZR §§74-711 and 74-79). It is important that the proposed text amendment not cause unnecessarily conflict between the interests of historic preservation and economic development. Developments should be allowed, where appropriate, to include existing landmarks in their designs. This is especially important for helping to preserve landmark buildings while also allowing for new development.

Potential development sites that include a New York City landmark should be able to apply for a special permit that would allow an uncleared site to be considered as a Qualifying Site if the proposed design incorporates the landmark building into a new commercial development. Findings for such a special permit could be modeled after ZR §74-711[24] which waives bulk regulations on landmark sites, provided that the proposed modifications relate harmoniously with the existing landmark,[25] and that the proposed development does not adversely impact the surrounding neighborhood. Additional findings for a new special permit should ensure a proposed landmark project: produces a viable commercial development; is integrated with the public transit and pedestrian networks; and will not unduly shift bulk towards other parts of the development lot.

Use Restrictions

The adoption of the City's proposed A-Text to allow residential up to and restrict hotel uses to 20 percent on Qualifying Sites will, generally, produce an appropriate mix of uses and create a more vibrant and business-friendly East Midtown. A mixed-use community reflects recent trends toward developing business districts with a greater component of residential uses, as evidenced by the Special Hudson Yards District and the Special Hudson Square District. These districts include residential uses as a way to both promote new, and preserve existing, commercial uses.

Benefits of Mixed-Use Neighborhoods
Mixed uses have several positive impacts on districts that are predominantly commercial. Additional residential development introduces and supports around-the-clock amenities and services such as higher quality retail. Improved retail stores that operate throughout the day also benefit workers. A retail presence enlivens the streets at night and generally improves safety for pedestrians. A mixed-use community with quality residential amenities could therefore be an asset to businesses that are looking to attract employees who want to live close to their jobs. Allowing some amount of new residential units in East Midtown is an opportunity to create a

[24] 74-711 is a Special Permit for Landmark Preservation in All District.
[25] This finding is general demonstrated by the Landmarks Preservation Commission providing a Certificate of Appropriateness.

more vibrant and appealing neighborhood that will meet the standards of a modern commercial district and thus better fulfils the goals of the proposed rezoning.

The Multi-Board Taskforce recommended permitting some residential development in new buildings, because it would allow greater variety in architectural design, as residential floor plates can be smaller and allow for more flexible design schemes than Class A office spaces. The option to include residential space as part of a larger development would additionally facilitate financing, as residential developments tend not to require anchor tenants as commercial developments would.

The proposed A-Text indicates residential uses on Qualifying Sites would be appraised at a different rate than the currently proposed DIB price of $250 per sf. As residential floor area is likely valued at higher rates than commercial floor area, the separate DIB price for residential uses could mean a greater return for the DIF, generating more funds for public improvements in the area.

The proposed alternative to allow residential uses on qualifying sites meets the community's concern and aligns with our office's general policy supporting a mix of uses in predominantly commercial areas. It also creates an opportunity to generate greater contributions toward transit and public realm improvements, and therefore, CPC should adopt the A-text for those reasons.

Hotels in East Midtown
The proposed A-Text introduces new restrictions on hotels. Hotels do not necessarily conflict with commercial uses. When developed carefully, they can produce good jobs, serve the City's tourism industry and complement existing businesses. However, any development of hotels must be done in such a way that is compatible with the dominant uses in the district. Hotels can introduce new traffic impacts such as increased deliveries and taxi pick-ups and drop-offs. New hotels in East Midtown should be regulated to avoid their potential negative impacts and ensure an appropriate mix of uses in the neighborhood.

The City's A-Text addresses hotels in East Midtown by:

- restricting new hotels to 20 percent of floor area on qualifying sites with larger percentages allowed through special permit; and
- allowing existing hotels on Qualifying Sites to preserve all of its use without the 20 percent limit.

These proposed additions are an important recognition by the City that hotel development needs to be carefully regulated in order to create a successful central business district. However, the City should restrict all hotel use on qualifying sites by requiring a special permit. If the A-Text is adopted, then hotels would be in direct competition with residential developments on qualifying sites. Since residential floor area would be appraised at a different rate than commercial floor area, and is generally appraised at a higher value, not regulating hotels may directly impact the amount of DIF contributions the area would ultimately receive from planned developments.

Moreover, these changes also do not fully address potential impacts of as-of-right hotels on development goals in East Midtown. While the direction the City is taking in the proposed A-Text is positive, a wider hotel special permit is necessary in this rezoning. The intention of a hotel special permit is to encourage the balanced growth of hotel to office uses. Especially in the case of this rezoning where one of the major goals is to create world class office space, then instituting a regulatory provision on hotels is highly appropriate and necessary. Hotel developments are generally easier to finance than Class A office buildings, and therefore, more profitable of the two options. The cost-effectiveness of building hotels may undercut the development of new office space, which not only detracts from this rezoning's general purpose, but it also discourages the creation of quality and high paying jobs that would come as a result of office developments. Additionally, the community has expressed a desire to see expanded residential uses in the district, which is beneficial for the reasons outlined above. Allowing hotels on non-qualifying sites may prevent the area from being seeded with the residential uses necessary to create a 24-hour mixed-use commercial district.

A special permit required of a hotel is consistent with the City's policies in special districts that have specific goals; the Special Hudson Square, the Tribeca Mixed Use District and M1-6D districts are a few examples. The findings associated with a hotel special permit should reflect the aims of this rezoning, which may include:

- that in addition to the proposed hotel sufficient Qualifying Sites are available in the area to meet East Midtown's commercial development goal; and
- that the proposed hotel is so located as not to impair the essential residential and commercial growth, or the future use or development, of the surrounding area.

To ensure that the goals of the East Midtown rezoning are met and the contributions to the DIF are maximized, the hotel special permit for the entire district should be adopted with this proposed plan. As the City has not yet studied the potential impacts of the proposal, an updated environmental review is required to achieve this goal. Further, the City would need to release an updated zoning text with this addition to ensure proper notice is given and that it remains in scope.

Urban Design and Bulk Provisions

The DCP proposal correctly prioritizes improvements to the overall public realm—the streets, sidewalks, plazas, and below-grade transit network—as critical to the goal of protecting and strengthening East Midtown as a premier business address and vital job center, and acknowledges the overall poor quality of these spaces due to factors such as overcrowding, inaccessibility, and lack of amenities. Improvements to the public realm are tied to investment generated through future development on Qualifying Sites through contributions to the DIF. At the same time, the proposal and the A-Text address the quality of these spaces through bulk, street wall, stacking, retail continuity, and lobby provisions that will define the urban design and pedestrian experience in key corridors throughout the East Midtown Subdistrict. While generally these provisions are appropriate, the sections below outline several key points for consideration.

Park Avenue
In the course of public review, significant attention has been placed on the rezoning's potential impact on architectural design, particularly on Park Avenue. Park Avenue is the primary north-south artery through East Midtown, and is home to significant landmarks and iconic architecture from all periods of 20th Century design, including the Ritz Tower, the Waldorf Astoria Hotel, St. Bartholomew's Church, the Colgate-Palmolive building, the Seagram Building, and Lever House. This section of the avenue terminates in the Helmsley Building, with its entrances to the Park Avenue viaduct leading ultimately through Grand Central Terminal itself. Each of these structures has a unique relationship to the avenue on which they all front. As a particularly wide street (140 feet instead of the 100 feet typical of avenues in Manhattan), Park Avenue has the potential to accommodate more flexible design than other areas of the City.[26]

The community has called for waiving of the proposed street wall rules along Park Avenue (proposed ZR § 81-651), as they believe the street wall requirement is inconsistent with the existing, varied character of the avenue and its removal would allow for more flexible design. The City should meet the community's suggestion and further include in the text provisions to allow for new styles of architecture and public spaces on Park Avenue that will continue to foster East Midtown's tradition of innovation. In the past, the City has experimented with minimal or non-existent street walls. In many cases, however, this approach has resulted in undesirable, low, one-story commercial street walls or large vacant spaces set away from the street. Still, in its more elegant form, street wall variations can produce exceptional architectural relationships to the public realm.

Therefore, it is appropriate to keep the street wall requirements outlined in the zoning, but create a pathway to achieve varied, unique architectural designs in order to circumvent both of these possible undesirable outcomes. While most Park Avenue developments anticipated by the DEIS will likely use the superior development special permit, which allows bulk and setback waivers to achieve up to 24 FAR, it is possible that a development not seeking additional density could benefit from waiving bulk controls. As such, the City should add a new authorization process for the Park Avenue corridor that will allow street wall and bulk modifications if the applicant is producing a development that harmoniously relates to the streetscape and does not impact light and air to either the street or surrounding open spaces.

Vanderbilt Avenue
The dense development of East Midtown has, over time, reduced opportunities for the City to provide quality open space in the neighborhood. While the POPS program has attempted to address this problem, as described earlier, the success of the existing public spaces is quite limited. The East Midtown rezoning proposal will add additional density with full block coverage, perpetuating the open space problem. The Department of Transportation ("DOT") has introduced Pershing Square, and proposed a similar pedestrian plaza on Vanderbilt Avenue.

While much of the discussion around the rezoning has addressed the planned pedestrianization of portions of this five-block street, such plans are separate and independent of this proposal, which

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[26] At present, one new tower redevelopment, designed by Lord Norman Foster, is planned at 425 Park Avenue, adding what is anticipated to be a contemporary icon to the Park Avenue skyline. Existing rebuild requirements do not permit

establishes certain urban design controls that appropriately relate the physical bulk of added density along Vanderbilt Avenue to Grand Central Terminal. More specifically, this plan reduces the maximum base height for new buildings fronting Vanderbilt Avenue to 100 feet to create a more harmonious relationship to Grand Central Terminal, which rises to a maximum height of 130 feet. The proposed zoning also requires new buildings adjacent to Grand Central Terminal intending to utilize the DIB to submit a report from the LPC to ensure there is a harmonious relationship between such a development and the historic Terminal (proposed ZR §81-621 (a)(4)). Additionally, the requirements for lobby width, transparency, and retail continuity will activate the streetscape. These new provisions will both help preserve the physical significance of Grand Central Terminal as well as heighten the pedestrian experience on Vanderbilt Avenue.

Parallel to this ULURP proposal, the City has commissioned a series of urban design workshops to inform a set of design recommendations and guidelines for East Midtown's public realm. The public workshops have been successful in drawing out community concerns, which include ones from property owners on Vanderbilt Avenue who are particularly concerned about transforming Vanderbilt Avenue into a pedestrian plaza and thereby restricting vehicular access to their front entrances.

As this public design process continues, our office looks forward to working with the City, community members, and property owners to establish an open space plan for the neighborhood. Further, should design plans for Vanderbilt Avenue be advanced, we encourage a careful balance between the interests of existing building owners and public benefits.

Public Spaces in the Sky
The Taskforce has called for activating public spaces at the skyline plane to extend much-needed public space in an area where skyscrapers dominate. This proposal would include active uses at the building's highest segment including restaurants, observation decks, or other such facilities. The proposed A-Text appropriately allows for such uses to occur by altering the stacking rules to allow for these active, commercial uses to occur above residential uses, which are also permitted in the A-Text. The potential to include these spaces has a benefit to the City as a whole, as they can serve as tourist attractions and open new perspectives on our City.

Historic Landmarks

East Midtown has a rich history that today can be seen in the built form of the neighborhood. From the Beaux Arts Helmsley Building[27] that evokes the golden age of railroads, to the sleek and modern Lever House, these handsome structures are a reflection of New York's story. As we now look to the future of this neighborhood, we should make sure to leave room to preserve our past. There are a number of existing New York City landmark buildings in the neighborhood, and as more research and evaluation occurs, there are sure to be more that warrant preservation. While this rezoning cannot influence which buildings are landmarked, our office encourages the LPC to engage in evaluating buildings identified as being historically significant and hold public hearings to determine their eligibility.

[27] Formerly known as the New York Central Building

While zoning and landmarking are separate land use processes, the goals of preservation and development are not mutually exclusive and should be reconciled. There are a number of important New York City landmarks whose air rights are presently "locked in," with few potential receiving sites, and this proposal would further limit the potential of these landmarks to sell their air rights. If more buildings are landmarked, they too may be landlocked.

Under the originally proposed text, only in the Grand Central Subarea could landmark air rights be coupled with DIB bonuses. In the Park Avenue corridor, there are a number of landmarks that would not be able to sell to any site developed as part of this rezoning. Collectively, though, these landmarks have over two million sf of unused development rights, so including them in a similar way as in the Grand Central Subarea could flood the market with air rights and result in very little money to the DIB. Creating a mechanism to allow the owner of Landmarks to sell development rights within this zoning framework thus necessitates a careful balance between ensuring DIF money for public improvements and protecting the viability of our City's landmark buildings and institutions.

The A-Text has introduced a good mechanism for achieving this goal. It would allow the sale of air rights in the proposed Northern Subarea through a floating mechanism, but delays those sales until 2019. This proposed future date ensures that some money will come in to the DIF for public improvements from projects that are developed in the near future. The authorization for air rights sales to non-Qualifying Sites will also allow owner's of landmarks recourse to sell their air rights without impacting the DIF. As a whole, these components help remove conflict between preservation and development.

Increased Energy Efficiency Standards

The proposed text would require increased energy efficiency standards for buildings on Qualifying Sites at a 15 percent increase over the standards of the current 2011 New York City Energy Conservation Code ("NYCECC"). Additionally, developers seeking the Special Permit for Superior Development per proposed ZR § 81-624 (b)(5) would be required to demonstrate an unspecified degree of additional energy savings above 15 percent. Generally, this type of provision represents a pioneering approach in the New York City Zoning Resolution, setting standards not only for new construction in East Midtown, but also as a likely precedent for other special districts in the future.

While tying incentive zoning to the building performance code is untested in New York City, the City should take a stronger position on the environmental agenda for East Midtown. Any world-class central business district should plan for the integration of the objectives of sustainable development in order to respond to additional density through the reduction of the ecological "footprint" of its buildings. In East Midtown, the new commercial buildings incentivized through the proposed zoning will be among the largest in the City. They should also be among the most resource-efficient. Buildings that are better energy performers give back to the City as a public benefit.

More efficient buildings are also attractive to tenants seeking Class A office space, and many developers are already providing high-quality and well-engineered commercial high rises in New

York's central business districts. Green construction offers a competitive advantage. Similarly, owner-operators of flagship headquarters will see rapid amortization of initial building systems costs, and will be more likely to invest in long-term efficiency. The feasibility of top-notch energy-efficient construction and retrofit for signature East Midtown buildings is exemplified by the recent $1 billion LEED Platinum-certified retrofit of the J.P. Morgan Chase headquarters at 270 Park Avenue, completed in 2012.[28]

In view of these benefits, planners, engineers, and policymakers have already begun to push New York City towards greater efficiency standards. Zone Green[29] and the City's Greener Greater Buildings Plan,[30] for example, have begun to establish pathways toward the City's increasingly aggressive sustainability goals by ensuring sustainable construction methods and design are permissible under zoning, and by putting in place systems and standards for benchmarking energy usage. Indeed, the City's Energy Conservation Code is only one piece of a larger whole.

The NYCECC is composed of a series of local laws[31] that modify and adopt the current version of the Energy Conservation Code of New York State ("ECCNYS"), thereby specifying the minimum standards for energy efficiency to which all new buildings and renovation projects must comply.[32] The NYCECC is revised every three years in accordance with local law.[33] It is slightly more stringent than the ECCNYS on which it is based. The NYCECC additionally requires compliance from buildings undergoing renovation.[34] Energy efficiency is measured in terms of cost savings, based on energy modeling of a design relative to a baseline reference building, the characteristics of which represent the minimum requirements of the current energy code.

It is of critical importance that this provision be updated to require "evergreen" standards — improvement over the applicable version of the NYCECC at the time of permitting. Therefore, the City should require a percentage improvement over the current edition of the NYCECC at time of permitting, and provide appropriate mechanisms for re-examining the energy savings required to receive the benefits of the proposed zoning. Today, it is typical for such developments to utilize LEED certification, which sets a minimum of 10 percent improvement over code as its baseline.[35]

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[29] http://www.nyc.gov/html/dcp/html/greenbuildings/index.shtml

[30] The Greener Greater Buildings Plan includes Local Law 84 (2009), which mandates that all private properties with individual buildings over 50,000 sf or multiple buildings with a combined area of 100,000 sf measure and report their energy and water use on an annual basis. At present, there are no incentives or requirements for building owners to act on any performance issues, although Local Law 87 provides guidance and requirements for energy audits and retro commissioning. http://www.nyc.gov/html/gbee/html/plan/plan.shtml

[31] Local Law 85: http://www.nyc.gov/html/planyc2030/downloads/pdf/ll85of2009_energy_code.pdf

[32] The 2011 (current) NYCECC includes: Local Law 1 (2011), Local Law 48 (2010) and the 2010 ECCNYS. The 2010 ECCNYS is based on the 2009 International Energy Conservation Code ("IECC"), in international model code published by the International Codes Council ("ICC").

[33] Codes are the products of significant legislative and industry consensus, of which the development community is a part.

[34] Buildings listed on the State or National Register of Historic Places or that are designated as contributing resources to Historic Districts on the National Register are exempt. Landmarks' interiors and exteriors as designated by the LPC are also exempt.

[35] Urban Green Council

Pegging the requirement for increased efficiency in East Midtown to the current code at the time of permitting is a simple solution to a complex issue of code revision, compliance, and the uneven nature of advancements in building technology. In order to refine the approach to piloting zoning requirements tied to the energy conservation code, CPC should require the proposed zoning text to include the following for approval:

- The text should be modified such that the performance standards applied to buildings on Qualifying Sites and those applying for the Special Permit for Superior Development be based on the current code at time of permitting.
- The percentage should be set within six months of the new code being released.
- CPC should be permitted to modify the percentage as appropriate by rule change.
- Neither method of adjusting the percentage shall produce an outcome that represents a net decrease in efficiency from the previous code cycle.
- The text should specify a performance-based path for modeling buildings and analyzing code compliance.

Finally, it is of note that size is less important than shape in building performance. The CPC may need to reexamine whether traditional building envelopes remain appropriate to encourage efficient buildings over the traditional light and air considerations.

Sunrise Provision

The City included a sunrise provision in its proposed rezoning to prevent new developments in East Midtown from competing with other development projects for which the City has outstanding funding to recoup. The 2005 Hudson Yards redevelopment project, for example, included over $3 billion in City-backed bonds, and development has not proceeded as quickly as expected, meaning the City has yet to earn back its money through higher property taxes. As such, the sunrise provision delays any new, large-scale development in East Midtown so as to remove competition for anchor tenants in order to protect the public's investment on the west side and downtown.

The Multi-Board Taskforce has recommended pegging the sunrise provision to development goals in Hudson Yards, Lower Manhattan and in the transit system. While this is an innovative approach, such a goal creates uncertainty for when the text would be applied. If the City experiences another downturn in the economy, this proposed rezoning may not be in effect for decades. On the other hand, if the City experiences an upturn, then this rezoning and its impacts may come into effect earlier than anticipated. A sped or slowed development process could create legal problems as the environmental review makes assumptions based on when developments come online.

Further, as stated above, it is the City's responsibility to ensure that new infrastructure is funded prior to development occurring. An unpredictable time frame could result in the City failing to improve the transit system prior to development. As such, the City should err on finding an appropriate time period for the sunrise provision, rather than pegging it to unpredictable swings in the development market.

Most importantly, the speed of the proposed rezoning will be mitigated by the sunrise provision. As the proposed rezoning will not go into effect until 2017, it allows the City to revisit regulations during this period, and to consider any necessary corrective measures or add any new proposals prior to the enactment of this rezoning. Given the City's recent history with the Hudson Yards Rezoning, which required multiple follow-up actions, a sunrise provision here can provide more time to evaluate and add any changes to the proposal.

Appropriate Exceptions to the Sunrise
New York City's real estate market accommodates a wide range of tenants with different needs and price points. Tenants looking to locate to East Midtown are not necessarily the same as ones going to the west side or Lower Manhattan. With the exception of a 30 FAR building on a 40,000 sf lot, many new developments in East Midtown would be significantly smaller than the building at One World Trade and the commercial buildings planned on the west side. For example, a rebuild of an 18.0 FAR building in East Midtown would likely have smaller floors-plates, and would attract a different type of commercial tenant.[36]

Under current zoning, owners are permitted to rebuild overbuilt sites by retaining at least 25 percent of the original building. [37] In addition, all sites in the district can currently build with increased floor area through existing bonuses and landmark air rights special permits. By stalling the enactment of this rezoning until 2017, the City relinquishes potential DIB contributions from developments that could occur in the near future.

The proposed zoning text should be revised to include an authorization to waive the sunrise provision for specific buildings. This would allow some flexibility to owners who are ready now to develop buildings that reflect the general purposes and goals of this East Midtown rezoning, which would include contributing to and seeding the DIF prior to 2017. Early contributions to the DIF could provide public realm benefits in the near future that would spur future development. Findings for such an authorization could include that the proposed development has floor-plates such that would not compete with other large-scale developments in the City and that the proposed new building is of similar scale to one that could be constructed today under the existing zoning.

Proposed Zoning Map Amendment

Finally, the proposed zoning map amendment would rezone a block bounded by East 42nd and 43rd streets and Second and Third avenues on the east side of the rezoning area as part of the Special Midtown District, specifically the Subdistrict. The block has a number of existing office buildings, so its inclusion in a special district aimed at regulating commercial districts makes intuitive sense. Incorporating the block into the Subdistrict will allow the area to be regulated by the specific height and setback rules designed for East Midtown. This zoning map amendment is appropriate.

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[36] One World Trade Center has floor plates of around 44,000 SF, which is the anticipated size of the ground floor of the largest buildings in East Midtown.
[37] L&L Holdings, the owners of 425 Park Avenue have announced that they plan to rebuild on their existing site by retaining 25 percent of their current floor area in a new building.

BOROUGH PRESIDENT'S RECOMMENDATION

The health and well being of Midtown is inextricably linked to its mass transit system. While the proposed rezoning targets development, any additional density onto a system that is over capacity will inevitably lead to potentially dangerous conditions. It is, therefore, critical that the City mitigate the existing overcrowding and create a real plan for investment in the east side's transportation infrastructure, including improving conditions at Grand Central. Further, as the transportation improvements will occur over time, the DIB must be constructed as a robust and transparent financing source.

The City must also take efforts to encourage commercial and residential uses in the area that will contribute to the City's overall economic goals without undermining East Midtown's architectural significance.

The proposed plan has taken several positive steps in the last month, including the introduction of residential uses, new mechanisms to benefit landmarks, modifications to the DIB to allow its price to be increased in recognition of the range of uses and a more flexible definition of Qualifying Sites. The Department of City Planning has indicated in a letter to this office that it is committed to advancing these changes as the process moves forward.

Most importantly, the Mayor's office has committed to the Borough President that it will provide upfront financing to mitigate impacts on the Lexington Avenue line, which will allow more trains to enter and leave the station prior to development occurring.

While there are still important issues to resolve, these changes represent a significant positive step forward and demonstrate willingness by the administration to address outstanding issues. As the proposal advances, the City should continue to work with the local community and elected officials to further refine this plan based on public feedback and the below outlined conditions.

Therefore, the Manhattan Borough President recommends <u>conditional approval</u>, if the applicant:

1. **ensures that infrastructure improvements are funded prior to development occurring under the new zoning by identifying and employing other financing mechanisms that will complement funds generated through the DIB;**
2. **works with the MTA to determine the scope of past mitigation commitments at Grand Central and determine an appropriate budget for those improvements that is separate from the DIB;**
3. **creates a transparent and regular process for evaluating the DIB price that requires the CPC to reexamine every four years, starting in 2017, based on a new appraisal and a public hearing;**
4. **incorporates residential uses into the DIB price at a higher value than the commercial uses;**
5. **expands appointments to the DIB committee to include Community Boards 5 and 6, the City Council, the Borough President, the Comptroller, Chair of the City**

Planning Commission, the Director of the Office of Management and Budget, the Commissioner of Department of Parks and Recreation, Commissioner of the Department of Transportation, Deputy Mayor for Operations, the Deputy Mayor for Economic Development, and the President of the MTA;

6. **creates more rigorous DIB committee regulations including requiring a public hearing for the creation or alteration of the priority projects and requiring the publishing of annual reports to the Comptroller, the City Council and CPC on the fund value, current annual capital and programmatic expenditures, status of previously initiated improvement projects and pipeline projects or approved priorities;**
7. **creates an authorization process for in-kind contributions to the DIB rather than allowing them as-of-right with DIF committee approval;**
8. **pursues the A-Text Qualifying Sites option that accommodates potential hold-outs;**
9. **creates a new special permit that would allow the integration of landmark buildings on Qualifying Sites;**
10. **pursues the A-Text option to allow residential use on Qualifying Sites;**
11. **begins the necessary environmental, zoning and planning work needed to create a hotel special permit for all of East Midtown;**
12. **creates an authorization process to allow for more flexible design and street walls on Park Avenue;**
13. **pursues the proposed A-Text option that would allow transfer of the air rights in the Northern Subarea;**
14. **modifies the energy efficiency requirements so that it is based on the time of permitting and requires the CPC to set the appropriate percentage within 6 months of the new code being enacted provided that it will not represent a net decrease in efficiency from the previous percentage, and allow CPC to adjust the requirement as needed by rule change;**
15. **creates a performance-based path for modeling buildings and analyzing the code compliance for energy standards; and**
16. **creates an authorization process that allows smaller buildings to utilize the new regulations prior to the sunrise provision to increase contribution to the DIF without creating new office space competition to other commercial districts in the city.**

Scott M. Stringer
Manhattan Borough President

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

ROBERT K. STEEL
DEPUTY MAYOR FOR ECONOMIC DEVELOPMENT

July 31, 2013

Dear Borough President Stringer,

Thank you to you and your team for your very thoughtful and thorough review of the East Midtown rezoning application, which will reinvigorate East Midtown and ensure that it remains one of the world's premier business districts. Indeed, the City has sought to encourage redevelopment in this area through zoning for over twenty years.

We have always believed that the East Midtown proposal would be improved through the public review process. For example, we made changes that will allow a more vibrant mix of uses in new buildings and give landmarks in the district greater flexibility to sell their unused development rights. Today, after extensive discussions with local stakeholders and elected officials, and in response to specific feedback from you, Councilman Dan Garodnick, and the community boards, we are announcing our commitment to advance funding for significant mass transit and open space improvements in East Midtown immediately upon passage of the rezoning.

Previously, the plan had been to pair private development and public investment, with developers paying into a fund at the time they seek a building permit. Now, we are committing to advance a portion of this funding, before new development occurs, so that the public can experience the benefits of the rezoning far more quickly. Our initial spending priorities will address stakeholder feedback about the need to reduce Lexington Line congestion today at the Grand Central subway station, which affects Lexington Line riders from the Bronx to Brooklyn. Among other things, we will invest in improved access and egress to the subway platform that will allow trains to clear more quickly and thus improve the rider experience. We will also continue our work with the community on a public realm vision plan to articulate and prioritize investments in the streets throughout East Midtown.

Without the rezoning and the revenue it generates, potentially in excess of $500 million, these improvements may never get made. We can't allow that to happen. By modernizing zoning and using the anticipated revenue to begin early funding of public improvements, we can create immediate quality-of-life improvements while also strengthening the long-term health of our economy.

Thank you again for your support and stewardship of this crucial project.

Sincerely,

Robert K. Steel

DEPARTMENT OF CITY PLANNING
CITY OF NEW YORK
OFFICE OF THE DIRECTOR

July 31, 2013

The Honorable Scott Stringer
Borough President, Borough of Manhattan
One Centre Street, 19th Floor North
New York, NY 10007

Dear Borough President Stringer,

As you may know, the Department of City Planning has proposed a number of modifications to its East Midtown rezoning proposal, which may be relevant as you consider your own review of this application. In particular a number of the elements included in this "A" text alternative have arisen in response to concerns raised by you and you staff, as well as with the community, other elected officials and stakeholders.

1) Changes to Allowed Uses on Sites Utilizing Zoning Incentives

Under the existing proposal, only fully commercial (office, hotel and retail) buildings qualify for zoning incentives, provided the site meets certain "Qualifying Site" criteria of a minimum site size of 25,000 square feet and 200 feet of frontage on a wide street. The Department heard from your office as well as the Community Board, recommendations that new developments should allow for a mix of residential use to complement commercial uses in the new buildings and contribute to the vitality of the area. We have also heard concerns that allowing hotel use to occupy the entirety of a new development would undermine the proposal's chief goal of incentivizing modern office space. In order to provide for a better mix of uses, without undermining the proposal's chief goal of incentivizing modern office development, City Planning is proposing to modify the proposal to allow up to 20% of a building's floor area as non-office uses as-of-right, with higher amounts achievable only through a full ULURP special permit process.

As your staff suggests, the rate for contributions for residential floor area will be established by a separate appraisal from the appraisal previously conducted for commercial floor area, and the contribution rate for a development will be based on its ratio of residential and commercial use.

2) Creation of a Northern Landmark Transfer Area

Under existing zoning rules, city landmarks may only transfer unused floor area to 'adjacent' lots, defined as lots which either adjoin or are across the street or catty-corner from the landmark. Transfers are made through a special permit process. In 1992, the City Planning Commission recognized the unique relationship between Grand Central Terminal and its surrounding area by

Amanda M. Burden, FAICP, Director
22 Reade Street, New York, NY 10007-1216
(212) 720-3200 FAX (212) 720-3219
nyc.gov/planning

4) Other Clarifications and Adjustments

In addition the A text introduces a number of other modest clarifications and amendments that respond to stakeholder concerns. Two that were specifically in response to concerns from your office are:

- Rooftop uses: In response to your concerns that rooftop uses be encouraged in the district, the modified proposal would facilitate the activation of top floors of mixed-use buildings with uses like observatories and restaurants, by modifying "stacking rules" which prohibit non-residential uses above residences.

- Qualifying Site clarifications: In response to your and other concerns that the Qualifying site criteria disincentives the adaptive reuse of certain buildings by requiring the clearing of a Qualifying site, the proposal clarifies that existing buildings are permitted to remain on a Qualifying Site, as long as the minimum cleared site requirements are achieved. It also clarifies that Qualifying Sites can maintain the bonus floor area from existing bonus plazas without proportional contribution into the DIB as long as such spaces are maintained as part of a new development.

I believe these changes are both responsive to concerns while continuing to meet the goals and objectives of the rezoning. We are committed to advancing these amendments through the ULURP process and will officially present them at the City Planning Commission session on August 5th, in advance of a public hearing on them August 7th.

Best regards,

Amanda M. Burden

TESTIMONY
CITY PLANNING COMMISSION
AUGUST 7, 2013
EAST MIDTOWN REZONING

I would like to write in support of the proposed Midtown rezoning. I am a partner at a real estate brokerage firm with 200 employees based in NYC for 25 years. I believe this proposal is a crucial step so that NYC can continue to improve its office stock and compete in today's global market.

Years back our firm was located at 400 Park Avenue at the corner of 54th Street. Although we loved the location, when it was time for us to expand, we could not find an adequate space that was priced accordingly to the quality of the space. The majority of buildings on this corridor are dated with inefficient layouts.

A recent study by Cassidy Turley (which I have attached) speaks to this undesirability. Grand Central now has an availability rate of 15%, more than double other surrounding neighborhoods.

Luckily our firm is committed to NYC and would not have considered another city to relocate to, but it's important to realize that when choosing today, companies not only consider headquarter locations in the US but around the world. On a recent trip to Hong Kong, I realized just how inferior our office stock compares. I have heard similar comments with respect to London's.

Although Hudson Yards and the World Trade Center are great alternatives, we need to ensure that East Midtown remains a viable option which provides space for companies to grow and operate at the highest efficiency. I appreciate your consideration on this matter

Testimony Submitted by James Nelson

80,000 square feet, with an approved plan from **Karl Fischer**. That just shows you how land prices have escalated."

The buyer was a joint venture between **Adam America Real Estate** and **Silverstone Property Group**, which have worked on a number of deals together in Brooklyn already.

"It's the fifth deal we've joint-ventured on together," Silverstone's **Martin Nussbaum** told *The Commercial Observer*. "Our plan is to build a very high-end rental building of approximately 75,000 square feet, with 6,000 square feet of ground-floor retail" and approximately 75 market-rate apartments.

They've hired **ODA Architecture**, an

across the street from the new buildings aren't going away anytime soon.

Aside from the McDonald's parcel,

»

STAT OF THE WEEK 15%

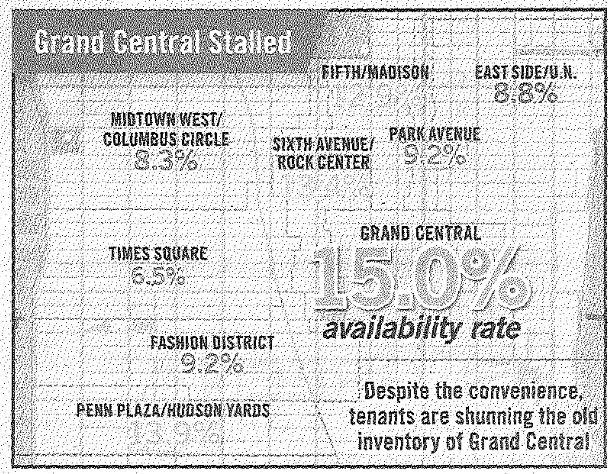
Through the first six months of 2013, the Grand Central availability rate stood at 15 percent—the highest of all the Midtown submarkets. Thankfully, it does not take the prize for the highest availability rate in Manhattan, as that honor goes to the World Trade Center submarket, but I will save that topic for another week.

Grand Central availability actually started the year at 13.8 percent, but it ballooned to 15 percent with the addition of six big blocks of space over 100,000 square feet at 330 and 335 Madison Avenue, 666, 711 and 730 Third Avenue, and 150 East 42nd Street. The Grand Central submarket has New York's most highly trafficked transportation hub right in the center of the submarket, so why are there still 7.3 million square feet of available space surrounding it?

As a commuter from Staten Island, this is tough for me to fathom. Since working in Manhattan in 1999, I have worked on all major Midtown avenues, but my current location on Park Avenue and 47th Street, mere steps from Grand Central, has made for the best commute of my career. On the other hand, one reason tenants seem to be avoiding this submarket could be the fact that 87.2 percent of the building inventory was constructed prior to 1975. These older buildings typically have low floor-to-ceiling heights, making the inventory less efficient for TAMI-type tenants. The city is aware of this potential challenge for the area and has proposed the East Midtown Rezoning plan to alleviate this issue. The rezoning would allow for more conversions of older product and development opportunities for new product.

Older buildings aside, I see an opportunity for Grand Central over the next 12 months, as average asking rents for Class A and B space are still 16 percent below historical highs. With Midtown South tightening further, expect to see tenants migrate north to Grand Central, where asking rents for Class A (3.5 percent) and Class B (14.8 percent) properties are significantly lower.

Richard Persichetti is the vice president of research, marketing and consulting at Cassidy Turley, with 14 years of NYC research experience.



TESTIMONY BY LOLA FINKELSTEIN, CHAIR OF THE MULTI-BOARD TASK FORCE ON EAST MIDTOWN, AT THE CPC HEARING ON EAST MIDTOWN, 8/7/2013

CHAIR BURDEN, COMMISSIONERS: THANK YOU FOR THE OPPORTUNITY TO SPEAK TODAY. MY NAME IS LOLA FINKELSTEIN; I AM A MEMBER OF COMMUNITY BOARD FIVE, FORMER CHAIR OF CB5 AND PRESENT CHAIR OF THE MULTI-BOARD TASK FORCE ON EAST MIDTOWN. WHEN I WAS ASKED TO CHAIR THE TASK FORCE, I WAS VERY INTERESTED BECAUSE FOR ME, EAST MIDTOWN IS HOME.

I WAS VERY CONCERNED ABOUT THE ACCELERATED TIMETABLE BUT I WAS EXCITED AT THE PROSPECT OF A RENEWED, ENLIVENED, LESS CONGESTED, 21ST CENTURY BUSINESS DISTRICT. FOR ME, THE CROWDED SUBWAY PLATFORMS AND CONGESTED SIDEWALKS ARE NOT ABSTRACT PLANNING ISSUES BUT DAILY REALITIES. FOR THESE REASONS, AND MANY MORE, I WAS LOOKING FORWARD TO A VISIONARY PLAN TO ADDRESS THE CHALLENGES IN EAST MIDTOWN.

COMMUNITY BOARD FIVE HAS LONG BEEN KNOWN AS A PRO-DEVELOPMENT BOARD. WE HAVE RECOGNIZED OUR UNIQUE PART IN THIS DENSE CITY AND HAVE ENCOURAGED SMART GROWTH. AS TIME WENT BY, HOWEVER, IT BECAME CLEAR THAT THIS REZONING PROPOSAL WAS NOT THE AMBITIOUS, COMPREHENSIVE PLAN I HAD HOPED FOR. YOU'VE HEARD THE EXPRESSION "RETAIL IS DETAIL" - WELL, GOOD PLANNING IS IN THE DETAILS.

AFTER A THOROUGH REVIEW BY THE INCREDIBLE TALENT ASSEMBLED FOR THE MULTI-BOARD TASK FORCE, IT BECAME CLEAR TO ME THAT THIS PROPOSAL WAS FLAWED FROM THE START. IT IS A FALLACY THAT WE CAN

SOLIDIFY EAST MIDTOWN'S GLOBAL PREEMINENCE FOR DECADES TO COME WITH A HANDFUL OF NEW SKYSCRAPERS AND A FEW MODEST TRANSIT IMPROVEMENTS.

WHAT MAKES AN OFFICE DISTRICT COMPETITIVE IS NOT ONLY THE SIZE OF THE BUILDINGS BUT THE QUALITY OF ITS TRANSIT INFRASTRUCTURE, THE APPEAL OF THE NEIGHBORHOOD, PROXIMITY TO OTHER BUSINESSES, ITS CULTURAL CACHE. THESE ARE THE QUALITIES THAT ATTRACT BUSINESSES. THIS PROPOSAL HAS FOCUSED ON CREATING INCENTIVES AND PREDICTABILITY FOR DEVELOPERS IN AN EFFORT TO ENCOURAGE NEW BUILDINGS; BUT THE CITY HAS NOT AFFORDED THESE SAME BENEFITS TO THE PUBLIC.

WHERE IS THE INFRASTRUCTURE MONEY? HOW MUCH WILL BE AVAILABLE? WHEN WILL IT BE AVAILABLE? WHAT IMPROVEMENTS WILL BE MADE? WHEN WILL THEY BE MADE? WILL THE IMPROVEMENTS SIMPLY RECTIFY CURRENT DEFICIENCIES OR WILL THEY BE FORWARD LOOKING TO ACCOMMODATE OUR 21st CENTURY TRANSIT NEEDS. HOW MANY OF OUR HISTORIC RESOURCES WILL BE LOST FOREVER AND WHICH WILL WE PROTECT? WHAT WILL THESE NEW SKYSCRAPERS LOOK LIKE AND WHAT WILL THEY OFFER THE PUBLIC?

VAGUE ASSURANCES OF FUTURE FUNDING FROM AN OUTGOING ADMINISTRATION DOES NOT REPRESENT SOUND POLICY. THERE ARE SIMPLY TOO MANY UNANSWERED QUESTIONS TO MOVE FORWARD WITH THIS INCOMPLETE PROPOSAL. AN UNDERTAKING OF THIS SIGNIFICANCE AND MAGNITUDE DESERVES CAREFUL, THOUGHTFUL CONSIDERATION, NOT A RUSHED ATTEMPT TO BEAT THE CLOCK.

THIS IS A WORK IN PROGRESS. I REMAIN HOPEFUL THAT, GIVEN ADEQUATE PROPER TIME AND PUBLIC ENGAGEMENT, A PLAN FOR A RE-

IMAGINED EAST MIDTOWN CAN BE CREATED THAT WOULD BE WORTHY OF OUR LOFTY GOAL OF A VIBRANT 21ST CENTURY NEIGHBORHOOD ATTRACTIVE TO BUSINESSES AND RESIDENTS AND TOURISTS.

Manhattan Chamber of Commerce
Testimony
August 7, 2013
East Midtown Zoning

Good morning. Thank you for holding this important hearing and for allowing us to voice our opinion. I am Nancy Ploeger, the President of the Manhattan Chamber of Commerce.

The Manhattan Chamber of Commerce supports the city's efforts to keep East Midtown a vital economic engine for the city and preserve the district and create jobs. For decades, New York City has been one of the greatest cities in the country and around the world for business, tourism, lifestyle and innovation and for years, East Midtown was "the place to be" in the city.

However, as the buildings have aged and office spaces have become obsolete, interest in this neighborhood for new and expanding businesses has waned. The market is demanding new and accessible space with column-free floors, greater floor-to-ceiling heights, energy efficient features, and world-class designs, with up-to-date infrastructures. It is critical that this district be rezoned to encourage construction of such buildings, not only meet the demands by new businesses and tenants but also to retain current businesses and jobs.

The district must continue to build and grow sensibly, targeting development and adding density in an area that is sufficiently served by many forms of mass transit whose reach extends deep into the five boroughs.

We know there are concerns regarding the preservation of historic buildings in this district. And we acknowledge that we must protect those buildings that have definite historical value. However, we need to make sure we are preserving only those that have value and not "copy cats" or other structures not fully recognized by all in the community as "historic." We have already preserved so many worthwhile, important and iconic New York buildings in East Midtown. But it is important to remember that Midtown East's very history is one of continuous growth and redevelopment, adapting to and reflecting the city's place in the global economy.

People supporting the rezoning here today include of labor, developers, the business community, and architects. There is also support by key elected officials, representing millions of working New Yorkers. We speak with one voice when we contend that this rezoning is imperative to keep our city from being held back from opportunity.

We urge the Commission to approve the rezoning proposal for East Midtown. Your approval will send an encouraging signal to the businesses and developers interested in building in the East Midtown market. Also, your approval will provide clearer guidance about the rules under which they will be planning and more importantly building on the future of New York City, upholding its reputation as the best city in the world: number one in economic growth, engineering innovation and architectural distinction and job creation.

Clayton Smith, Chair of the Parks Committee and 2nd Vice Chair of Community Board 5, and member of the Multi-Board Task Force.

We agree that East Midtown must continue to serve as a world-class district for a new century. A bold, forward-thinking vision is the only thing worthy of that goal. This proposed rezoning is not that vision. Here are some of the blind spots; I implore the Councilmembers to have these questions answered for yourselves:

1) Infrastructure improvements are drastically needed NOW, even without the proposed rezoning. The DIF is not the appropriate mechanism to handle the required scale of these improvements. Shouldn't the number-one priority of the planning vision for this area be to ensure the improvement of the district for the New Yorkers who live and work there? Instead, what we see is a way in which the sky can be sold with no firm, adequate commitment to the commensurate improvements that are already sorely needed below.

2) While there has been much talk about these 'infrastructure improvements,' most of it has been concerned with subway improvements and the MTA's capital needs. These are vital; but what about above-grade improvements (streets, sidewalks, and public spaces)? Problems with sidewalk width on Madison and Lexington, traffic flow problems, and public space concerns have been widely discussed for years by planners and thinkers interested in improving the district for the New Yorkers who live and work there. Where is the plan? How can the hastily-conceived public realm strategy underway now be seriously considered, when it falls after community review has already taken place, and is not part of the ULURP process?

3) Which threatened buildings will be protected? This timetable does not come close to allowing the LPC adequate time to calendar and consider the affected properties. Suggesting otherwise is fantasy.
4) If the City is thinking about the future, serious sustainability and environmental adaptability measures are a must; something for which the Mayor himself has repeatedly and insistently advocated. But this proposal

comes nowhere near that degree of forward-thinking: the standards that it seeks to impose will be out-of-date by the time this hearing is over, ~~much less when buildings are actually rising~~. New bldgs benefiting from rezoning should be required to perform 20% above NYC energy code.

5) Where is the public review for buildings above 18 FAR? How can an as-of-right designation, with no public review for buildings of such significant size and impact, seriously be considered as appropriate in this city?

6) Why are air rights priced at anything less than fair market value? How is this a wise calculation for the City to carry out its obligations to its citizens? Any funding mechanism that is approved needs to include an appraisal process for development rights to ensure market pricing and to include a floor which increases over time as well.

7) Taxpayers are still paying for improvements that have not happened in Hudson Yards and in Lower Manhattan, as anticipated demand for office space has failed to materialize. Why is it so urgent to hastily up-zone 70 blocks of Midtown based on more vague promises, especially if it puts those other districts at increased risk of not meeting expected occupancy rates?

As CB5 said in their statement of August 1: "Does this administration really believe that failing to address these questions in an 11th hour deal is the best way to plan for the future of New York City?"

This proposal is inadequate. It is short-sighted. It is being rushed for political reasons. It fails to achieve its obligations to the public. And it marginalizes the New Yorkers who will be most affected by it.

It's now time for the City Council to listen to the architects, urban planners, civic leaders, and seven unanimous affected community boards to turn it down.

THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

August 7, 2013

East Midtown Zoning Proposal

Statement of the City Club of New York
To the New York City Planning Commission

My name is Michael Gruen. I am President of the City Club of New York. You probably know of the Club but have not heard from it in quite a while. The Club has recently been resurrected with a new constituency, and is pleased to speak out after ten years of public silence.

We share the concerns of many other public-interest organizations.

We question the wisdom of promoting a significant amount of midtown growth without solid evidence for its need, especially when other areas of the City – such as Hudson Yards, Downtown, Jamaica, Long Island City – are already designated growth centers.

We question the wisdom of encouraging the destruction of the many older buildings in East Midtown, many of landmark quality, that give the area its distinctive character.

We question the wisdom of failure to require that a very substantial proportion of street-front space be given over to non-chain stores.

That said, we have chosen to focus on what we must bluntly call the <u>sale of development rights</u>.

Our conclusions are not favorable.

Disguising the sale in the cloak of zoning does not change the truth about its character. The development incentive bonus has everything to do with raising money, and nothing to do with development incentive. The $250 per square foot price is based on market value, not on specific need related to development. The stated purpose of the rezoning is to promote newer and larger buildings, but that purpose is contradicted by imposing fees that can run into hundreds of millions of dollars. Fees, like taxes, have the reputation of inhibiting, not promoting, growth.

249 W. 34th Street, #402, New York, New York 10001, (212) 643-7050

The law is clear: an outright sale of zoning rights is incompatible with the purposes of the zoning power to promote health and welfare. Under very limited circumstances, a development fee may be imposed for mitigation purposes. But the fee must be directly related to the specific burdens that development imposes; and it must be proportional to the degree of burdens imposed.

This charge does not meet those standards.

First, the DEIS indicates that the impact of new construction on pedestrian circulation issues will be very slight and will occur almost exclusively in the subway stations at Grand Central. Those stations are already over-crowded. New population added by new construction will increase the burden by only the smallest percentage.

Second, it is anticipated that the funds generated by the bonus will be spent primarily in the Grand Central area, regardless of where the development occurs. Thus, a new building at 57th Street must contribute the same $250 per square foot as a new building at 42nd Street, although the 57th Street building will contribute relatively little to overcrowding in the 42nd Street area.

One could go through other anomalies. They all point to the same conclusion – that there is no proportionality whatsoever between the purchase prices to be paid by each developer and the special burdens, if any, that each imposes. We are convinced that judicial review will result in voiding the charges.

This project deserves far more careful consideration than it has received thus far. The rush to get it through should be suspended.

The City Club will be publishing a detailed report of its findings in the very near future and will file it with the Commission.

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THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

OFFICE OF THE CHAIRPERSON
AUG 19 2013
26123

August 19, 2013

BY HAND

Hon. Amanda Burden, Chair
New York City Planning Commission
22 Reade Street
New York, NY 10007

East Midtown Rezoning

Dear Chair Burden:

I am transmitting herewith 20 copies of the Report of The City Club of New York on the proposed rezoning of East Midtown Manhattan.

We will be pleased to respond to any inquiries you may have.

Sincerely yours,

Michael S. Gruen
President

cc: David Karnovsky, Esq.

249 W. 34th Street, #402, New York, New York 10001, (212) 643-7050

THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

Report of the City Club of New York
Concerning East Midtown Rezoning Proposal
August 19, 2013

Introduction and Summary

New York has become a city for sale.

The City offers to sell or lease parkland for apartment buildings and other commercial ventures in order to finance maintenance. It offers up libraries in order to offset a long history of cutting their budgets and, consequently, deferring maintenance.

Now, the City proposes to relax bulk regulations to allow more intensive development around Grand Central Terminal and the Midtown office district running north from Grand Central . . . for a price. The City Club opposes this plan as a matter of policy and as a matter of law.

In brief, the rezoning would establish a basic maximum floor area ratio for various zoning districts, but would allow up to twice that basic FAR in certain locations upon payment of $250 per square foot to a special mayoral fund to spend on pedestrian circulation improvement projects that have not yet been selected or priced.

The scheme to sell development rights represents bad policy in that it undermines the well-earned reputation of the City Planning Commission for doing what it should: planning and zoning, objectively, for the general public benefit and welfare. Selling zoning rights inevitably raises doubt in the public mind as to whether the Commission is acting independently and objectively to achieve good planning goals, or is simply serving as a surrogate for the City's tax collector – whether it makes zoning decisions on the basis of merit or money.

The scheme also violates the law. The zoning power does not include the power to tax or otherwise raise funds for the City. Zoning authorities may not put zoning rights up for sale. Zoning power is limited to adjusting the relationships among property owners through a sound comprehensive plan that benefits the general public as a whole. A very limited exception allows imposition of development fees or conditions to mitigate damages or burdens that a development project will impose on the community. But that exception is available only where there is a direct causal relationship between development and the purpose of the fees or condition, and where such exactions are fair in the sense of being roughly proportional to the actual cost of mitigation. Those standards are clearly not met here. In fact, the City rather candidly acknowledges that its $250 price is not based on the unknown cost of the unknown improvement projects, but simply on what the City calculates the market will bear.

We believe that the courts will hold the fee-for-zoning scheme, as presently written, illegal and void, with the result that developers may go ahead and build to the maximum allowable floor area (including bonuses), but will not be required to pay the price that the Planning Department proposes to impose.

A second area of concern is that the proposed amendments would give broad and undefined discretion to the Commission to issue special permits for still greater FAR to encourage outstanding design, planning and energy performance. We question whether the guidelines for such "superior developments" are specific enough to satisfy legal requirements for delegation of power to an administrative agency.

The City Club was formed in 1892 to promote sensible organization of New York City's government and responsible action in the full range of governmental activities. It acted largely as a forum for the exchange of ideas. Long respected for its intelligent analysis and leadership, its finances fell behind its accomplishments. Around 2003, it suspended active operations. In mid-2013, the City Club again became active, infused with new constituents who are dedicated to rebuilding the organization to once again play a leading role in addressing important governmental issues, especially concerning the urban environment, and to advocate vigorously to implement its views.

The City Club is led by a growing array of professionals with expertise in areas including planning, architecture, preservation, and law. Many have decades of professional experience. Others are well on their way to becoming the leaders of the future.

The City Club is a 501(c)(3) charitable organization. Contributions to it are tax deductible as provided by law.

THE CITY CLUB OF NEW YORK

Fighting vigorously for the urban environment and responsible government

Report of the City Club of New York Concerning East Midtown Rezoning Proposal August 19, 2013

Main Text

OVERVIEW

The City proposes to upzone an area of about 70 blocks around Grand Central and northwards through the prime Midtown office district. The move would, in some cases, as much as double the permissible floor area of a new building. The plan calls for a thinly veiled arrangement to sell the new development rights that the new zoning would create. For the most part, the deal the City offers would be quite simple: the developer pays $250 per additional square foot above what is allowed by existing zoning, no strings attached.

Many speakers on behalf of real estate interests at the City Planning Commission's hearing on the proposal, held on August 7, 2013, addressed the proposed charge. Almost to a person, they commented on the price level, opining that $250 per square foot was too much, too little, just right, or should be more flexible to reflect market value variations throughout the area. The assumption was always that selling development rights was appropriate. Only the price was at issue.[1]

The City Club rejects the assumption that the City may sell zoning development rights. Such an action is beyond the legitimate scope of the zoning power and would suffer defeat in the courts if adopted.

This Report sets out the City Club's full position and reasoning.

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[1] These positions have been aired before. See the Real Estate Board website and the real deal blog: https://members.rebny.com/pdf_files/rew-071812.pdf; http://therealdeal/blog/203/06-03/grand, both visited July 16, 2013.

THE CITY CLUB OF NEW YORK

The difference of opinion arises for a simple reason. The Department of City Planning,[2] sponsor of the rezoning, has set the price at estimated market value. In doing so, DCP has candidly, if not explicitly, announced that when it rezones to increase available floor area and thereby increase the value of affected land, the City should share in the added wealth. It, therefore, offers to sell the newly minted rights: owners will have a choice; they can build to a maximum base floor area ratio of 12 or 15,[3] or, they can go as high as 21.6 or 24 FAR by the simple expedient of paying for at least much of the excess over the base maximum. In fact, they can go even higher, up to 30 FAR, if they satisfy the Planning Commission that their buildings will be exceptionally beautiful and energy efficient, and the owner pays the $250 per square foot price for the additional allowance under this "superior development" further bonus program.

The purpose of zoning is to adjust the competing interests of property owners so that all can flourish without unnecessarily damaging one another. It requires that zoning decisions must, not only as a matter of good government but as a matter of law, be exercised solely with a view to carrying out a comprehensive land use plan for the general public welfare.[4] Zoning authorities may not regulate land to other ends. Specifically, they may not put zoning rights up for sale.

There is an area of exception. Property development, though otherwise desirable, may impose burdens on infrastructure. Therefore, under very restrictive conditions, it may be appropriate to require the developer to contribute to the mitigation of those burdens. This is commonly seen in rural areas where a subdivider who formerly used his 100 acres solely to accommodate one family, breaks it up into smaller lots accommodating 100 families. The increased population may put pressure on limited parkland or adjacent roads, and there are laws allowing the municipality to impose conditions to ensure that the subdivider fairly contributes to remediation of the burdens he will create if permitted to subdivide. Where the issue is parkland, and it would be impractical to require the owner to set aside parkland within the subdivision, local zoning boards may condition approval of the subdivision on the owner's contribution of an appropriate amount of money for creation of parkland elsewhere within the community. The idea has been applied to require urban developers to provide plazas or other pedestrian and rest

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[2] We use "DCP" to refer to the City Planning Department, and "CPC" to refer to the City Planning Commission (the board of Commissioners responsible for initially adopting zoning provisions).

[3] "Floor area ratio" or "FAR" refers to the ratio of built floor area to the area of the lot on which a structure is built. For example, 5 FAR would allow a five story structure covering the entire lot. Open space and set-back requirements often result in much greater height because each floor may be far smaller than the area of the lot. In general, the Zoning Resolution assigns maximum floor area ratios for various types of buildings in every zoning district.

[4] See e.g. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

THE CITY CLUB OF NEW YORK

space, or to provide subway access, to compensate for introducing a larger population to their sites.

Where such conditions or "exactions" are allowed, they must comply with standards intended to ensure that the zoning authority acts within its proper limited authority to address land use issues, and in the public interest, not simply to extort payment as the price of conferring benefits to owners.

Our following discussion shows that the proposed East Midtown zoning scheme violates these standards and exceeds the zoning power. In brief, the zoning power does not extend to the sale of zoning rights or other illegal exercises of zoning power. Conditions and exactions may be imposed, but only where there is a reasonable relationship between the condition or exaction, on the one hand, and the burden created by the owner if permitted to do what he proposes, on the other. Where the condition or exaction is not sufficiently related, or is excessive, the courts deem it void. The East Midtown zoning proposal fails these tests.

The price formula alone makes the scheme look, smell and feel like zoning for dollars, not for good land use purposes. Other evidence tends to confirm this conclusion. For example:

- The City proposes that the proceeds of sale of the zoning rights will go to a special mayoral fund dedicated to making improvements in pedestrian circulation within, and adjacent to, the East Midtown area. DCP identifies only a few possible improvements, but the MTA had previously undertaken to perform some of the very same improvements that are identified. To that extent at least, the proceeds of zoning rights sales go to relieving the City or its surrogate (such as the MTA) of expenses they would otherwise have absorbed out of general funds rather than to new projects causally related to the burdens created by new development.

- The environmental impact statement reveals that new development will actually have almost no impact on pedestrian circulation throughout most of the area. It will have a little on the Grand Central subway stations where, by one measure, it will increase existing overcrowding by 0.8%. The necessary connection between created burden and exaction to mitigate is missing.

- That the rather small impact is focused on the Grand Central subway situation makes one wonder why the developer of new square footage at 57th Street should pay the same into the fund as a developer on 42nd Street. The contribution rates are, in fact, unrelated to the degree of burden each developer imposes. But the law requires that there be such a relationship, determined on an individualized basis, if the scheme is to survive judicial review.

- Although DCP has tentatively identified some projects for the fund, the fund's management committee will actually decide what projects get funded. At this point, it is not known what the projects will be nor how much they will cost. In that factual vacuum, it is hard to say that $250 per square foot will raise too much,

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too little, or just the right amount to fund such projects as are necessitated by a duty to mitigate. The absence of evidence of the identity and cost of potential projects precludes any rationalization that the price might somehow relate to anticipated needs.

We believe that, in its present condition, the financing scheme is doomed to failure in any prospective litigation. Major rethinking is necessary.

DETAILED DISCUSSION

1. Specific Background.

The area proposed to be rezoned lies largely between 40th Street and 57th Street, and between Third Avenue and a line running mid-block between Madison and Fifth Avenues.

Other organizations (including the Municipal Art Society, and the Multi-Board Task Force on East Midtown[5]) have extensively analyzed the planning issues raised by the proposal. We largely agree with their analysis. We are particularly concerned, for example, with the encouragement the proposal gives for demolition of older buildings, including some 14 or more landmark-quality buildings, which serve as reminders of our roots and history; the impact of further development of East Midtown at the possible risk of reversing growth of other business centers, particularly in outer boroughs; and failure to encourage small retail space to accommodate and encourage non-chain stores.

The essence of the rezoning has two aspects: First, a sharp increase in the amount of allowable floor area on large lots fronting on wide streets[6] throughout the district. In some areas, the "as of right" floor area limit is increased by as much as 80%, or 100% for "superior developments." Second, a required "contribution" to a special mayoral fund of $250 per square foot of planned floor area above the "maximum base" amount, which generally corresponds to the current zoning. (Proposed Sections 81-621 and 81-624).

The City Club is concerned that, all too often, the City's governing bodies view City assets – including the dignity and beauty of its streetscapes, its public buildings, and, in the present context, development rights – as saleable commodities, there to be cashed in to finance city operations or to make up for past failures to maintain capital infrastructure. We see this in the MTA's use of its sidewalk entrances as scaffolds for advertising, in the sale of libraries to

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[5] The Task Force is comprised of several community boards.

[6] A "wide" street is generally 75 feet or more across (NYC Zoning Resolution 12-10); in Manhattan, "wide" streets are generally avenues and major cross streets such as 42nd and 57th Streets.

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raise operating funds or make up for deferred maintenance, and the introduction of unrelated commercial uses into public parks to support park operations.

Often such practices elevate financial interests to a level overwhelming other aspects of the City's welfare. Often they compromise the integrity of governmental operations by inviting an inference of abuse of authority even where agencies may believe they are acting in the utmost good faith. The East Midtown rezoning proposal may have many good intentions and laudable provisions. But what jumps out and eclipses all else are doubts inspired by the seemingly paramount purpose of raising revenues through the sale of development rights. The motive impugns too many other aspects of the plan and, whether consciously or not, invites such questions as: Is DCP's primary purpose really what it claims – to replace older buildings and make the City more competitive with other cities? (The answer may be, yes, but DCP offers very little solid evidence of pernicious obsolescence or impending decline.) Will upzoning to increase bulk solve the supposed problem? (Again, no significant evidence.) Is DCP falsely minimizing the probability that the proclaimed purpose of replacing older buildings will result in wholesale demolition of landmark quality buildings? (DCP soothingly assures that its efforts will not be devastatingly successful. But it offers no evidence.)

DCP's assigned function is land use planning. Other sectors of government, more directly responsible to voters, have the power to raise money, generally by taxation. When DCP and the Commission venture into planning for fund-raising purposes, they compromise their own integrity and lead the public, quite rightfully, to ask whether these planning bodies choose, for example to upzone to increase density, because increased density is desirable from a planning point of view, or because doing so serves as a disguised substitute for taxation.

The proposed fixed price dissolves the disguise. Two hundred fifty dollars per square foot does not relate to the cost of district-wide improvements necessitated by the new construction. As far as the supporting description and Environmental Impact Statement[7] reveal, that cost is not known. Nor is the price otherwise based on planning considerations. City Planning candidly discloses that the price is equal to the estimated market price of transferrable development rights from landmark buildings to nearby receiving sites, that is to say, the market value of the right to construct floor area above the basic zoning standard. The City would simply charge what it believes the market will bear for a zoning commodity that the City creates.

We believe that the courts will find the fee-for-zoning scheme illegal and void. They may leave the increased development rights in place, but they will not allow collection or retention of the payments. This could result in construction of much more floor area than the

[7] The description was produced by DCP to explain the proposals and the need for them. It is divided into sections which we refer to following each citation to the Description (e.g. "DCP Description, Background & Existing Conditions," referring to the first section). The Description is available on the DCP's website as is the Environmental Impact Statement (referred to herein as "EIS.") References to the EIS are followed by the relevant section or table number.

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City would choose to allow if it had assumed to begin with that it could not collect the payments.[8]

A second area of concern is that the proposed amendments would give broad and undefined discretion to the Commission to issue special permits for still greater FAR to encourage outstanding design, planning and energy performance. (Proposed Section 81-624). We question whether the guidelines for such "superior developments" are specific enough to satisfy legal requirements for delegation of power to an administrative agency.

2. Sale of zoning rights.

2.1 The opportunity.

The Commission proposes that an owner of a "qualifying site" (i.e. one having at least 200 feet frontage on a wide street,[9] and total lot area of 25,000 square feet if on Park Avenue, or 40,000 square feet if in the area surrounding Grand Central Terminal) may increase its buildable floor area above the basic maximum amounts (either 12 or 15 FAR) in two ways:

> The owner may increase FAR by 44 to 80 percent *as of right* simply by making a monetary contribution to the District Improvement Fund for use in improving pedestrian circulation within, or immediately adjacent to, the East Midtown Area. (Proposed Section 81-621).[10]
>
> In a slightly smaller portion of the same Grand Central/Park Avenue area, the owner may increase the FAR still more, from 24 to 30 (Grand Central), or from 21.6 to 24 (Park Avenue), by making a further contribution, and by satisfying the Commission that the project will meet the Commission's vague requirements for

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[8] See City of New York v. 17 Vista Associates, 84 N.Y.2d 299, 618 N.Y.S.2d 249 (1994), where defendants gave a promissory note to the City for expediting and assuring issuance of a demolition permit, and the court refused to enforce the note as illegal because the City had, in effect, extorted it. Significantly, the Court was aware that the building had already been demolished by the time the case reached the courts. Voiding the note had the effect of confirming the demolition but eliminating the City's quid pro quo.

[9] On avenue sites, 200 feet almost always represents the entire width of the block.

[10] As we read the somewhat ambiguous language of the Table of allowable increases in FAR at Proposed Section 81-62, and text of Proposed Section 81-621, an owner may get an increase of 20 to 25% of base FAR by payment alone. For the next 35% to 60%, the owner has a choice of either making further monetary contributions to the District Improvement Fund or buying transferrable development rights on the market, or a combination of both. (DCP East Midtown Description, Proposal, confirms this reading).

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excellence in design, planning, and energy performance. (Proposed Section 81-624).

2.2 The price.

The price is fixed at $250 per square foot of additional FAR. An exception is made for grandfathered buildings constructed before December 15, 1961 which exceed the basic maximum FAR of 12 or 15. The owner may knock down such a non-conforming building and rebuild it to the same FAR it formerly had on condition that he contribute $125 per square foot of the former excess. These dollar amounts may be changed annually to reflect changes in average asking rents in the area, but may never be reduced below the fixed figures of $250 or $125 per square foot.

There are no catches in the "as of right" portion of the deal. You pay your money, you get your additional floor area.[11]

The $250 price is not related to any estimate of the cost of needed or desirable pedestrian circulation improvements. Rather, it is what the City estimates is the market value of transferrable development rights. (DCP East Midtown Description, Proposal).

2.3 Limits of zoning power.

New York State has defined zoning authority as "not a general police power, but a power to regulate land use." Sunrise Check Cashing v. Town of Hempstead, 20 N.Y.3d 481, 485, 964 N.Y.S.2d 64, 66 (2013). The zoning board of a municipality may not reach beyond that scope to achieve other objectives nor employ methods inconsistent with its limited power. So, for example, Sunrise holds that the Town acted beyond its zoning authority in adopting a zoning regulation banning check cashing businesses because the evidence showed that the Town acted out of animosity against the particular type of business rather than to achieve land use objectives such as limiting commercial activities in residential areas. Similarly, the zoning power does not extend to "spot zoning" or creation of exceptions to a uniform plan to suit a specific user. Dexter v. Town Bd. of Town of Gates, 36 N.Y.2d 102, 365 N.Y.S.2d 506 (1975).

[11] The proposed amendments lay down blanket rules for obtaining the "as of right" additional FAR. A single exception allows an owner to build a pedestrian circulation improvement himself, but the project must be on the Committee's priority list and be approved by the Committee, and the cost must be at least as great as the required monetary contribution. Thus, the option has little to no practical effect in terms of what improvement gets built and how much it costs the "contributor." But it does further confirm that what matters in this proposed law is not merely whether the owner satisfactorily ameliorates a specific burden he creates, but the monetary value of the "contribution," whether in money or in kind.

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Another limitation on the scope of zoning power bars a municipality from simply selling zoning rights. Municipal Art Society of New York v. City of New York, 137 Misc.2d 832, 522 N.Y.S.2d 800 (Sup. Ct. N.Y. Co. 1987). In that case, the City agreed to sell the former Coliseum site at Columbus Circle on the condition that, if the buyer was unable to obtain a special permit to build an entrance to the adjacent subway station on the property (which would enable the buyer to increase its permissible FAR by 20%), the price would go down by $57 million. If, on the other hand, the special permit was issued, the City would keep the $57 million in its general funds. The court voided the permit on the ground that the price in reality had two distinct components: one price for the land, and an add-on of $57 million for the increased floor area if the buyer obtained the special permit. In the Municipal Art Society case, the $57 million charge had nothing to do with land use planning. It had to do with a commercial deal wrapped in a thin veil of zoning.

Other courts implicitly recognize the general illegality of zoning for dollars by explicitly recognizing that the limited scope of zoning authority (and related exercises of police power, such as issuing building permits) bars agencies involved in regulating real estate development from imposing charges (sometimes termed "impact fees" or analogous names) on owners and developers that are not directly and exclusively related to, and proportional to, the burdens a permitted new development place on the community. An excessive charge ceases to be merely an act of regulation (exercise of police power) and becomes a disguised exercise of the power to tax – i.e. to generate funding for purposes going beyond simple mitigation of an impact directly resulting from land use regulation. See e.g.:

- Idaho Bldg. Contractors Ass'n v. City of Coeur d'Alene, 126 Idaho 740, 743, 890 P.2d 326, 329 (1995) (if an "impact fee" on new construction is imposed primarily for revenue raising purposes, it is in essence a tax and can only be upheld under the power of taxation," not under the police power; court concludes that there is a lack of substantial relationship between the intended use of the fee and the plaintiff's development and that the fee is, therefore, in reality, a tax).

- Country Joe, Inc. v. City of Eagan, 560 N.W.2d 681, 686 (Minn. 1997) (fee imposed on property owners to build and improve streets is a tax, though "cloaked" as an exercise of police power; "we find it significant that revenues collected from the road unit connection charge are not earmarked in any way to fund projects necessitated by new development, but instead fund all major street construction, as well as repairs of existing streets").

- Mayor & Bd. of Aldermen, City of Ocean Springs v. Homebuilders Ass'n of Mississippi, Inc., 932 So. 2d 44, 56 (Miss. 2006) (a series of development impact fees adopted by city were not earmarked for the primary or exclusive benefit of those obliged to pay them and, therefore, could not be approved as an exercise of police power).

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As will appear from discussion below, some of these fact patterns bear a remarkable relationship to characteristics of the "development incentive bonus" program of the proposed rezoning, such as the anticipated use of the funds raised to support improvement projects to remedy conditions that either already exist and are, therefore, totally unrelated to new development, or which are necessitated by new construction only to a very limited extent, and then only by new construction near Grand Central.

There are also constitutional limitations. Zoning restricts free use of property and, therefore, implicates Fifth and Fourteenth Amendment provisions prohibiting takings without just compensation, and deprivation of property without due process of law. Traditionally, zoning finds justification on the ground that some restrictions are necessary for the common welfare; restrictions provide reciprocal benefits assuring, as best one can, that each owner may enjoy his property undisturbed by his neighbors. If your use is restricted, at least you have the benefit that your neighbor's otherwise cherished right to carry on a junk yard business next to your home is also restricted. To carry out these requirements, the law requires that a comprehensive plan form the basis for all zoning and that the plan and its execution equitably allocate the rights and burdens of ownership. See Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

Euclid adds that a zoning law which is "arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare" would be unconstitutional. (272 U.S. at 395). The New York Court of Appeals agrees that a zoning ordinance that does not substantially advance a legitimate zoning objective is invalid under the Due Process clause, and the Supreme Court from time to time confirms the same. Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck, 94 N.Y.2d 96, 105, 699 N.Y.S.2d 721, 974 (1999); see e.g. Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 125 S. Ct. 2074, 61 L. Ed. 2d 876 (2005).

A zoning restriction may also so inhibit use of land, or otherwise seize property, that it violates the Takings clause unless just compensation is paid. For example, government raises both taking and due process issues when it conditions the bestowal of a governmental benefit – such as permission to build – upon the beneficiary's giving back something of value if the government's seizure of that give-back would itself constitute a taking. If the quid pro quo reasonably relates to a special burden the individual would impose on the public in exercising the permit, and a reasonable level of use remains, the government's demand is not a taking.[12] But remove the reasonable relationship, and the government's demand becomes pure and simple extortion. Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987); Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).

Extortion takes the form of using governmental regulatory authority to force owners to purchase from the government something they already own. A fundamental proposition lies at the heart of much of our political and economic system: real property is the exclusive property

[12] For a more complete general formulation of what amounts to a taking see Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978).

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of its owner, and extends not merely over the surface of a platted parcel, but from the core of the Earth to the heavens above. See, Macmillan, Inc. v. CF Lex Associates, 56 N.Y.2d 386, 392-393 (1982) (treating "air rights" – also known as "development rights" – as an attribute of property rights and expressly rejecting the idea that they are a product of zoning). Society has agreed that government may regulate the use of property to prevent conflicting or noxious uses and otherwise to promote the general health, safety and welfare. So government may, within reason, put a ceiling on the amount of floor area owners may build on their property. That does not alter ownership of development rights inherent in the ownership of property; it merely limits their use. Government might appropriately reduce the regulatory strictures by upzoning as the municipality grows and improved infrastructure comes into place supporting greater density. If government relaxes the regulation so as to allow more FAR, then tells the owner that he may build to the new level only upon paying government for the development rights he already owns, it crosses beyond the bounds of regulation into the realm of extortion. It tells the owner that he may enjoy his property, including constructing what government has demonstrated that it regards as reasonable by adopting the particular FAR limit, but only by purchasing development rights (rights he already owns by virtue of owning the land) from the government. There is even an inherent element of economic strong-arming: so long as the price government demands still allows the owner to make a profit, the owner's financial self-interest militates in favor of getting ahead of his competitors by paying the price (much as entrepreneurs throughout the world grease palms) with no more than a wince.

Why the fuss? one might ask. If a municipality can do the same thing by, for example, taxing or by enacting a criminal law against engaging in a check cashing business, what does it matter that it uses the zoning power instead? Without going into details, the answer is that different standards and limitations may apply. A town may not have legislative authority from the state to enact such a criminal law which concerns state-wide policy issues rather than local likes and dislikes. Taxation has uniformity and general use requirements, and the option of adopting a particular type of tax may not be authorized by the state legislature for given types of municipalities. Furthermore, as mentioned before, the public's expectation of fairness in zoning would be seriously undermined if, in practice, some owners could buy their way out of restrictions that apply to most others, or if the public perceived that zoning boards were more concerned with raising money than with enacting land use laws for the general public welfare.

2.3.1 Zoning action must substantially advance a legitimate zoning goal.

A zoning ordinance that does not substantially advance a legitimate zoning objective is invalid under the Due Process clause. Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck, 94 N.Y.2d 96, 105, 699 N.Y.S.2d 721, 974 (1999). That rule encompasses sub-rules mentioned above, such as that zoning may not be used simply as a device for extracting money from persons applying for permits.

The formula expresses two independent requirements: the objective must be a legitimate land use purpose, and the action taken must substantially advance it.

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If either requirement is not met, the New York courts treat the action as void. See e.g. Fred F. French Investing Co., Inc. v. City of New York, 39 N.Y.2d 587, 385 N.Y.S.2d 5 (1976), rearg. denied 40 N.Y.2d 846, 387 N.Y.S.2d 1033, 356 N.E.2d 491, appeal dismissed and cert. denied 429 U.S. 990, 97 S.Ct. 515, 50 L.Ed.2d 602) (holding invalid a rezoning, as public parkland, land formerly zoned residential that the owner had used as a private park for residents of the housing units on the same property).

Thus, though the action may purport to be zoning, it fails if not properly undertaken. The effect is the same as if the action were completely outside the zoning power.

The East Midtown proposal's sale of rights orientation is hard to justify either as a legitimate zoning goal or as substantially advancing any stated goal.

2.3.1.2 Legitimacy of zoning purpose.

DCP does not explicitly state what its zoning purpose is for charging a fee for extra FAR.

Fund-raising in itself is, as we have shown above (2.3), not a legitimate zoning purpose.

In its public presentation, DCP says that its over-all purpose for recommending the rezoning is to encourage increased development in an area at risk of decline because its office space does not meet modern requirements, and its buildings are old, all to the City's disadvantage in competing with other cities throughout the world. As the Description says, "Existing commercial zoning in most of the area allows commercial density to an as-of-right Floor Area Ratio (FAR) of only 15 along the avenues and 12 on some mid-blocks." "Current zoning has proven to be an impediment to reinvestment in East Midtown." Existing special permit provisions for extra FAR, the Description says, have failed to generate new development except for 383 Madison Avenue, built in 2001. (DCP East Midtown Description, Background & Existing Conditions).[13]

While that premise may justify upzoning, it cannot credibly be offered as a justification for charging a very substantial fee to the developer for taking advantage of the upzoning. Inevitably, the charge exerts a contrary influence just as higher construction costs or interest rates would. It certainly cannot be credited with *promoting* development.

Alternatively, we might suppose that DCP would claim, although it has not done so thus far, that the purpose of the charge is to mitigate burdens caused by the prospective new construction. (The Mayor's reported deal with the Manhattan Borough President to complete all pedestrian circulation improvements out of other funds and before the new zoning becomes available for use starting in mid-2017 may deprive the City of the ability to make this argument.)

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[13] Although not mentioned by the Description at this point, the SL Green company is also in process of planning development of the 42nd Street block between Vanderbilt and Madison Avenues.

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In any event, it too lacks credibility. There are many reasons to believe that there is simply no rational relationship between the charge and the perceived burdens, and these will be discussed in the next section. Suffice it for now to focus on one: although the EIS indicates that there are many problems with the pedestrian circulation system around Grand Central, they exist now and will barely be affected by the anticipated future development. That being the case, the problems would have to be resolved somehow with or without the zoning amendment. Charging a fee for FAR is merely a device for raising money to take care of this pre-existing problem and avoid having to pay to remedy it out of general funds. Again, it looks like the motive is fund-raising rather than a planning objective.

In fairness, the EIS does indicate that, even if a very large proportion of the problems to be remediated exist already, there are some that will be caused by new development. But one must quantify that to make a case for charging $250 for every square foot of new development. DCP documents do not reveal estimated costs nor what aggregate amount of fees can reasonably be expected and when; nor are projects even specifically identified. So meaningful quantification is impossible. One thing we do know is that almost all of the *newly* added pedestrian circulation issues will be at the Grand Central subway stations, and *new* population will add about 0.8% to existing burdens. Being more generous, let us arbitrarily suppose that say, 10% of the costs of remediation for pedestrian circulation problems would be attributable to new construction, and that 100% of the funding raised by charges for zoning rights went to pay for 100% of the remediation required by present and future conditions. That would necessarily lead to the conclusion that 90% of the purpose for the charges is fund-raising. One could change the assumptions, perhaps to say that the charges would pay for only 50% of the needed remediation. The contribution from new development would still be five times what that development caused to be required. It seems fair, at a minimum, to be very skeptical that the City can demonstrate a legitimate planning objective for the exaction.

For many reasons, the charge appears to be an end in itself and, therefore, invalid, or at best, highly suspect so as to compel the closest scrutiny.

- That the amount of the fee is fixed on the basis of market value – i.e. the theoretical maximum that a willing buyer would pay in order to acquire the right to construct more FAR and still make an acceptable profit on his investment – marks the charge as representing what the City figures it can extract as a quid pro quo rather than as a charge related in some way to legitimate planning purposes.

- The price will be adjusted annually to reflect increased asking rents in the district, though it cannot go below the initial $250 per square foot. This appears to be merely a method of indexing to keep the "contribution" at market value. It, therefore, tends to confirm that it represents what the City believes it can extract as a quid pro quo rather than a payment to further legitimate planning objectives. The idea of basing the index on asking rents, incidentally, must amuse space marketers who know full well that one can as easily "remeasure" space to increase it by ten percent as raise the asking rental rate by ten percent; the result is the same, but only the latter raises the index for development rights.

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- The price serves to oblige the owner to pay for the privilege of developing space that the City wants to see built anyway. The City actually characterizes most of the increased allowable FAR as "earned as of right" development. (DCP Description, Proposal). More correctly, one should call it "purchased as of right" FAR as the developer is not required to do anything to "earn" it; he only has to pay.

Unless the City succeeds in establishing a prima facie case that it is imposing the sale price for legitimate planning purposes, rather than to wrest a commercial deal, the inquiry stops here.

2.3.1.3 Substantially advancing the legitimate zoning purpose.

Assuming that there is a legitimate zoning purpose served by the fee requirement, even if it is secondary to the primary purpose of promoting development, does the fee substantially advance the secondary legitimate purpose?

An "exaction" is any give-back for public use that the zoning authority requires as a condition for granting zoning approval.

Exactions fall into two categories: those that serve to promote legitimate zoning objectives, and those that do not. The Coliseum site case discussed above (2.3) illustrates both. In the first type, the buyer was allowed to build more floor area if it provided an entrance to the adjacent subway station, a need presumably created by the excess floor area. As far as the court's decision reveals, the buyer did not bother to challenge this, apparently satisfied with that part of the deal financially and, perhaps as a legitimate exercise of zoning power. But the buyer did attack the second type, in that case a raw extortion of payment, essentially for ensuring that the Planning Commission would cooperate in giving the permit contemplated by the Zoning Resolution for such a subway entrance bonus.

Most contemporary litigation on exactions concerns the more sophisticated form of exaction where the property owner's activity imposes a burden on the public; and the municipality, to alleviate the burden, demands what at least appears to be a related remedial give-back.

Authoritative cases over the past 25 years have established the following criteria to determine whether an exaction is valid:

(a) Is there a "**nexus**" or sufficiently close connection between the exaction and a legitimate governmental objective the zoning authority seeks to achieve? Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987). In Nollan, the plaintiff wanted to expand his beachfront house. The Coastal Commission, whose permission was necessary, denied permission unless Nollan would agree to grant an easement for the public to pass along the beach on the shorefront side of the house after reaching the beach from other public access points. It

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justified the denial on the ground that expansion of the house would cut off the public's view from the road on the opposite side of the house. The Court ruled that there was no nexus between the justification for denying the permit (that the house would impair vision from the road) and the exaction (giving public access to walk along the beach in front of Nollan's house if one already had access to the beach through other means). See Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 547-548, 125 S.Ct. 2074, 2086-2087, 161 L.Ed.2d 876 (2005), further explaining Nollan.

(b) Is there "**rough proportionality**" between the burden imposed by the owner and the exaction imposed by the zoning authority? Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). I.e., assuming there is a nexus, is the exaction roughly proportional to the burden created by the property owner upon exercising the permit the owner is seeking? The plaintiff in Dolan sought a building permit to enlarge her hardware store on a downtown parcel bordering the Fanno Creek. The municipality had adopted a program to impose conditions on building permits to achieve two public objectives: (a) to contain flooding from the Creek by preserving an unpaved flood zone along the creek; and (b) to alleviate traffic congestion in the downtown area. To help achieve this, the town conditioned the issuance of a building permit to Mrs. Dolan on her agreeing to convey the flood plain portion of her parcel to the City for the City's use as a pedestrian and bicycling area. The Court held that the exaction did not pass the rough proportionality test because it required granting title to the flood area to the Town whereas simply imposing an easement prohibiting paving would suffice, and the Town's use of the land for general alleviation of a traffic problem could not be sustained in the absence of evidence that the bike and pedestrian path's absorption of traffic would bear an acceptable quantitative relationship to the amount of additional traffic which the store enlargement would create. That relationship should take into account the inequity of burdening a private owner with the expense of resolving a public problem if that burden should justly should be borne by the public at large (citing Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960)).

Dolan left the concept of "rough proportionality" rather vague except to indicate that it falls between standards previously adopted by various states, which required either little to no proportionality at one extreme or something close to equality at the other. Dolan added that "no precise mathematical calculation is required." (512 U.S. at 391).

(c) Third, the zoning authority cannot apply a flat formula to the question of proportionality; there must be an **individualized determination** in each case. Dolan v. City of Tigard, 512 U.S.374, 114 .Ct. 2309, 129 L.Ed.2d 304 (1994). At least in theory, Dolan suggests, in each case the burden

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imposed by the owner's action will be unique, as will its satisfactory proportionality to the exaction imposed.

Although Dolan does not directly say so, we take individualized determination to imply that there must also be a reasonable relationship between the exactions on persons imposing burdens within a given area, which are similar in nature but different in degree. The point is to be fair to all.

Nevertheless, the New York Court of Appeals held in Twin Lakes Development Corp. v. Town of Monroe, 1 N.Y.3d 98, 769 N.Y.S.2d 445 (2003), that a flat fee of $1,500 per lot resulting from the subdivision is presumptively constitutional because of the "plaintiff's heavy burden to rebut the presumption of constitutionality of this law" and the Court's inability to perceive of anything in Dolan that would preclude a flat fee. (1 N.Y.3d at 106, 769 N.Y.S.2d at 449). The Court's reasoning is less than persuasive especially without a detailed exposition of the facts. Reading between the lines, one can imagine a context warranting by-passing individual determinations where the fee is relatively small so that it would not be economical to administer if an individualized determination were required, and where, by virtue of proximity and similar circumstances within the regulated area, there might be little variation in impact.

In a fairly similar situation to Twin Lakes, the New Hampshire Supreme Court ruled otherwise in J.E.D. Assocs., Inc. v. Town of Atkinson, 121 N.H. 581, 584, 432 A.2d 12, 14 (1981), overruled on other grounds, Town of Auburn v. McEvoy, 131 N.H. 383, 553 A.2d 317 (1988).[14] The town adopted a provision requiring that, as a condition of approval of a subdivision, the owner must contribute land to the town for park or other municipal purposes (otherwise unspecified) representing approximately 7 1/2 % of subdivision area. The Court held the provision was illegal because unrelated to any specific burden the owner would be imposing on the community and because the town had not demonstrated any particular need for the land. J.E.D. has been favorably cited in Nollan and Dolan, and by the New York Court of Appeals in Seawall Associates v. City of New York, 74 N.Y.2d 92, 544 N.Y.S.2d 542 (1989), cert. denied, 493 U.S. 976, 110 S.Ct. 500 (1989).[15]

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[14] The overruling is on limited procedural grounds not related to the substantive holding.

[15] The factors described in the foregoing text apply generally throughout the land use field, not just to zoning. See Manocherian v. Lenox Hill Hospital, 84 N.Y.2d 385, 618 N.Y.S.2d 857 (1994) (rent stabilization); City of New York v. 17 Vista Associates, 192 A.D.2d 192, 599 N.Y.S.2d 549 (1st Dep't 1993) (expedited issuance of building permit for a fee).

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(d) Koontz v. St. Johns River Water Management District, 2013 WL 3184625 (U.S. Sup. Ct. June 25, 2013), further explains the rationale of the principle that, absent the necessary nexus and proportionality, an exaction is unconstitutional. The zoning authority is saying, in essence, we will not give you a benefit which would otherwise be available unless you pay for it, whether in kind or in cash. Clearly, the zoning authority could not directly seize a material interest in property (such as an easement for public passage – Nollan – or outright title to a portion of the parcel – Dolan) without compensation. See Fred F. French. But it is doing much the same thing by demanding it as a quid pro quo because it is in a position to force you to accept the "deal." You are interested in getting a permit, say to add 5 FAR to your building. The permit has a value to you in terms of a capitalized value of future earnings from the extra floor area. So long as the zoning authority demands something having less cost to you than that capitalized value plus the estimated cost of litigation, you will make the "deal" even though what the zoning authority demands has no significant relationship to any burden you would be causing by acting on the permit. Essentially, the zoning authority has placed itself in a position to act arbitrarily and to extort your "contribution." The Court condemns this as an **"unconstitutional condition"**

(e) The theory in exactions cases has elements of both due process and takings analysis. But, for present purposes, we believe that such classification is unimportant. New York courts generally tend to treat zoning and other land use regulations that violate due process or constitute de facto takings as void. See Fred F. French (rezoning of private residential property as public park is void); Vernon Park Realty, Inc. v. City of Mount Vernon, 307 N.Y. 493 (1954) (confiscatory zoning regulation is void); Manocherian v. Lenox Hill Hospital, 84 N.Y.2d 385, 618 N.Y.S.2d 857 (1994) (extension of rent stabilization in such manner as to protect charitable corporation's interest in housing its employees – and terminating their subtenancy at will – is inconsistent with general purpose of rent stabilization to protect interest of occupying tenants and is, therefore, unconstitutional and void). In these cases and others, the courts hold the statute void because the enacting entity exceeds its authority when it enacts unconstitutional regulation. The question may remain whether the court should award damages, or even just compensation for the period during which the regulation was in effect against the plaintiff. That issue may be of some importance to the owner if he brought the challenge. But, where the challenge is brought by a non-owner, an interested member of the public, with the goal of obtaining a declaratory judgment that the zoning scheme is void, whether and on what theory the owner might be able to recover damages from the City will not affect the declaration that the regulation is void.

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2.4 Application of law to "as of right" FAR bonuses (for a price) (Proposed section 81-621).

These are the bonuses that apply to all "qualified sites" (200 feet frontage on a wide street, and minimum lot size of 25,000 square feet). The proposal grants these bonuses subject only to payment of $250 (generally) into a District Improvement Fund devoted to pedestrian circulation improvements anywhere within, or adjacent to, the East Midtown Subdistrict. This allows an increase from a present maximum of 15 FAR in the affected areas to 21.6 FAR, a 44% increase. The only requirement is to pay for it.

2.4.1 Nexus.

We have discussed above whether the exaction is motivated by legitimate planning concerns or really expresses nothing more than a market trade-off: zoning for dollars. Finding legitimate planning concerns amid the fog of commercial trade-off evidence is not easy. Here are some of the problems:

(a) The City does not explain in a meaningful and evidence-based manner what its needs are, either as they relate to increasing the availability of modern office space and making East Midtown more like other cities' downtown areas, or as they relate to pedestrian circulation. It does not explain how imposition of a flat charge per square foot of additional FAR serves either purpose.

(b) The charge presumably actually works against the goal of increasing modern office space and renovating Midtown, just as higher construction costs or increased interest rates would. The City says nothing to explain how increasing costs would encourage construction. But it does recognize that existing special permit devices (including exactions) have not worked.

(c) If the charge is to be justified by a need to mitigate additional burdens on existing pedestrian circulations systems, the City's evidence is not persuasive. It is not persuasive precisely because of the irrationality and lack of proportionality between undefined needs (known only to be concentrated in and around Grand Central) and monetary "contributions" at a fixed rate with regard to buildings more distant from Grand Central which may have substantially no impact on pedestrian use of Grand Central.

We do not believe that the City has satisfactorily demonstrated, at least at this time, that the necessary nexus exists to establish that the exaction serves a legitimate public purpose.

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2.4.2 "Rough Proportionality."

Assuming, however, that the nexus requirement might be satisfied, we move on to the question of "rough proportionality" between the exaction and the impact of each development that creates a need for mitigation.

Neither the proposed amendment nor the accompanying Description contributes much to analyzing the "rough proportionality" issue. We do not believe the City's burden of establishing rough proportionality has been met.

Notably, the EIS suggests that, except for impacts on the Grand Central subway stations, relatively few pedestrian circulation burdens are attributable directly to the rezoning (and consequent construction), and many of those are readily remediable using what would appear to be relatively inexpensive means. The EIS findings strongly suggest that pedestrian circulation impacts occur and are caused disproportionately at the southern end of the district. For example:

> Subway stations. The rezoning would have no significant impact on stations at 47th-50th Streets/Rockefeller Center; 51st Street/Lexington/53rd Street; and 5th-6th Avenues/Bryant Park. (EIS 12.2.2, 19.6.1).
>
> Even the impact of nearby new construction on conditions at Grand Central appears largely illusory. As the EIS says, the subway station at Grand Central is already "one of the busiest in the entire subway system with nearly half a million daily users . . . and experiences pedestrian circulation constraints, including platform crowding and long dwell times for the Lexington Avenue line (4, 5, and 6), which limits train through-put, creating a subway system bottleneck." (EIS 1.3.1.3). The EIS estimates that new buildings resulting from the rezoning would add about 4,000 users of the subway platforms at Grand Central at peak hours (divided approximately evenly between the morning and evening peak hours). (EIS 15.5.2.1). This is about 0.8% of the current half million daily users. The cited figures might not be exactly comparable (the peak hour traffic, for example, does not include non-peak users who might be contributed by the rezoning) but they raise an unanswered question as to just how significantly the rezoning would add to the existing "bottleneck."
>
> The EIS assumes that added burdens caused by increased traffic through the Grand Central stations would be fully mitigated by anticipated projects under the DIB (district improvement bonus) program. (EIS 12.2.2). Whether the projects funded by the DIB program would also clear up existing "bottleneck(s)" is not entirely clear. What does appear, is that the existing problems at Grand Central are already quite severe (as anyone using the Terminal's subway facilities at rush hour knows well). Where DCP provides no information to the contrary, one must assume that adding 0.8% usage is not the straw that will break the camel's back. More likely,

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the Fund will go primarily to remediating existing problems, not new ones.

Buses. Increased bus traffic could be fully mitigated by adding bus runs or using articulated buses, which are larger. (EIS 19.6.2). That would not appear to fall within the scope of pedestrian circulation improvements to be performed by the Fund.

Sidewalks. The rezoning would adversely affect two sidewalks, located on 43rd Street between Fifth and Vanderbilt Avenues on the north side. The problems can be fully resolved by widening one by 1.5 feet, and by moving the location of tree pits on the other. (EIS 19.7.1). Seemingly, a minor matter.

Crosswalks. Twenty-six crosswalks would be severely impacted. Remediation would "generally consist of crosswalk widening and minor traffic signal timing adjustments," following which only four would continue to present problems." No further solutions are offered for those four. (EIS 19.7.2). No cost estimate, but it cannot be much.

If additional pedestrian traffic follows perforce from the increased FAR which the City views as a boon, then surely, at a minimum, the calculation of rough proportionality of exaction to burden created by the developer should take into account the public benefit of the construction. J.E.D. Assocs., Inc. v. Town of Atkinson, 121 N.H. 581, 432 A.2d 12 (1981). But a fixed price based on market value of TDRs does not do that.

Nor does a fixed price appear to have any relationship at all to the burden created, much less a roughly proportional one.

The task of identifying appropriate pedestrian circulation projects, prioritizing them, planning them, and pricing them, falls to the as-of-yet non-existent District Improvement Fund Committee. The Description provides essentially no information on these points other than an implication that creating a pedestrian zone on Vanderbilt Avenue would be a priority. (DCP Midtown Zoning Description, Proposal). The amendment text suggests that the Committee should give priority to projects in the immediate Grand Central area. (Proposed 81-681(a)). Without these basic decisions having been made, one clearly cannot know what the total cost will be. Whether or not one allocated part of the cost to developers and part to the public, one cannot know what the developers' share should be. Would $250 per square foot fairly approximate the cost of all likely pedestrian improvements? Might it be grossly excessive? There is no basis for even beginning to answer this. One cannot know whether there is any rough proportionality between the burden any particular development imposes on the pedestrian circulation system and the cost of ameliorating that burden (i.e. the required level of contributions) without knowing what the solution is and how much it will cost to implement it. See J.E.D. Assocs., Inc. v. Town of Atkinson, 121 N.H. 581, 432 A.2d 12 (1981) (exaction void where town failed to demonstrate particular needs). Inevitably a court would have to conclude that rough proportionality is unproven.

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A fixed price also cannot cover the varied circumstances strewn over a large area of about 160 acres and some 70 blocks. From 40th Street to 47th Street, much (but not all) of the district lies within two blocks of Grand Central and the teeming railroad and subway terminals centered there. At the northern reaches of the district (as far up as 58th Street, one would expect that commuting life might focus considerably more on closer subway stations and on bus lines, not to mention taxis. As noted above, the EIS concludes that the rezoning will not result in any substantial adverse impacts on the northernmost subway station within the district – the one at Lexington/51st to 53rd Streets – nor at the stations at Rockefeller Center and Bryant Park. Accordingly, the proposed rezoning text prioritizes pedestrian circulation projects at and immediately around Grand Central; there is no mention of what might be done farther north. (Proposed 81-681(a)). While the $250 per square foot paid by a developer at 42nd and Madison might go largely to remediating the excess pedestrian traffic emanating from his building (although it will more likely go to remediating existing problems), the same amount paid by a developer 15 blocks north at 57th and Madison may be spent on projects nearly three-quarters of a mile to the south having very little, or even nothing, to do with the pedestrian traffic newly added at 57th Street.

Buildings of exactly the same floor area, located in substantially similar locations, may nevertheless have quite different impacts on use of transit infrastructure. Take, for example, a hotel and an office building, both on Park Avenue near Grand Central. The office building likely would add subway traffic at rush hours; the hotel might add less total subway traffic and disperse it throughout the day and evening hours.

Of course, not all pedestrian traffic in the Grand Central Subarea is generated by buildings located within the Subarea. Many thousands of people daily no doubt use the Terminal but have no other connection whatsoever with the Subarea. They may walk to and from the Terminal, or take taxis, buses, or subways. Tourists may enter the area for no purpose other than to look at the main hall of the Terminal and take a picture or two of the Chrysler Building. Workers might get off the Lexington line at 50th Street and walk to their jobs to the west of Fifth Avenue. All of these people are contributing to the pedestrian traffic jams that the Planning Commission proposes should be ameliorated at the cost of developers within the Subdistrict. Yet it may well be argued that, in all fairness, the City should be paying the public's fair share of the burden.[16]

The Planning Department's underlying Description specifically recognizes that the rezoning has far broader public benefits than mere improvement of a single business district. Rezoning, it states, is necessary to encourage construction of new buildings with more usable office space, including higher ceilings and more column-free floor area. It is necessary to promote new jobs and expand the tax base. And it is necessary to capitalize on both the existing

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[16] This concept of fairness underlies much of the law of regulatory takings. Although the concept is difficult to apply, an ultimate issue is whether some people alone should bear public burdens which, in all fairness and justice, should be borne by the public as a whole. See Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978); J.E.D. Assocs., Inc. v. Town of Atkinson, 121 N.H. 581, 432 A.2d 12 (1981).

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concentration of regional rail infrastructure in the area and on the addition of the Second Avenue subway line and East Side Access (providing Long Island commuters with one-seat access to both the West and East sides). (DCP East Midtown Description, Background & Existing Conditions).

Indeed, it might be argued that pedestrian traffic around major urban transportation centers – including train stations and subway stations – is largely, if not entirely, a public responsibility. These facilities, after all, serve the general public. True, commerce tends to gather around such centers and reaps enormous advantage from what real estate experts call "location, location, location." But increased value is reflected in higher tax assessments, so the owners pay higher taxes for such locations, just as they should. See Municipal Art Society of New York v. City of New York, 137 Misc.2d 832, 522 N.Y.S.2d 800 (Sup. Ct. N.Y. Co. 1987). The legal notion that private owners should pay exactions only when they themselves impose specific extra burdens may not be out-of-line with common sense.

There are other asymmetries in the scheme, again suggesting absence of rough proportionality. For example, suppose two adjacent locations where, under the rezoning, 15 is the maximum base FAR. One is occupied by an 18 FAR grandfathered building which the owner would like to rebuild to exactly the same size. The other now has a 15 FAR building and this owner too wants to rebuild to 18 FAR. Both owners must buy 3 FAR. Owner A gets a discounted rate of $125 per square foot to the extent he is replacing existing floor area. Owner B pays the full $250 per square foot. Yet owner A has added nothing to the existing pedestrian burden, while owner B has added whatever pedestrian volume pours in and out of 3 FAR. Clearly, the difference in treatment does not depend on the new burdens imposed by each owner, as Nollan/Dolan require.

High appellate courts reputedly express themselves in the driest of language. But, when the Supreme Court looked for an appropriate term to describe the City of Tigard's convoluted efforts to explain the proximity of relationship between easing traffic and controlling flooding, on the one hand, and exacting Mrs. Dolan's creek-side land for a public park as a condition to approving her application to expand her hardware store, the Court came up with "gimmickry." (512 U.S. 387) The relationship here between mitigating the effects of new development on pedestrian traffic by exacting fixed monetary contributions which may be spent far from the developer's site strikes us as far more tenuous than anything in Dolan, and invites one to speculate as to what harsher term a reviewing court might employ.

2.4.3 Individualized determination.

Whatever nuanced meaning the Supreme Court's requirement of individualized determination may include, it surely means, at absolute minimum, that sufficient individualized determination must be conducted to ensure that the end result will satisfy the rough proportionality test. In this case, the variety of circumstances is too great, the needs too vaguely stated, the geographical area too large, to postulate that a one-size-fits-all contribution could possibly achieve rough proportionality or equitable apportionment of responsibilities. As we have shown, construction in one part of the Subarea may have vastly less impact on pedestrian circulation needs than construction in another part of the Subarea. Also, the proportion of

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expense that the public ought appropriately to bear may differ significantly in different areas depending, for example, on the amount of use of pedestrian facilities by persons who do not work in the Subarea.

Again, we recognize the opinion expressed in Twin Lakes Development Corp. v. Town of Monroe, 1 N.Y.3d 98, 769 N.Y.S.2d 445 (2003), that a flat fee may suffice in the circumstances of that case. Those circumstances differ so greatly from the circumstances here – in terms of amounts of money, complexity, and presence or absence of standardized fact patterns – that we believe that Twin Lakes would not be applied in litigation concerning the validity of the East Midtown rezoning.

2.5 Special permits for superior developments (Proposed section 81-624).

2.5.1 Same analysis applies in part.

Proposed section 81-624 allows additional FAR for "superior developments" immediately surrounding Grand Central and along Park Avenue. As-of-right bonuses bring allowable FAR in the Grand Central core area to 24, and along Park Avenue to 21.6. If one obtains a discretionary special permit from the Commission for a "superior development," one can increase the FAR in the Grand Central core area to a total of 30 (a 25% additional increase above the rights that can be purchased with no conditions attached), and along Park Avenue to a total of 24 (an 11% additional increase).

The additional FAR available under this section must be paid for at the same $250 rate and, in addition, the developer must provide more on-site above-grade and (for developments at Grand Central) below-grade pedestrian accommodations.

Generally, the "superior development" provisions raise the same issues as do the "as of right" FAR bonuses.

2.5.2 Absence of regulatory guidelines.

In addition, the "superior development" provisions raise an issue as to endowing the Commission with legislative prerogatives by failing to set sufficient standards for the exercise of what are regulatory (i.e. executive branch) functions. Proposed section 81-624 lists criteria for the Commission's consideration of applications under this provision. But the criteria are dominated by such hyper-subjective adjectives as to raise serious question as to their sufficiency as guidelines. Thus, for example,

> The additional pedestrian circulation space must be "prominent," of "generous" proportions and "quality" design that is "inviting" to the public and provides "considerable" light and air. There should be "abundant" greenery and "generous" amounts of seating. The space should provide a "vibrant" streetscape and "well-designed" site plan.

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> Below grade improvements should provide "significant" and "generous" connections to the below-grade pedestrian circulation network and "major" improvements to public accessibility to transportation facilities.
>
> Any modifications to bulk requirements should result in "compelling" distribution of bulk on the zoning lot.

Absence of clear guidelines always puts regulations in jeopardy because it allows the regulatory agency to act in a legislative rather than an administrative capacity. As the Court of Appeals has said with respect to legislative granting of authority to a zoning agency to issue special permits, "The standards for issuance of such a permit may not . . . be so general or imprecise as to leave issuance of a permit to the unchecked discretion of the issuing authority (Matter of Tandem Holding Corp. v Board of Zoning Appeals, 43 N.Y.2d 801)." Robert Lee Realty Co. v. Village of Spring Valley, 61 N.Y.2d 892, 894 (1984).

Here, the large sums of money that become available to the City upon approval by the Commission[17] exacerbate the problem by injecting financial interest on behalf of the City into what should be a totally objective evaluation by the Commission. See Municipal Art Society of New York v. City of New York, 137 Misc.2d 832, 522 N.Y.S.2d 800 (Sup. Ct. N.Y. Co. 1987). The lack of guidelines could also stamp this part of the proposal as "spot zoning" because it may so easily appear that standards, such as they are, are not equitably applied as to different owners in the same district. If owners are not treated substantially alike, someone gets favored by an exception to the standards applied to others.

We grant that outcomes of litigation over alleged unlawful delegation of legislative authority are often not readily predictable. We also recognize that the "superior development" bonus may be deemed something less than a total delegation of legislative authority as the procedure is subject to the Council's review under Uniform Land Use Review Procedure. It is safe to say, however, that reviewing courts will likely find the broad discretion inherent in the loose standards of this provision very troubling.

The vagueness of the standards for approval of "superior developments" will likely plague the Commission time and again with charges that it has, in one case or another, played favorites, discharged political obligations, or otherwise placed revenue above responsibility. The City Club respects the Commission's and Department's well-earned reputation for professionalism. Embracing ill-defined adjectives to describe the limits of power is all too likely to sully that reputation.

The "superior developments" section also allows various exceptions to otherwise applicable bulk distribution and use standards without adequate standards. For example, and of special concern, is that exceptions may be made to the requirements for retail density along the

[17] The award of a special permit for superior development in the Grand Central area would produce at least a $60 million "contribution" to the Fund (40,000 square feet times 6 FAR times $250). That does not include the "contribution" necessary to bring the building from the base maximum of 15 FAR up to 24 FAR, the limit for less than superior development.

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street facades. We consider retail presence along streets very important to the safety and enjoyment of street life. It is just as necessary for large buildings as for small.

3. General comments and conclusions:

3.1 It has been suggested, with some reason, that the timing of getting this plan voted on by November is motivated more by politics than sound planning. We urge that action on the plan be deferred pending careful description of the needs of the project area and the entire City as the project area relates to it, and far more careful consideration of the wisdom of the proposed solutions.

3.2 The district improvement bonus at the heart of the plan rests on what we consider, at best, extremely shaky legal ground. As a matter of policy, it should be recognized that transportation and other infrastructure needs exist now, independently of any future development made possible by upzoning. They should be addressed now with existing resources, not deferred in the expectation that new construction, for which there is no proven need, will provide funding by legally doubtful means.

3.3 Judicial voiding of the sale of FAR would have dire implications. In theory, a court finding the entire transaction illegal, could require that the excess FAR be demolished as well as requiring the City to refund the sales price. More likely, given practical realities, and an easy supposition that the Council intends the "contribution" aspect of the proposal to be severed if found illegal, the court would require the City to refund the sales price, but would let the building stand. Because the City extorts the "contribution" to the fund, a court would likely hold the City responsible for making the refund even if the Committee had already spent the contribution. The proposal might be amended to provide that illegality of the specific provisions such as the purchase of air rights would automatically cancel the related bonus. However, a court would not likely apply such a provision to a project in which the developer had obtained vested rights by starting construction.

3.4 All this said, we do not mean to suggest that a system could not be devised which would impose the appropriate portion of costs of pedestrian impacts caused by new development on the developers. To do that, one would need substantial information about what those impacts are, how they vary among different locations, what projects are required to mitigate those impacts, and what the cost of those project would be. DCP may or may not have such information. But it has not provided it to the public

JULIE MENIN
P.O. BOX 1261 • New York, NY • 10013 • julie@juliemenin.com

TESTIMONY ON EAST MIDTOWN REZONING

CANDIDATE FOR MANHATTAN BOROUGH PRESIDENT & FORMER COMMUNITY BOARD 1 CHAIR JULIE MENIN

AUGUST 7, 2013

I am Julie Menin, former Chairperson of Community Board 1 and candidate for Manhattan Borough President. I first want to thank the Multi-Board task force for their hard work and their thoughtful recommendations on this rezoning.

Rezoning East Midtown is a major decision and deserves careful consideration. The current process is moving way too quickly and the urgency is manufactured. The Municipal Art Society (whose board I sit on) and community boards raised some of the earliest concerns about the rushed nature of this process. We should not rush to rezone before we have more-thoroughly developed plans for the area's infrastructure needs. By the City's own estimate, less than ten buildings are expected to be built in the next decade or two. This proposal can and should be delayed for further consideration.

Substantively, Borough President Stringer has insisted that the transportation infrastructure be funded upfront – that is a step in the right direction. It is critical transportation infrastructure be fully funded and committed to before any rezoning takes place.

However, serious issues remain that must be deliberated and resolved.

First, we must ensure a clear funding source is devoted to the early infrastructure improvements and that there is a clear understanding on the amount of funds needed. Otherwise, we could end up with insufficient funds to implement the much-needed infrastructure improvements.

Second, the current mechanism to sell development rights is problematic. Fixing the cost of air rights at $250 per square foot undervalues them. Naturally, certain blocks in the zone are more prime and desirable than others. The pricing should account for that.

Third, I am still deeply concerned that this plan will lead to overcrowding in the area and overwhelm East Midtown's public transportation system. The proposal would drastically alter one of Manhattan's most iconic neighborhoods – and we lack a holistic understanding of its implications and what New Yorkers stand to gain.

This is indicative of a larger problem we have: the City must be thinking long-term to develop our infrastructure. Manhattan needs a comprehensive borough-wide Master Plan to guide our future development. With careful and proactive planning, we can better

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JM

absorb Manhattan's exploding population growth and sensibly make our large-scale plans fit together smoothly – instead of introducing quick changes that could detrimentally impact our neighborhoods, commuters, and workers.

Our attention now should focus on Penn Station which must be revitalized to accommodate the approximately 600,000 riders who use it daily. That is of far greater necessity and relevance. Connectivity between Penn Station and Grand Central Station must be enhanced as well.

JM

My Name is Bill Montana, I am an office leasing real estate broker that represents tenants. However I speak today not as a broker but as an advocate for New York.

I strongly advocate that the proposed rezoning of Midtown East move forward now.

NYC is the global center for commerce. To remain so it needs new modern buildings to compete with other major cities to attract and retain the large international businesses that provide so many jobs. NYC has the oldest building stock of any major city and those older buildings simply do not work for many large, international businesses. Allowing for the construction of new, efficient, environmentally friendly office buildings will create jobs at every level, now and going forward.

This area should remain primarily commercial and not residential. The rezoning should allow this district to cluster office buildings exactly where they should be; near the main transportation hub, allowing people to easily get to work. The rezoning should encourage office buildings to be built in this area rather than letting the current market dynamics dictate residential development in a district who's highest and best use is commercial.

Also it would be a mistake to allow our future to be dictated by well-meaning preservationists who seek to designate ordinary and , banal buildings as landmarks. There are many buildings in this area that have been identified for landmarking that simply do not merit that distinction. Rather, you should support the construction of large and Iconic buildings that will bring vibrance and energy to our skyline. Do not let NYC stagnate and get surpassed and marginalized by other growing international cities that are wise enough to responsibly plan for their futures by replacing obsolete building stock.

You only have to look to London to see the successful integration and coexistence of new iconic skyscrapers located next to historic, buildings that merit protection. The new buildings actually enhance the appreciation of the historic ones.

The question has been asked "What do New Yorkers get out of this? They will get a city that is well organized, that clusters office buildings in the best area for that use. They will get an upgraded transportation infrastructure, they will get more jobs, they will cement NYC's postion as the global center for commerce, the city that the best and brightest from around the world want to move to to live and work and all the knock on effects of that distinction.

Others have said that they like some elements of this proposal but want to study it further before acting. That would be a mistake. There is buy-in for this plan from a broad spectrum of stakeholders. There is momentum and we should act while there is the will to do so. You can always tweak the details as needed but we need to embark on this path now and get started working on our future without further delay.

PLEASE have the foresight to approve the rezoning.

Thank you.

East Midtown Rezoning—Carol Willis Testimony

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

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

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

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

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

The issues of historic preservation and the mechanics of landmarking are important, and certainly a part of the planning process in this district. I have a lot to say about the list of high-rise buildings that I believe should be designated and protected as landmarks–but I have limited time, so I will submit my list in my written testimony. In short, though, in my view, there are ten skyscrapers within the district that merit individual designation. However, landmark protection is an independent action that has its own clear rules and goals, and these should not be confused with the process of up-zoning.

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

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

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

Thank you.

NYC Landmark Recommendations in the East Midtown Rezoning Area
10 Skyscrapers recommended for individual designation by Carol Willis

Hotels

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

Pre-War Commercial/Office Buildings

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

Post-War Commercial/Office Buildings

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

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CITY PLANNING COMMISSION TESTIMONY
CARL WEISBROD, ON BEHALF OF MIDTOWN TRACKAGE VENTURES
AUGUST 7, 2013

Madam Chair and members of the Commission.

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

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

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

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

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

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

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

HR&A Analyze. Advise. Act.
99 Hudson Street, 3rd Floor, New York, NY 10013-2815
T: 212-977-5597 | F: 212-977-6202 | www.hraadvisors.com

MEMORANDUM

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

Introduction

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

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

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

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

[1] *East Midtown Rezoning District Improvement Bonus (DIB) Contribution Rate Market Study*. Landauer Valuation & Advisory. February 28, 2013.

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

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

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

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

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

- The seller of air rights above Grand Central, American Premier Underwriters (APU), is an insurance company based in Cincinnati, Ohio. In the 1990s, while still in the process of disposing of the former Penn Central Transportation assets, APU was mired in court proceedings regarding the use of TDRs over Grand Central.

- TDRs may have been purchased at a price guaranteed in a prior option by Gooch Ware Travelstead for Credit Suisse First Boston, the former owner of 383 Madison. The option may have guaranteed a lower price than the market value at their time of sale.

- The deal was undertaken in 1997; at a time of very low market activity given that New York had not fully recovered from the late 1980s-early 1990s recession.

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

Analysis of the Theater Subdistrict, NYC

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

Data

1. **TDR transactions:** HR&A compiled data from City Planning and the New York City Department of Finance to obtain the size and value of the 14 TDR transactions that took place in the Theater Subdistrict between January 2001 and January 2012. The TDRs from these transactions were transferred to 7 receiving sites. Table 1 shows the TDR transaction information.

2. **Value per buildable square foot:** HR&A used data provided by Eastern Consolidated to obtain the average annual price paid per buildable square foot in Midtown West.

Table 1: Theater Subdistrict TDR Transactions

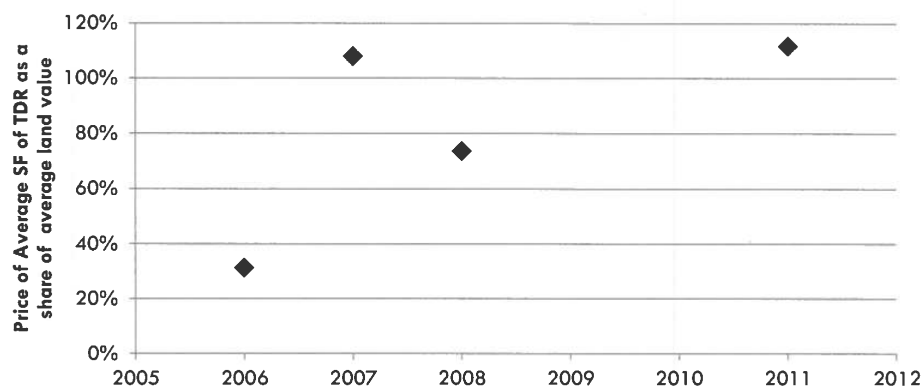
Theater Name (Sending Site)	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share Land Value
Broadhurst and Booth Theater	120 W 41th St.	9,480	$400	11/14/2011	$280	143%
Broadhurst Theater	120 W 57th St.	18,075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

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

Results

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

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



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

Analysis of the Special West Chelsea District, NYC

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

Data

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

[3] Oddly, the only floating TDR transaction, other than the 15 year old outlier of 383 Madison Avenue, cited in the Landauer study.

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

Table 2: Special West Chelsea District TDR Transactions

Sending Site	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share Land Value
507 West 27th St.	282-29811th Ave.	9,875	$228	1/16/2009	150	152%
507 West 27th St.	529-545 W 28th St.					
507 West 27th St.	517-527 W 28th St.					
512 West 20th St.	537 W 27th St.	2,566	$310	8/5/2008	300	103%
511 West 23rd St.	282-298 11th Av	6,155	$400	8/25/2008		133%
507 West 25th St.	282-298 11th Ave.	19,750	$228	7/10/2008		76%
507 West 27th St.	529-545 W 28th St.					
507 West 27th St.	517-527 W 28th St.					
508 West 25th St.	319 10th Ave.	4,857	$400	6/4/2008		133%
508 West 29th St.	537 W 27th St.	5,479	$310	3/28/2008		103%
511 West 23rd St.	282-298 11th Ave.	15,000	$387	2/21/2008		129%
509 West 20th St.	282-900 11th Ave.	23,080	$250	1/18/2008		83%
507 West 24th St.	282-298 11th Ave.	37,110	$250	12/14/2007	320	78%
510 West 25th St.	282-298 11th Ave.					
508 West 25th St.	282-298 11th Ave.					
510 West 25th St.	524 W 19th St.	3,957	$180	7/13/2007		56%
508 West 25th St.	524 W 19th St.	643	$180	6/13/2007		56%
509 West 24th St.	303-309 10th Ave.	12,500	$240	10/19/2006	330	73%
507 West 24th St.	303-309 10th Ave.					
507 West 24th St.	516 W 19th St.	36,800	$126	5/25/2006		38%
511 West 23rd St.	535 W 19th St.	34,520	$184	12/21/2005	250	74%

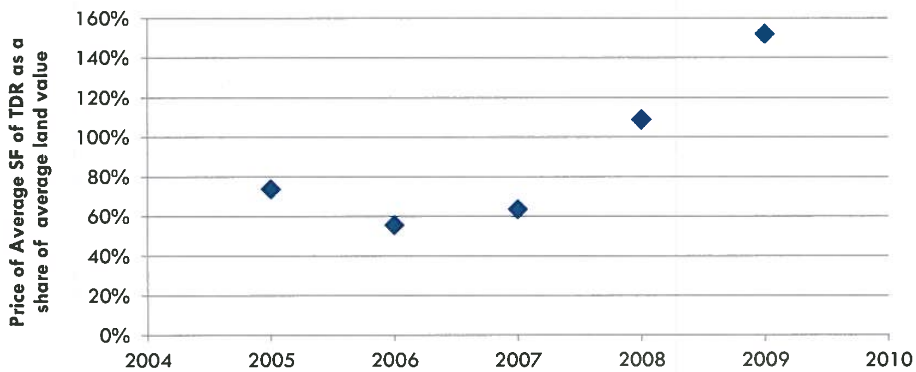
Source: NYC Department of City Planning; The Furman Center; New York City Department of Finance; HR&A

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

Results

Our analysis shows that the annual average price of TDRs has fluctuated from 38 percent to 152 percent in the period between 2005 and 2009. As shown in Figure 2, the gap between average TDRs price and average land values first narrowed and then, as the market became constrained, the value of TDRs surpassed that of land values. Again, this data shows that a plentiful number of sending and receiving sites is necessary for TDRs to stabilize, and that once either type of site is in short supply, the demand for TDRs can rise or fall quickly. In this case, constraints on sending sites may have driven up the cost of TDRs in 2008 and 2009.[4]

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



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

Weaknesses of the Landauer Report

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

Use of irrelevant comparable TDR transactions

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

Zoning lot mergers versus floating TDRs

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

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

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

Pricing TDRs based on land value

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

Time-adjusted prices

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

Discounting TDRs in relation to land value

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

Calculating TDR price within the East Midtown Subdistrict

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

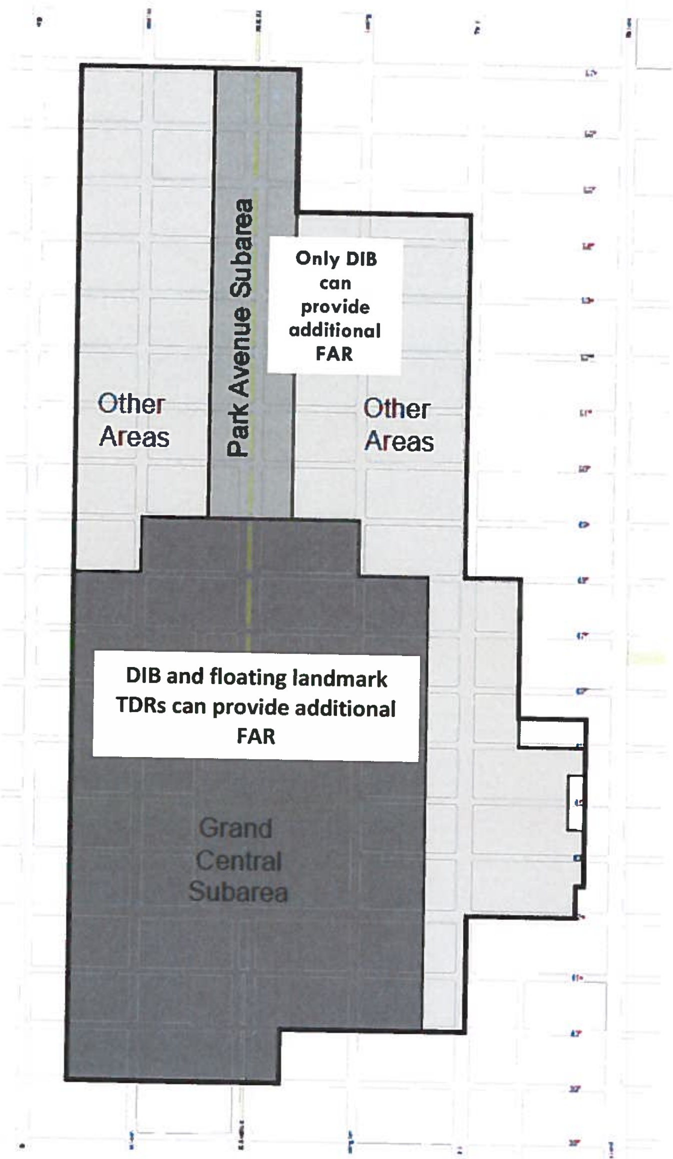
Conclusions

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

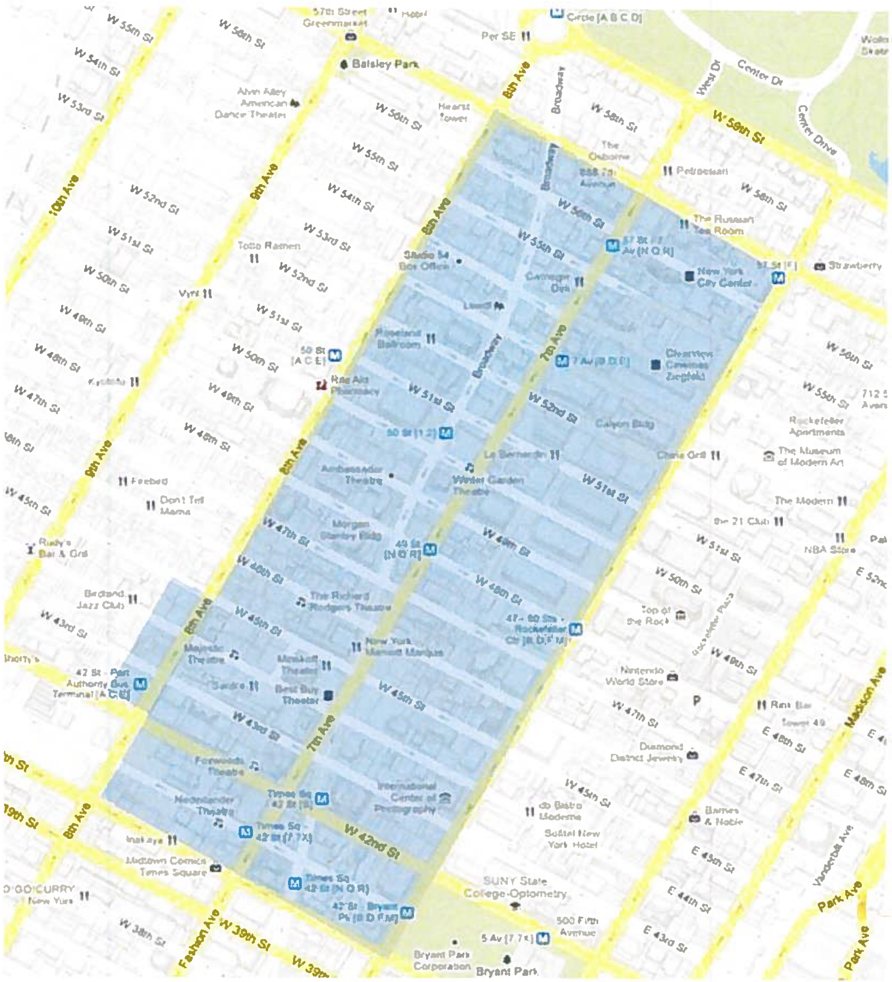
The rezoning of East Midtown represents a path forward to enhance the health of one of the City's commercial districts. It is a highly anticipated rezoning that will set a standard for Districts throughout the City, and may act as a model throughout the Country. The pricing of the DIBs and TDRs, therefore,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

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

Appendix 1: Proposed East Midtown District



Appendix 2: Theater Subdistrict



Appendix 3: West Chelsea Special Purpose District

Transferable Development Rights Valuation Study

Prepared for:
Midtown TDR Ventures, LLC

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

HR&A Analyze. Advise. Act.

Introduction

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

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

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

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

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

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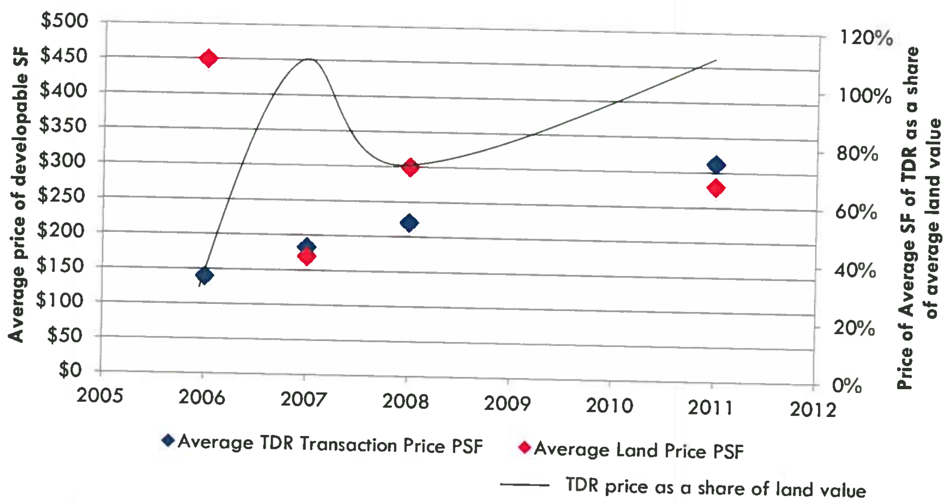
[1] A map of the proposed sub district can be found in Appendix 1.

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

[3] In this memorandum the terms "air rights", "development rights" and "TDRs" are used interchangeably.

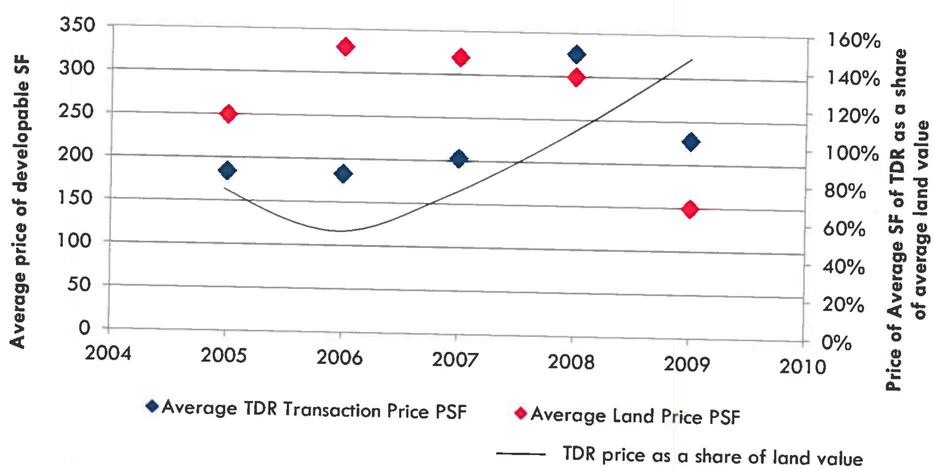
when there are sufficient pools of buyers and sellers, TDRs and land development rights should command close to the same value.

Figure 1: Theater Subistrict Average Developable Square Foot Price



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

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



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

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

Establishing the fair price of TDRs

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

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

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

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

Conditions of an efficient TDR market

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

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

Analysis of efficient markets

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

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[4] Dunlap, David. "Using Thin Air to Let Buildings Grow Taller." New York Times. May 17, 1998.
[5] Air rights transfers from non-landmarked sites are even more restrictive.

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

Analysis of the Theater Subdistrict, NYC

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

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

Efficient Market Criteria	Theater Subdistrict Deviation/Conformity
A number of sending and receiving sites distributed among a number of owners	• Granting sites are controlled by only two owners, creating an imbalance between buyers and sellers. • After years of intense development, the number of receiving sites has decreased, putting sellers at a disadvantage.
Publicly available price information for previous transactions	• When newly created, information that would guide the fair market value of TDRs in a floating district was scarce, as the only transaction data available was for non-floating TDR transactions. As a result, developers who were unfamiliar with conditions in a floating TDR district were reluctant to pay prices that differed from what they had previously experienced. • Though publicly available, data remains difficult to access.
Low transaction costs	• The district currently charges a $15 per square foot transaction cost to a district development fund for all TDR transactions.
Low regulatory risk	• Transactions still require approval from City Planning through a chairman's certification.

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

Data

1. **TDR transactions:** HR&A compiled data from City Planning and the New York City Department of Finance to obtain the size and value of the 14 TDR transactions that took place in the Theater Subdistrict between January 2001 and January 2012. The TDRs from these transactions were transferred to 7 receiving sites. Table 1 in the next page shows the TDR transaction information.

2. **Value per buildable square foot:** HR&A used data provided by Eastern Consolidated to obtain the average annual price paid per buildable square foot in Midtown West.

[6] HR&A did not find a district elsewhere in the country that provided a comparable, sophisticated TDR transfer mechanism.

Table 1: Theater Subdistrict TDR Transactions

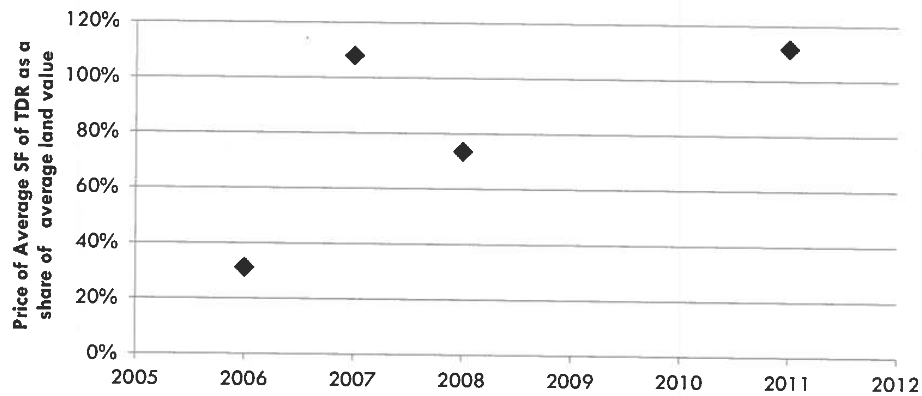
Theater Name (Sending Site)	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share Land Value
Broadhurst and Booth Theater	120 West 41th St.	9,480	$400	11/14/2011	$280	143%
Broadhurst Theater	120 West 57th St.	18,075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

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

Results

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

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



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

Analysis of the Special West Chelsea District, NYC

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

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

Efficient Market Criteria	**Special West Chelsea District Deviation/Conformity**
A number of sending and receiving sites distributed among a number of owners	• After years of intense development, the number of available TDRs has almost been exhausted, putting buyers at a disadvantage.
Publicly available price information for previous transactions	• Though publicly available, data remains difficult to access.
Low transaction costs	• The grantor's responsibility to provide an easement for a stairwell or elevator to the High Line upon transfer of development rights, • The charge for additional rights to transfer (a $59 psf donation to the High Line Improvement Fund).
Low regulatory risk	• Transactions still require approval from City Planning.

Data

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

Table 2: Special West Chelsea District TDR Transactions

Sending Site	Receiving Site	Floor Area Transferred	Price per SF	Deed Date	Average Annual Price Paid per Buildable SF from Land Purchases	TDR Price as a Share Land Value
507 West 27th St.	282-29811th Ave.	9,875	$228	1/16/2009	150	152%
507 West 27th St.	529-545 West 28th St.					
507 West 27th St.	517-527 West 28th St.					
512 West 20th St.	537 West 27th St.	2,566	$310	8/5/2008	300	103%
511 West 23rd St.	282-298 11th Av	6,155	$400	8/25/2008		133%
507 West 25th St.	282-298 11th Ave.	19,750	$228	7/10/2008		76%
507 West 27th St.	529-545 West 28th St.					
507 West 27th St.	517-527 West 28th St.					
508 West 25th St.	319 10th Ave.	4,857	$400	6/4/2008		133%
508 West 29th St.	537 West 27th St.	5,479	$310	3/28/2008		103%
511 West 23rd St.	282-298 11th Ave.	15,000	$387	2/21/2008		129%
509 West 20th St.	282-900 11th Ave.	23,080	$250	1/18/2008		83%
507 West 24th St.	282-298 11th Ave.	37,110	$250	12/14/2007	320	78%
510 West 25th St.	282-298 11th Ave.					
508 West 25th St.	282-298 11th Ave.					
510 West 25th St.	524 West 19th St.	3,957	$180	7/13/2007		56%
508 West 25th St.	524 West 19th St.	643	$180	6/13/2007		56%
509 West 24th St.	303-309 10th Ave.	12,500	$240	10/19/2006	330	73%
507 West 24th St.	303-309 10th Ave.					
507 West 24th St.	516 West 19th St.	36,800	$126	5/25/2006		38%
511 West 23rd St.	535 West 19th St.	34,520	$184	12/21/2005	250	74%

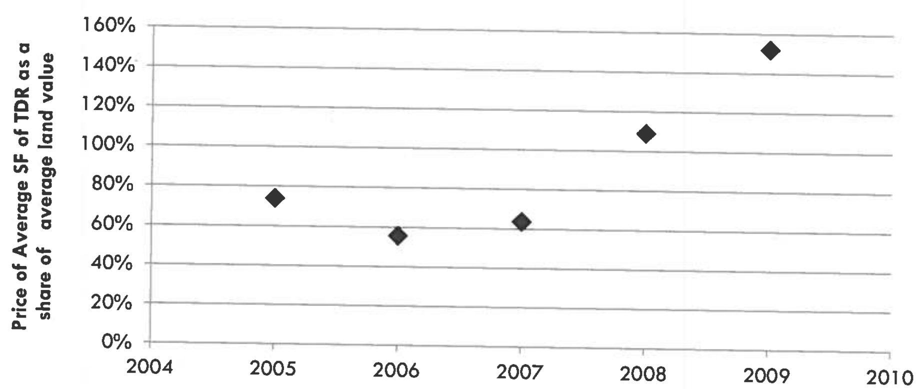
Source: NYC Department of City Planning; The Furman Center; New York City Department of Finance; HR&A

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

Results

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

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



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

Conclusions

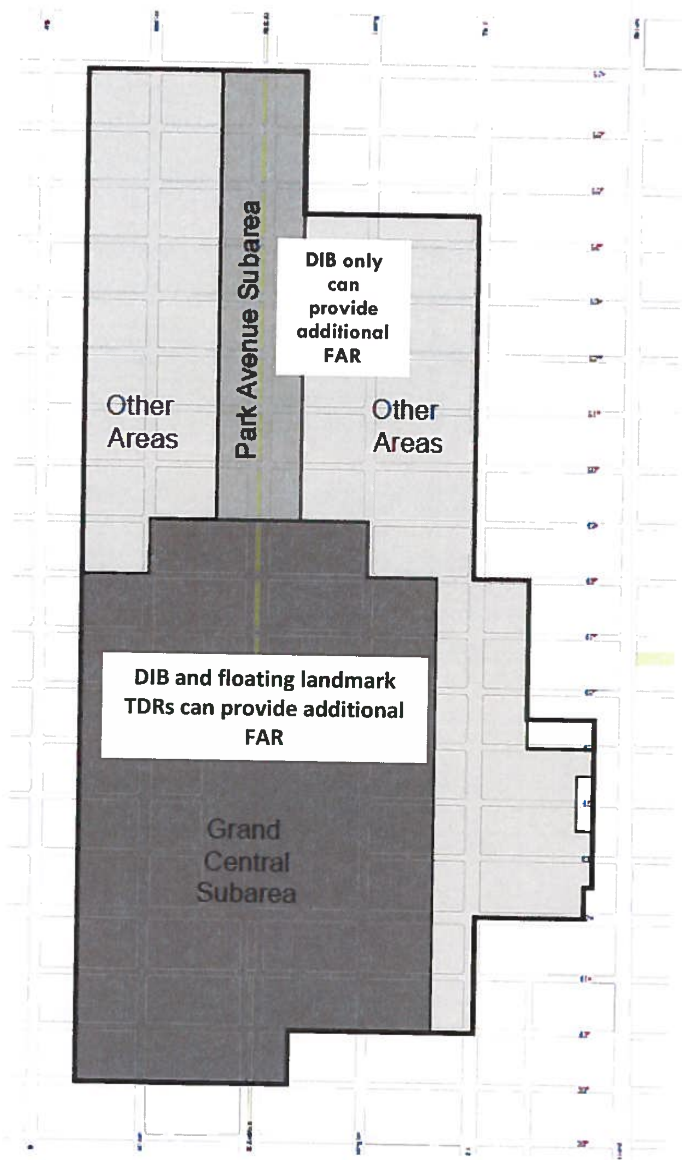
HR&A's analysis indicates that the relationship between the fair market value of development rights and land value can fluctuate greatly even within a district that allows floating development rights. Variations in pricing over time are a product of the relationship between buyers and sellers, which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

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

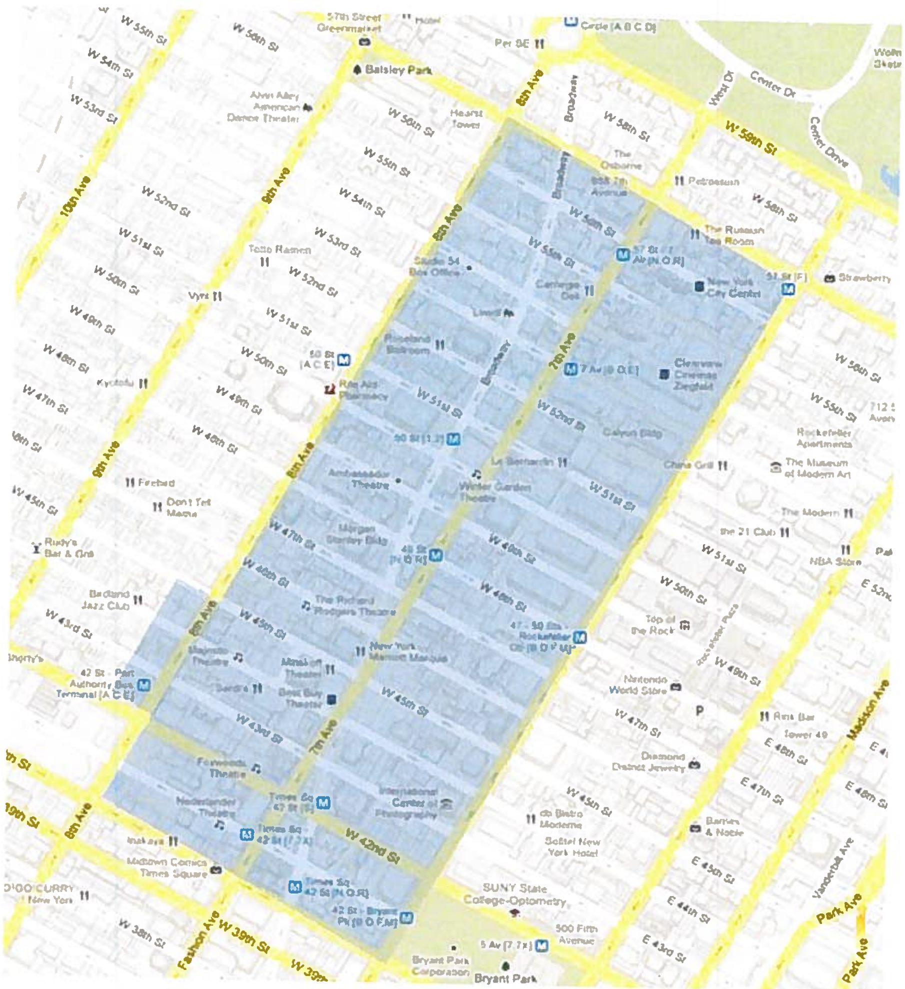
[7] Another notable finding is the high price variance observed for the 282-298 11th Avenue site, a residential development undertaken by The Avalon Group, where TDRs transacted from $229 to $400 per square feet. This large variation can be attributed to district regulations[7] that required purchasing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

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

Appendix 1: Proposed East Midtown District



Appendix 2: Theater Subdistrict



Appendix 3: West Chelsea Special Purpose District

INSTITUTE FOR RATIONAL URBAN MOBILITY, INC.

George Haikalis
President

One Washington Square Village, Suite 5D
New York, NY 10012 212-475-3394
geo@irum.org www.irum.org

Statement at August 7, 2013 NYCDCP Hearing on East Midtown Rezoning

The Commission should reject the East Midtown Rezoning Proposal, and instead develop a *comprehensive street use plan* and a *regional rail plan* for Midtown Manhattan. Then rezoning should be considered.

The Institute for Rational Urban Mobility, Inc. (IRUM) is a NYC-based non-profit concerned with reducing motor vehicular congestion and improving the livability of dense urban places.

IRUM urges the Commission to reject the current East Midtown Rezoning Proposal. While the proposal begins to focus on many critical issues that the Commission should be addressing to preserve East Midtown as the nation's premiere business district, these issues are complex and affect many individuals and organizations. Major zoning changes should be considered at the end of a comprehensive planning process after a thoughtful analysis. The Commission has not made the case for rushing this rezoning to approval. Few indicators suggest that East Midtown property owners are facing economic hardships. In fact these properties are growing in value.

This not an excuse for inaction but a *call to arms* for the Commission to address key problems that affect the long term viability of the core of the City as a global business center. Focusing on transport issues, it is clear that adding new office space in a very dense area where sidewalks are already overwhelmed with pedestrians, and subways are filled to the brim, requires more herculean efforts than those proposed in the rezoning plan.

Needed is a *comprehensive street use plan* for Midtown Manhattan that rationally allocates street space, the city's most valuable real estate, among competing users – pedestrians, bus riders, cyclists, truckers making deliveries, motorists and taxi passengers. IRUM's proposed grid of modern surface light rail lines set in auto-free streets – starting with IRUM's vision42 proposal for an auto-free light rail boulevard on 42nd Street - should certainly be considered in the development of this plan. Had the Midtown Community Boards' request for such a street use plan made in December 2009 been heeded, the city would be well on its way to having an acceptable public realm plan for this crowded area.

Also needed is, a comprehensive *regional rail plan*, focusing on Midtown Manhattan, developed by the City in cooperation with its partners in the regional planning community. Remaking the region's disconnected commuter rail lines into a regional rail system with frequent service, integrated fares and through running would shift passengers from overcrowded subways to speedier regional rail lines. A key element of such a plan, developed in the planning process for new passenger rail capacity under the Hudson River, would connect Penn Station with Grand Central Terminal, permitting West of Hudson residents to more easily reach East Midtown, the nation's largest concentration of office space, while offering residents from the northern suburbs an opportunity to gain better access to growing developments in West Midtown.

The Commission must think more comprehensively about planning if NYC is to meet the challenge of its growing competitors abroad.

Wednesday 07 August 2013

Testimony by Terrence O'Neal

I am Terrence O'Neal, Chair of the Land Use & Waterfront Committee, Community Board 6. I am also a licensed architect here in Manhattan, in independent practice in New York City since 1993. Thank you for the opportunity to speak to you today.

Today I am speaking on behalf of my own views as a resident, adjacent to the southern end of the Study Area.

For over one year, the community boards asked for a public realm plan. The city finally relented, after the ULURP application was certified, and began the process do develop a public realm plan.

For over one year, the community boards said that the DIB is an inadequate mechanism to fund improvements needed right now. The city finally says it will "advance a portion of this funding before development occurs…" [quoting a July 31, 2013 letter from Deputy Mayor Steel to the Borough President]. But how much funding, and for what? A vague and hastily-made promise is not good enough.

For over one year, the community boards asked that public realm and infrastructure improvements are made first. Now, finally, the city says it will fund some of these improvements now, to "address stakeholder feedback about the need to reduce Lexington Line congestion…" However, we have no assurances that any of this will take place. How much will be committed? Which improvements will be made? Where is the comprehensive plan? We have a ULURP application, but, after-the-fact, although it is good the city is listening, it appears as though the we are improvising as we move along. A comprehensive plan for the area should have preceded any decisions to up-zone the area. It was done the other way around, with the decision to up-zone first. This proposal is too important to leave so many issues left unanswered.

While a public realm plan is in development, no one knows which improvements will be put forward, which improvements will be funded, how much it will cost, and what is the source of the funding? There are so many open questions in connection with this plan, the borough President's conditional approval is both surprising and disappointing.

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

Rewind and readjust. When the public realm plan is complete, when we have a comprehensive plan, when we have specificity on what improvements will be made, how much it will cost, and where the funding will come from, then we will be presented with a plan that is worthy of review. Further, we need a ULURP application that includes all aspects of the plan, not hastily-conceived ideas incorporated after-the-fact with no opportunity for public review. We must advance a first-rate, well-thought-out plan for this district, which contains some of the foremost business addresses in the world. Anything less is unworthy of consideration. Let's get it right the first time. Thank you.

BRAD HOYLMAN
27TH SENATE DISTRICT

DISTRICT OFFICE
322 EIGHTH AVENUE, SUITE 1700
NEW YORK, NEW YORK 10001
PHONE (212) 633-8052
FAX (212) 633-8096

ALBANY OFFICE
ROOM 413
LEGISLATIVE OFFICE BLDG
ALBANY, NEW YORK 12247
PHONE (518) 455-2451
FAX (518) 426-6846

E-MAIL HOYLMAN@NYSENATE.GOV
WEBSITE HOYLMAN.NYSENATE.GOV

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

August 7, 2013

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

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

Manhattan Community Boards 5 and 6 and the Multi-Board Task Force on East Midtown are to be heartily commended for their careful deliberation and thoughtful, well-supported recommendations that this proposal be denied. I share their objections, and in my testimony today, I will highlight several of my major concerns with the proposal.

I believe it is critical that any plan to rezone East Midtown be preceded by a concrete plan to finance the much-needed improvements to the area's transportation infrastructure in a timely manner. Such infrastructure is fundamental to our city's economy, culture and global stature, and ensuring its long-term viability must be a top priority. Indeed, we must not be put in the position of relying upon a local rezoning to fund transit infrastructure improvements that benefit the entire region. Urgently needed improvements must be made and funds must be secured before we put more pressure on Grand Central Terminal and local subway stations that cannot safely sustain existing ridership let alone that which would result from new development as well as East Side Access and the extension of the 7 subway line.

I greatly appreciate Manhattan Borough President Scott Stringer's successful efforts to secure a commitment from the City to provide upfront funding to improve the Lexington Avenue subway line at Grand Central Station. Still, more is needed to improve the area's wider mass transit infrastructure before we add thousands of new workers and residents. In addition, we are lacking specific details on the City's commitment, notably how much it will provide and how long it will be before we see those improvements go into effect.

Also essential to any large scale rezoning of East Midtown is a clear preservation plan for potential landmarks. It is my understanding that of 32 properties that the New York City Landmarks Preservation Commission (LPC) identified within the project area as "potentially eligible" for landmark designation, there are only eight on which it intends to act in the near future. Many noteworthy buildings in East Midtown—the Yale Club among them—are not on LPC's short list. We must act to protect the many historically and architecturally important buildings within the rezoning area before adding new development pressure.

I recognize the intent behind the creation of the Northern Landmark Transfer Area. As the Department of City Planning (DCP) notes on its website, "These changes are designed to create an appropriate balance between offering landmarks greater opportunities and flexibility for transfer of development rights to a broader area beyond 'adjacent' sites -- thus facilitating the continued maintenance of their properties – and ensuring that the District Improvement Fund (DIF) will be funded to make area-wide subway and pedestrian network improvements." However, in the case of Lever House at 390 Park Avenue, the owner of the land, which would pocket up to $75 million in proceeds from the sale of the development rights, does not ~~own~~ operate the landmark building. As such, it is under no obligation to maintain the building at all let alone to invest the proceeds from the sale of air rights in its preservation. This glaring loophole is yet another example of a hurried rezoning proposal that would have benefited from greater deliberation. To close this loophole and to ensure the Northern Landmark Transfer Area meets its intent, I urge DCP to establish a mechanism to mandate that property owners who take advantage of it use the proceeds, after their DIF contribution, for the preservation of their properties' historic structures.

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

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

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

Thank you for your consideration of my comments.

MALKIN
HOLDINGS

CPC Public Hearing – East Midtown Rezoning
Peter Malkin

- I am Peter Malkin, Chairman of Malkin Holdings. My family and investment groups we have created over the years have been long-term owners/investors in significant commercial buildings in Midtown, including the Empire State Building and One Grand Central Place, which is located at 60 East 42nd Street across from Grand Central Terminal. I am the Founding Chairman of the Grand Central Partnership, and I am a Trustee Emeritus of have Chaired the Council of the National Trust for Historic Preservation.

- I am here to speak in favor of the East Midtown Rezoning. I applaud the thought that has gone into the proposed East Midtown Rezoning and the healthy dialogue it has engendered. Midtown must continue to be one of the world's premier business addresses and a key job center for NYC and the region. Central to all urban planning is Transit Oriented Development… the maximization of business activity around key transportation hubs. Grand Central Terminal and the subways connected to it are critical assets for New York City. The multi-billion dollar East Side Access project will increase its importance with an expected 24 more trains per hour delivering a projected 162,000 additional commuter trips per average working weekday. However, the East Midtown area suffers from archaic office stock, and this obsolescence is damaging its economic potential for the city: as reported in the July 30th edition of The Commercial Observer, 87 percent of the building inventory was constructed prior to 1975, and the Grand Central submarket has the highest vacancy rate (15.0 percent) of all the Midtown submarkets. We must make better use of this asset to enable economic growth with the least adverse consequence to our city's quality of life, or we will see a continued downward trend. If the commuters coming in and out of Grand Central Terminal cannot work in the neighborhood, there will be more stress on the area's infrastructure as they continue their commute out of the neighborhood.

KL3 2936710 1

Malkin Holdings LLC One Grand Central Place 60 East 42nd Street New York, NY 10165 T (212) 687-8700 F (212) 986-7679 www.malkinholdings.com

- I am a preservationist. The vast bulk of our office portfolio in Manhattan is in excess of 80 years old. Many people know of our association with the Empire State Building, and our ground-breaking work in restoring, repurposing, and repositioning this Landmark, the World's Most Famous Office Building. But less attention has been paid to the hundreds of millions of dollars we have spent restoring, upgrading and repositioning 1333, 1350, 1359, and 1400 Broadway; 501 7th Avenue, 250 West 57th Street, and One Grand Central Place. We have spent this money on historic restoration or recreation of lost lobbies, new electric and broadband, new elevators, new bathrooms and common areas, and energy efficiency in an effort to make older building stock competitive for today's and the future's demands.

- Our property at One Grand Central Place, is superbly located with in-building access to Grand Central Terminal and four subways, and is an example of why the Midtown East Rezoning must proceed. Its low slab-to-slab floor heights and oddly configured and inefficient floor plates make the building ill-suited to meet the needs of today's corporate office tenant. We have invested over $100 million in an effort to make it work for top tier corporate tenants. However, its design limits its utility for the types of high quality, larger, higher density tenants which should be attracted to its superb location. The lesson I have learned from this massive expenditure is that One Grand Central Place is an ideal candidate for future redevelopment … the only one of our portfolio of Manhattan office buildings about which I can make this comment. Since One Grand Central Place has nearly double the floor area that is permitted by current zoning, it will never be redeveloped under current zoning law.

- The proposed East Midtown zoning text that is the subject of today's public hearing would provide targeted zoning incentives that would allow non-complying buildings on qualifying sites to retain their existing floor area. We strongly support the proposed East Midtown Rezoning and its goal of encouraging the development of modern, sustainable office buildings that, together with transit and pedestrian improvements, will reestablish the Grand Central Terminal area as one of the premier office districts in the world. I am confident that the Landmarks Preservation Commission will do its job and see to it that the architectural gems of our market area will not be swept aside while this rezoning process goes forward.

KL3 2936710 1

East Midtown Rezoning

Wednesday, August 07, 2013

Testimony: **Dan Biederman, President**
34th Street Partnership and Bryant Park Management Corporation
1065 Avenue of the Americas, Suite 2400
New York, NY 10018

Phone: **212-719-3434**

Though we are technically outside the affected area of these proposals for new zoning rules, City Planning staff has asked us for our view.

Too many of the rules that govern the use and surroundings of midtown real estate are antiquated or plain ridiculous – rules on peddling, bus locations, and the like. The Bloomberg administration should be commended for taking a fresh look at things, as it often does.

Our view of this particular proposal is favorable. Clearly, the city needs to help the private sector upgrade the capacity of its office stock to attract tenants with new requirements.

We have a few reservations:

1. Today's glass and steel towers tend to hit the ground awkwardly, with boring and pretentious lobbies. This zoning legislation, unfortunately, needs to prevent this by veering into design specifications.

2. Madison and Lexington Avenues' remaining masonry buildings are attractive and do hit the ground gracefully. Some of them may merit landmark status, and we hope others will remain.

We do believe, from years of experience founding and managing the Grand Central Partnership, our path-breaking Business Improvement District that cleaned up the neighborhood crime, litter, and graffiti in the 1990's, that the objection raised by many to this proposal regarding pedestrian congestion is overblown. There are only two locations in midtown Manhattan where sidewalks are truly overcrowded by New York standards: Lexington Avenue between 43rd and 50th Streets, and Seventh Avenue between 34th and 40th Streets, at rush hour only. The added bulk of towers resulting from this proposal may worsen the former situation, and pedestrianization of the west side of Lexington Avenue may be a solution. Otherwise, the argument is overstated, and sounds like the view of observers who don't regularly commute through this district.

EDISON PROPERTIES

Statement of Douglas Woodward, Edison Properties,
in support of the East Midtown Rezoning
August 7, 2013

Good morning, commissioners, Chair Burden. My name is Douglas Woodward. I am Vice President for Design and Development at Edison Properties. I am here to testify in support of the East Midtown rezoning proposal. The proposed text amendment and A-text build on New York's history of innovative zoning to create a powerful zoning mechanism for realizing much-needed improvements to the transportation system and the public realm in East Midtown. And the City's recent commitment to funding important infrastructure improvements *before* development is a critical step to ensuring the success of the rezoning.

Over the last several decades, I have worked as a planner and urban designer on a number of projects utilizing incentive zoning and I have seen first-hand how this development value-capture has contributed to the City, especially in Midtown. These projects included 383 Madison Avenue (which utilized the Grand Central sub-district TDR and also included privately owned public space); 599 Lexington

Avenue, a major improvement connecting the number 6 to the E and F; The Hearst Building, which made substantial improvements to the Columbus Circle station complex; The Lipstick Building at 885 Third Avenue, another key subway access improvement; and, in Queens, Citibank at Court Square, in an area for which special district zoning was created to enable connections and improvements to E, F, G, and number 7 trains. These projects owe their lives to incentive zoning, and but for their construction, the city would never have realized critical improvements to transit infrastructure. The use of the DIF in East Midtown will expand on the success of these earlier incentive projects and help revitalize Grand Central.

Incentive zoning improvements to the public realm have been equally important. I worked on the Rubenstein Atrium at Lincoln Center, which the *Times* reported the other day had just welcomed its millionth visitor in a little over 4 years since it re-opened. The public realm improvements that this rezoning will make possible will add significantly to the quality of the streetscape and pedestrian environment in East Midtown.

Let me just put in a word for POPS themselves. The DEIS identifies all the publicly accessible open space in East Midtown. Fully 87% of the spaces it found were privately owned public spaces. The improvement of these spaces should be integrated into the public realm plan for East Midtown. Not as high a priority as the Grand Central Terminal improvements, but we urge the Department to develop a strategy for the revitalization of these critical public space resources.

We also believe that the value of TDRs established for the District Improvement Bonus should be recalibrated more frequently to bring it in line with other comparable TDR transactions. We did a study of all the air rights transactions in West Chelsea since the special district was created in 2005, and found a remarkable rate of increase over the last eight years. Something similar is not unlikely in East Midtown. Undervaluing the DIB air rights detracts from the funding available for district improvements.

Finally, we would like to congratulate DCP staff, and especially the Manhattan Office, for a careful, well-crafted incentive zoning plan, and also recognize the staff of the Manhattan Borough President for their detailed analysis and comprehensive list of suggestions. We encourage the Commission to pass the Amendment.

ALLIANCE OF BTEA UNION CONTRACTORS
Louis J. Coletti
President & CEO

BUILDING TRADES EMPLOYERS' ASSOCIATION
INTEGRITY • VALUE • SAFETY
1430 Broadway, Suite 1106 • New York, NY 10018 • www.bteany.com
Telephone: 212.704.9745 • Facsimile: 212.704.4367

TESTIMONY PRESENTED TO THE NEW YORK CITY PLANNING COMMITTEE

MIDTOWN REZONING

AUGUST 7, 2013

Submitted By
Louis J, Coletti
President & CEO
Building Trades Employers' Association

GOOD MORNING MADAME CHAIRPERSON AND MEMBERS OF THE CITY PLANNING COMMISSION. MY NAME IS LOUIS COLETTI AND I AM THE PRESIDENT OF THE BUILDING TRADES EMPLOYERS' ASSOCIATION REPRESENTING SOME 2,000 UNION CONSTRUCTION COMPANIES IN NYC.

FIRST LET ME SAY THANK YOU TO THE COMMISSION FOR ITS VISION AND POLICIES OVER THE PAST 11 YEARS WHICH HAVE SUSTAINED NEW YORK CITY'S POSITION AS THE WORLD'S LEADING INTERNATIONAL CITY AND HAS KEPT NEW YORK'S ECONOMY SO STRONG THROUGH SOME VERY DIFFICULT TIMES.

I AM HERE TODAY TO STRONGLY URGE THE COMMISSION TO APPROVE THE REZONING PROPOSAL FOR EAST MIDTOWN. YOUR APPROVAL WILL SEND YET ANOTHER STRONG SIGNAL NOT JUST TO DEVELOPERS INTERESTED IN BUILDING THE EAST MIDTOWN MARKET—BUT TO WORLD BUSINESS LEADERS WHO WANT TO BE LOCATED IN NEW YORK CITY.

THIS REZONING PROPOSAL PROVIDES CLEAR GUIDANCE ABOUT THE RULES UNDER WHICH PLANNING AND DEVELOPMENT WILL OCURR IN THIS DISTRICT AS WELL AS PROVIDING THE INNOVATION AND ACHITECTURAL DISTINCTION THAT THIS COMMISSION HAS WORKED SO HARD TO ACHIEVE.

IT IS A WONDERFUL POSITION TO BE IN WHEN I SAY THE NEW YORK CITY MARKET DEMANDS NEW COMMERCIAL OFFICE SPACE—HOW MANY OTHER CITIES IN THE WORLD CAN MAKE THAT CLAIM? THAT'S WHY THE APPROVAL OF THIS REZONING PROPOSAL IS SO IMPORTANT TO PUTTING OUR CITY AHEAD OF THE CURVE, ONCE AGAIN, IN DEFINING ITSELF AS THE LEADING CITY IN THE WORLD.

WHY DO WE NEED THIS ADDITIONAL SPACE? SINCE 2000, MANHATTAN HAS HELD A VACANCY RATE OF 4% AND ADDED ONLY 5 MILLION SQUARE FEET OF COMMERCIAL OFFICE SPACE. ON THE AVERAGE EAST MIDTOWN OFFICE BUILDINGS ARE MORE THAN 70 YEARS OLD AND CANNOT COMPETE FOR TENANTS IN PROVIDING THE TYPE OF OFFICE SPACE COMPANIES WANT AND NEED TO COMPETE IN TODAY'S GLOBAL ECONOMY.

NEW YORK CITY MUST BE ABLE TO OFFER AND TO PROVIDE TO PROSPECTIVE COMPANIES BUILDINGS WITH COLUMN-FREE FLOORS, GREATER FLOOR-TO-CEILING HEIGHTS, ENERGY EFFICIENT FEATURES AND WORLD CLASS DESIGNS THAT WILL APPEAL TO TODAY'S NEW WORKFORCE AND TENANTS IN ORDER FOR THE MIDTOWN DISTRICT TO BE A COMPETITIVE COMMERCIAL DISTRICT.

JUST LOOK AT THE SUCCESS HUDSON YARDS AND MANHATTAN WEST ARE HAVING IN LEASING NEW COMMERCIAL OFFICE SPACE FOR THEIR NEW BUILDINGS—IT IS PRECISELY BECAUSE OF THE FACTORS I JUST MENTIONED.

AND WITH THE MAYOR'S ANNOUNCEMENT TO ADVANCE FUNDING FOR SOME OF THE MASS TRANSIT AND OPEN SPACE IMPROVEMENTS IMMEDIATELY UPON THE PASSAGE OF THIS REZONING PROPOSAL THE TIME TO ADOPT THESE CHANGES IS NOW.

EVERY DAY WE DELAY THIS DECISION IS A DAY WE INCREASE THE THREAT OF UNDERMINING THE ECONOMIC COMPETITIVENESS OF THIS AREA. MIDTOWN EAST HAS ALWAYS BEEN ONE STEP AHEAD OF THE INTERNATIONAL COMPETITION BECAUSE IT HAS EVOLVED AND CHANGED TO MEET THE DEMANDS OF THE GLOBAL ECONOMY.

THE BUILDING TRADES EMPLOYERS' ASSOCIATION AND ITS 2,000 MEMBERS STRONGLY URGE YOU TO APPROVE THE MIDTOWN ZONING PROPOSAL.

THANK YOU.

REBNY®
REAL ESTATE BOARD OF NEW YORK

Steven Spinola
President

The Real Estate Board of New York
East Midtown Testimony
City Planning Commission

August 7, 2013

I am Steven Spinola, President of the Real Estate Board of New York—a trade association representing 13,000 owners, builders, brokers, managers, and other professionals active in the real estate industry in New York. I am here to strongly support the Department of City Planning's proposal to rezone East Midtown.

The East Midtown business district is a tremendous economic driver and critical to the City's tax base and economy. It is the city's most prominent commercial district and regional transit hub with approximately 70 million square feet of office space and numerous commuter transit connections into Grand Central Terminal. However, its position as a preeminent global business district is threatened unless the City addresses the problem of its aging office buildings and insufficient office development.

As the Department recognized, the average age of buildings in the district is 73 years old, with 80% of all buildings being older than 50 years old. Over the past decade, only two new office properties have been developed in the district. Meanwhile, the expectations and requirements of tenants who are paying some of the highest rents in the City are changing. Companies are seeking buildings with column-free floors, greater floor-to-ceiling heights, energy efficient features, and world-class designs—features that our aging buildings cannot accommodate. These conditions weaken East Midtown, while global competitors like London and Singapore continue to bolster their central business districts with the development of modern office buildings.

The Department of City Planning has put forth a thoughtful and comprehensive plan that will help modernize East Midtown and ensure that it stays competitive with other global cities. This plan is a plan for the 21st Century—one that

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REAL ESTATE BOARD OF NEW YORK

rectifies antiquated zoning that impedes new office development. The rezoning proposal properly encourages office development by offering earned as-of-right density increases for office use, with only a limited amount of residential or hotel use allowed. Further, the plan only permits the new allowable floor area on qualifying sites. As we studied the rezoning, it became clear to us that the plan's purpose was to encourage the creation of superiorly designed office buildings, by carefully targeting development and adding density in an area that is sufficiently served by many forms of mass transit.

The Rezoning will not only help modernize our aging building stock, but will also improve the area's transit and pedestrian network and public realm. The District Improvement Fund smartly and adequately ties increases in development to capital investment in public infrastructure improvements without asking the public to shoulder the burden. The recent announcement by the Mayor that the City will jumpstart the mass transit and open space improvements by advancing the funding for these improvements only improves the plan. Overall, these capital improvements will complement the existing public spaces, such as the majestic interior of Grand Central, the broad expanse of Park Avenue, the attractive plazas at Citicorp, Seagram, and Lever House, and the interior public space in the Sony and IBM buildings on Madison Avenue.

The theme of change in East Midtown has been constant throughout its history, and as a result we have a collection of some of the most universally recognized and beloved landmarks: Grand Central Terminal, the Chrysler Building, the GE Building, St. Patrick's Cathedral, the Seagram Building, Lever House and many others. This rezoning will create opportunities to construct new landmarks that reflect modern ideals and set new standards in sustainability and design. And that is something we should all welcome. We hope that the Landmarks Preservation Commission and future administrations won't prevent the development of future landmark buildings by designating existing buildings that lack true merit.

We applaud the Department and the administration for their thoughtful planning and diligent engagement with stakeholders and we urge the Commission to approve this rezoning that addresses a serious need and ensures that New York City's most important business district stays competitive in a global economy for future generations.

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Over 100 Years of Building and Serving New York

I am David Levinson, Chairman of L&L Holding Company and developer of 425 Park Avenue, the first, new Park Avenue office building in 47 years.

I want to start by congratulating the Commission and the Department. After months of consultation with all of the interested stakeholders, you have sent out a balanced and creative plan for the revival of private infrastructure and the public realm.

L&L is very excited to be redeveloping 425 Park Avenue. The redevelopment will commence May of 2015. 425 Park will be the first block front development in almost 47 years and is one of only two projected sites in the in the East Midtown EIS. We intend to make 425 the most energy-efficient and sustainable building in East Midtown. In addition, we believe we are creating a landmark of the 21st Century.

Commencing in May 2015, L&L intends to do this redevelopment of 425 Park Avenue "as of right" under current zoning regulations. Many of you have already seen our superior design by Norman Foster and Foster & Partners. We are moving forward with that design and have finished our schematic design stage. We plan to file for our foundation permits by year end. However, L&L believes that the City would be better served if it could utilize the provisions of the proposed zoning to redevelop 425 Park. Doing so would allow us to have more construction flexibility without having to keep 25% of the existing floor area and more design flexibility under the proposed DCP rules for qualifying sites on Park Avenue.

The problem is that the Sunrise Clause in the current text makes it impossible for L&L to use the new zoning and provide the City with an up to $35M DIB payment.

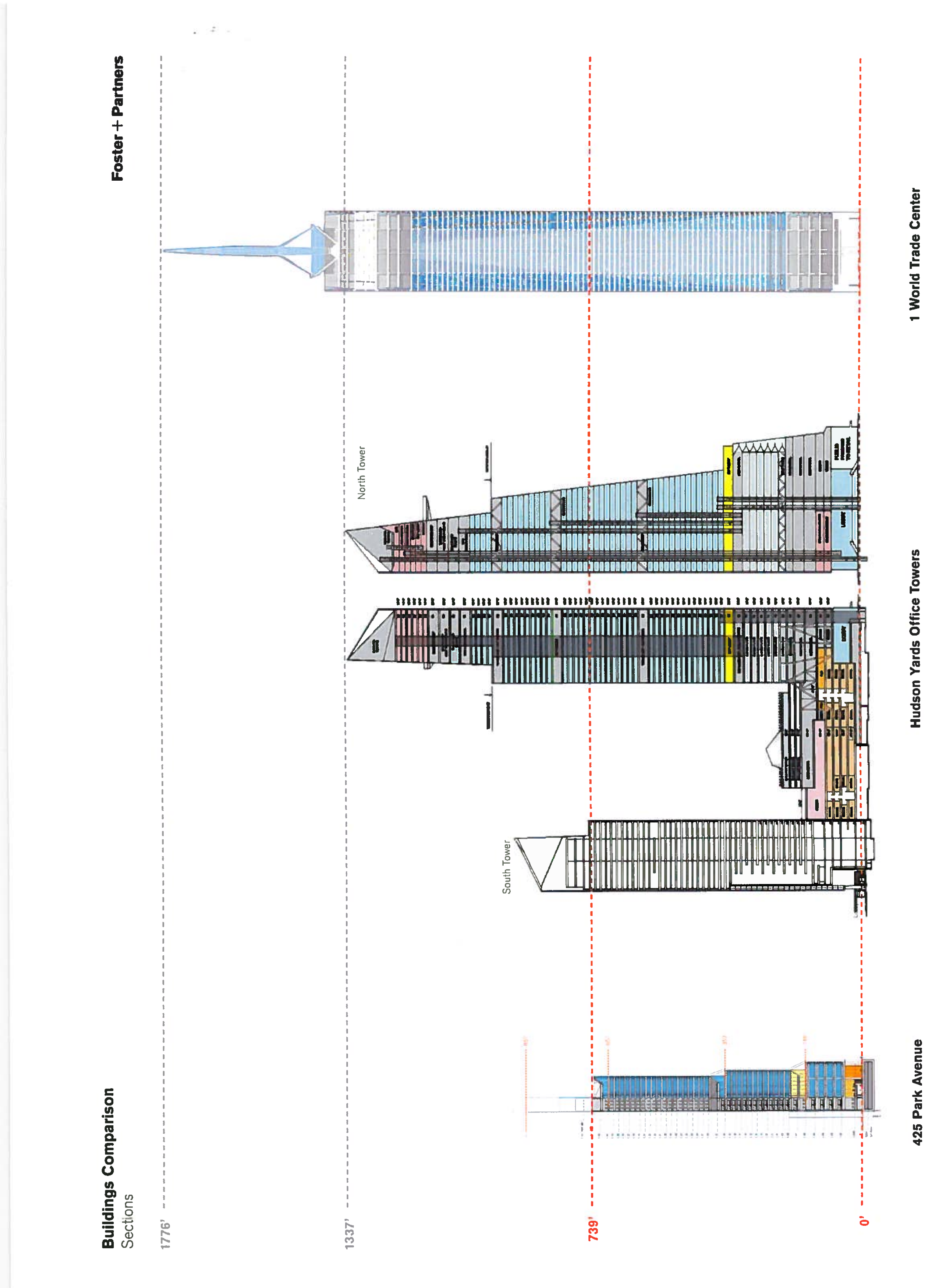
The remedy we suggest is to exempt sites smaller than 30,000 sq. ft. Buildings built on sites like this do not compete with the Hudson Yards or World Trade Center. 425 Park is a modest, bespoke office building built for much smaller tenants than Time Warner or Conde Nast. We have attached an Exhibit to our written testimony showing the comparison. 425 Park is 1/3 to 1/2 the size of Hudson Yards and WTC and twice the rental rate. The City should encourage early development of buildings of this scale and early payments into the DIB. We plan on building 425 Park – why not carve out the exception we suggest and collect up to $35M to pay for City improvements.

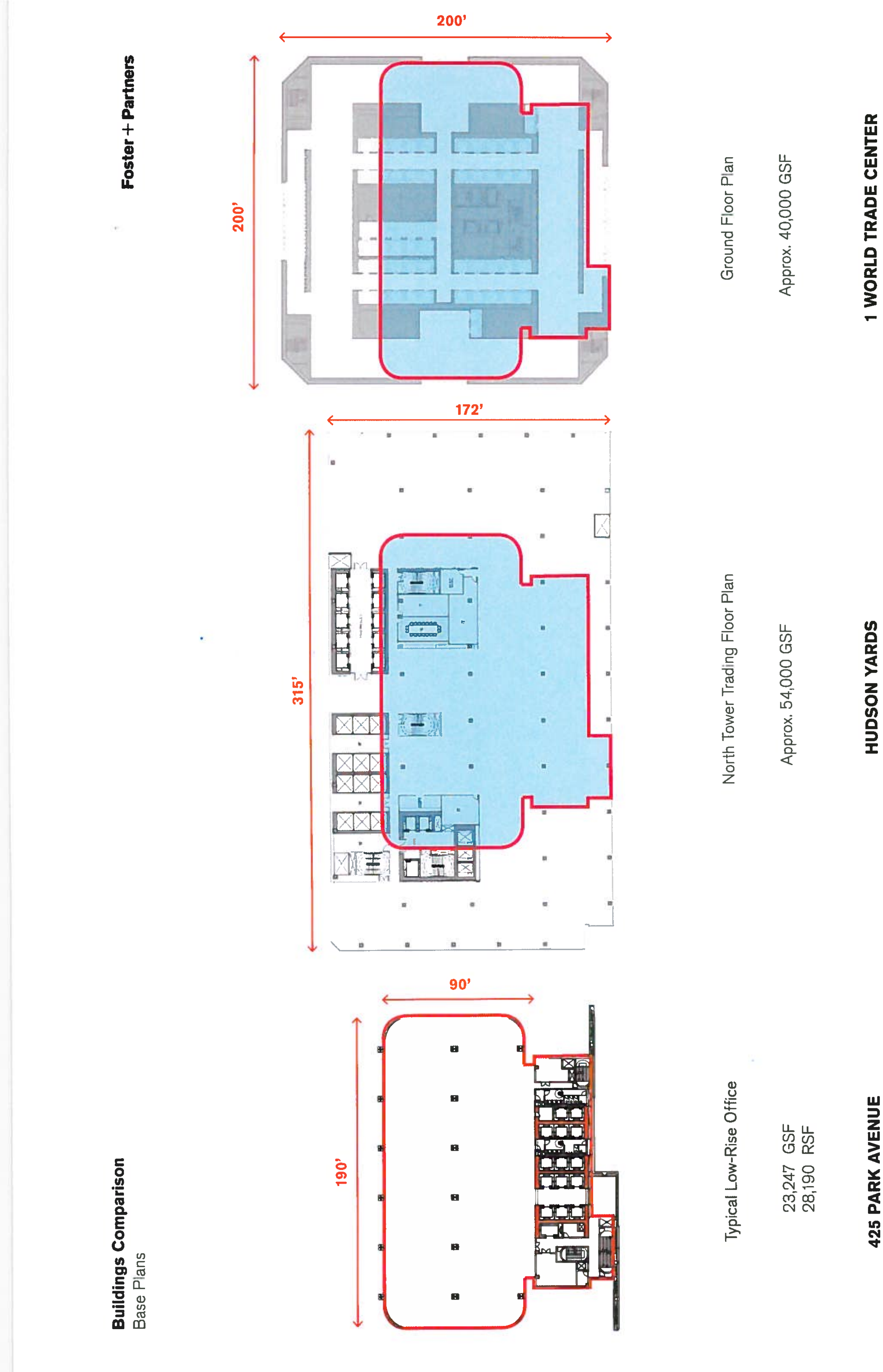
I want to leave you with two other thoughts:

- One to encourage you to reaffirm the as of right nature of the proposed rezoning by rejecting proposals calling for a special permit requirement for 18+ FAR developments. Accepting such proposals would cut out the heart of the Rezoning Plan.
- The second is to extend the Park Avenue height and setback rules that are proposed in the "A" text you are considering to all Park Avenue sites – not just qualifying sites. The proposed text is premised on the simple reality that Park Avenue, by reason of its width of 140', is different from all other Midtown East Avenues of 100'. There is no reason to recognize it for only one class of site and not for every site. This is because, in the end, the more flexible zoning envelope permitted by the proposed rules will promote buildings that are more sustainable and produce superior design.

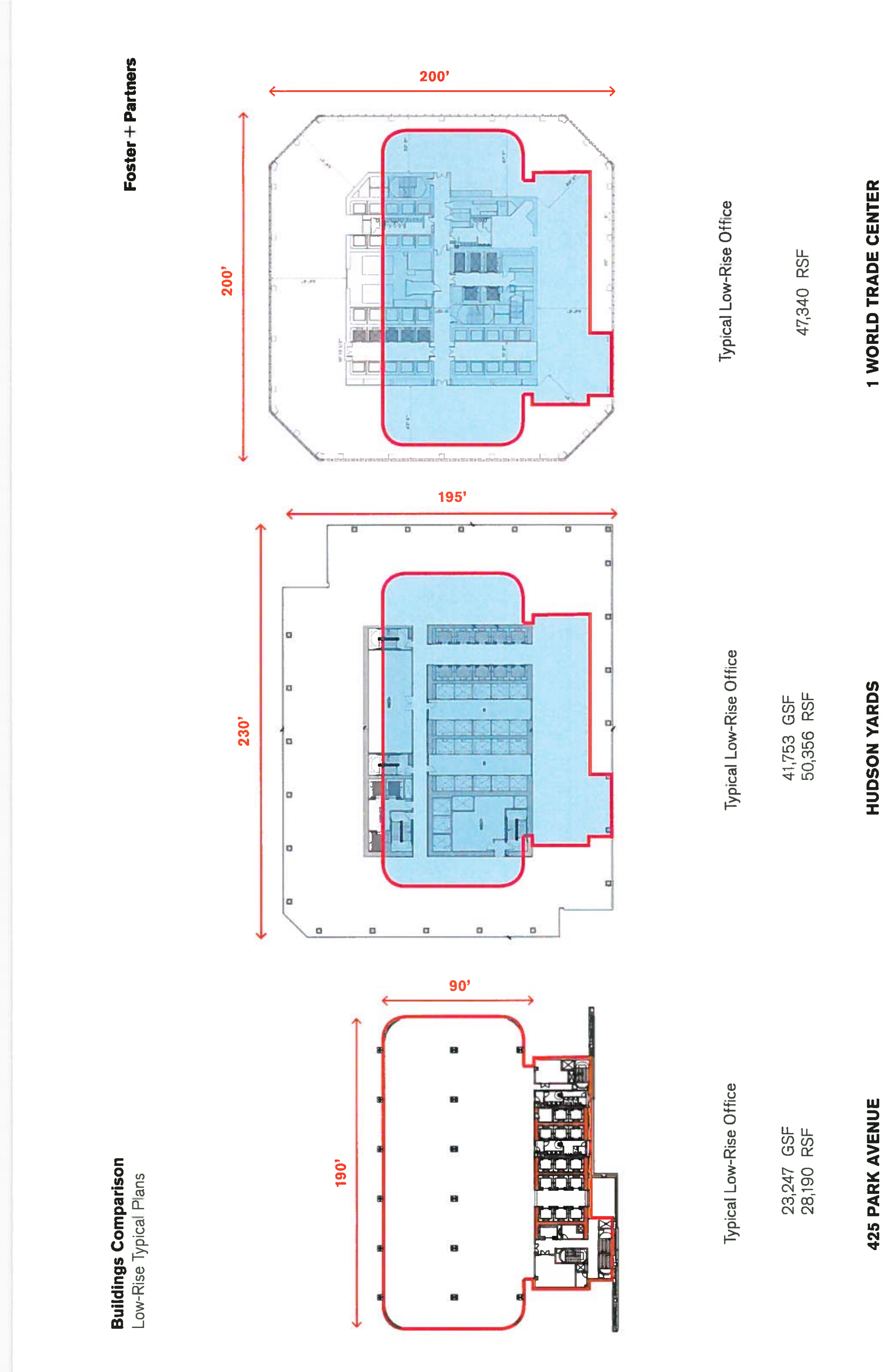
Park Avenue is 140' wide, unlike other Streets and Avenues in Midtown East. The current "A" text recognizes this and allows bulk regulation measurement from the Avenues mid-point 70'.

Non-qualifying sites should be able to measure from 70' as well. This will stimulate the re-skinning of these older, single pane "energy hogs" and allow for some modest, structural re-massing.


Buildings Comparison
Sections
Foster + Partners
1776'
1337'
739'
0'
425 Park Avenue
South Tower
North Tower
Hudson Yards Office Towers
1 World Trade Center

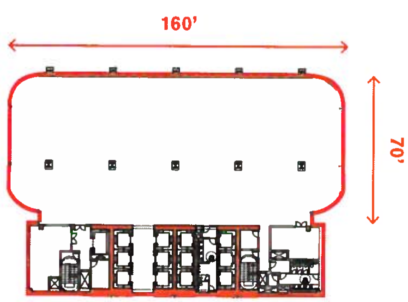


Buildings Comparison
Base Plans
Foster + Partners
190'
90'
Typical Low-Rise Office
23,247 GSF
28,190 RSF
425 PARK AVENUE
315'
172'
North Tower Trading Floor Plan
Approx. 54,000 GSF
HUDSON YARDS
200'
200'
Ground Floor Plan
Approx. 40,000 GSF
1 WORLD TRADE CENTER


Buildings Comparison
Low-Rise Typical Plans
Foster + Partners
190'
90'
Typical Low-Rise Office
23,247 GSF
28,190 RSF
425 PARK AVENUE
230'
195'
Typical Low-Rise Office
41,753 GSF
50,356 RSF
HUDSON YARDS
200'
200'
Typical Low-Rise Office
47,340 RSF
1 WORLD TRADE CENTER

Buildings Comparison
Mid-Rise Typical Plans

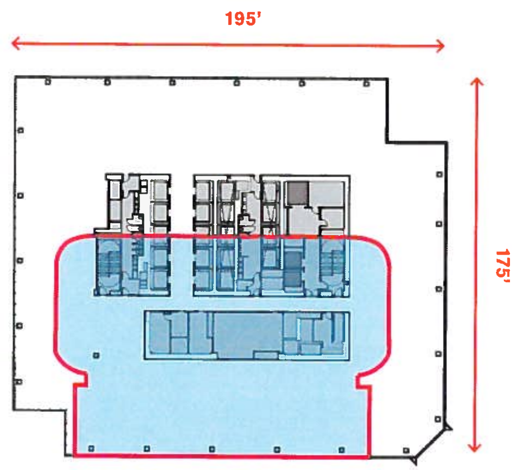
Foster + Partners



Typical Mid-Rise Office

15,739 GSF
18,979 RSF

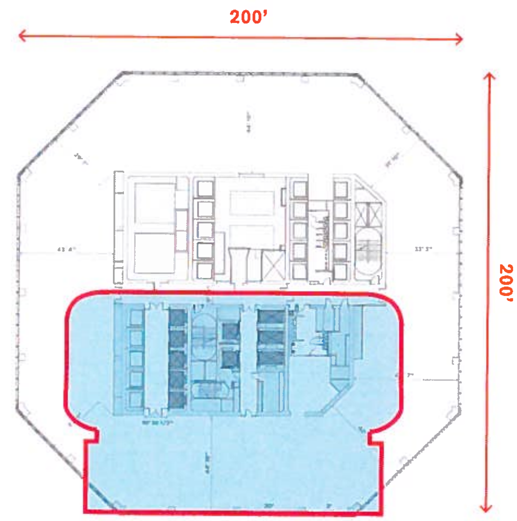
425 PARK AVENUE



Typical Mid-Rise Office

33,425 GSF
41,862 RSF

HUDSON YARDS



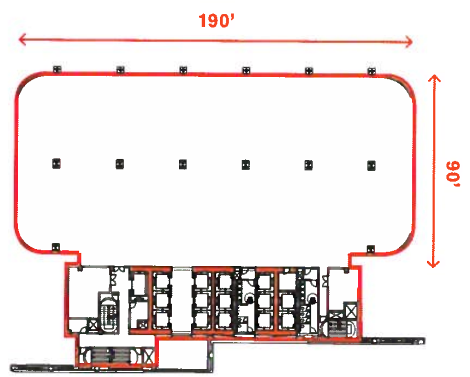
Typical Mid-Rise Office

43,850 RSF

1 WORLD TRADE CENTER

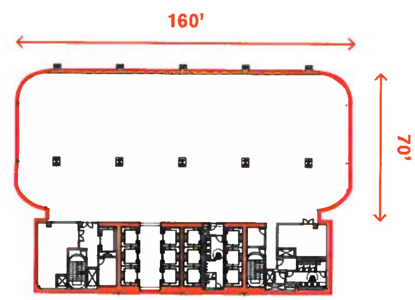
Buildings Comparison
425 Park Avenue Typical Plans

Foster + Partners



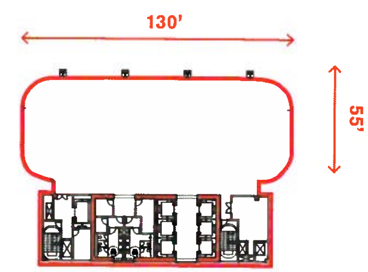
Typical Low-Rise Office

23,247 GSF
28,190 RSF



Typical Mid-Rise Office

15,739 GSF
18,979 RSF



Typical High-Rise Office

10,658 GSF
12,674 RSF

NEW YORK BUILDING CONGRESS

Testimony of Richard T. Anderson
President, New York Building Congress
At a Hearing of the New York City Planning Commission
Regarding the East Midtown Rezoning
August 7, 2013

The New York Building Congress supports the Bloomberg Administration's proposed rezoning for the East Midtown neighborhood. The zoning amendments will permit responsible renewal of New York City's premier office district, facilitate job growth and expansion of the City's tax base.

East Midtown is anchored by Grand Central Terminal, which will soon open an east side terminus for the Long Island Rail Road. East Side Access is a transformative project, providing direct access from all of Long Island to the east side of Manhattan for the first time. Tens of thousands of additional commuters will flow out of Grand Central at peak hours, creating a real incentive for property owners to upgrade their building stock to accommodate this potential new workforce.

Failure to capitalize on this multi-billion dollar infrastructure investment will be a missed opportunity for the City. Right now, high redevelopment costs in Midtown East discourage truly transformative, area-wide change. Rezoning would add substantially to the value of these sites, creating the necessary financial interest for builders to assemble sites, tear down existing large structures, and erect larger, modern buildings.

Moreover, because of their age and quality, the building stock around Grand Central is simply inadequate to accommodate new demand. The average building age is 70 years old and does not offer the amenities and more open floor plans that attract Class A tenants.

The rezoning includes a development incentive bonus (DIB) that must be purchased by developers wishing to maximize their developable square footage. The DIB has the potential to fund hundreds of millions of dollars of improvements to mass transit and public open spaces. The City has agreed to pre-fund some of these investments before it collects DIB revenues so that investments can get underway in advance of development. We support this effort.

The East Midtown rezoning will facilitate development of modern office space that will help attract and retain the world class businesses that drive the City's economy. The MTA has made an enormous investment in East Side Access to help anchor new growth. The Department of City Planning's proposal creates the conditions for development of new commercial space to capitalize on this investment.

The Building Congress endorses the East Midtown Rezoning and urges the Commission to approve the Administration's application.

Michael R. Keane, AICP
30-79 33rd Street, Apt. 1A
Astoria, New York 11102

August 7, 2013

Hon. Amanda M. Burden, FAICP
Chair
City Planning Commission
22 Reade Street
New York, New York 10007

Re: Public Hearing Comment – East Midtown Subdistrict ULURP Application No.: N 130247 ZRM

Dear Chair Burden:

Reference is made to the proposed zoning text amendment (N 130247 ZRM) to establish the East Midtown Subdistrict, superseding the existing Grand Central Subdistrict.

The Proposed Action includes a Sunrise Provision, under which building permits in the East Midtown study area could not be issued under the new zoning mechanisms until July 1, 2017. The intent is to "allow for the sequencing of development consistent with planning objectives in the entirety of Midtown," including the Hudson Yards Redevelopment area.

This temporal restriction, while written in the spirit of development sequencing, might not fully prevent future development efforts in East Midtown under the new zoning mechanisms from adversely impacting future development efforts in Hudson Yards. In fact, the amount of time necessary to prepare for a new development project in a rezoned East Midtown (property acquisition, parcel assemblage) could exceed the four-year restriction, thereby rending the provision obsolete. Moreover, the restriction could expire before the amount of development in Hudson Yards necessary to repay the tax increment financing (TIF) bond sales used to fund the #7 subway line extension is achieved.

As an alternative, the Sunrise Provision should establish a <u>minimum amount of commercial floor area</u> that must built and occupied in the Hudson Yards Redevelopment area in order to allow the issuing of building permits under the new East Midtown zoning mechanisms. The minimum amount of built floor area required should be <u>no less</u> than the amount necessary to generate the tax revenues needed to repay the municipal bonds used to fund the #7 line extension. This alternative would serve to better sequence development patterns in Manhattan while also ensuring fiscal responsibility.

I thank you, members of the City Planning Commission and the New York City Department of City Planning –in particular Edith Hsu-Chen and Frank Ruchala – for your forward-thinking, collaboration and professionalism during the East Midtown Rezoning process.

Sincerely,

Michael R. Keane, AICP
917.941.9886
mikerk@gmail.com

Note: I am a member of Manhattan Community Board Five. I am <u>not</u> a member of the Multi-Board Taskforce on East Midtown. I respectfully submit this public comment as an individual citizen, <u>not</u> as a member of Community Board Five.

NO

CARLA FINE
477 W. 22nd St
NY NY 10011

Hello my name is Carla Fine and I live in Chelsea in Community Board 4. I am concerned with the level of density in this proposal. This plan allows for the creation of some of the largest buildings in the entire city. We must think very carefully about the incredible size of these new skyscrapers and the effect they might have on iconic New York structures such as Grand Central Terminal and the Chrysler Building.

The argument made for this rezoning is that we must replace old buildings to compete with new skyscrapers being erected in other large cities. We should not be using old as a byword for obsolete and as a pretext for demolition and redevelopment. Across the city, "old" buildings have been crucial to establishing the character and identity of some of our most famous neighborhoods.

The Flatiron district is an example of a neighborhood full of history and character that is now being re-populated by one of the fastest growing industries in New York. What attracts these tech firms to the Flatiron area is not column free space or large floor plates; it is the quality of the neighborhood, the amenities, the cultural cache. We did not develop this cache by tearing down structures like the Flatiron Building or the Toy Building, but by preserving them. As Robert Stern rightly argued in his op-ed article in The New York Times, preservation can be and has been a stronger stimulant for development than rezoning.

New York City's competitive advantage lies not in the size of our buildings but in the character of our city. We would do well to preserve it.

NO

ALLEN OSTER
477 W 22nd St
NY NY 10011

Air rights Pricing Testimony

Hello, my name is Allen Oster and I reside in Community Board 4. I would like to speak today about the pricing of air rights that are created by this proposal. The are two main problems with the pricing mechanism currently proposed:

1. Setting a single price for development rights across a 73 block area of Manhattan is illogical.

Imagine for a moment a property owner offering space at 42nd and Madison for the same price as space at 47th and Third. Real estate is all about location, location, location.

2. The price is too low.

$250 a square foot for development rights surrounding Grand Central and along Park Avenue is simply not reflective of market realities. What's more, prices could fluctuate significantly in the next few years - rendering a present day appraisal totally inappropriate.

These issues can be addressed by a simple mechanism: allowing the value of these air rights to be determined **at the time** of **sale through an appraisal process**. Let the markets decide how much these air rights should cost.

The stated rationale for the proposal's pricing scheme is to provide developers with certainty. It achieves that aim. Unfortunately, it also provides certainty that the City will get a bad deal. If there really is market demand for such a vast increase in density, why should city tax-payers subsidize the development? Why not maximize the public benefit generated from this opportunity provided to developers? After all, this revenue is the proposed source of funding for urgently needed infrastructure maintenance that will benefit, and help to mitigate the effects of these massive new superstructures.

More revenue means the City can provide truly significant commitments to the future transit infrastructure of this critical section of New York. What the area needs is more than just maintenance or mitigation; what the area needs is a comprehensive plan to anticipate and provide for Midtown's future challenges and opportunities. We should empower the City to engage in long-term planning to envision the future needs of a 21st century Midtown. Unfortunately, this proposal undercuts the City's ability to achieve these vital functions. Why is the City so keen to shortchange itself?

The Yale Club of New York City

Testimony of Kevin Lichten before the New York City Planning Commission
East Midtown Rezoning Proposal
(N 130247 ZRM; C 130248 ZMM)
August 7, 2013

Good morning Commissioners and Chair Burden,

My name is Kevin Lichten. I am a member of the Council and House Committee of the Yale Club as well as a licensed architect, partner in Lichten Craig Architects, and Vice Chairman of the Landmarks Preservation Foundation. My practice is focused on institutional clients and issues of stewardship and preservation.

As you've heard in earlier testimony, the Yale Club is out-growing its beloved 22-story, 19.2 FAR Clubhouse. We need to expand in order to continue to meet the needs of our growing membership by providing enhanced educational and community programming space and expanded accommodations for events. In order for the Club to remain a thriving and vibrant presence in East Midtown with the capacity to adapt to the future interests of its membership, it is critical that the proposed rezoning not harm the Club by preventing it from being able to expand.

I have looked at the building's expansion capabilities and would like to share them with you.

In the first place, the Clubhouse is currently overbuilt. Under the proposed zoning text amendment, there is a possibility that the Club, as a non-qualifying site could purchase excess development rights from a landmark building to get to a maximum FAR of 21.6, but that would only permit a 2.4 FAR expansion or 21,840 sf (9100 x 2.6 = 21,840 square feet). It is unclear whether the Club, at enormous expense, would have to cure the difference between the 15 FAR allowable and the 19.2 FAR existing, prior to benefitting from the additional 2.4 FAR.

In any event, this approach to enlarging the Club is untenable for several reasons. First, the 21,840 square feet would be inadequate to meet the Club's needs. Second, the Clubhouse, built in 1915, cannot structurally handle a vertical enlargement in excess of two lightweight stories, so likely it would not even be able to utilize the full 21.6 FAR. Third, the roof of the Clubhouse is embellished with decorative copper penthouses that are integral to the Clubhouse building design and would be compromised by a roof top addition.

In fact, the best expansion for the Club is horizontally to the west, into an adjoining building built on the MTA lots. Expansion to the north is not feasible since the Club's elevator and stair cores line the entirety of the north party wall. Horizontal expansion is also more practical than vertical expansion since it provides the opportunity to add event space and dining rooms on the same floors as those functions are at present. Placing these functions on the roof would unreasonably divide the Club's services and compromise the security of the guest rooms that are located at the top of the Clubhouse.

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The Yale Club of New York City

Before the introduction of the proposed text amendment, the possibility for horizontal expansion was real. If left in its current form, the proposed East Midtown zoning will prohibit the Club's expansion. I urge you to modify the text to permit Use Group 4 community facilities, which include non-commercial clubs, and Use Group 6E non-commercial clubs to be located on Qualifying Sites. In addition, since under the recently revised definition of "building", the horizontal expansion would likely require the Clubhouse building to sit on the same zoning lot as the building into which it expands, I urge you to permit an existing UG 4 and UG 6E building to be located within the minimum site geometry of a Qualifying Site.

Thank you for your consideration of these very important concerns.

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Public Hearing on East Midtown Rezoning
N 130247 ZRM
City Planning Commission
August 7, 2013

MIDTOWN 21C Coalition for a Globally Competitive NYC

32BJ SEIU Stronger Together

Madame Chair, Commissioners, thank you for the opportunity to speak today.

I am here to express Service Employees International Union Local 32BJ's support for the proposed rezoning of Midtown East, on behalf of its 70,000 member janitors, doormen and security officers who live and work in New York City.

32BJ represents the janitors and security officers that help keep our flagship commercial offices spotless and secure. We know the office buildings in New York City better than anybody. We've seen how important innovation has been to the industries at the heart of New York's economy. But Midtown East's older buildings and outdated zoning laws hold the area back. Right now, the neighborhood can't come up with the modern, energy efficient office facilities needed to attract world-class tenants, and that could make the whole city's economy suffer. More state-of-the-art office buildings will ultimately mean the creation of quality jobs, both blue-collar and white-collar, and that will have a real economic impact for *all* New Yorkers.

In keeping with this vision for the area, we also believe that hotels can play an important role in the creation of good jobs, when developed carefully. They can complement commercial uses and support the City's tourism industry. However, any development of hotels must be done in such a way that is compatible with the dominant uses in the district, avoid their negative impacts, and ensure an appropriate use mix in the neighborhood. We believe a special permit process would help ensure that the right mix of hotels is built in the area. The same applies for residential development and it is positive that there is a special permit provision for use modification for residential already being considered.

Rezoning Midtown East is important in order to keep this famous business district globally competitive, in today's changing economy. Allowing the construction of more modern office facilities, with column-free floors, greater ceiling heights, modern design and greater energy efficiency will go a long way to keep New York competitive with other global cities. This update to the zoning code will help raise funds for improvements to public infrastructure that we really need.

For these reasons, we urge you to approve this rezoning. Thank you.

AUGUST 07, 2013

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

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

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

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

The Yale Club of New York City

Testimony of Alan Dutton
before the New York City Planning Commission
(N 130247 ZRM; C 130248 ZMM)
August 7, 2013

Good morning Chair Burden and Commissioners.

I am Alan Dutton, General Manager of the Yale Club, which is located on Vanderbilt Avenue between 44th and 45th Streets, in the heart of the Grand Central Core and Subarea of the proposed East Midtown Subdistrict.

The Club was constructed on this site in 1915 and has grown markedly since that time Today, it has 11,000 members who use the Club for dining, lodging, business meetings, educational programs, and social functions. The Club is the largest university club in the world and is a thriving and bustling home, not only for its members, but for the New York City business community. It hosts over fifty different business groups and industry associations annually for educational and community programming.

The 22-story Clubhouse includes 138 guest rooms, three restaurants, athletic facilities, and meeting and banquet rooms that can accommodate up to 350 guests. The Club employs more than 250 people who are members of Local 6 and has annual revenue of approximately $34 million. On any given day, over 1,000 people come in and out of the Club.

The Club has two serious concerns with respect to the proposed rezoning. First, we understand that the proposed rezoning would preclude the Club from expanding horizontally into a new building on the MTA sites to the west of the Club. This result would harm the Club. The Club is in need of additional meeting space for its programs, including educational and community programming, as well as expanded accommodations for events so that it can meet the current needs of its members, as well as adapt to future needs. This is key to remaining a vibrant and viable institution.

Second, the proposed use of the District Improvement Fund to eliminate vehicular traffic on Vanderbilt Avenue poses a serious threat to the Club.

1745266.5

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The Yale Club of New York City

Specifically, this proposal would prohibit vehicular access to the Club's only public entrance on Vanderbilt Avenue between 44th and 45th Streets, requiring Club members (and others) arriving by private car and taxi to be dropped off instead at the corner of 44th or 45th Streets. This would pose a hardship to many of the Club's guests, including those arriving with luggage to stay in one of the Club's 138 rooms, and those arriving in inclement weather or attending one of the many large events the Club frequently hosts, such as weddings and other life cycle events. Furthermore, the Club's sizable elderly and disabled population would be unreasonably burdened, as the accessible elevator is located adjacent to the Club's main entrance on Vanderbilt Avenue. Accordingly, the Club strongly opposes the closure of Vanderbilt Avenue as it would cause the Club serious harm.

Thank you for your consideration

1745266.5

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Coalition for a Livable West Side
Leading the Fight for a More Liveable New York and the Environmental Health of Cities Everywhere

Coalition for A Livable West Side * PO Box 230078 * New York, New York 10023
Email : livablenewyork@erols.com Phone: 1-212-874-3456 Website: www.livablenewyork.org

August 7, 2013

To: All Commissioners
Re: East Mid-town Proposed Rezoning

The Coalition for a Livable West is vehemently opposed to the East Mid-town proposed rezoning for all the reasons cited by Community Boards, Preservation groups, prominent architects, and the NY Times, including its excellent coverage on the issue.

Sincerely
Batya Lewton
President

New York Hotel and Motel Trades Council, AFL-CIO • 707 Eighth Avenue, New York, NY 10036 • Telephone (212) 245-8100 • Fax: (212) 977-5714

Testimony Of Peter Ward, President New York Hotel Trades Council

My name is Peter Ward, and I represent over 32,000 members of the New York Hotel Trades Council, the union for hotel and hospitality workers in New York.. Thanks for allowing me to comment on today's rezoning.

Three hundred of our members have come here today because they are deeply concerned about the implications of rezoning East Midtown.

New York City's middle-class is in trouble. According to a recent Partnership for New York City study, over 100,000 middle-class jobs have been lost since 2008. Worse, they've been largely replaced by jobs making under $35,000 per year, not nearly enough to survive in the city. Meanwhile, the cost of living has increased, and the cost of housing has gone up significantly.

Hotel jobs are a bright spot in this bleak picture. A study by CUNY's Center for Urban Research found that average hotel wages in the City are $53,000—solidly middle-class, and well above the City's median wage of $46,000. The study attributed the high pay of Union and Non-union jobs to the strong Trades Council contract and high union density.

Our members enjoy free healthcare for themselves and their families, retirement security, and crucial job protections. They come from all over the world and are a vibrant part of New York City's middle class.

East Midtown is a particularly important hotel district in New York, employing almost a fifth of the workers in the hotel industry. Ninety percent of these workers are unionized. The rezoning threatens not only those jobs, but could damage the gains we have won for Hotel workers, union and non-union, throughout the City. I urge you to include a hotel special permit in the rezoning proposal to help protect them, as well the hotel industry and the East Midtown community.

A special permit process would help ensure that the right mix of hotels are built in the area. It will maintain the world-class, full-service hotels currently in East Midtown. Full-service hotels are needed in a central business district like East Midtown. They are also the ones that can best support middle-class jobs.

A special permit for hotels is nothing new. It is already required of a hotel in other special districts that have specific goals and want to obtain a certain mix of uses. The city has put in place special permits for hotels in the Special Hudson Square District, the Tribeca Mixed Use District, and the M1-6D district in the Fur District. Allowing hotels only by special permit in East Midtown would ensure that any development of hotels is done in such a way that is compatible with the dominant uses in the district, avoids hotel's negative impacts, and ensures an appropriate use mix in the neighborhood.

The City included a minor provision for a hotel special permit in its A-text proposal, recognizing that hotel development needs to be carefully regulated in order to produce a successful

New York Hotel and Motel Trades Council, AFL-CIO • 707 Eighth Avenue, New York, NY 10036 • Telephone: (212) 245-8100 • Fax: (212) 977-5714

central business district. Hotel developments are generally easier to finance than Class A office buildings, and thus often easier to develop. Increasing the likelihood of hotels over office space goes against the rezoning's main purpose—which is why the city modified its initial proposals. Unfortunately, the A-text would still allow most hotels in the district to be built without a special permit. The proposed special permit provision must be greatly expanded to achieve its purpose.

In addition, the City's A-text proposals responded to community concerns by introducing some residential development in the area. If it is adopted, not only would hotels be in direct competition with office development, they would also conflict with residential development in the area—something the community directly requested. Allowing unregulated hotels on non-qualifying sites may prevent the area from being seeded with the residential uses necessary to create a 24-hour mixed-use commercial district.

Hotels can be a unique burden on communities, distinct from residential and commercial uses, and should be treated differently. They are designed to be densely occupied, and operate 24 hours a day. They introduce new traffic impacts on communities, such as increased deliveries and taxi pick-ups and drop-offs. Hotel loading zones can also reduce needed parking. A special permit would allow communities the ability to carefully regulate hotel development and ensure that hotels are good neighbors.

A hotel special permit is key to the health of the area, and to maintaining middle-class jobs in New York. Unless it is included in the rezoning proposal, the rezoning should not be passed. This rezoning must not be another assault on New York's dwindling middle class.

My name is Kathy Thompson and I am a member of Community Board 6. Over the past several months I have listened to a number of presentations made by the City on the proposed East Midtown Rezoning; and I have been an active participant in the negative resolution vote issued by Community Board 6, in conjunction with the Multi-Board Task Force.

Throughout the presentation processes which resulted in the negative resolution, the community board remained concerned over a long list of questions arising from the proposed rezoning that the City was unable or unwilling to answer.

In response to the many voices raising concerns about the rush to push this proposal through without solid foundations to build upon we have now received a belated offer from Mayor Bloomberg to advance the funds that will be needed to alleviate any additional overcrowding of the already overburdened green line at Grand Central Station. This offer is certainly a step in the right direction, but is by no means definitive. Mayor Bloomberg states that in the coming weeks his team will draw up specific plans for improvement of the infrastructure which would be paid for upfront by the city and reimbursed by the developers over time.

This belated offer from the Mayor's office is not included in the scoping plan that is already in effect; so we would wonder not only what the details of this newly identified plan are, but how this plan can be enforced if it has been introduced outside of the realm of the scoping vehicle.

In addition to this gray area of enforcement, what assurances are there that the next mayor will have the ability to enforce the as-yet-unknown package of improvements suggested by Mayor Bloomberg?

While Borough President Stringer has issued a conditional approval of the East Midtown Rezoning proposal, his list of conditions to be met is extensive; encompassing most, if not all of the many communities' concerns.

The list is long and thoughtful. The Mayor has made a last-minute attempt to address one of many large, looming concerns that must be addressed ***in specific detail***. Yet, there are so many other issues that require further study.

I would ask the City Planning Commission to reject this proposal in order to allow for more time and thoughtful consideration of the plan and to address many of the unresolved issues that community boards and others have raised.

The community is not clamoring for this proposal to be approved by the end of 2013. We have this one opportunity to get it right; whether that runs into the year 2014 or beyond.

I thank you for your time today.

THE NEW YORK
LANDMARKS
CONSERVANCY

August 7, 2013

STATEMENT OF THE NEW YORK LANDMARKS CONSERVANCY AT THE NEW YORK CITY PLANNING COMMISSION REGARDING THE MIDTOWN EAST REZONING PROPOSAL

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

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

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

The Landmarks Preservation Commission is reviewing a list of 32 buildings for designation. We support that list, but this area is rich with historic resources, many already eligible for the National Register of Historic Places, that should also be considered for LPC designation. The plan encompasses 70-plus blocks, so there is no reason to take down the best of its architecture, when there is ample room for new design.

The rezoning is racing toward an artificial deadline, out of sync with the Landmarks Commission at exactly the time when they should be working together. The inclusion of a five-year sunrise provision is clear proof that this plan does not need to be approved now.

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

Why is the City cutting out the public out of a review process that has yielded new construction across the five boroughs? If the rezoning will result in just a few buildings, the standard process should be able to handle them.

The City has not offered specifics on how Grand Central and the streets of Midtown East should accommodate existing overcrowding, East Side Access, or the tens of thousands of workers at these new buildings.

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

One Whitehall Street, New York NY 10004
tel 212 995 5260 fax 212 995 5268 nylandmarks.org

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

Finally, we wonder if the Department of City Planning appreciates the level of public dismay that will be triggered upon construction of one or more new 30-FAR building in the tightly packed blocks adjacent to Grand Central, or if a wall of glass towers obscures one of New York's favorite icons, the Chrysler Building.

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

The Conservancy agrees that change and growth are integral to New York's success; but not at the expense of the distinct historic architecture that makes the City great. We ask the City Planning Commission to reject this plan, and help clear the way towards a new vision for Midtown East that protects the best of our architectural heritage and allows the public a voice in the area's development.

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

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

Testimony of Robert Paley, Director of Transit Oriented Development, Metropolitan Transportation Authority to

New York City Planning Commission on East Midtown Rezoning Proposal.

August 7, 2013

Good morning. My name is Robert Paley and I am Director of Transit Oriented Development at MTA. It is a pleasure to be here today. As Chairman Prendergast indicated in his letter to the Commission, transit and East Midtown are inextricably linked. The MTA is dedicated to meeting the transportation needs of this region, and the City's proposal complements and enhances MTA's goals.

The rezoning proposal would seed development in a part of the city rich with transportation infrastructure and the MTA capital program is investing billions of dollars more in two major projects:

> **Phase 1 of the Second Avenue Subway will provide** a convenient connection from the Upper East Side to the West Side, decreasing Lexington Avenue line congestion by over 10% and reducing the number of people transferring at Grand Central.
>
> **East Side Access** will benefit Long Island Rail Road customers traveling to East Midtown. Right now half of LIRR riders at Penn Station are going to the East Side and get there by taking subways, buses or taxis. An estimated 80,000 customers or 160,000 trips will use East Side Access to Grand Central Terminal because it will take them more directly to their destinations.

It makes sense for private investment to follow this public infrastructure investment. **Furthermore, the zoning creates a fund that reinvests in our existing transportation** infrastructure with funding generated by the development itself.

The MTA has a strategic plan for improvements to Grand Central and the other stations in East Midtown that will greatly improve these stations.

As the City grows and changes, it is vital that we find ways to accommodate growth in the transit system and that we have new types of revenue streams to support investment. MTA improvements, both in new services and in the existing system, will bring great benefits for people who travel to East Midtown and to travelers throughout the region. We welcome initiatives such as the proposed zoning which will help to advance these improvements.

TESTIMONY TO THE NEW YORK CITY PLANNING COMMISSION IN CONNECTION WITH THE PROPOSED MIDTOWN EAST REZONING WEDNESDAY, AUGUST 7, 2013

Caroline Angoorly, GreenTao LLC
Turtle Bay Resident

I am a long-term resident of Midtown East, specifically Turtle Bay (CB6) and I work in Midtown. I remain deeply concerned at the nature and extent of the proposed rezoning, as it seems completely out of step with the wonderful diversity of neighborhoods that exist in New York, especially those to the East of Grand Central. I think there are nuances and subtleties about the mixed use environment that exists in Midtown that are not receiving sufficient focus in the stakeholder process and I want to touch on those in this testimony.

As any visitor to – and certainly every resident of – our wonderful city knows, New York is made up of a complex, delicate and terrific patchwork of neighborhoods: when you walk from one block to the next in various parts of town you are instantly aware of a change in character and distinct community. This is certainly true in Midtown where one of the country's premier business districts is flanked by extremely residential neighborhoods like Sutton Place, Turtle Bay, Kips Bay and Murray Hill. Unless you live in these areas, I think that the radical shift in character, appearance, amenity, use, diversity and "vibe" that happens literally from one side of a street to the other is neither broadly recognized nor appreciated. When I first found my apartment listed for an open house just off Third Avenue in Midtown many years ago, what went through my head was "I guess it's close and I might as well take a look, but what's there? It's just a bunch of office buildings". I could not have been more wrong – east of Third and I was instantly in a quiet streetscape of low-rise townhouses and other residential buildings with light, neighborhood stores, restaurants and a distinctly residential feel.

Much work has been done by very many parties in this review process and I am grateful for the time, thoughtfulness and analysis that has been invested, including by Council Member Garodnick and his staff, the Multi-Board Task Force and all the affected Community Boards, the Manhattan Borough Board and the Press. Borough President Stringer's recommendations also included some very useful input, although I was disappointed with his "conditional yes" conclusion, which I regard as premature.

The recent submissions and publicity around the proposed rezoning properly focus on things like transport and other infrastructure, the public realm, landmark preservation, streetscapes and "ripple effects" to other parts of the City. One area that I continue to feel very strongly has been under-represented and is insufficiently prominent in submissions and public statements to date is <u>the importance of preserving the delicate balance between business and existing residential land use and the expectations of ongoing use and enjoyment by all owners</u>.

Unlike many cities that possess a commercial district that is lively during office hours and deserted at other times, Manhattan rightly prides itself upon its high density of residents across all its neighborhoods, including the commercial center in Midtown. Any proposed rezoning

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should be highly sensitive to, and preserve, the existing residential ecosystems, without allowing commercial density and boundary creep at the expense of Midtown residents. In my opinion, the current proposal fails to do this.

The proposed rezone would do great violence to established Midtown residential communities given that the currently drawn boundaries show little respect for these neighborhoods and their inhabitants – especially where there are partial block "carve-ins". In many areas the boundaries of the proposed rezone are drawn so broadly (rather than truly focusing on the commercial center and hub around Grand Central) as to materially encroach into beautiful and established residential neighborhoods. Allowing large-scale commercial redevelopment to breach Midtown residential boundaries has real and varied consequences for those of us who live there. A ham-fisted commercial redevelopment dooms residents to major upheaval and long-term disruption through demolition and construction phases, as well as materially changing neighborhood character through density, light, amenity, nature and extent of traffic, types of retail establishments, among other effects. This seems nothing short of prioritizing business and office towers above interests of residents, and shows a troubling disregard for people's homes and vibrant local community lives.

I completely understand seeking to maintain New York's preeminence as a place to do business. However, meeting this objective should neither be done at the expense of the diverse and intricate neighborhood footprints that are the heart of our city nor in a manner that is completely blunt, lacking in finesse or tone deaf to the ongoing diversity and finely balanced existing cohabitation of business and residences.

I appreciate the opportunity to participate in this stakeholder process.

The City of New York
Manhattan Community Board 1
Catherine McVay Hughes CHAIRPERSON | Noah Pfefferblit DISTRICT MANAGER

City Planning Commission
Public Hearing on the City's Proposed East Midtown Rezoning Plan

Testimony by Michael Levine, Consulting Planner
Manhattan Community Board 1
Wednesday, August 7, 2013
Museum of the American Indian
10:00 am

I am Michael Levine, Consulting Planner for Manhattan Community Board One (CB1). Thank you for the opportunity to comment on this application for the proposed East Midtown Rezoning.

The proposed plan for rezoning the East Midtown area around the Grand Central District would increase the maximum allowable Floor Area and create incentives for new development in East Midtown. This proposed rezoning would result in a projected increment of approximately 4.4 million square feet of space in the next 20 years, and it is this net increase that drives most of the negative impacts of the proposed rezoning including increased load on public transit and overcrowded streets and sidewalks.

We believe the current proposed plan would also impose undue hardship on Lower Manhattan. On September 11, 2001, 14 million square feet of commercial office space in Lower Manhattan was destroyed, 65,000 jobs were lost or relocated, and more than 20,000 residents were displaced. Now, almost twelve years later, Lower Manhattan is in the middle of a renaissance as more residents and businesses have come to the area than were lost. By 2012 Lower Manhattan had 8,484 companies, 186 more than were here on 9/11. Employment is on an upward trend with a current total of 309,500 employees.

CB1 wants to make sure that this positive momentum continues. Steady progress has been made as construction continues on 10 million square feet of world class, LEED certified office space, including almost 500,000 square feet of retail space. The 105-story 2.6 million square foot World Trade Center Tower 1 is approximately 55 percent leased and is expected to open in the first quarter of 2014. The 72-story 2.3 million-square-foot World Trade Center Tower 4 is 50 percent leased and will also open in first Quarter of 2014.

The proposed East Midtown Rezoning contains a "sunrise" provision under which building permits could not be issued until July 1, 2017. But, the final build-out of the World Trade Center site will extend beyond 2019, according to the World Trade Center Campus Security Plan Draft Environmental Impact Statement released on April 8, 2013.

While CB1 supports the concept that zoning changes may be necessary to permit the commercial office space in East Midtown to be upgraded and maintained as 21st Century Class A commercial space, CB1 believes that a 4.4 million square foot net increase in commercial office space in the East Midtown area would place an unsustainable burden on the transportation infrastructure that serves not only East Midtown, but Lower Manhattan as well.

49 Chambers Street, Suite 715, New York, NY 10007-1209
Tel. (212) 442-5050 Fax (212) 442-5055
man01@cb.nyc.gov
www.nyc.gov/html/mancb1

We thank mayor Bloomberg for his announcement about transit improvements but we need further clarification. We believe that the City of New York and the MTA should continue to work on resolving subway capacity issues in advance of the East Midtown zoning change in order to accommodate the expected increase in ridership.

Further, CB1 strongly urges the City Planning Commission to conduct a comprehensive review of how the proposed East Midtown Rezoning would affect Lower Manhattan, with a particular emphasis on the extent to which rezoning Midtown would adversely impact the ongoing redevelopment of Lower Manhattan.

Finally, CB1 strongly urges that the sunrise provision of the proposed East Midtown Rezoning be extended to a later date on which certain meaningful World Trade Center site development milestones could be accomplished, such as completion of a fixed number of buildings and square feet of space completed and leased, before the proposed rezoning is adopted.

Copies of the CB1 resolution on the East Midtown Rezoning adopted on May 28, 2013 are attached to this testimony.

Thank you for the opportunity to testify today.

COMMUNITY BOARD #1 – MANHATTAN
RESOLUTION

DATE: MAY 28, 2013

COMMITTEE OF ORIGIN: PLANNING

COMMITTEE VOTE:	14 In Favor	1 Opposed	0 Abstained	0 Recused
BOARD VOTE:	31 In Favor	1 Opposed	0 Abstained	0 Recused

RE: N 130247 ZRM
C 130248 ZMM
East Midtown Rezoning

WHEREAS: The proposed East Midtown Rezoning for 78 blocks around the Grand Central District would increase the maximum allowable Floor Area Ratio (FAR) for developers, which would immediately create incentives for new office development in East Midtown, and

WHEREAS: As a result of the terrorist attacks on the World Trade Center on September 11, 2001, 14 million square feet of commercial office space in Lower Manhattan was destroyed or damaged, 65,000 jobs were lost or relocated, and more than 20,000 residents were displaced, and

WHEREAS: Now, almost twelve years after the attacks of 9/11, Lower Manhattan is in the middle of a renaissance as more residents and businesses have come to the area than were lost during the attacks, and

WHEREAS: By 2012, Lower Manhattan had 8,484 companies, 186 more than were here on the day of the attacks. Employment is also on an upward trend with a current total of 309,500 employees[1], a trend that is expected to continue to grow as office space comes on line at the World Trade Center site, and

WHEREAS: The 4, 5 and 6 train lines are currently at 116% capacity[2]. Currently utilized by many residents, workers and students, they are expected to draw even more riders after the build-out of the World Trade Center site, and

WHEREAS: Remarkable and steady progress has been made at the 16-acre World Trade Center site as construction continues on 10 million square feet of world class, LEED certified office space, including almost 500,000 square feet of retail space, and

WHEREAS: The 105-story 2.6 million square foot World Trade Center Tower 1 is approximately 55 percent leased and is expected to open in Q1 2014. The 72-story

[1] Downtown Alliance: Lower Manhattan Fact Sheet, Q3 2012
[2] Straphangers Campaign: Letter to Mayor Bloomberg & Chairman Ferrer of the Metropolitan Transit Authority, 2013

2.3 million-square-foot World Trade Center Tower 4 is 50 percent leased and will also open in Q1 2014, and

WHEREAS: The rebuilding of Lower Manhattan is a long-term process and is vital to the restoration and revitalization of our neighborhood and redevelopment of the World Trade Center site is on track. CB1 wants to make sure that the positive momentum continues, and

WHEREAS: The proposed East Midtown Rezoning would result in a projected increment of approximately 4.4 million square feet of commercial office space in the next 20 years, and it is this net increase that drives most of the negative impacts of the proposed rezoning, including increased load on public transportation and increased road traffic loads, some of which are described as unmitigatable, and

WHEREAS: The proposed East Midtown Rezoning contains a "sunrise" provision under which building permits could not be issued until July 1, 2017, and the final build-out of the World Trade Center site will extend beyond 2019, according to the World Trade Center Campus Security Plan Draft Environmental Impact Statement released on April 8, 2013, now

THEREFORE BE IT RESOLVED THAT: CB1 strongly urges the City Planning Commission to conduct a comprehensive review of how the proposed East Midtown Rezoning would affect Lower Manhattan, with a particular emphasis on the extent to which an up-zoning of office and commercial space in Midtown would adversely impact the ongoing redevelopment of Lower Manhattan, and

BE IT FURTHER RESOLVED THAT: CB1 believes that the City of New York and the MTA must resolve subway capacity issues in advance in order to accommodate the expected increase in ridership as a result of the East Midtown zoning change, and

BE IT FURTHER RESOLVED THAT: While CB1 supports the concept that zoning changes may be necessary to permit the commercial office space in the East Midtown area to be upgraded and maintained as 21st Century Class A commercial space, CB1 believes that a 4.4 million square foot net increase in commercial office space in the East Midtown area would place an unsustainable and unmitigatable burden on the transportation infrastructure that serves not only East Midtown, but Lower Manhattan as well, and accordingly CB1 strongly urges the City Planning Commission to adjust the proposed zoning changes such that development in accordance with the new zoning would not result in a net increase of commercial office space in the East Midtown area, and

BE IT FURTHER RESOLVED THAT: CB1 strongly urges that the sunrise provision of the proposed East Midtown Rezoning be extended to a later date on which certain meaningful World Trade Center site development milestones could be accomplished, such as completion of a fixed number of buildings and square feet of space completed and leased, before the proposed rezoning is adopted, and

THEREFORE BE IT FURTHER RESOLVED THAT: CB1 recommends disapproval of proposed Zoning Text Amendment N 130247 ZRM and proposed Zoning Map Amendment C 130248 ZMM for the proposed East Midtown Rezoning because these amendment would adversely affect Lower Manhattan as well as East Midtown.

One Battery Park Plaza New York, NY 10004-1479
T 212 493 7400 F 212 344 3344 www.partnershipfornyc.org

PARTNERSHIP for New York City

TESTIMONY BEFORE THE CITY PLANNING COMMISSION

WEDNESDAY, AUGUST 7, 2013

MICHAEL SIMAS
EXECUTIVE VICE PRESIDENT

The Partnership for New York City represents the city's business leadership and its largest private sector employers. We have reviewed the proposed rezoning plan for East Midtown and believe that it will contribute in important ways to New York's future as a global center for commerce.

East Midtown has historically performed strongly as an office district and continues to do so, but significant infrastructure investments will position the area to be an even greater job generator for New York City over the coming decades. The East Midtown transportation network is currently being expanded through two major public infrastructure projects: East Side Access and the Second Avenue subway, scheduled to be completed over the next six years.

These projects will accommodate job growth in the city's central business district, but the area's outdated building stock is a major hurdle to the realization of these economic benefits. Companies increasingly want space that is open, modern and high-tech, but the average office building in East Midtown is more than 70 years old.

The Partnership recently collaborated on a study with global consulting firm Aon plc that examined how New York can continue to attract and retain talent in the 21st century to bolster long-term competitiveness. A key recommendation was to incentivize development of open workspaces that will result in transforming the City's older building stock into new, creative spaces that the millennial workforce desires.

Current zoning has proven to be an impediment to this modernization. In the past decade, only two office buildings, both of which are mid-sized, have been developed in the area. The rezoning plan would fix that by promoting development of a handful of new, state-of-the-art commercial buildings over the coming decades and providing half a billion dollars to fund transportation upgrades and pedestrian improvements that will not otherwise happen.

These changes will prime the area for the investment and modern redevelopment that is critical to our competitive future. The rezoning proposal, which has been refined through community dialogue, deserves your support and we urge its approval. Thank you.

Madam Chairperson and Commissioners –

My name is Bob Fox. I am a partner in COOKFOX Architects and a partner in Terrapin Bright Green, a research and consulting firm.

I have been an architect involved with high rise office buildings since 1966 when I first came to NYC. As the only architect to serve as one of the advisors to Mayor Bloomberg's Office of Long Term Planning and Sustainability, I was challenged by the main goal of PlaNYC – by 2030, create a plan to reduce CO2 levels by 30% while adding 1,000,000 more New Yorkers. This will not be easy on either front.

Terrapin Bright Green did a study of what we called Midcentury (un)Modern buildings – NYC office buildings built between 1958 and the energy crisis of 1973 – one of the many "wake-up" calls we have gotten in the last 4 decades.

These buildings were quite formulaic – essentially built to minimal standards and designed to last a few decades:

1. They were steel buildings, with columns 20' on center with low strength poured in place concrete floors.
2. Because they were built to squeeze into older zoning envelopes, the floor to floor heights are quite low – about 11', with ceiling heights of 8'-0" or even less.
3. The air conditioning systems are usually induction systems – something incredibly inefficient that no one would consider designing at this time.
4. The external walls are the very early single glazed curtain walls. They were designed with minimal wind load – a fraction of what would be considered today – and with a category 3 hurricane could easily fail.
5. The exterior walls have operable windows for cleaning the outside of the building. Many of these frames have warped over the years and leak both air and water.

The Terrapin study showed that it is almost impossible to make a meaningful difference in energy efficiency by retrofitting these buildings, and it is unquestionably financially unfeasible. Why are they still here? They were all built to the maximum zoning floor area which in some cases has been lowered since they were built. I can assure you that almost no building owner will go through the expense of tearing down an existing building – however obsolete – to build a new one of equal or lesser area.

So I support the proposed zoning amendment because I believe it will encourage new high performance buildings in Midtown. There are three main reasons why:

1. We know from PlaNYC that in order to significantly change the carbon footprint of our city we must deal with all the existing buildings.
2. There are developers who would demolish a building and replace it with a new state-of-the-art "green" building if they could achieve more rentable area.
3. Because the proposal breaks new ground with requirements for these buildings to out-perform energy code, and because of competition in the NYC real estate market, I believe that almost

> every new building will use less energy per person, save about 50% of typical potable water use, capture and reuse 100% of the storm water that falls on the site, perhaps generate some of its energy on site and certainly make ice at night to store energy. And perhaps – most importantly for the future of our city – create healthy, productive and vibrant work environments.

I believe this proposed zoning amendment will help achieve some of the more critical goals of PlaNYC.

Thank you for this opportunity.

urban green

Testimony for Cecil Scheib
New York City Planning Commission
August 7, 2013

Good morning Madame Chairperson and members of the Commission. My name is Cecil Scheib. I am a licensed professional engineer in New York State, a LEED Accredited Professional, and I am Advocacy Director of Urban Green Council. I am here to testify about the proposed energy efficiency standards in the East Midtown rezoning.

Urban Green Council wishes to commend the Commission on its initiative to include energy efficiency requirements in this rezoning. We are highly supportive of this direction and we hope it will be a model in NYC and elsewhere.

Energy efficiency is important because it helps reduce the carbon pollution that causes global warming, threatening our city with hurricanes and deadly heat waves. Carbon pollution costs New Yorkers their property, and sometimes their lives, and three quarters of it comes from buildings. East Midtown energy efficiency is also necessary to reduce the strain on utility systems that can lead to summer blackouts.

The Commission proposes a 15 percent energy efficiency improvement – a reasonable number. The market demands new construction be LEED certified, which means it's already 10 percent better than code. Something above the norm should be required for East Midtown. Under Local Law 86 of 2005, NYC buildings must be 30 percent better than code. So the Commission's suggested 15 percent reduction is significant without placing an undue burden on East Midtown. We have three suggestions to help the rezoning reach its goals.

First, the savings percentage should be tied to whatever code is in effect when a project is designed, not the code in effect right now.

The energy code is not static. It is updated on a three-year cycle by a national consensus process of government and private stakeholders, including New York.

Urban Green Council
U S Green
Building Council
New York

20 Broad Street
Suite 709
New York, NY 10005

Phone (212) 514-9385
Fax (212) 514-9381
urbangreencouncil.org

But the proposal is based only on the current energy code. It will be out date before it's even used, because New York will adopt a new energy code this fall.

New York design experts and a US Department of Energy study tell us that under the new code, non-tenant energy usage of a large commercial building in our climate zone will drop anywhere from 10 to 30 percent. Taken with the market realities of LEED, this means the 15 percent improvement proposed by the Commission will be overtaken before the first building gets a permit, much less breaks ground. We recommend the rezoning text be tied to whatever code is in effect when buildings are designed.

Our second suggestion is to refer to an accepted standard to keep the required energy savings relevant.

Since codes change, the required energy savings should reflect market realities. Since LEED undergoes a national stakeholder process, its updates are reasonable and accepted by the industry. We recommend that projects be required to design for five LEED energy points, an 11% savings over code with the new LEED version. This is the bare minimum to make a difference from market forces, which experts tell us will lead Midtown East projects to seek LEED and at least 3 energy points. By tying the savings to LEED, instead of a fixed percentage based on outdated code, the city will benefit from a regularly evolving peer reviewed standard. The requirement will adapt to the market.

Finally, the Commission can make these design requirements more enforceable by the Department of Buildings by allowing a test referenced in the energy code called the *performance rating method*, which was specifically designed to rate the performance of new buildings.

The purpose of the test method currently proposed is to determine code compliance, not to calculate improvements over code. LEED uses the performance rating method, and East Midtown zoning should, too.

We would like to reiterate our appreciation for the Commission's leadership in including energy requirements in the East Midtown rezoning, which will improve our city and the health of all New Yorkers. We offer these recommendations to keep the proposal relevant in the future. I look forward to answering any questions you may have.

GALE A. BREWER
COUNCIL MEMBER, DISTRICT 6
MANHATTAN

DISTRICT OFFICE
563 COLUMBUS AVENUE AT 87TH STREET
NEW YORK, NY 10024
(212) 873-0282
FAX (212) 873-0279

CITY HALL OFFICE
250 BROADWAY, SUITE 1744
NEW YORK, NY 10007
(212) 788-6975
FAX (212) 513-7717

gale.brewer@council.nyc.gov
www.council.nyc.gov

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Testimony before the City Planning Commission on Proposed East Midtown Rezoning August 7, 2013 by Council Member Gale A. Brewer

My name is Gale A. Brewer and I represent the Upper West Side and northern Clinton in the City Council. I am testifying on the Commission's modification of the proposed East Midtown rezoning. Thank you for giving me this opportunity.

Last year I urged the Department of City Planning and the Mayor's office to reconsider the impact of their proposal, and to allow for a long, thorough planning process. Less than 12 months later the plan is before us once again- only somewhat modified, still ill-conceived and a rush to judgment, and in essence a vague set of ideas with the potential to do unnecessary harm.

I urge you to pay close attention – as I am sure you have – to the report of the Multi-Community Board Task Force because they raise the questions that must be answered before an application moves forward, as has Council Member Dan Garodnick. I know that the Borough President has also made insightful comments that are before us today.

The most important aspect of the modified proposal is up-front funding for public space and transportation prior to major rebuilding, including expansion of capacity on the 4, 5, and 6 lines at Grand Central Terminal. However, these are just concepts - there is nothing in the proposal that could be accurately described as a *plan* or a timetable to make them into a reality. Specifically, there is no funding mechanism for the hundreds of millions of dollars that the subway redesign would require. This, at a time when the city is facing a multi-billion dollar budget shortfall and the MTA is already burdened by massive debt, with fares and tolls to pay for it already projected to rise 30% over the next few years. The "plan" before you seems to be a blank slate of unfunded ideas, upon which unknown parties, at an unknown time, will reshape East Midtown and its iconic architectural identity into an unknown form at their whim.

The Commission has done excellent, thoughtful rezoning in other parts of the city- including in my own City Council District; please don't sign off on these vague promises, unfunded concepts, and uncontrollable consequences as a "plan" for New York. We need to emulate the process of the planning for the Hudson Yards, for instance, and come up with a more thoroughly researched plan that better takes into account the needs of the East Midtown community, and the city at large.

The Commission's East Midtown proposals for mixed-use high rises and air rights transfer are a place to *begin* planning. But the specifications for the Northern Sub-Area seem intended only to address the demands of a few property owners. Without specified site controls on location, height, volume, density, and other key planning factors it is easy to foresee Park, Madison and Lexington Avenues lost to the piecemeal creation of second-rate high-rise corridors like Second and Third Avenues - walls of sterile towers, streets devoid of green public space or any amenity, drowned in traffic and air pollution, and created only to provide sunny aeries for a few high above. In this respect, the threat to Park Avenue in the revised setback proposal is particularly dire.

As I stated last year, one of the most alarming potential side effects of a poorly thought out rezoning plan will be an influx of uninspired buildings into one of the city's most venerated skyscraper districts. This rezoning should include a preservation plan for the area's iconic buildings, and strict limits on intrusive development around landmarks like the Chrysler, Chanin, and RCA buildings, as well as Grand Central Station. It should also include a strong preservation component for other important buildings, like the Lincoln Building and the Fred Friendly Building, that distinguish their sites and help define the city. In addition, the plan should require that architects working under the East Midtown rezoning match the quality of these inspired buildings, and ensure that New York's status as the world's greatest modern architectural landscape is not lost to the mediocrity that characterizes some new construction.

In closing, I once again urge you to step back from this rush to judgment. Everyone understands that many of the area's older buildings come with low ceilings and column spacing that make them unattractive to current technology build-outs, and the city must modernize to survive, and that each generation must make room for new ideas and new plans. Some things that we cherish are inevitably lost. But this great city should never *plan* to hasten the destruction of what it treasures and what identifies it in the eyes of the world. The Commission's highest responsibility is not to act on such motives. There is plenty of time to rezone East Midtown rationally and creatively, and to chart a wise course in doing so.

DANIEL R. GARODNICK
COUNCIL MEMBER, DISTRICT 4

DISTRICT OFFICE:
211 E. 43RD ST., SUITE 1205
NEW YORK, NY 10017
TEL: (212) 818-0580
FAX: (212) 818-0706

CITY HALL OFFICE:
250 BROADWAY, ROOM 1880
NEW YORK, NY 10007

garodnick@council.nyc.gov

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Testimony of Council Member Daniel R. Garodnick
On ULURP Application Nos.: N 130247 ZRM and C 130248 ZMM
related to the East Midtown Rezoning
Before the City Planning Commission
Wednesday, August 7, 2013

Chair Burden and City Planning Commissioners, thank you for the opportunity to testify about the proposed zoning text and zoning map amendments which would establish the East Midtown Subdistrict and amend the existing zoning in a portion of the Special Midtown District.

For the past 19 months, we have been engaged in a city-wide dialogue about this proposal. Since last testifying at the scoping session on September 27, 2012, there has been a lot of discussion, but not too many changes to the proposal. We appreciate that in matters such as these, many amendments do not take place until the final stage of the ULURP process—namely, at the City Council. It is therefore my expectation that we still have considerable work to do, even after this Commission votes on the proposal and the a-text amendment, and moves this process forward.

I also want to recognize that the Multi-Community Board task force, comprised of Boards 1, 4, 5, and 6, did a yeoman's job in steering our community through a detailed review of this proposal. I strongly urge the Commission to read their report carefully. While their ultimate vote was to disapprove of this application, they lay out a series of important proposals and raise many questions that must be addressed for this application to succeed. Likewise, the Borough President's detailed report provides an important roadmap for all of us to use.

As you know, I asked for a six month delay in this process to afford us the opportunity to struggle through these issues in a more reasonable timeframe. Even a proposal with merit can fail for lack of planning, and the desire for this to be a legacy of the Administration will not be a justification to sacrifice quality in the process.

As for the changes proposed today, I appreciate that the Administration has continued to modify this proposal to address concerns raised by various stakeholders. Indeed, the a-text amendment includes a variety of welcome changes—including a mixed use residential component; flexibility for rooftop amenities; and the ability for landmarks above 49th Street to more broadly transfer their air rights. These are all changes that I support. It was important that these changes be made at this point, because they are now within the scope of the ULURP process, and will allow the City Council to consider them.

And yet, as set forth below, the biggest challenges related to this proposal remain.

Infrastructure

The Grand Central area is in dire need of infrastructure improvements today, with or without any rezoning. The public deserves to know with certainty what they will get out of this proposal—much as the development community will. I was therefore encouraged to see the Mayor's op-ed last week announcing that the City will pay for critical infrastructure investments upfront—heeding my calls, and those of the community, that if any future development is to occur, it must be preceded by a significant investment in our overtaxed transit system. While this is an important signal from the Mayor, we still lack the detail necessary to be able to evaluate this commitment in the broader context of this rezoning.

Public Realm

Similar to the needed infrastructure improvements, it is vital that this rezoning take steps to reduce the congestion on our streets, sidewalks and limited open space. Any plan must ultimately result in more walkable and well-designed streets, open spaces, and seamless connections between the buildings and Grand Central. Until recently, the only suggestion by the City to address these matters had been the conversion of Vanderbilt Avenue to a pedestrian plaza—an idea which is appealing, but has many logistical implications that may prevent it from being implemented as proposed.

The City heard our calls for a comprehensive public realm plan, and hired a consultant to engage the community in three public workshops. We will need to find ways to activate the plan before the City Council votes on this proposal.

Pricing

Having studied the issue of pricing in greater detail, I question the wisdom of setting the price for air rights at $250 per square foot. I do not know if that is the right price; indeed, nobody could possibly know if that is the right price. That is why we need a more objective and fluid measure that can reflect market conditions and individual sites.

We will consider the wisdom of: setting a single price for an entire 73 block area; leaning on an appraisal that will be over 5 years old at the time the first buildings are developed; using the proposed adjustment mechanism (tied to the Midtown Manhattan average asking office rents report) as the best way to create a dynamic price over time; and setting a price using other mechanisms that could allow for a closer approximation to market value.

DIF Committee

In addition to the issues of market-based pricing and the timing of infrastructure and public realm investments, the composition of the DIF Committee and structure of projects are important outstanding issues.

The DIF Committee must include robust public participation, and it is unacceptable to have a committee solely comprised of Mayoral appointees. At the very least, this committee should include representatives from the City Council, the local community boards, and relevant City agencies, but we should also consider more innovative ways to solicit community feedback.

Additionally, it is important that the DIF Committee has a transparent procedure for prioritizing and funding future projects. I wholeheartedly agree with the Borough President's recommendation that any changes in the proposed project list be made available for public comment. Likewise, I do not know why the rezoning proposal would allow for the inclusion of in-kind contributions in lieu of monetary contributions. I fear that allowing developers to make their own improvements will detract from the goals of having the district-wide benefits of the DIF.

And, as has been pointed out by the community boards as well as the Borough President, we will need assurances that monies raised through the DIF are not used to meet obligations that City has made to mitigate prior projects—such as East Side Access and the 7 Line Extension. Those obligations should be met, in addition to any of the commitments made by the Mayor.

Density

To date, there has been very little discussion about what the appropriate density in the East Midtown area should be. As this proposal moves forward, the question about density will move closer to the fore. The proposal would increase the as-of-right density with the purchase of air rights from 15 FAR to 24 FAR immediately around Grand Central, and from 15 FAR to either 18 or 21.6 FAR along Madison, Lexington and Park Avenues, respectively. While it is clear that some buildings in midtown are stuck, with no incentive to modernize, it is not clear to me that this proposal has landed at the right numbers for density.

Let us be clear: these will be some of the tallest buildings in our skyline, and the community boards have raised the important question of why some of these buildings should be allowed to secure the maximum FAR without any public review whatsoever. The impacted boards have made a strong argument that the City should not entirely sacrifice their role in the process. That is a fair point. It is also unclear to me why 18, 21.6 or 24 FAR is the right number here, and we will evaluate the appropriateness of those density calculations in the context of other commercial districts.

Sustainability

Any new buildings that arise from this rezoning should be held to the highest environmental standards. The current proposal would require qualified sites to outperform the New York City Energy Conservation Code by at least 15 percent. While this is a step in the right direction, the text ties the performance to the 2011 Code.

We do not know when the first buildings will go up, and we certainly do not want their sustainability goals to be tied to an outdated and potentially obsolete standard. At the very least, the sustainability requirement should be tied to the code in place at the time that permits are issued.

Landmarks

As part of the recent amendments, the City has suggested creating an area in the northern sub-district for landmarks to transfer their unused development rights. This transfer has limited applicability, and while I agree with the concept that our land-locked landmarked buildings should have the ability to transfer unused air rights, it is worth noting that any landmarked building that transfers unused development rights will be doing so in direct competition with the city's infrastructure fund.

I have studied this carefully and believe that the small number of landmarks in the northern sub-district would benefit from the transfer at very little cost to the future DIF, and the transfer will allow them to make important upgrades to their buildings.

We also look forward to the recommendations from the Landmarks Commission on calendaring of individual landmarks. As we consider the potential for new development in this corridor, we need to ensure that buildings with historic significance are protected. There are 23 landmarked buildings within the proposed boundaries today. The Landmarks Preservation Commission has identified 32 additional potential historic resources and I have asked that they expeditiously conduct this review so that we have the benefit of their analysis before this proposal arrives at the City Council.

Special Permit for hotel development

We need a plan that empowers the community to address the particular concerns that hotels bring to our neighborhoods. Because hotels are a 24-hour-a-day operation, distinct from commercial or residential uses, we need to treat them differently, and that is what a special permit achieves. I was disappointed to see that this was included neither at the April 22 certification, nor in the amended text proposed last month.

Rationale for Sunrise provision

The very existence of a 5 year sunrise provision begs the question of the potential impact of this rezoning on other developing commercial districts. We need to ensure that this rezoning does not draw development away from areas in which the City has heavily invested—like

Hudson Yards. However, it is not clear to me today that this rezoning will compete with other developing districts. I will continue to study this issue, but there may be no rationale to push development into the future, and thereby delay potential DIF infrastructure payments from the limited sites that could be ready before 2017.

Turtle Bay

One remaining issue that I want to note today is the possibility that this rezoning would expand commercial development into the residential neighborhood of Turtle Bay—particularly east of Third Avenue in the 40s. If this rezoning is to succeed, we must ensure that it balances density where appropriate, while protecting the residential nature of this historic community.

Conclusion

The above is my effort to consolidate my biggest concerns about this proposal. There are other, more technical issues, that I have omitted here. I am hopeful that the City will take these recommendations seriously, and look forward to reviewing any proposal that the Commission approves.

Thank you for the opportunity to testify today.

LIZ KRUEGER
SENATOR, 28TH DISTRICT
ALBANY OFFICE
LEGISLATIVE OFFICE BUILDING
ROOM 905
ALBANY, NEW YORK 12247
(518) 455-2297
FAX (518) 426-6874
DISTRICT OFFICE
211 EAST 43RD STREET
SUITE 401
NEW YORK, NEW YORK 10017
(212) 490-9535
FAX (212) 490-2151
E-MAIL
LKRUEGER@NYSENATE.GOV

NEW YORK
STATE
SENATE
ALBANY, NEW YORK 12247

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Testimony of State Senator Liz Krueger
Before the New York City Planning Commission on the
Proposed Rezoning of East Midtown
August 7, 2103

My name is Liz Krueger and I am the State Senator representing the 28th State Senate District, which includes parts of East Midtown, and most of the East Side of Manhattan from 13th Street to 96th Street. I appreciate this opportunity to comment on the Department of City Planning's proposed rezoning of East Midtown, a 73-block area surrounding Grand Central Terminal.

Barely a year after the idea of rezoning East Midtown was first mentioned in the Mayor's 2012 State of the City address, a sweeping rezoning proposal that has the potential to dramatically impact the area was certified by the Department of City Planning for public review through the Uniform Land Use Review Procedure (ULURP) process. The certification on such an abbreviated timeline of a rezoning proposal of this scale is virtually unprecedented. Along with the members of the Multi-Board Task Force on East Midtown, and my fellow East Side elected officials, I called upon the City to postpone the certification of this proposal to allow time for sufficient community input. Unfortunately, instead of slowing down the process and seriously considering the myriad concerns raised, the City certified an ill-conceived rezoning proposal that will benefit a small number of developers at the public's expense.

I believe, as do many people in this room, that the East Midtown rezoning proposal fails to address a number of fundamental concerns that local elected officials, Task Force members, editorial boards, transportation, land-use and preservation advocates, and other affected community members have raised over the course of the last year. Any zoning changes with the potential to lead to substantial new development in a densely populated vibrant area, such as those being considered today, must be carefully considered in the context of comprehensive community-based infrastructure and open space plans. A rezoning of this scale cannot be driven simply by a desire to facilitate real estate development or to complete it before the end of a mayoral administration.

I fully appreciate the importance of maintaining East Midtown's long-standing position as a premier business district for companies across the globe, and understand that some of the area's existing building stock is out of date. There is no question that we must keep our midtown core competitive, and that some zoning changes may be needed to encourage the development of new world-class office buildings and the jobs that will come with them. However, the future competitiveness of East Midtown will be determined not by whether a number of new large office towers are constructed but by the strength of the area's transportation infrastructure, the vibrancy of its streets and open spaces, and the protection of its historic resources. Building stock is only one piece of the puzzle, and this plan fails to properly account for these other factors' critical importance to any effort at ensuring East Midtown will remain a premier business district.

I am proud to have included in my district the incredibly talented and dedicated members of Community Boards 5 and 6, in whose boundaries this rezoning is being proposed. Community Boards 5 and 6, which joined with Community Boards 1 and 4 to form the Multi-Board Task Force on East Midtown, worked tirelessly to analyze, debate, and improve this rezoning proposal since it was first announced. After countless hours of discussion and public meetings, the Task Force developed comprehensive "Principles for a New East Midtown" which state that the rezoning of the area will only be successful if it strengthens the area's transit network, provides desperately needed additional open space, improves pedestrian flow, and protects the neighborhood's historic buildings. There is no question that these principles, rather than a focus on adding large class A office towers, should provide the framework for any rezoning of East Midtown.

Unfortunately, despite months of discussions between the Multi-Board Task Force and the City before the rezoning plan was certified, the rezoning proposal submitted for consideration through the ULURP process ignores almost all of the fundamental principles the Task Force articulated. After conducting a public hearing on the certified proposal, and engaging in many additional hours of discussion, the Task Force determined that the rezoning proposal violates the majority of its "Principles for a New East Midtown," fails to address the real challenges facing the community, and does not properly balance private gain with public good. The Multi-Board Task Force, the individual boards making up the Task Force, and the Manhattan Borough Board all voted to recommend denial of the ULURP application.

While the City has made small improvements to its rezoning proposal since the votes by the Multi-Board Task Force and Manhattan Borough Board, these improvements are far too modest and fail to address the plan's fundamental flaws. Therefore, I join the Multi-Board Task Force in recommending the rejection of the proposed rezoning of East Midtown.

The adoption of this proposal would represent a tremendous missed opportunity at best, and would play a dangerously risky game with the future of Manhattan's urban and commercial core in East Midtown. Below, I highlight some of my primary concerns about the plan.

Infrastructure

In both meetings and written correspondence with the City, my fellow elected officials and I insisted upon a commitment to infrastructure improvements in the Grand Central neighborhood today, not simply an offer to attempt to start them more than five years in the future. The plan ignores this concern, offering us the future prospect of a District Improvement Fund financed by uncertain commercial development and steered by a committee of mayoral appointees who are not even obligated to spend the money on the improvements that are of highest priority to the community.

We cannot build a 21st century Midtown with early 20th century infrastructure. If the City is serious about our global position with respect to other world cities, serious infrastructure investment should be at the center of any plan for Midtown. As the *New York Times* architecture critic Michael Kimmelman wrote on July 24, 2013:

> Big cities making gains on New York are investing in rail stations, airports and high–speed trains, while New York rests on the laurels of Grand Central and suffers the 4, 5, and 6 trains,

> which serve East Midtown….Improving the lives of the 1.3 million people riding those trains would instantly make the city more competitive.

The MTA has identified $340 to $465 million in basic improvements (in 2013 dollars) that will be needed – not desired, needed – over the next ten years. These are particularly crucial in light of the projected completion of East Side Access, and the expansion of the 7 line to the far West Side, before the end of the decade. East Side Access alone is projected to add approximately 80,000 additional people each day to the Grand Central area's already-overtaxed pedestrian network and subway and intermodal connections. Moreover, it is inappropriate for the MTA and the City of New York to rely on a local rezoning to fund critical capital transit improvements that will benefit (and should be paid for by) the whole region.

We can work with the City and the MTA to prioritize needed improvements, but the funding and timetable must be predictable, stable, and not substantially dependent on the hope of development and attendant contributions to the proposed District Improvement Fund. My colleagues and I have repeatedly insisted that we must think far more ambitiously about potential infrastructure investments, and investigating sources of funding other than the proposed District Improvement Fund. Members of the community have proposed several alternatives that are worth serious investigation and consideration, including bonding or pursuing special assessments. Both of these have been dismissed by City officials, with obvious contempt, at public meetings. The closed-minded, my-way-or-the-highway attitude displayed by the Administration throughout this process, particularly on this point, has been unacceptable.

After months of refusing to consider alternative funding infrastructure mechanisms, Mayor Bloomberg announced in a *Daily News* editorial last week that the city would advance "a significant portion of the money" so that "the public can experience the benefits of the plan — a transformed Grand Central with benefits throughout the Lexington subway line and improvements to streets and public spaces — far more quickly." While I am pleased the City has apparently recognized that it cannot wait for private funds to trickle into the District Improvement Fund to begin infrastructure improvements, we have been given few details and no specific guarantees on how and when this money would be spent provides little comfort to the community.

Pricing of the District Improvement Bonus

Even taking the District Improvement Fund as given, the plan presented seems deeply flawed. I appreciate that the City consulted experts to develop a "fair market value" of contributions to the District Improvement Fund, but I join community members and several of my fellow elected officials in wondering why the City chose to assess this particular number – an average fair market value for air rights across an extremely varied area. I question the wisdom and the necessity of applying this rate universally, when it may be tremendously undervalued with respect to the specific development sites in question. Still, I appreciate that some expert scrutiny and planning has been brought to bear on the question of air rights valuation, in stark contrast to the complete lack of advance planning or predictability when it comes to the transit and public realm improvements this rezoning is supposedly intended to support.

Public Realm

My colleagues and I joined members of the community in calling for a comprehensive public realm plan addressing the area's needs block by block almost a year ago. A rezoning plan must result in more walk-able and well-designed streets, open spaces, and seamless connections between the buildings and Grand Central. With the exception of closing off several blocks of Vanderbilt Avenue to car traffic, the City has not adequately studied these questions, nor has it formulated anything resembling a comprehensive plan. As an aside, the City's clear prioritization of Vanderbilt Avenue's closure and conversion to a public plaza seems odd, given its low value to the neighborhood as a whole when compared to transit and street-level pedestrian improvements. There are many unanswered questions about the "private" versus "public" advantages that would be the result of Vanderbilt Avenue's closure.

I am pleased that at the urging of Councilmember Daniel Garodnick, the Departments of City Planning and Transportation hired architecture and planning consultants to work with the public to develop a comprehensive public realm plan for East Midtown. Unfortunately, this public realm study was not initiated until almost a month after the certification of the East Midtown rezoning plan – making it impossible for any recommendations from this public realm study to be incorporated into the formal review of the rezoning proposal.

Historic Preservation & Landmarks

I am also concerned that the rezoning proposal fails to provide an adequate opportunity to protect the many historically and architecturally important buildings in East Midtown that have not yet been landmarked. There are 21 non-landmarked buildings in the proposed rezoning area that the New York State Historic Preservation Office has determined are eligible for listing on the State and National Registers of Historic Places. A 2012 survey conducted by the New York Landmarks Conservancy found an additional 17 historic buildings that it plans to submit to State Historic Preservation Office for consideration. Of this total group of 38 historically significant buildings identified by the Landmarks Conservancy, 16 have been identified as projected or potential development sites in the scoping document prepared by the Department of City Planning.

Given the speed at which the rezoning proposal is moving forward, it is essential for the Landmarks Preservation Commission to calendar the buildings it has identified as expeditiously as possible. The Draft Environmental Impact Statement (DEIS) evaluating this rezoning proposal identified 11 buildings eligible for possible landmark designation by the City Landmarks Preservation Commission. The owner of one of 16 East 41st Street, one of the 11 buildings listed in the DEIS, is already working to strip the building of its historic façade to try to prevent landmark designation. Unless the Landmarks Preservation Commission acts quickly to protect the 10 remaining buildings, the remaining non-designated historic buildings are in great danger of being altered or demolished.

As we are working to lay the groundwork for the future of East Midtown, it must ensure that the historically important buildings that add to the community's vibrancy and diversity are preserved. As anyone familiar with the history of East Midtown is aware, if it were not for citizen activists challenging poorly vetted proposals, we would no longer have Grand Central Station, the Lever House, or St. Bartholomew's Church on Park Avenue.

To summarize:

1. The City has failed to outline, detail, or guarantee swift progress on the very transit and public realm improvements this rezoning is supposed to fund;
2. The City has failed to adequately study alternative funding mechanisms to overcome or sidestep the shortcomings of the proposed District Improvement Fund structure;
3. The City has failed to even consider strategies for maximizing District Improvement Fund revenue, volunteering to leave substantial sums of money on the table rather than maximize the benefit of their plan for transit and the public realm; and
4. The City has failed to leave adequate time for evaluating landmarks status for a significant number of important buildings identified by the experts in their fields.

The rezoning proposal being considered today is not a comprehensive plan for the future of East Midtown. It is a proposal to add substantial commercial density to a neighborhood with overburdened infrastructure that fails to provide reliable benefits for the impacted community. That is not how land-use, zoning, and transit planning should be done in New York City.

I pledge my continued support to work toward a plan that is guided by the framework established by the Multi-Board Task Force's "Principles for a New East Midtown." These are complicated issues, and it appears that the City is either unwilling or unable to seriously address them in 2013. I believe in the City's stated goal for this rezoning plan: securing the future of East Midtown as a premier business district. But because I do believe in that goal, I believe we must reject this plan, this year, and work together to come up with a plan that actually achieves that goal.

New York City Transit Riders Council

NYPIRG Straphangers Campaign

Riders Alliance

Transportation Alternatives

Tri-State Transportation Campaign

Good Morning. My name is William Henderson; I am the Executive Director of the Permanent Citizens Advisory Committee to the MTA. I am speaking today on behalf of my group and its constituent council, the New York City Transit Riders Council, as well as the NYPIRG Straphangers Campaign, the Riders Alliance, Transportation Alternatives, and the Tri-State Transportation Campaign.

Clearly, action is needed to improve transportation infrastructure and the pedestrian environment in East Midtown, and it is encouraging to see the Bloomberg Administration exploring innovative means of funding these needed improvements. Even without further development, riders and pedestrians in the area are suffering unacceptable levels of crowding on the sidewalks and subways of East Midtown. Narrow sidewalks are difficult to navigate in rush hours as automotive traffic dominates the streetscape. The Lexington Avenue line, with its 4, 5 and 6 trains, carries nearly one third of the daily riders of the subway system and operates at 116 percent of capacity during the rush hour. This crowding takes a toll, as extended dwell time in stations that is caused by overcrowding slows trains and reduce capacity on the line by more than 10 percent during the morning peak.

Anyone who travels through East Midtown during peak periods doesn't need statistics to know there is a problem in East Midtown; the painful experience of trying to move through the area is sufficient. These issues demand immediate attention, and because of this our groups had misgivings about the initial rezoning proposal, which provided that funding for transportation improvements would become available only as developers paid into a dedicated fund. We are encouraged by the Administration's evolving position, as expressed in Mayor Bloomberg's July 31 New York Daily News Op-Ed, that a significant portion of the expected $500 million in proceeds from the rezoning plan would be advanced to fund needed improvements in Grand Central, the Lexington Line, and area streets and public spaces.

Mayor Bloomberg has committed to develop a specific package of improvements to be funded through funds advanced by the City and repaid as developers pay into the dedicated fund. This change is a positive step forward, but much greater detail is needed to evaluate this proposal. The information to be provided should include the total amount that will be advanced to fund improvements and the source of these funds, as well as breaking down the total funding advanced to subway, surface transportation and streetscape, and public realm projects. It is not only critical to know which projects that will be benefitted but also to know the portion of their costs that City funding will meet and the source of funding for any remaining costs. The mechanism by which this funding is made available, the actors that will be involved, and how the process will be institutionalized to ensure that it moves forward in future administrations are important to know. Finally, as someone once said, timing is everything, and this further information must address the phasing of improvements to be completed with funding advanced by the City.

Transportation advocates, including our groups, have long considered ensuring a stable and reliable funding stream for capital improvements a top priority. This proposal can be a vital part of this funding stream, but at this point we need to hear more detail about what is being proposed and how it will function over time.

LANDMARK WEST!

THE COMMITTEE TO PRESERVE THE UPPER WESTSIDE

Testimony of LANDMARK WEST!
Before the New York City Planning Commission
Proposed East Midtown Rezoning
August 7, 2013

LANDMARK WEST! is a not-for-profit community organization committed to the preservation of the architectural heritage of the Upper West Side.

LW! strongly opposes the East Midtown rezoning proposal by the NYC Department of City Planning. Today, LW! departs our own architecturally vibrant Upper West Side to speak on behalf of our extended neighborhood, East Midtown, whose unprotected architectural resources merit public comment.

As Robert A.M. Stern, architect and dean of the Yale School of Architecture writing in the *New York Times* on April 21, 2013, and others have urged, a thoughtful proposal must consider the intrinsic value the historic buildings around Grand Central have imparted to the area. If heard and designated, the 32 buildings eligible for Individual NYC Landmark status will again spur development, as preservation has done for the SoHo and Flatiron districts in the past. Rather, the LPC has, in the words of *New York Times* architecture critic Michael Kimmelman on July 24, 2013 "dragged its feet on the landmark status of these buildings… greasing the wheels for development."

East Midtown is one of the most architecturally iconic sections of the city. Grand Central Terminal first posited East Midtown's status as a world-class transit and business district when it opened in 1913, 100 years ago. The development that followed resulted in construction of some of the beloved buildings that created Terminal City as a distinct enclave and a major center of business in Manhattan. This is the neighborhood that the Chrysler Building and the elegant office towers of the post-World War II construction boom call home. Collectively, the layers of this building fabric have served as a nucleus for investment for over a century. Future layers of the world's premier business address deserve a comprehensive plan and stringent public review process that truly listens to the public's unanswered questions and concerns.

Instead, New Yorkers have been presented a hastily-composed "plan," which will be damaging to our entire city. As the *New York Times* has reported, the plan has been "a rush job, too hurried for the public good," thinly veiled beneath a desire to have it approved before the end of Mayor Bloomberg's final term. Michael Kimmelman agrees, characterizing the proposal's aim to "limit public oversight."

It is time to put politics aside. Absent from the East Midtown "plan" is a discussion about the future of 31 historic buildings which are eligible as Individual Landmarks by the Landmarks Preservation Commission; absent is public input on new construction of extraordinary size and density; absent is "a guarantee that in the future the Chrysler Building and the Empire State

45 WEST 67 STREET, NEW YORK, NY 10023 TEL: 212-496-8110 FAX: 212-875-0209 landmarkwest@landmarkwest.org

Building will not be lost in thickets of taller buildings," as heeded by architect Robert A.M. Stern in his op-ed to the *New York Times* on April 21, 2013.

Abundantly present in the East Midtown proposal are strong voices of criticism, if not cries for help, and not only from preservationists. Collectively, Community Boards 1, 2, 4, 5, 6, 7, 8, and 10, the *New York Times*, transit advocates, elected officials, and community groups request a plan for East Midtown of the caliber of the great city it seeks to serve. The plan in its current form is an affront to architecture, urban planning, and the people of New York.

We urge the City Planning Commission to listen to New York today, and not be sorry tomorrow, and deny the proposed East Midtown rezoning.

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GENERAL INFORMATION

HOW TO PARTICIPATE:

Signing up to speak: Anyone wishing to speak on any of the items listed under "Public Hearing" in this Calendar, is requested to fill out a speaker's slip supplied at the staff desk outside the hearing chambers on the day of the hearing. Speakers on each item will be called in the order these slips are submitted, with the exception that public officials will be allowed to speak first. If a large number of people wish to speak on a particular item, statements will be taken alternating every 30 minutes between those speaking in support of the proposal and those speaking in opposition.

Length of Testimony: In order to give others an opportunity to speak, all speakers are asked to limit their remarks to three minutes.

Written Comments: If you intend to submit a written statement and/or other documents please submit 20 sets of each.

Anyone wishing to present facts or to inform the Commission of their view on an item in this calendar, but who cannot or does not wish to speak at the public hearing, may fill out the form below and return it to the desk outside the hearing chambers or mail their written comments to:

CITY PLANNING COMMISSION
Calendar Information Office - Room 2E
22 Reade Street, New York, N.Y. 10007

(Extra copies of this form may be obtained in the Calendar Information Office at the above address.)

Subject: East Midtown Rezoning

Date of Hearing: 8/7/2013 Calendar No. 23, 24, 25

Borough: Manhattan ULURP No.: ______ CD No.: 6

Position: Opposed ✓ C 130248 ZMM

In Favor ______

Comments:

Name: Rachel Levy

Address: 45 West 67th Street, NY, NY 10023

Organization (if any) LANDMARK WEST!

Address: 45 West 67th St Title: Graduate Intern

JESSICA S. LAPPIN
COUNCIL MEMBER • 5TH DISTRICT

DISTRICT OFFICE
330 EAST 63RD STREET, SUITE 1K
NEW YORK, NY 10065
(212) 980-1808
FAX (212) 980-1828

lappin@council.nyc.gov

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Testimony of City Council Member Jessica Lappin
Before the City Planning Commission
Public hearing on the East Midtown Rezoning
August 7, 2013

I am pleased to be here today to offer testimony on the East Midtown Rezoning Plan.

While I agree with the premise that the city has a great interest in preserving the allure and appeal of East Midtown as a business address, the City's current rezoning proposal has not substantially taken public feedback into account and falls far short in many important respects.

I have said from the get go that this process is simply moving too fast. City Planning's recent modifications to the rezoning offer some improvements but do not go nearly far enough. I would like to focus on five key areas of the rezoning that require further attention.

First, crucial infrastructure and pedestrian flow improvements must be made in advance of any development. East Midtown is already one of the densest population centers in the developed world with a transit system that is currently overcapacity. And we have been told repeatedly that no more trains can be added to Lexington Avenue corridor. Yet, this rezoning would bring an estimated 15,000 additional people into a central business district that is already congested. The Administration has recently agreed in concept to advance a portion of the funding before development begins to reduce congestion at the Lexington Avenue line at Grand Central Station. This is a step in the right direction. But not enough. It also raises more questions than it answers. What specific improvements actually could and would be made? How much would they cost? What is the timetable for their completion? In what order would they be done? What if there isn't enough funding to complete them?

And what assurances are there that commitments will be kept both by this and future administrations? A real transit strategy is needed, with specific plans and a detailed budget. Further, the plans laid out by the MTA last fall, which the MTA estimated would cost up to a half a billion dollars in 2012 dollars, merely fix the problems that exist today. If we desire to truly compete on the world stage, we need to create a 21st Century transit strategy that would link Grand Central with Penn Station, create one stop access to our local airports, and complete the 2nd Avenue subway, among other important goals.

Second, the District Improvement Bonus mechanism, known as the DIB, is flawed and should be revamped. Developers would have the right to build larger buildings by contributing to a District Improvement Fund prior to development. The problem is that we don't know how much money the fund will have or when it will have it. And the improvements will be needed long before projects are built. To address this problem, other secondary funding mechanisms should be considered, such as issuing bonds against the fund - as suggested by Senator Schumer and others. An appraisal process for development rights is also needed to ensure market pricing at the time of each transaction. This is what the City does when it sells its own properties, and it should be done here.

And, of course, the governing committee for the DIB fund must be more inclusive, and should include representation from the City Council, the Borough President and the Community Boards.

Third, a comprehensive public realm plan is needed. A community planning process was organized by City Planning and DOT in May to create a vision for needed streetscape improvements in east midtown. But this study was begun after the ULURP application was certified and is therefore not part of the application before us today. Further, the results of this study will not be known until sometime this fall, possibly not until around the time the City Council must vote on this ULURP application. Candidly, I must add that, with the demands of infrastructure inevitably coming first, it seems extremely doubtful that any money from the DIB will ever be designated toward the public realm improvements this visioning study might ultimately suggest.

With no commitment that any of the improvements suggested through this process would be implemented, it is easy to be skeptical of the study's relevance. Yet, any plan for a successful global business district must include solutions for our overcrowded streets and sidewalks, create connections between public transit options, and create the open space that will attract people to want to live, work and visit East Midtown in the decades to come. A few fixes to subway platforms is not the answer. As with infrastructure, a funding mechanism is needed that is not dependent on development.

Fourth, the Landmarks Preservation Commission should immediately calendar the buildings it believes to be eligible for protection. They recently announced 32 buildings that they are allegedly evaluating for this purpose. This rezoning plan has already placed some of these buildings in jeopardy and the administration should not ask the City Council to vote on this ULURP item before calendaring those buildings that might be deserving of landmark status.

Fifth, we must not let density trump light and air. More discussion and study is needed concerning the proposed density in the area. I share the concerns of many that the plan's focus is backwards: the rezoning considers increased density first and the streetscape as an afterthought. We would be better off to consider in tandem how buildings and public spaces can together create a 21st Century central business district. To this end, the multi-board task force recommends a limit on density to 24 FAR in the Grand Central Core and 21.6 FAR in other areas. It further recommends a mandated public review process for any building over 18 FAR. As this plan moves forward, I will work with the community and my colleagues in the City Council to find the right balance.

In addition to the above, a number of recent modifications are welcome. I am pleased that City Planning's rezoning will now allow up to 20 percent of a building's floor area to be for residential. I am also pleased that in response to the multi-board's concerns, the modified plan allows for the top floors of buildings to have publicly accessible uses such as observatories and restaurants. However, the rezoning plan should be amended further to restrict all hotel use on qualifying sites by requiring a special permit.

We talk a lot about making New York a more livable city. And to do so we need to ensure that our infrastructure and urban design keep pace with how we live and work today – which is ever evolving. We need to anticipate, as best we can, how we can plan for the needs of future generations. A few weeks ago, in his thoughtful analysis of the rezoning, the New York Times's Michael Kimmelman points out that the future of our city "depends on strengthening and expanding what already makes the city a global magnet and model. This means mass transit, pedestrian-friendly streets, social diversity, neighborhoods that don't shut down after 5 p.m., parks and landmarks like Grand Central Terminal and the Chrysler Building." These are the goals we should be striving for in the rezoning. The current plan falls far short of meeting them. And it should not be approved until it does.

Dear Chair Burden and Commissioners:

I am among the many New Yorkers, from all over the city, who are strongly opposed to the East Midtown Rezoning proposal. Eleven years as executive director of a community-based historic preservation advocacy organization and my ongoing work as professor of preservation planning at Columbia University's Graduate School of Architecture, Planning and Preservation give me some seasoned perspective on what makes—or breaks—a New York City neighborhood.

But, honestly, anyone who walks through Grand Central Terminal or along the High Line, two of New York's most successful recent projects, immediately grasps what this proposal seems to ignore. Lively neighborhoods must have life. New development—which includes making good use of historic structures—must focus on people. Real people, not some abstract, corporate idea. Both Grand Central and the High Line create significant development opportunities while glorifying the public realm. The proposed zoning is missing this key ingredient. A thin promise that somehow, someday the public will benefit is not good enough. Frankly, it is a lame legacy for this administration to leave.

Will New York trade its soul for an out-moded idea of "progress" and "competitiveness"? Will we, once again, repeat the mistakes of the past?

Of Pennsylvania Station, architectural historian Vincent J. Scully famously wrote, "One entered the city like a god; one scuttles in now like a rat."

Grand Central was restored…to become the glorious gateway to a rat's den?

I hope not. Please rethink the plan to rezone East Midtown.

Sincerely,

Kate Wood
250 Cabrini Boulevard, Apt. 7C
New York, NY 10033
lwkate@gmail.com

CAROLYN B. MALONEY
12TH DISTRICT, NEW YORK

2308 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–3212
(202) 225–7944

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SUITE 311
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(718) 932–1804

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**TESTIMONY OF CONGRESSWOMAN CAROLYN B. MALONEY
ON THE EAST MIDTOWN REZONING
August 7, 2013**

While I strongly support the idea of ensuring that East Midtown remains New York City's premier business center and recognizing its importance to our efforts to compete with other cities both nationally and internationally, I believe the current proposal – even as modified – continues to fall short. I believe the City has made a number of crucial improvements to the initial proposal – giving parity to all landmarked buildings in the zone, allowing hotel and residential components to be part of a larger building and committing to invest in infrastructure improvements in advance of contributions to the District Improvement Fund. Nonetheless, the speed with which we are moving through the rezoning process gives us inadequate time to fully consider the problems that these enormous changes will have. The effects of this rezoning will be permanent and will impact New Yorkers for generations to come and I urge the city to take the appropriate time to complete the evaluation. I note that the Multi-Board Task Force on East Midtown, representing Manhattan Community Boards One, Four, Five & Six, continues to express grave reservations about this rezoning.

Here a just a few of the unresolved problems with this proposal:

1. Infrastructure. The most significant problems with the plan is the lack of guaranteed upfront funding for infrastructure and the almost complete absence of a plan. The initial proposal called for all improvements to be paid for through contributions by developers to a fund, which ensured that most improvements could not be made until new buildings were significantly underway and that construction of improvements would likely lag behind any planned development. The Mayor's recent op-ed in the Daily News calls for the city to advance the funds so that some improvements and open space to be built immediately. While that is certainly welcome news, there is no information as to how much the funding will be, what improvements will be funding and what will bind future administrations to adhere to this administration's 11th hour commitments. We need a definitive commitment that funds will be made available to improve transportation, provide open space and address crowding on the streets and sidewalk in the area NOW before the buildings are built. We also need to know how much money will come from the city, what improvements will be immediate and what will wait for the developer's fund and whether the city expects repayment from the developer's fund. The Mayor's proposal acknowledges the problem but has not yet begun to solve it. And it is not at all clear that the details of the solution will be available or acceptable before this rezoning plan is rushed through to approval.

2. Alleviating Surface Overcrowding. Currently, Midtown is one of the most congested areas of New York. It is necessary for any rezoning to reflect the needs of the area block by block. We need a plan to relieve the already overcrowded streets, sidewalks and public spaces. Parks, plazas, pedestrian walkways, connections between buildings and Grand Central and mitigation of vehicular traffic should be explicitly laid out now – currently there are vague promises but no plan.

3. Effect on other neighborhoods. Expanding office space in the desirable precincts of East Midtown will undoubtedly have an impact on New York's other business districts. I have heard no consideration about how this plan will impact the office space proposed for the Hudson Rail Yards, Long Island City or other burgeoning commercial communities. An appropriate sunrise provision could mitigate the impacts and allow these neighborhoods to be substantially developed before the zoning amendment goes into effect.

4. Landmarking the not-yet Landmarked. The Municipal Arts Society and the Community Boards have identified a significant number of buildings that are deserving of landmarking that have not yet been landmarked. We need to know which buildings will be protected and which continue to be at risk.

5. In-kind Contributions to the Developer Improvement Fund. I understand that the plan permits developers to make in-kind contributions in lieu of providing actual dollars to the fund. This would allow unimportant improvements to a developer's property to take priority over crucial community needs. It creates a process that is not transparent and is not uniform. It would be far better to require all developers to pay into the fund so that necessary infrastructure improvements can be made as quickly as possible.

6. Vanderbilt Avenue. I have heard from business owners along Vanderbilt Avenue who are concerned about becoming landlocked as a result of the proposed creation of open space along the avenue. They are concerned that elderly and disabled customers will go elsewhere if they cannot be dropped off at the entrance. Care should be given to ensure that the new amenity does not harm existing businesses. In addition, I note that the Yale Club is concerned that, as a community facility, they will not qualify for a use modification by special permit the way a hotel or residential use would be. I think it would be fair to extend the accommodation to them since the club activities are similar to a hotel – renting rooms, catering halls, etc.

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

Thank you in advance for your consideration.

HISTORIC DISTRICTS COUNCIL

THE ADVOCATE FOR NEW YORK CITY'S HISTORIC NEIGHBORHOODS

232 East 11th Street New York NY 10003
tel (212) 614-9107 fax (212) 614-9127 email hdc@hdc.org

Statement of the Historic Districts Council
City Planning Commission
August 7, 2013

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

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

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

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

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

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232 East 11th Street New York NY 10003
tel **(212) 614-9107** fax (212) 614-9127 email hdc@hdc.org

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

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

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

347 Madison Avenue
New York, NY 10017-3739
212 878-7200 Tel
212 878-7030 Fax

Thomas F. Prendergast
Chairman and Chief Executive Officer

Metropolitan Transportation Authority
State of New York

August 6, 2013

Amanda M. Burden, FAICP, Chair
New York City Planning Commission
22 Reade Street
New York, NY 10007-1216

Dear Chairperson Burden:

This year, we celebrated the centennial of one of New York's iconic places – Grand Central Terminal, the heart of East Midtown. Not only is Grand Central a majestic monument to travel, but with the enclosure of its train yards and track, the new Terminal paved the way for the development of one of the world's most important business districts.

Transit is essential to East Midtown. Eighty percent of the people who work in the area arrive by transit. Every day, there are 700,000 transit trips at Grand Central Terminal and the three East Midtown subway stations, representing more than 10% of the subway and commuter rail customers the MTA carries. People come to East Midtown from all over the region and benefit from MTA's significant capital investments in the area and throughout the system.

Over the past 30 years, the MTA has transformed its massive system. The reliability of our subway cars has increased from 6,800 miles between failures to over 160,000 miles. We've invested in trains, tracks, power and stations. Metro-North and LIRR have on-time performance in the 90's. And of course, we renovated Grand Central, making it a wonderful public space and a well-functioning transportation hub. As a result of these successful investments, people have returned to the system. On the subway, ridership is at levels that haven't been seen since the late 1940's.

And, for the first time in a generation, the MTA's system is expanding. The 7 train extension will connect a rapidly developing new neighborhood to the rest of the City. The first segment of the Second Avenue Subway will serve 200,000 customers a day. East Side Access will bring LIRR riders directly to a new terminal at Grand Central, reducing their travel times to the East Side by up to 40 minutes a day. New services coupled with ongoing investment in the reliability and resiliency of our existing infrastructure will make it possible to carry more people and meet the needs of the growing region.

Since the MTA system requires continuous investment to keep pace with riders' needs, the MTA welcomes land use redevelopment proposals that include on-going sources of revenue for transit investment in those redeveloped areas. The City's East Midtown rezoning proposal recognizes that economic vitality and transit are linked and includes investment in transit infrastructure through the District Improvement Fund as one of its central principles.

I welcome the Mayor's proposal to advance these improvements. Funding from the rezoning proposal provides an important contribution to meeting the needs of the area and the transit system as a whole.

Sincerely yours,

Thomas F. Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority

cc: Hon. Scott Stringer, Manhattan Borough President
Hon. Daniel Garodnick, Councilmember
Lola Finkelstein, Multi-Board Task Force

Testimony of Fredericka Cuenca, Director of Corporate Initiatives, Metropolitan Transportation Authority to

New York City Planning Commission on East Midtown Rezoning Proposal.

August 7, 2013

Good morning, my name is Fredericka Cuenca, Director of Corporate Initiatives at the MTA. As my colleagues have discussed, the MTA is dedicated to meeting the needs of a growing region and growing ridership. Strategic investments to our existing infrastructure are essential to meeting those needs. The MTA has a plan of discrete, but significant, improvements for Grand Central and other East Midtown stations that will greatly improve the capacity of the stations and the experience of the people who use them.

Right now as you travel through Grand Central subway station at rush hour you'll probably encounter a series of choke points: It may be hard to get off the train, it is slow getting up the stairs to the mezzanine, and then you may encounter another crowd as you move from the mezzanine to the street. To relieve these choke points we can makes changes that double capacity in strategic locations.

One of our first projects is to add a new stair from Grand Central terminal into the station and then another stair from the central mezzanine to the platform. This project is already included in the current capital program, will start construction next year and take about two and half years to complete. The project addresses some of the anticipated impacts from additional riders taking the new #7 line extension from Hudson Yards, as well as new East Side Access customers. We can make similar kinds of additions at the northeast end of the platform and add another stair at the southwest end of the platform.

We can also replace the big concrete stairs with narrower, open steel stairs we've used in other stations. This change will make it easier for people to move around on the platform and to get on and off the trains.

After these improvements are made, you'll find that it's easier to get off the train, a stair will be right in front of you and platforms will be less crowded. One of the other benefits of these changes is decreased dwell time for trains passing through the station. Trains spending less time at Grand Central will have a ripple effect up and down the line with more reliable service and increased capacity. These kinds of improvements to the Lexington Avenue line are our first priority

To meet future growth in the area and the City as a whole, we can build new passageways between the commuter rail areas of Grand Central and the subway.

Because Grand Central is the second busiest station in the system, these projects have to be carefully phased and designed. We have to add a new stair before we take one out to rebuild it. In this way we are not reducing access while we work to expand it.

Now, new staircases in an existing station may not grab everyone's imagination as an exciting new investment. But these kinds of improvements are the most effective way to relieve congestion and provide capacity for future growth at these critically important stations. Increasing the number of stairs off of platforms will be noticeable to the hundreds of thousands of people who use this station every day and to the people who use the lines that go through these stations.

The MTA welcomes the opportunity to accelerate investments to the Grand Central subway station. We'll work with the City to come up with a series of projects from our overall strategic plan that will have a meaningful impact.

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

Dan Quart
Member of Assembly
73RD District

COMMITTEES

Alcoholism & Drug Abuse
Corporations, Authorities & Commissions
Consumer Affairs
Housing
Insurance
Judiciary
Tourism, Arts & Sports Development

Testimony of State Assemblymember Dan Quart
On the Proposed Rezoning of East Midtown
Before the New York City Department of City Planning
Wednesday, August 7, 2013

Thank you for the opportunity to testify today. I represent the entirety of the area included in this rezoning proposal, and have closely followed each iteration of the plan. I am grateful to the careful attention the Department of City Planning and Mayor Michael Bloomberg have paid to input from the community and I expect that this will continue through the public comment period leading up to the final vote on the proposal by the City Council.

Transit Pre-funding

The initial rezoning plan lacked a mechanism to begin much-needed transportation improvements before development was to begin. Specifically, in the original proposal, transit improvements would be dependent upon contributions to the District Improvement Fund (DIF) by developers at the time they apply for building permits. There was no mechanism to ensure that the improvements will be funded, planned and built before the additional density is added to the area.

There is no denying that transit improvements are needed right now in the proposed rezoning area, and specifically, the Grand Central area. The Lexington subway line is constantly overcrowded; studies have placed the overcrowding of the Lexington subway line at 120% to 130%. The station at 53rd/51st Streets and Lexington Avenue and the subway platforms at Grand Central Terminal are nearing dangerous conditions. When East Side Access is operational in 2019, there will be thousands of new commuters in Grand Central each day. New development will only exacerbate these already existing problems. I am pleased that Mayor Bloomberg has announced that the City will pre-fund the necessary infrastructure improvements, ensuring that area transit systems are prepared for an influx of new people. Beginning these much needed transportation infrastructure improvements immediately is critical to the infrastructure needs of the Grand Central area, and my constituents and thousands of other commuters who use the Lexington Avenue subway on a daily basis.

It is important to note, however, that neither these pre-funding dollars nor the actual DIF monies should be used to pay for improvements that the City or the MTA have already committed to. Plans for both East Side Access and the extension of the 7 train have included a variety of upgrades to Grand Central. Funds from the DIF should not be used to pay for these already-promised improvements.

DISTRICT OFFICE: 360 East 57TH Street, Mezzanine Level, New York, New York 10022 • (212) 605-0937
ALBANY OFFICE: Room 530, Legislative Office Building, Albany, New York 12248 • (518) 455-4794

Energy

The current rezoning plan requires new as-of-right development to meet a higher standard than the New York City Energy Code. These new buildings will be required to be 15% more efficient than the 2011 standard. New buildings built under a special permit will be required to increase efficiency even more. I support the principles undergirding these requirements; these buildings are expected to exceed standards in every other realm of development. There is no reason to except energy usage.

However, these requirements are static and do not allow for future developments in energy efficiency. Specifically, efficiency requirements for buildings that could be built pursuant to the rezoning plan in ten, twenty or thirty years should not be held to current standards, but contemporary standards. Both the as-of-right and special permit developments built under this proposal should be required to comply with standards in place at the time of development, not the current standard.

Hotel Permits

I appreciate the efforts that have been made to take into account the unique concerns of hotels in the area. It is important to ensure that this rezoning is targeted to the needs of East Midtown by prioritizing new office space over other kinds of uses. The A-Text rightly recognizes this by restricting new hotels to 20% of floor area in qualifying sites and requiring a special permit for more extensive hotel development. However, I believe that all hotel development within the relevant area should be subject to a special permitting process to protect the primacy of Class A office development and to allow the community an opportunity to have input into any new hotel development.

Thank you for the opportunity to testify.

Regional Plan Association

East Midtown Rezoning

City Planning Commission, City of New York

August 7, 2013

Testimony by Christopher Jones, Vice President for Research, Regional Plan Association

The proposed rezoning is unlike any the City of New York has pursued in decades. Unlike the plans that are transforming waterfront and industrial areas such as Hudson Yards and Williamsburg, or helping to fulfill the potential of mixed-use communities like Jamaica, this action is attempting to ensure the continued success of one of the highest value concentrations of commercial activity anywhere. By almost any measure—jobs, office space, salaries, taxes, rents—East Midtown has few rivals across the globe. It is the heart of the central business district that fuels the economy of the city and the New York region. It is also a dense, 24-hour neighborhood with some of the world's most iconic buildings and a critical transportation hub at Grand Central Terminal, as well as some of the city's most crowded streets and subway lines.

Given East Midtown's commercial success, as well as its pedestrian and transportation challenges, the proposed rezoning raises a number of legitimate concerns. If East Midtown is already a vibrant but crowded job center, why create incentives for additional development? If the streets and subways are overcrowded, shouldn't we be focused on fixing those instead? And with millions of square feet of new office space being added in Lower Manhattan and West Midtown, is there a need for even more office towers?

Yet in spite of East Midtown's success, the rezoning addresses a need that won't become fully apparent for several years. The proposal isn't as much about adding more office space as it is about ensuring that the district continues to evolve and adapt in a rapidly changing world. East Midtown already has several unremarkable and outdated structures whose low ceilings and heavy interior columns deter potential activities and tenants. Businesses are increasingly moving toward open floor plans and amenities that these structures don't provide.

Under current zoning, the district will continue to age and gradually decline. The proposed rezoning would enable the district to replenish its building stock to respond to changing market demands. No one knows how many new structures will be built or when they will be constructed, but it is likely to be fewer than two dozen buildings over the next three decades. The new structures would be concentrated on corner and avenue-facing lots, allowing light to continue to reach into mid-blocks and not crowd out smaller structures.

The text amendments permitting 20% of buildings to be residential gives the district greater flexibility to respond to changing preferences for mixed-use districts, and can

NY 4 Irving Place, 7th floor
New York, NY 10003
212.253.2727

NJ 179 Nassau Street, 3rd floor
Princeton, NJ 08542
609.228.7080

CT Two Landmark Square, Suite 108
Stamford, CT 06901
203.356.0390

www.rpa.org

enhance the 24-hour character of midtown. But care must be taken in evaluating applications for higher amounts of residential development to maintain the high concentration of jobs and business activity that drives economic growth throughout the city.

Just as important is how to address the transportation and public space needs of the area. Even the modest increases in density projected from the rezoning will add to the congestion at Grand Central, on the subway and on sidewalk corridors and intersections. Mayor Bloomberg's commitment to provide upfront capital to improve the Lexington Avenue line and other needs in anticipation of revenue from the District Improvement Fund is an important action that will not only help mitigate any increase in congestion, but will also address a longstanding transportation bottleneck that needs to be solved regardless of the rezoning. We look forward to hearing the details of the funding mechanism, most importantly how the mayor's commitment will be carried out under future administrations.

Still, the existing transportation and circulation needs of the district go well beyond the dollars that would come from the fund under even the most optimistic assumptions. Future mayors, the governor, legislators and the MTA will need to maintain a focus on improving transportation along the entire East Side beyond the actions specified in the proposed rezoning.

Specific priorities that will need to be addressed include both actions already anticipated in the proposal and others that go beyond its scope. We recommend the following as priorities for both the District Improvement Fund and future funding from both city and MTA capital plans:

- Interventions to address congestion at the surface and in existing subway stations are the critical near-term priorities. Expanding the mezzanine for the Lexington Avenue subway, adding new connections and a mezzanine for the Flushing line, and constructing a passageway connecting to Metro-North's lower-level platforms and Long Island Rail Road's East Side Access concourse to the subway will make a substantial difference in the commuter experience, as will circulation improvements at the two crosstown 53rd Street stations.

- The full buildout of the Second Avenue subway, both Phase 2 extending to 125th Street and Phase 3 to Lower Manhattan, is essential to relieving congestion on the Lexington subway and at Grand Central Terminal, as well as providing the capacity for job growth along the entire East Side. A priority for future MTA capital plans should be to complete Phase 2 by the mid-2020s and getting Phase 3 underway as more space comes under the rezoning.

- The proposal to close Vanderbilt Avenue to auto traffic from 42nd to 46th streets, allowing for emergency and overnight truck delivery access, would serve as a buffer for pedestrians at Grand Central, allowing the spreading of pedestrian flows among the various side streets for commuters heading to 5th and 6th avenues.

- A broader pedestrian circulation study for the district should be conducted, with special consideration given to pedestrian issues along Lexington and Madison avenues and the potential closing of parts of discontinuous cross streets like 41st and 43rd streets.

- Additional station entrances for East Side Access should be developed as new buildings are constructed above the Madison Avenue concourse. Improved access to the east also should be explored as new buildings are constructed on the eastern side of Park Avenue.

It must be acknowledged that new office construction in East Midtown will create some additional competition to locations elsewhere in the city, particularly Hudson Yards and the World Trade Center, which combined could provide as much as 35 million square feet of new office space over the next 30 years. But this competition should be minimal. If the city's forecasts are accurate, the rezoning will result in only 4.5 million square feet of net new space.

In addition, there is a differentiation among office districts that both mitigates the competition and is healthy for the city and the region. East Midtown has a unique ecology that includes large and small companies with many top banks, law firms and media businesses mingling with technology and service firms, as well as hotels and tourist activities. It is unlikely to compete with Hudson Yards or downtown Brooklyn for newer technology companies seeking a particular type of work environment. East Midtown will attract a different type of tenant that wants a premium Midtown address and access to Grand Central. Having healthy office districts that appeal to different markets is good for the city overall. Businesses attracted or retained in Midtown rather than a non-city location will stimulate job growth, some of which will end up in other parts of the city

Even if competition proves more significant, it is far more important to allow the city's premier office district to modernize and compete with other global centers. It is difficult to predict the amount and type of workspace that New York City will need over the next 30-50 years, but the ability to provide a range of choices in different locations will maximize job growth potential. Whether we create too much office space for one or two business cycles is less of a concern than whether we will have the flexibility to respond to demand over several decades.

In summary, Regional Plan Association supports the proposed rezoning to help ensure New York's continued competitiveness. Other actions, including investments in the transit network, public spaces and pedestrian circulation, are equally important. The commitment to fund some of these improvements in advance of the development that will occur as a result of the rezoning will make a significant difference, but securing additional funding and maintaining a focus on the public realm are essential to the future of East Midtown, the city and the region.

ABS PARTNERS REAL ESTATE, LLC

Testimony
City Planning Commission Public Hearing
August 7, 2013

I am Gregg Schenker a principal in ABS Partners and involved in the ownership and management of two office buildings in the East Midtown district.

I know first-hand about the problems associated with older office buildings in the district. They are functionally inefficient, with low floor to ceiling heights and column cluttered spaces that cannot be brought up to a standard that would attract tenants who find the East Midtown location desirable. The East Midtown plan is right to focus attention on encouraging the development of new office buildings in revitalizing the office market in East Midtown.

This rezoning plan provides an opportunity for two of our properties. First, the proposed rezoning allows us to build a new building and retain the existing built floor area for one of our overbuilt sites. Under the existing zoning, we would be prohibited from using all the floor area we currently have now, or would have to find a way to preserve twenty-five percent of the existing structure to retain all the current floor area. We would not redevelop a smaller building, and the second option would need significant and costly engineering analysis to see if it was physically and economically feasible. With our portfolio of properties and our current activity, I cannot see our company embarking on such a speculative endeavor under current conditions.

Our second property does not meet the definition of a qualifying site so we are unable to take advantage of the "earned as of right" floor area. However, the plan does provide a powerful inducement to assemble properties in order to become a qualifying site and utilize the higher allowable floor area. Under the current zoning, I do not think we would seriously consider assembling a site for a new development. However, the opportunity to acquire additional floor area easily at a known price would facilitate site assemblage for a new office development.

In our view, this rezoning creates an important opportunity to redevelop our sites with new, modern and more efficient office buildings and helps to preserve the qualities of East Midtown that make it the city's premier office district.

200 Park Avenue South, 10th Floor New York, NY 10003 T 212-400-6060 F 212-400-9494 absre.com

Fried, Frank, Harris, Shriver & Jacobson LLP

One New York Plaza
New York, New York 10004–1980
Tel: +1.212.859.8000
Fax: +1.212.859.4000
www.friedfrank.com

FRIED FRANK

Direct Line: (212) 859-8780
Fax: (212) 859-4000
stephen.lefkowitz@friedfrank.com

August 12, 2013

By Hand

Amanda M. Burden
Chair, New York City Planning Commission
22 Reade Street
New York, New York 10007

Re: East Midtown Zoning - Public Hearing Statement

Dear Chair Burden:

Enclosed please find a copy of the statement I had prepared to deliver at the August 7 public hearing on the above. Unfortunately, I ran out of time and was unable to deliver the statement in person at the hearing.

I would appreciate your including this statement in the record of the public hearing and making copies available to the members of the Commission.

Thank you for your consideration.

Very truly yours,

Stephen Lefkowitz

SL/md

Enclosure

cc: Richard Barth
David Karnovsky
Robert Dobruskin
Edith Hsu-Chen

9092114

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

STATEMENT OF STEPHEN LEFKOWITZ -- EAST MIDTOWN ZONING (Application Nos. N130247 ZRM and C130248 ZMM) – PUBLIC HEARING, AUGUST 7, 2013

My name is Stephen Lefkowitz. I am a partner at the law firm of Fried Frank representing S.L Green the Owner/Developer of the block immediately to the West of Grand Central Terminal, 42nd – 43rd Streets, Vanderbilt and Madison Avenues.

As the Commission has heard from previous speakers, we are planning to apply for the new East Midtown special permit (81-624) to develop this key block. Other speakers have described the proposed building, the improvements it would make to pedestrian circulation and the public realm, as well as the planning rationale for the density we are proposing.

I want to address two additional matters:

SUNRISE

Following upon the suggestion of Borough President Stringer, we urge that there be a means of waiving the Sunrise in selected cases.

The Borough President has proposed that a waiver be available upon a finding that a proposed building would not be competitive with other Manhattan developments with significant public interest and public investment – based on the differences in floor plate size, effective rents, etc.

In addition, we suggest that where extensive below grade work is required in order to provide connections to the subway system or Grand Central Terminal, or to provide other pedestrian improvements – work that will significantly extend the construction cycle – that work and related foundation work should be permitted to proceed in advance of the Sunrise. Otherwise the development is being penalized beyond the stated Sunrise date for the public contributions it is making—"No good deed…"

We ask that the Commission provide in the text a mechanism for a discretionary waiver of the Sunrise for subsurface work in appropriate cases.

IMPROVEMENTS IN KIND

Many speakers have stressed the importance of transit improvements and urged that they be given priority for DIB payments. We agree with the importance of these improvements, and note that our proposed development will provide significant amounts of DIB cash for the transit system.

However, we ask that the Commission not lose sight of the importance to East Midtown and the Grand Central area of public spaces and other public realm improvements, and their contribution to the overall goals of this rezoning.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

By way of example, our proposed development is bordered by Vanderbilt Avenue, directly adjacent Grand Central Terminal. The Avenue today is merely a backdoor to the Terminal and contributes nothing to the public's experience of the Terminal or to the public realm.

We propose to convert Vanderbilt Avenue between 42nd and 43rd Streets to an open, traffic-free public space which would enhance the Terminal and the public experience. When built as an in-kind DIB improvement, in conjunction with the new development, a new Vanderbilt Plaza would make a striking contribution to the goals of the rezoning. In addition, we propose to construct significant in-kind improvements which would ease the flow of pedestrian traffic when the new East Side Access opens later in the decade.

We urge that the Commission not so prioritize transit improvements that streetscape and other public realm improvements will be slighted, or that in-kind improvements will not continue – as was the original intent – to be equally eligible for DIB bonus.

Lastly, we applaud the Department for their heroic efforts to prepare this proposal which is one of the most important zoning initiatives in recent years, and their responsiveness to the suggestions and criticisms of all affected parties and the public.

Thank you for your consideration.

James Korein
Omnispective Management Corp.
240 Central Park S., New York, NY 10019
Tel: 212-581-6394 Email: jimkorein@omnispective.com

8.12.2013

Statement on Amended East Midtown Rezoning Plan

I am Jim Korein, CEO of Omnispective Management Corporation, a family-owned business started by my grandparents more than 75 years ago. My grandmother, Sarah Korein, was one of the first women in New York City's real estate industry.

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

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

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

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

Under the rezoning plan as originally proposed, the few options that do exist to transfer development rights under current zoning regulations were severely impaired by competition from the DIB (new development rights from the City), which may be purchased and used on an as-of-right basis, without a two-year ULURP process. This effectively negated the benefits of the transferable development rights under Section 74-79, effectively destroying a pre-existing and valuable transferrable development right that had been conferred with landmark status.

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

This will create opportunities during the next decade for us to structure a plan to continue to maintain and improve Lever House, and to ensure that it remains a world class office building. We did this contractually in our current ground lease by making it a priority to require renovation of the curtain wall and maintenance as a first class office building. We will have the opportunity to refine our plan for maintenance and improvement in the course of upcoming lease negotiations, or to perform them directly, in the event that the net lessee declines to renew.

For our family, Lever House is permanent asset. With this great privilege comes the obligation of ensuring that it remains a great building in perpetuity. This implies attention not only to cosmetic aspects of this iconic building, but long term sustainability and energy efficiency.

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

The purpose of the East Midtown Rezoning is to ensure that this district remains competitive. In its amended form, the rezoning proposal addresses both new buildings and iconic landmarked buildings such as Lever House. Lever House will belong to our family for generations to come, and we are committed to making the capital expenditures required to ensure that Lever House remains an iconic and competitive building for many decades.

We fully support the amended rezoning proposal.

Sincerely,

James Korein

CHARLES E. SCHUMER
NEW YORK

United States Senate
WASHINGTON, DC 20510

COMMITTEES:
BANKING
FINANCE
JUDICIARY
RULES

Amanda Burden
Commissioner
Department of City Planning
22 Reade Street
New York, NY 10007

August 7, 2013

Dear Commissioner Burden:

I write to offer my strong support for the needed rezoning of Midtown East. Earlier this year, I endorsed the plan as forward thinking, but with some needed changes – investment in transportation infrastructure and changes to how landmark intuitions were treated under the plan. I applaud City Planning and Mayor Bloomberg for embracing and incorporating these changes as the public review process has moved forward. The City of New York is an ever-evolving, ever-expanding city that must adapt and grow to stay competitive. The plan, with these key additions, will help the City do just that.

Commercial office buildings are the factories of the twenty-first century and we must allow them to modernize and meet the needs of today's – and even more importantly, tomorrow's – workers. Midtown East is one of the preeminent business districts in the world. Seventy million square feet of office space is home to headquarters of fourteen Fortune 500 companies and houses a quarter of a million jobs. This is the greatest density of such companies in the US and one of the greatest in the world. It is one of New York's most storied and oldest commercial districts.

Unfortunately, in the world of commercial office space, old is usually not a good thing. Right now, the average age of a Midtown commercial building is 73 years. In comparison, the average age of London office buildings is 43 years. Future development of this aging building stock is constrained by zoning restrictions that limit the construction of new buildings with modern amenities, such as fully wired broadband, column-free floors, greater floor-to ceiling heights and energy-efficient features needed to attract world-class tenants. These issues strike at the heart of Midtown's competitiveness and the rezoning plan is a proactive way to keep this key district as a place where businesses want to locate.

Midtown East's status as a world-class business district not only relies on world class office-buildings but, as with any business district, the ability of surrounding transportation infrastructure to move people in-and-out and of the district. In the case of Midtown East, there's no question that Grand Central Station, one of the world's greatest transportation hubs, provided the core for development in the district years ago. Currently, massive transportation investments are being made to move even more workers to and from the district, making it a prime target for rezoning. At Grand Central, East Side Access will finally create a much-needed link between the Long Island Railroad and the East Side of Manhattan and it is expected these new tunnels will serve 179,000 daily commuters. On the Upper East Side, the first phase of the 2nd Avenue subway that will reduce overcrowding on the Lexington Avenue line and is projected by the MTA to carry over 200,000 weekday riders is expected to be completed by 2016. To its credit, the Bloomberg Administration had the vision to see that this added transportation capacity be followed by new office capacity.

While Midtown East's increasing capacity to move people makes it a prime candidate for rezoning, there is a real need to better support and expand pedestrian and commuter access infrastructure. As I advocated in May these upgrades must happen prior to and concurrent with adding new office density. Grand Central, for instance, presently faces severe overcrowding in the passageways, stairways, and escalators. This overcrowding necessitates expansions and improvements to platforms and busy corridors in Grant Central and other stations in the district. Also in need are sidewalk improvements and the creation of open spaces that ameliorate congestion and crowding without hampering pedestrian flow or building operations. I look forward to hearing more details about the Administrations promise to advance funding to pay for mass transit and open space improvements before new buildings begin rising.

I was also glad that the City included an expanded landmark transfer zone. As I wrote in May the plan must provide adequate treatment of all landmark institutions in the district, such as St. Patrick's Cathedral, St. Bart's Church and Central Synagogue, among others. Creating a landmark transfer zone will help support existing landmarks. The City has done much to move this plan forward and I'm sure this good work will continue to see the plan to approval. For example, I urge you to work with the labor community to reach a mutually agreeable framework over special permitting concerns for hotels.

Given its state of constant flux, New York City is always in need of reinvention. While we are working so hard on improving current infrastructure and opening Midtown up to so many more commuters, it naturally follows that commercial real estate stock should also be given the chance to modernize and move New York forward.

Sincerely,

Charles Schumer

Charles E. Schumer
United States Senate

Andrew S. Berkman
Attorney at Law

August 14, 2013

OFFICE OF THE CHAIRPERSON
AUG 13 2013
26717

The Honorable Amanda Burden
Chair, City Planning Commission
22 Reade Street
New York, NY 10007

- and -

City Planning Commission
c/o The Calendar Information Office
22 Reade Street, Room 2-E
New York, NY 10007

Re: East Midtown Rezoning
Cal. Nos. 23, 24 and 25
C 130248 ZMM
C 130247 ZRM
N 130247(A) ZRM

Dear Ms. Burden:

I am counsel to 335 Madison Avenue, LLC and write this letter to you in connection with the public hearing held on August 7, 2013. You noted at the hearing that these calendar items would remain open for written comment until August 19, 2013.

This letter solely addresses issues which were not well-raised at the hearing concerning the possible closing of Vanderbilt Avenue. To begin, I think it important that CPC reiterate that any up-zoning does not now include the closure of Vanderbilt Avenue.

I begin with a criticism of the comment made early in the afternoon concerning the aesthetic value of Vanderbilt Avenue as open space. The comparison was drawn between the possibilities for the creation of open space along the Vanderbilt Avenue corridor similar to that which presently exists in Paley Park, the Channel Gardens and the Rockefeller Plaza ice skating rink. Those comparisons are very far afield of the actual conditions on Vanderbilt Avenue. Beyond that, there is the difficulty of taking away street access from commercial building owners which will have a significantly detrimental effect on their manner of operations, without any compensating alternatives. Anyone who spends any amount of time between the hours of 8 A.M. and 7 P.M. on Monday through Friday along the stretch of Vanderbilt Avenue will know that this is an important vehicular thoroughfare encompassing all manner of four (or more)-wheeled services, and is distant—in space and theory—from a pocket park or a mid-block planned amenity. I note additionally that Vanderbilt Avenue is cast in shadow for much of the day.

Here are other considerations:

(a) access to Vanderbilt Avenue from 42nd Street is an important right-hand turn safety valve for traffic moving west on 42nd Street. A closure of Vanderbilt will mean that no right turns may be made along 42nd Street from 3rd Avenue to 6th Avenue. Additionally, one significant vehicular access point along Vanderbilt Avenue to Grand Central ("GCT")

335 Madison Avenue, 9th Floor, New York, New York, 10017 Tel.: (212) 350-2750 Fax: (212) 350-2701

will be terminated, resulting in additional traffic along both of East 42nd Street and Lexington Avenue;

(b) 44th Street at present between Madison and Vanderbilt is confined to one lane and will remain so due to MTA construction until 2019 or later. On most weekdays the traffic still backs up into and on Madison Avenue resulting in a traffic hazard which continually blocks the bus lane. Service entrances for the Yale Club and 335 Madison are located on this block as is the only public parking garage, all of which are blocked at times throughout the day;

(c) a vital cab stand serving GCT is now located just north of 43rd Street on Vanderbilt Avenue. The primary access for drop off and pick up to and from GCT is from 44th, 45th, 46th and 47th Streets. If all the east-west streets between 42nd and 47th Street are closed except 44th Street cab service will be completely disrupted;

(d) cars, cabs and trucks are forced to make a right turn from Vanderbilt onto 43rd Street, which is also now only one lane wide. The left lane is for trucks, which will be lost when SL Green starts construction. The right lane is used for a city bike rack and police parking. The result is that traffic on 43rd Street is often blocked by double parked trucks.

The present condition along East 44th Street, where there is significant construction being undertaken by the MTA, and on 43rd Street, where presumably a new loading dock will be built on the south side of 43rd Street between Vanderbilt and Madison (along with the bike racks now on the north side of 43rd Street) significantly diminishes the movement of traffic around the entire block, Madison to Vanderbilt, 43rd to 44th Street. This situation is not likely to improve or be ameliorated as time goes on.

The Yale Club has at least one bus a day headed for Dartmouth College (and always parked on Vanderbilt Avenue), access to GCT is provided nearly 24 hours a day by cab and emergency vehicles, and the standpipe for GCT is located on Vanderbilt Avenue, providing necessary access to police, fire, and other officials.

Of what use would DIF monies be to the MTA if the rezoning is approved, Vanderbilt Avenue is closed, and significant monies are required to be spent by MTA-Metro North in an effort to ameliorate the access issue posed by the closing of Vanderbilt Avenue to vehicular traffic?

Other speakers in opposition raised critical concerns concerning various legal constraints and deficiencies in the EIS. May I suggest that your office convene a meeting within the next several weeks among CPC officials and representatives of all stakeholders owning properties on either side of Vanderbilt for its entire length? Further, it would seem to be incumbent on CPC to conduct a separate environmental and traffic study addressing these (and perhaps other) similar issues before any definitive action is taken to close Vanderbilt Avenue.

Thanks for your consideration.

Very truly yours,

Andrew S. Berkman

Andrew S. Berkman

ASB:jd

KRAMER LEVIN NAFTALIS & FRANKEL LLP

MICHAEL T. SILLERMAN
PARTNER
PHONE 212-715-7838
FAX 212-715-7832
MSILLERMAN@KRAMERLEVIN.COM

August 8, 2013

OFFICE OF THE
CHAIRPERSON
AUG 8 - 2013
26699

Via Hand Delivery

Honorable Amanda M. Burden, FAICP
City Planning Commission
22 Reade Street
Room 2W
New York, NY 10007-1216

Re: August 7, 2013 East Midtown Rezoning Public Hearing Testimony on behalf of the Hotel Benjamin, the Hotel Lexington, and the Marriott East Side Hotel

Dear Chair Burden:

Please find enclosed ten (10) copies of the testimony I delivered at yesterday's East Midtown Rezoning public hearing with respect to our concerns about the potential designation of three hotels located in East Midtown as individual New York City landmarks.

I have also attached written testimony from the owners of each of the three hotels, The Hotel Benjamin, the Hotel Lexington, and the Marriott East Side Hotel.

Thank you for your consideration in this matter.

Very truly yours,

Michael T. Sillerman

Michael T. Sillerman

MTS:le
Enclosures

Michael T. Sillerman, Kramer Levin Naftalis & Frankel LLP
Testimony to the City Planning Commission
at the 8/7/13 Midtown East Plan Public Hearing on behalf of the
Hotel Benjamin, the Hotel Lexington & the Marriott East Side Hotel.

Good Morning. My name is Michael T. Sillerman from Kramer Levin Naftalis and Frankel. Kramer Levin is special land use counsel to the owners of three hotels located in East Midtown. The Hotel Benjamin, the Hotel Lexington and the Marriot East Side Hotel are separately owned and operated but are all located on the east side of Lexington Avenue (between East 47th Street and East 51st Streets). Each hotel enthusiastically supports the East Midtown Plan. The proposed rezoning is a vital and concrete step towards ensuring East Midtown's future as a world-class business district and major job generator for New York City. The proposal will promote the development of new, state-of-the-art energy efficient commercial buildings and fund needed improvements to the subway and pedestrian network in the area. As New York City hotel operators and owners, our clients welcome the prospect of a revitalized East Midtown. However, they are very concerned that their ability to provide equally modern, energy efficient and attractive hotel rooms will be significantly impaired if, as an unintended consequence of the rezoning, these hotels are designated as individual New York City landmarks.

The three hotels were each built in the 1920's as affordable apartment hotels. They are located within two blocks of each other, but distinct, having been constructed by different architects for different owners. Each of these hotels has been significantly altered over the years to accommodate retail tenants, modern windows, HVAC sleeves and necessary and often unsightly repairs to address significant underlying structural issues. Notwithstanding the significant investment in the buildings by their owners, these hotels face serious obstacles in their attempts to compete both with more generously designed older hotels such as the Waldorf Astoria and the more modern hotels that have been built nearby or in the rest of Manhattan.

Like the outmoded and obsolete office buildings in East Midtown, these hotels cannot meet the expectations of today's and tomorrow's guests due to the design and the physical limitations of the original buildings. The low ceilings, narrow corridors and small windows that characterize each of the hotels make it impossible as a practical matter to provide the adequately sized and well-lit rooms that guests expect and that national and international hotel chains require without doing comprehensive gut rehabilitation, including a complete façade replacement, of the building. Landmark designation will make it impossible to make the kind of rehabilitation needed or alternatively to redevelop their sites, and it will thus cripple their ability both to serve and to benefit from the new business development expected under the East Midtown Rezoning. It will also increase the costs of operating these already economically challenged hotels by imposing additional landmark related costs for the on-going repairs that these aging buildings require.

Over time, the reduction in revenue attributable to the functional obsolescence of the hotels themselves and to their decreasing appeal to prospective guests, together with the increased costs associated with maintaining an outmoded physical plant to landmark standards can be expected to compromise the hotels' economic viability. The ensuing losses would extend beyond the interests of the hotel owners and the job security of the union members who work there; they would include the cost to the City of the lost opportunity to offer modern, sustainable hotel options that will be convenient to and will complement the new office buildings expected under the rezoning.

Prior to the initiation of the East Midtown Rezoning, none of the preservation groups, community boards and the Landmarks Preservation Commission staff had ever expressed any interest in designating these hotels as individual landmarks. Whatever the motivations behind this sudden and unexpected call for designation, it must be evaluated on the merits pursuant to the criteria set forth in the Landmarks Law. And the law's criteria require more than a finding that a building is old, that it has a recognizable style, that it was designed by a named architect, or that its guests have included one or two people of note. We think that an objective review of these hotels will show that none of them demonstrates the level of special architectural character and historical significance required for individual landmarks designation.

The CEQR process required for the rezoning has resulted in the identification of these three hotels as historic resources that could be adversely impacted as the result of the rezoning. However, it is equally important that the CEQR process address the economic and planning consequences that will result if one or more of these hotels are designated. In light of the relative lack of distinction of these hotels and the important policy objectives at stake, a designation which would effectively freeze these properties is not the right option to address this potential impact. Instead, a more appropriate mitigation for the potential alteration or demolition of these minor hotels would be a requirement that the hotels' architecture and history be documented in accordance with Historic American Buildings Standards (HABS).

We ask the Commission to consider this issue carefully, both in the context of the CEQR process and in its Charter mandated review of any individual landmarks designation that might occur in the future. The Midtown East Plan should not be diluted by a misguided and lasting landmarks designation. Modern, first-class offices need modern, first-class hotels –not hotels that suffer from the same (or even greater) shortcomings of age and design as the current office stock. It would be ironic if existing hotels in East Midtown are deprived of their ability to modernize at the same time that City implements a plan to allow office buildings to achieve this same goal. Designation of these hotels is contrary to the goals of the Midtown East rezoning and would frustrate the realization of the City's goal to restore East Midtown as a premier office district.

THE BENJAMIN

August 7, 2013

Amanda Burden
Chair, New York City Planning Commission
22 Reade Street
New York, NY 10007

Re: The Benjamin Hotel, 125 East 50th Street, New York, NY

Dear Chair Burden:

On behalf of the ownership of The Benjamin Hotel (DP Fee Holding Co., LLC), I am pleased to provide this testimony regarding the East Midtown Rezoning.

We would like to express our support for the Midtown East Rezoning, which we see as an important policy initiative that will benefit Midtown, the entire City and the metropolitan region, and complement the other major development initiatives such as Hudson Yards and the World Trade Center. The improvements to the urban infrastructure and transportation system, the addition of world-class modern buildings, and an increase in options for businesses to occupy new space are all ideas whose time has come.

Our excitement and support for the plan is only tempered by one small issue. By designating our hotel as a landmark, our ability to take part in this great improvement will be squashed. Landmarking would place significant financial and operational burdens on The Benjamin, creating an inability to modernize – which is the very goal of the Midtown East Rezoning.

By way of background, The Benjamin was designed in 1926/1927by Emery Roth, one of New York City's noted architects. Unlike his 'showpiece' projects, this has always been considered one of his many secondary, undistinguished 'derivative' designs. It was built as The Hotel Beverly, a low-priced apartment hotel similar to many other undistinguished buildings of that era that dotted business centers. This lack of significance is apparent by its absence in the descriptive narrative in the WPA guide to New York City or the various AIA Guides to NYC. It is also not mentioned in the standard Landmarks texts on Roth, in Roth's body of work, and in the history of hotels and apartment hotels both in New York City and nationally. In fact it is characterized as a minor building that does not rise to the level of "special" that characterizes the purpose of the New York City Landmark's Law, which clearly demonstrates by these scholarly and research reports that this is a minor building not worthy of landmarking. While we are proud of The Benjamin and the service we provide, we agree with Paul Goldberger's comment as it relates to The Benjamin. "Roth was a commercial architect, one who willingly and admittedly made numerous compromises in the service of his clients, and who was more concerned with getting a job done than in creating structures that would change the direction of architectural history."

We are proud of all of our hotels, and have carefully curated a family of high quality, well-respected and individual hotels. Over the years, we have paid specific care to The Benjamin and made significant investments in the building, both interior and exterior, as well as its operations. As we are all aware, New York City hotels, especially those in Midtown, need continual investment and upgrading to keep them competitive and to keep the City's supply of accommodations at the forefront of the industry. Unlike anyone else, we know the hotel inside and out. The physical limitations of the building pose significant operational challenges and these will continue to grow with time.

We are highly concerned about the oddly-timed sudden push for designation. The sudden push to designate The Benjamin is not merited on the grounds of architectural significance given the numerous alterations over years, the actual design of the building, and the loss of original fabric.

The most apparent reason why the hotel is not suitable for destination is that after many decades of exterior changes, the façade is no longer intact and bears no resemblance to the original design. The principal street level façades were demolished and replaced in the 1960s and 1970s. The current façade is the fourth generation façade at street level. What is in place now is a modern recreation of the base façade and lacks the original detail of Emery Roth's scheme. The original small-pane guestroom casement windows have been entirely replaced with inexpensive, dark finished 1/1 metal windows. Because of low floor-to-ceiling heights, air conditioning was introduced with large through-wall HVAC units in each room; as a result large grills are the dominant feature of both facades, destroying architectural integrity and key elements of the original façade elements. These new elements (windows, HVAC openings, replaced areas of the base, extensive masonry replacement of the upper levels) mean that some 40% of the facades are not original and are vastly different from the original design. Should any of these elements need to be replaced in the future – which is likely given the need to constantly upgrade to remain competitive – the painfully high premium required to meet LPC standards for items like replacement windows that match the original windows would be an impossible financial burden on the hotel that it could not support.

Aside from the intentional changes made to the façade and structure, on-going physical deterioration has destroyed much of The Benjamin's historic fabric that is important to designation. The building suffers from extensive deterioration on all of its façades and at all levels because of the failure of the original barrier wall system. The brick and mortar repairs made in the past few decades do not match the original fabric, since the original wire-cut brick is no longer available. As a result the exterior is a hodge-podge different colors and textures. The ongoing barrier wall system problem needs to be addressed, but designation-related restrictions will create costs that cannot be compensated for by increased room rates. Aside from this problem, the structure is poorly configured for modern hotel operations, with low ceiling heights; fixed, small corridor-to-exterior wall dimensions, small room sizes, and narrow corridors. On the technical side, passenger and service elevators are not compliant with current code and required capacity, and light and air do not meet current standards. With a current Energy Star rating of 63, the building falls far below the minimum required rating of 75; this requirement must be considered for any window replacement or other upgrades, hitting the hotel's bottom line hard.

All of this forces The Benjamin into a noncompetitive situation against modern peer hotels in Midtown and it cannot afford to be forced to meet more expensive landmark-level repairs.

Had the structure not been altered so significantly, its lack of architectural significance is still the litmus test for designation. And The Benjamin is, plain and simple, *not* architecturally significant. Emery Roth designed some significant structures in Manhattan - the Beresford, San Remo and El Dorado apartment buildings, and the nearby Ritz Tower. Each of these is a designated landmark, bragging stellar design, ample sites, and classic massing schemes that contribute to the City's skyline and architectural dialogue. The Benjamin is a smaller, stripped-down knock-off of Roth's nearby Warwick, and never had much to distinguish it in the first place. One of four yellow brick and limestone hotels on Lexington Avenue, it is a pedestrian, workaday structure that just happened to be designed by a noted architect who also created some true landmarks. The Benjamin is not one of Emery Roth's landmarks.

Perhaps one of the oddest issues concerning the proposed designation is the claim that the structure has historical and cultural significance. For decades preservationists failed to identify the property as significant. It was only when a few individuals saw the landmarking option as a way to derail the Midtown East Rezoning that The Benjamin was even noticed. It is not been used as the setting for novels or movies, nor been the site of any location-related significant activity. Using designation as a tool to stop another government action is not the reason the landmarking process was created; in fact, when it is attempted using a non-significant property like The Benjamin it puts the entire purpose at risk.

The Benjamin looks forward to continued operations serving tourists and business people in a more vibrant and improved Midtown East. A landmark designation that would impede its ability to maintain and improve its hotel services is contrary to the intent and the spirit of the Midtown East rezoning. The Benjamin hopes that both the City Planning Commission and the Landmarks Preservation Commission will not act at cross-purposes.

Sincerely,

Brooke D. Barrett

Brooke Barrett

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DIAMONDROCK HOSPITALITY

3 BETHESDA METRO CENTER • SUITE 1500 • BETHESDA, MARYLAND 20814

William Tennis, EVP & General Counsel, DiamondRock Hospitality

Testimony Submitted to the NYC Planning Commission

Midtown East Rezoning
August 7, 2013

This statement is being delivered by William Tennis, the Executive Vice President and General Counsel of DiamondRock Hospitality Company, a premier lodging-focused real estate company in the United States. DiamondRock, owner of four hotel properties in New York City including The Lexington hotel, located at 511 Lexington Avenue at the corner of East 48th Street, would like to express its enthusiastic support for the proposed Midtown East Rezoning.

DiamondRock shares the Bloomberg Administration's vision for a new Midtown East commercial district. We believe that City Planning's proposal provides a zoning framework that can unlock the development potential of this important area and pave the way for a handful of new, state-of-the-art, architecturally distinctive mixed-use towers over the coming decades. This rezoning can serve as the catalyst that will ensure Midtown East remains an attractive and desirable destination for growth and investment by a broad range of U.S. and international firms.

As a lodging-focused real estate company, DiamondRock is highly concerned about maintaining a thriving Midtown East. We strongly support this rezoning which will expand the City's tax base, add thousands of permanent jobs in East Midtown and fund improvements to the subway and pedestrian network in the area. We especially applaud City Planning for including a requirement for a higher standard for energy efficiency, ensuring that new commercial towers in East Midtown will be at the leading edge of sustainable design. From DiamondRock's perspective, equally modern, energy efficient and attractive hotel buildings will be needed in the future to serve the guests of a flourishing Midtown East.

DiamondRock believes that this rezoning is essential for the New York City's core business district to remain competitive as well as provide a mechanism for infrastructure improvements and enhancement of the public realm. **Our enthusiasm notwithstanding, we are deeply troubled by what may prove to be an unintended negative consequence of the plan that prevents our property at 511 Lexington Avenue from participating in the important mission of the Midtown East Rezoning.**

The potential individual landmark designation of The Lexington Hotel conflicts directly with and, in the end, will undermine the vital planning and economic goals of the rezoning. Based on the history, appearance and condition of 511 Lexington Avenue, our property does not possess the special character and architecture required for individual landmark designation. Indeed, until now, it has never been even considered for LPC review. The reality is that The Lexington Hotel has become a pawn in the conflict regarding passage of this legislation.

It is important to note The Lexington Hotel's long tenure of extraordinary service that its workforce provides to many thousands of guests each year. Moreover, The Lexington plays a significant role in Midtown East—indeed it is one of only a handful of full-service hotel properties in the area. However, judging solely on the merits, landmark designation requires a property to meet a high watermark of historical architecture which goes beyond simply being an old building. Criteria which 511 Lexington does not meet.

One of the many reasons The Lexington Hotel does not merit landmark designation is demonstrated by the sweeping scope of alterations this property has undergone over the decades to accommodate new fenestration and HVAC sleeves, as well as extensive façade alterations. To be specific, more than 80 percent of the original decorative façade along 48th Street has been removed and replaced during myriad renovations; parapet walls on the corner of the building have been added to hide AC equipment and all of the original windows have been replaced. And despite being an important building in DiamondRock's hotel portfolio, the fact is The Lexington has never been viewed as a significant work of architecture by historians or preservation groups like the AIA or the Municipal Art Society.

Notwithstanding the significant investment we've made in our property, DiamondRock faces serious obstacles in our attempts to compete both with more nearby older hotels such as the landmarked Waldorf Astoria and the modern, new hotels that have been built elsewhere in Manhattan and likely to be built in the Midtown East Subdistrict. Like other buildings in East Midtown that are struggling with inefficient and outdated design, The Lexington Hotel already faces challenges in meeting the expectations of today's and tomorrow's guests due to the physical limitations of the original building. Low ceilings, narrow corridors and small windows make it impossible to provide the larger and well-lit rooms that guests most desire and that national and international hotel chains readily offer. To remain competitive, a comprehensive gut rehabilitation, including a complete façade replacement, of the building would be required. Landmark designation will make it impossible either to transform the building or redevelop the site in the future, crippling DiamondRock's ability to benefit from the Midtown East Rezoning. Landmarking will also increase the costs of operating what is already an economically challenged hotel by imposing additional landmark-related costs for the extensive renovations continually required by this building. These costs cannot be covered by increased room rates and makes The Lexington even more non-competitive against new hotels.

Over time, the reduction in revenue attributable to the design and infrastructure challenges faced by The Lexington, together with the increased costs associated with maintaining the building to LPC standards will compromise the hotels' economic viability. Moreover, the loss would include the cost to the City of the lost opportunity to offer modern sustainable hotel options in East Midtown convenient to the new office buildings anticipated under the rezoning.

Given the important policy and planning objectives involved here, we believe the City Planning Commission should make clear its opposition to any action that would either deliberately or inadvertently obstruct the goals of the proposed rezoning. This means considering the potential economic and planning consequences involved with landmark status and affirming that buildings located in the Midtown East Subdistrict which fail to meet the highest standards of historical and architectural merit should not be considered for individual designation.

Historic preservation plays a vital role in the City's economy and in the quality of life for both visitors and residents. As a matter of policy, landmark designation is an important planning tool, however, one that must be used wisely. **It should not be used as a tool to block growth and development. Nor should it be indiscriminately ascribed to buildings which lack the extraordinary historical character to support New York City landmark designation. This is especially true in connection with The Lexington Hotel, where designation would preserve a building that is increasingly less efficient and undermine the regeneration of East Midtown for the 21st Century.**

Testimony by Kramer Levin Naftalis and Frankel LLP Submitted on Behalf of Prime Property Fund, LLC, the owner of the Marriott East Side Hotel, to the City Planning Commission at the 8/7/13 Midtown East Plan Public Hearing

The Commission's goal of revitalizing East Midtown as a world-class business district and major job generator for New York City will strengthen demand for hotel occupancy in the neighborhood. But, the Marriott East Side hotel will only be able to help meet this demand if it can provide a competitive room product. The identification of the hotel as a historic resource and the consequent misguided interest in designating the Marriott East Side as a New York City landmark is contrary to the Commission's goals. If the hotel is designated as an individual New York City landmark, it will be deprived of the ability to modernize along with its neighboring office buildings and it will be unable to compete.

Since 2005, almost $50 million has been invested in the Marriott East Side Hotel. Despite this significant investment in the property, the hotel has struggled to perform due to the increasing cost of operations and an inventory of guest rooms that cannot compete with the new product offered by modern hotels constructed in the city. Net Operating Income is less than half what it was in the early years of ownership. With 79 new hotels opening in the next three years with a projected 15,000 new rooms, the competitive landscape is only going to increase. Landmark designation would make it impossible to make the kind of rehabilitation needed to convert the building into a modern, sustainable hotel that would complement the new office buildings expected under the East Midtown Rezoning initiative. It would also escalate already high maintenance and repair costs to the point where operation as a full-service hotel may no longer be economically viable, potentially resulting in the loss of 413 jobs. The Marriott East Side is a union hotel, so most of these positions are union jobs.

The hotel's difficulties are a direct result of its increasingly obsolescent building. The Marriott East Side hotel was built in 1922-23 as a bachelor residence for men with 1,200 exceptionally small rooms, many of which utilized group bathrooms. It has since been reconfigured to a full service hotel with 646 rooms, but retains numerous operational challenges due to its original design including small rooms (even by New York standards), small windows with inadequate natural lighting and little protection from street noise, narrow corridors, low ceilings, and 125 different room configurations. Substandard and inefficient heating and cooling systems significantly impact guest satisfaction and contribute to high operating costs. Three years ago, the hotel was further impacted by the construction of the adjacent Hyatt 48 Lex building. Eighty-five guest room windows were bricked over and one of the building's best amenities, the Fountain Terrace, was obscured, relegating it to a staging area for air conditioning units rather than the event and wedding venue it used to be.

The building also suffers from extensive failure of the original barrier wall system due to the materials and construction techniques uscd in thc building's construction. Extensive repairs have been required to date that have resulted in replacement of approximately 35% of the façade, but the remaining original materials will require equally extensive and ongoing repairs. Important design features originally constructed in stone, such as gargoyles, have been replaced with light weight glass-fiber-reinforced polymer due to the risk of collapse resulting from inadequate support. Repairs to the façade are obvious since replacement brick and mortar does not match the original material in color or finish. These repairs can be seen in twenty-story vertical stripes at the building's corners, horizontal bands at window lintel positions, and the total reconstruction of entire surfaces of parapets and cornices at the setbacks of the building. This has significantly disfigured the building and altered the original visual unity of the structure. Repairs to the façade have been costly and will continue to be a burden to ownership as long as the original façade remains in place.

Other physical alterations have been made to the exterior of the building over time, including significant modifications to the Fountain Terrace (removal of the character-defining original fountain, paving, pergolas, hanging lamps and other decorative elements), enclosure of two other terraces, replacement of most of the original windows with modern window systems, insertion of HVAC units under windows (resulting in hundreds of façade penetrations), addition of a modernist canopy above the front entrance, and enclosure of the sky bridge. These changes have also significantly altered the original appearance.

In addition to its lack of architectural integrity, the hotel lacks the historical and architectural significance to merit designation as a landmark. The Marriott East Side hotel has been the subject of numerous historical claims that exaggerate the importance of the building, and in some cases are factually inaccurate. While it is true that Georgia O'Keeffe and Alfred Stieglitz resided in the hotel at various times and made the building a subject of their art, it was not their primary residence at any point in time and they lived in many other locations throughout the city that were true residences. There are other far more significant New York City sites associated with these artists that better represent their work and lives, such as 509 Madison Avenue, the only surviving Stieglitz gallery. The building was not the first, or even one of the first in New York City to take into account the 1916 Zoning Code. It was also not the first major building or the first hotel to reflect the code. It did not initiate a new generation of design for tall buildings in New York City. In fact, the building represented the end of a design. The building did garner much fanfare when it was constructed due to its free-standing giantism among a sea of small structures. However, within a few years it was surrounded by taller buildings on all sides, making it unremarkable to modern historians.

On three separate occasions in the 1970s and 1980s, the New York City Landmarks Preservation Commission took no action and expressed little or no interest in calendaring this building despite the submission of requests for consideration. The building has been significantly altcrcd duc to ncccssary structural repairs since then, making it even less appropriate for landmark designation now than it was 40 years ago. The sudden and unexpected call for designation now is unwarranted and is in stark contrast to the primary goal of the proposed East Midtown Rezoning initiative, which is to maintain and improve the vibrancy, viability, and competitiveness of East Midtown through development of state of the art commercial buildings. World class amenities are a necessary component of this goal.

The prospect of a landmarks designation is not justified on the merits and will prevent the Marriott East Side from participating in the revitalization of this important commercial district. We ask the Commission to consider this issue carefully as it moves forward with the East Midtown Plan.

STATEMENT OF MIDTOWN TRACKAGE VENTURES LLC
TO THE NEW YORK CITY PLANNING COMMISSION
REGARDING THE EAST MIDTOWN REZONING
AUGUST 7, 2013

I am Andrew Penson, a managing member of Midtown Trackage Ventures LLC, the owner of the land underneath Grand Central Terminal and the unused development rights associated with that land.

We purchased the land in December 2006 with the goal of creating additional value for developments on sites around the Terminal. Unfortunately, our timing was less than perfect. Not long after our purchase, the national economy and the stock market both collapsed, and there was neither the demand for new commercial space in Manhattan nor the financing to build it.

Today, the city's real estate market is coming back, and there are sites within the existing Grand Central Subdistrict which are available and ready for redevelopment. These sites, which came into play before the East Midtown Rezoning was first suggested publicly, offered us a long awaited chance to participate in the area's redevelopment through the use of the Terminal's transferable development rights. We had hoped that the East Midtown Rezoning proposal would provide us with the full opportunity to do so.

We share the City's goals of a vital East Midtown Central Business District marked by a rejuvenated stock of office buildings and an improved public transit system. Within the appropriate regulatory framework, these conditions are good for both us and the City. However, the rezoning proposal before the City Planning commission today falls short of providing such a framework in three crucial respects.

- The proposal neither maximizes funds for infrastructure improvements nor ensures that, consistent with the promise of the Penn Central case, the sale of landmark development rights will truly provide compensation for the burdens of landmark designation. This is because it does not use the most appropriate analogue – floating development rights – as the touchstone for setting the price of the District Improvement Bonus.

  The study prepared by HR&A Advisers, Inc. and submitted with this statement demonstrates that the price of floating development rights relative to the price of land has historically been very different than the relationship between the price of development rights transferred through zoning lot mergers and land value. The fundamental reason for this difference is simple: the buyer and seller have relatively equal bargaining power (or leverage) in a transaction involving floating rights, while the buyer has significantly more leverage than the seller in a zoning lot merger transaction. This leverage should not be a factor in placing a value on the DIB. Rather, the DIB price should recognize the relative equality in the parties' bargaining power. It should also recognize that, like the transferred floor area referred to in the testimony of Tommy Craig of the Gerald Hines Interests, the floor area generated through the DIB will be used at the top of the building – its most valuable part. Surely, then, it is not unreasonable to establish a framework for valuing the DIB in which its price closely approximates the price of land.

The risk in the City's current approach to pricing the DIB is that the DIB will be undervalued and the City will not be able to maximize the funds available for the infrastructure improvements needed in East Midtown. The extent of the undervaluation can be seen by comparing the results of the City's appraisal, which was premised on development rights being worth only 60% of land value, and the appraisal of Jerome Haims Realty, Inc., which was based on development rights being worth about 80% of land value. Undervaluing the DIB subverts its public purpose – that of creating maximum funding for infrastructure by getting maximum value for development rights. It also, perhaps inadvertantly, aligns the plan against the interests of the community and the taxpayers, which makes no sense whatsoever. We believe that this undervaluation has been a key reason why elected officials, the affected Community Boards, and many of the City's most thoughtful civic groups have criticized the DIB and why the Community Boards chose to reject the rezoning in its entirety.

We understand that some take comfort in the fact that, because development rights buyers argue that a DIB price of $250/square foot is too high and development rights sellers argue that it is too low, then somehow $250/square foot must be the right price. We disagree. The right price is the price that is established through an appraisal with instructions that recognize that the most appropriate analogue to the DIB is the value of floating development rights. Using such an appraisal process for each DIB transaction together with a floor for the DIB price (which based on the Haims appraisal could reasonably be set at $350/square foot) will go a long way to aligning the interests of all landmark owners, as sellers of air rights, with those of the City and the public. The only stakeholders with an interest in buying DIB as cheaply as possible are developers who want to "average down" their land costs.

- The proposal uses a virtually unknown, untested and methodologically questionable process for adjusting the pricing of the DIB. We know of no one outside of the City who, on or off the record, believes that this index offers either the most transparent or accurate way of tracking changes in the value of the floating development rights. Here, the inadequacy of using any index is exacerbated because the DIB is underpriced to begin with and because the first price adjustment is not until long after the DIB's was first set. This is a formula for ensuring that the DIB will always cost less than the value of comparable development rights, and it provides what we believe to be an unintended and unnecessary subsidy to real estate developers.

We understand that a key justification for using an index to adjust DIB pricing is to provide developers with certainty. But certainty has never been critical to the development process, as is demonstrated by the fact that developers will pursue properties offered for sale the City despite the fact that these properties cannot be sold unless and until their value is duly established by an appraisal. And, for the purposes of the DIB, the accuracy and fairness of an appraisal which looks at sales on a real time basis, should more than make up for any uncertainty as to its outcome.

No adjustment mechanism is perfect. But we (along with many others) continue to believe that an appraisal with clear, fair and publicly reviewed instructions offers a better and more accurate way of identifying, over time, the right price for the DIB.

- The proposal allows for in-kind work to be substituted on an as-of-right basis for a DIB contribution. This aspect of the proposal should be eliminated. The City's advance of funds for infrastructure improvements has obviated the need for it, and it will divert funds needed to repay this advance away from the DIB. Alternatively, substitution should not be permitted on an as-of-right basis. The arrangement as proposed is unprecedented in the Zoning Resolution. In Hudson Yards, for example, the substitution of an in kind contribution for a payment into the District Improvement Fund requires an authorization.

  We believe that the Planning Commission has not permitted in-kind substitution for a monetary bonus on an as-of-right basis for the best of reasons. The substitution process is fraught with judgments as to whether the in-kind work proposed is appropriate and whether it is being properly valued. Public review will require that decisions on these issues be carefully considered and transparent. It will ensure that they are fully legitimate, that they are not open to allegations of cronyism or favoritism, and that, most importantly of all, the public gets the full benefit of the bargain.

We urge the Commission to modify the proposed text so that the City can receive the full benefit of the rezoning and so that all public and private stakeholders are treated fairly. Doing so would go a long way to addressing not only our concerns, but the concerns of the area's elected officials and Community Boards as well as some of the city's most important and thoughtful civic organizations.

Thank you for your attention. I am, of course, prepared to answer any questions you may have about our position.

The Municipal Art Society of New York
MASNYC

Testimony to the City Planning Commission
August 16, 2013

The Municipal Art Society of New York is a non-profit committed to advocating for intelligent urban planning, design, and preservation policy. MAS has a particularly long and celebrated history in East Midtown, leading the fight to preserve Grand Central Terminal and for many years locating our offices at the Villard Houses on Madison Avenue and East 50th Street within the re-zoning area.

Since the Department of City Planning released their plans to rezone a large portion of East Midtown Manhattan last year, MAS has been working with area stakeholders and a variety of planning, preservation, and real estate experts to help ensure the future vitality of this important neighborhood. Much of this work culminated in a report released earlier this year, *East Midtown: A Bold Vision for the Future*, which lays out recommendations for a planning framework to secure the future of this vital business district (see attached report).

The report was released in February, 2013 and has been viewed by over 15,000 people. MAS hoped it would serve as a useful guide to the Department of City Planning , the Landmarks Preservation Commission, MTA, and the Deputy Mayor's office and others as they prepared a planning framework for East Midtown. All of the issues outlined below are described in detail in that report and this testimony is a continuation of the core concerns MAS has been raising for well over a year.

Over the course of the year some changes have been made to the proposal and in the 'A' text and MAS is pleased by the allowance for some residential development and the initiation of a public realm planning study but MAS continues to have serious reservations about many other details in the proposal and cannot support the rezoning in its present form.

The City's proposal revises the general purpose of the Special Midtown District to include new goals to "protect and strengthen the economic vitality and competitiveness of the East Midtown Subdistrict by facilitating the development of exceptional modern and sustainable office towers and enabling improvements to the above and below grade pedestrian network; protect and strengthen the role of iconic landmark buildings as important features of the East Midtown Subdistrict; and to protect and enhance the role of Grand Central Terminal as a major transportation hub within the City and in East Midtown…"

MAS views these as laudable goals; however, there are many aspects of the proposal that are inconsistent with these goals or where there is insufficient information to know whether these goals are being met.

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To better plan for the future of East Midtown, MAS recommends that the City Planning Commission revisit the following four areas of the proposal very carefully:

1. Public Realm & Infrastructure Investment
2. Density & Public Review
3. Proposed Financing Structure and Oversight
4. Historic Preservation

Fundamentally, the zoning text must make clear that infrastructure and public realm improvements will precede new density, include meaningful public review at densities above what is allowed today but lower than what the Department of City Planning is proposing, create a real market pricing mechanism for the publicly controlled development rights, and protect critical buildings.

The following testimony outlines MAS's recommendations based on an analysis of the proposal and accompanying Draft Environmental Impact Statement (DEIS). It also identifies specific changes for various sections of the proposed East Midtown 'A'-text amendment released on July 17, 2013.

The key recommendations in each section are followed by a longer explanation.

1. **Public Realm and Infrastructure Investment**

   Recommendations:

   - The City needs to commit in a clear and defined timeline to the essential improvements to the transit network the MTA has described in public presentations (10/10/12) and the improvements the public realm study will describe. <u>**Building permits and approvals for new development need to be contingent on the completion of the infrastructure and public realm improvements. The sunrise period provides a window to ensure infrastructure is in place and we need to take advantage of that opportunity. The Commission should insist on essential investment coming before new development.**</u>

   - A comprehensive urban design and infrastructure improvement plan should be created. This plan should include a map, which diagrams the existing above and below grade circulation network and displays where connections could be made to East Side Access and other desirable public and private circulation improvements. In particular, language regarding transit connectivity (A-text, 81-625, (b) (5) (p 34) should be strengthened to include generous and

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specific design requirements for new subway and railroad connections.

- A more effective way to manage any potential impacts of the East Midtown rezoning on the prospects for development in Hudson Yards and Lower Manhattan would be to base benchmarking on the completion of specific infrastructure and development goals in these neighborhoods. The Independent Budget Office or the Office of Management and Budget (OMB) should be charged with certifying that the Hudson Yards and Lower Manhattan developments have hit certain milestones, thereby permitting construction to begin in East Midtown and ensuring that tax payers who are helping to support those initiatives are not risking their investment. These milestones should be based on the public sector re-capturing the investment it has made in these projects.

- This plan should also include a map of existing POPS within the area and include specific requirements for upgrading existing POPS with minimum design standards for seating, signage, lighting, and signage.

Other specific elements that should be revised to improve the quality of the street life include:

- The street wall requirement along Park Ave should be revised in order to allow flexibility for additions such as plazas, which are a dominant characteristic along this stretch of Park Avenue (A-text, 81-651, (d) (1) p 54).

- There is currently no retail provisions required along Park Avenue. To increase the vitality along this stretch of the Avenue, retail continuity should be required (A-text, 81-674, p 67).

- Bank street frontage should be limited along Vanderbilt to encourage a diversity of retail options and promote a more active streetscape for pedestrians (A-text, 81-674, (c) p 67). For instance, new and expanding banks could be restricted to no more than 25' of frontage along Vanderbilt.

<u>Public Realm</u>
Although the City has hired consultants to conduct a community planning process to help re-envision the area's public realm, to date the City's proposal has focused on Vanderbilt Avenue. East Midtown needs a more comprehensive strategy—one that takes advantage of and enhances the unique characteristics of Grand Central

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Terminal and the surrounding area and carefully examines the relationship between transit, new buildings, and at-grade spaces. MAS started this conversation in October of 2012 by inviting three leading design firms – Foster + Partners, SOM, WXY – to re-think the public experience of Midtown and continues to believe that without a clear commitment and timeline for making essential improvements to the public realm Midtown will not realize its full economic potential.

One aspect that makes this area unique is its extensive system of public spaces and below-grade circulation corridors leading to Grand Central Terminal. This system of corridors has changed over the years as some connections have been closed and others created. These corridors are continuing to evolve, especially with the East Side Access project now underway. It is important for the future of the neighborhood to continue to leverage and expand on these essential below grade access points as they help ease congestion on surrounding streets. The Department of City Planning should include a map much like the existing Map 4, now located within the existing text, which diagrams the existing above and below grade circulation network. The Department of City Planning should elaborate on this map by including a plan that illustrates where these networks could be added to and improved. This work in close coordination with the MTA will ensure that appropriate station ingress and egress is planned for East Side Access which will transform how people arrive in Midtown for better or for worse.

Where a network improvement is tied to a particular site the zoning should clearly prescribe the transit connections. The mass transit access section (A-text, 81-672 p 65) of the proposed zoning text establishes a process for determining transit access improvements rather than describing what the improvements should be. This creates an element of uncertainty for the developer who will need to commit an unknown amount of time to negotiate with the City of New York and the MTA. There is also no explanation of how these transit access improvements would contribute to the future public realm - a more detailed description of the improvements which are needed is critical in the zoning to ensure predictability for both developer and the public.

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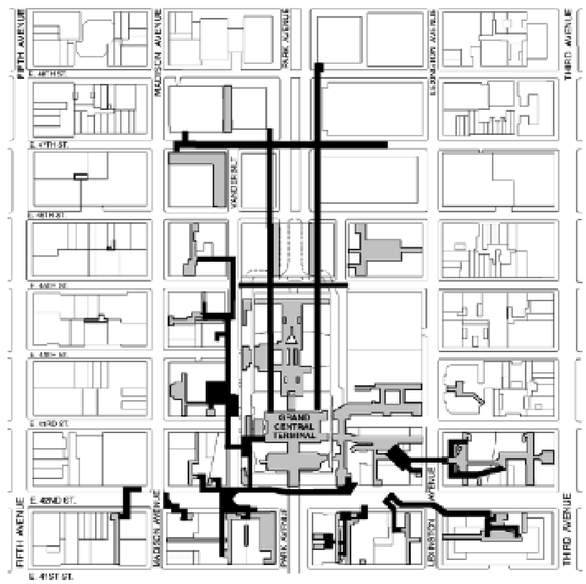
(8/26/92)

Map 4: Network of Pedestrian Circulation (81-A4)



MIDTOWN DISTRICT PLAN
MAP 4 - NETWORK OF PEDESTRIAN CIRCULATION

Below Grade Circulation Network
Street Level Circulation Network

Another element unique to East Midtown is the prevalence of Privately Owned Publicly Spaces (POPS). This area has one of the highest concentrations of POPS anywhere in the city. There are 47 buildings within the rezoning area with some type of POPS. Developing a public realm strategy which takes advantage of these spaces and also seeks to improve them is critically important to developing a public realm which takes advantage of the existing assets in East Midtown.

<u>Sunrise provision</u>
The "Sunrise" provision is the proposal's principal method of protecting development elsewhere in the city, such as Hudson Yards and Lower Manhattan. The proposal states that no foundation permit for a building on a qualifying site shall be issued by the Department of Buildings (DOB) prior to <u>July 1, 2017</u>. In the Northern Subarea the transfer of development rights from a landmark building to a receiving site will not be allowed until <u>January 1, 2019</u> (A-text, 81-612, p 21).

The reason for selecting these two particular dates is unclear. The DEIS lacks analysis of how the 2017 date was chosen or how it fits with the construction sequence and planning for the other neighborhoods. The City's Response to

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Scoping Comments (Comment B1.22 p. 11) states that "the relationships among various city initiatives need to be coordinated," but the DEIS does not reflect or describe what such coordination includes.

Furthermore, in the 2011 bond report for the Hudson Yards prepared by Cushman Wakefield notes on page 23 that "these projections assume that the existing zoning legislation remains in place throughout the analysis period. It is also assumed that future changes to applicable City zoning and tax incentive programs will not materially affect Manhattan's overall development potential. Significant changes to City zoning to create new markets that would be competitive with Hudson Yards could potentially result in lower development than forecast." The report is a 30 year forecast. How does that fit with a 5 year sunrise?

If the purpose of the sunrise provision is to ensure that E Midtown , Hudson Yards, and Lower Manhattan do not compete we should be setting up far more clearly defined benchmarks for development in Hudson Yards and Lower Manhattan and infrastructure/public realm benchmarks in East Midtown rather than guessing what the state of development activity will be in 2016 or 2107. This will provide the public some measure of comfort that their investments in these other neighborhoods are secured and that the appropriate infrastructure is in place in East Midtown to absorb the influx from East Side Access, new development in East Midtown, and broader regional growth in transit demand.

The Department of City Planning has used the Cushman & Wakefield report to argue that real demand exists for the additional square footage of office space which would be created. Earlier Cushman and Wakefield reports significantly underestimated the demand for office square footage in Hudson Yards and therefore created a shortfall in revenue to fund the 7 train extension which taxpayers are now paying for instead of private development.[1]

It is not clear that a study produced to re-assure bond holders/potential bond buyers that there is a demand for office space in Hudson Yards is an unbiased examination of market demand today. Moreover, the study has not accurately predicted the demand since prepared. Finally, the convenient application of only those pieces of the study that are useful is not a complete and up-to-date market analysis for office market demand in New York City. For all of these reasons, the sunrise provision needs to be re-thought as described above.

2. Density & Public Review

[1] See: http://www.ibo.nyc.ny.us/iboreports/hudsonyards2013.html &
http://online.wsj.com/article/SB10001424127887324874204578441223686072506.html

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Recommendations:

- The severity of the impacts identified in the DEIS is a clear indication that the proposed density will create significant challenges in East Midtown. To reduce projected impacts the proposed zoning should be examined more carefully on a site by site basis. **No as-of-right development should be permitted to exceed 18 FAR**. Buildings receiving floor area in excess of 18 FAR (A-text, 81-625, p 32) should be required through special permit to ensure public review. 18FAR still represents a significant increase in the allowable as-of-right density in Midtown and therefore would achieve the City's stated goals while allowing for more careful monitoring of potential impacts. Along Park Avenue, for instance, this would represent a 3FAR increase.

  A 20% increase in the as-of-right density without any additional public review is also more consistent with density bonuses elsewhere in Midtown such as in the Theater Subdistrict where a 20% bonus is permitted through a Commission certification. This does not conflict with the City's goals of building a few iconic office buildings as many signature office buildings have been created through the public review process.

  In addition, the proposal with the 'A' text has a variety of levels of public review; in many cases buildings with less density require public review while those buildings with more density do not. <u>Public review, rather than being linked to the lot area, should be linked to density which is an approach consistent with the criteria for public review elsewhere in New York City.</u>

  One example of this inconsistency is shown in the chart below which examines FAR in the GCT Core and clearly illustrates this confusion, 24FAR can attained as-of-right for large development sites but on smaller sites public review is required for sites with 21.6 FAR.

  Rather than a patchwork quilt to describe where public review is required a far more consistent approach to minimizing project impacts would be to require it for all projects over 18FAR regardless of lot area or year planned.

Qualifying Site	**24 As-of-right FAR**

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	6 Additional FAR by special permit **30** FAR cap by special permit
Non-Qualifying Site	**15** As-of-right FAR **6.6 FAR for TDR and/or subway improvement bonus by special permit*** **21.6** FAR cap by special permit**

- The total maximum FAR in the Grand Central Subarea Core should not exceed 24 FAR; in the non-core, along Park Ave north of Grand Central Terminal to 57th Street, FAR should not exceed 21.6. 24 FAR and 21.6 FAR represent an increase over what is allowed today but would better align proposed FARs with the largest building in East Midtown rather than seek to create a new urban design context. The Department of City Planning has not provided a clear rationale for the densities that have been proposed and 24 FAR and 21.6 FAR is higher than what is allowed today.

- Maintaining the same setback controls along Vanderbilt as are along Madison Avenue is essential to ensure that the new buildings do not shift their bulk overwhelmingly to Grand Central. The proposal inappropriately relaxes setback controls along Vanderbilt. If the size of the site cannot accommodate the proposed densities within the Midtown envelope without significant waivers then the proposed densities are inappropriate (A-text, 81-66, (a) (3) p 59 and A-text, 81-663, (b) p 62). See figure below which illustrates the concerns with the proposed setback controls along Vanderbilt Avenue and how the regulations unduly shift bulk towards Grand Central Terminal, casting shadows and blocking access to daylight.

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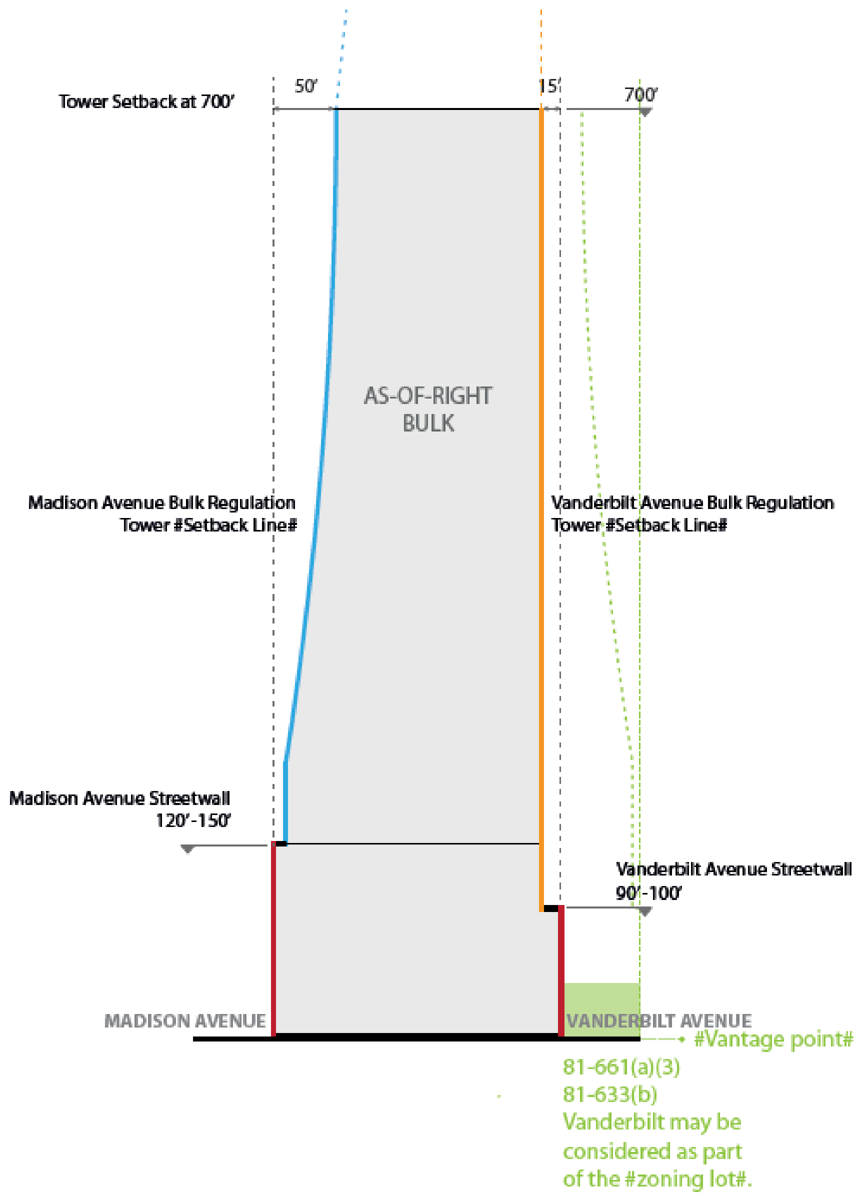

- The proposed language ties new development to the energy code now in effect. To ensure that new development truly leads the way in energy efficiency, the zoning text should require that new developments be at least 15% above the code that is in effect at the time the building permit is

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pulled. This is a point that has been raised as well by the US Green Buildings Council NY Chapter. (A-text, 81-623, p 30).

Rationale for As-of-Right Density
Due to the significant increase in density, the DEIS projects a number of impacts and identifies several impacts that cannot be mitigated. Unmitigated impacts fall into four categories: shadows; historic resources; some transportation congestion (traffic, transit, pedestrians); and construction impacts.

The first two unmitigated effects—shadows and the destruction of significant architectural resources—would be permanent, and tend to be tied to specific new buildings (shadow impacts are summarized in Sec. 5.2; historic resource impacts are summarized in Sec. 6.2). The DEIS states that the rezoning could lead to the partial or complete demolition of 14 historic resources that are eligible for New York City Landmark designation and/or inclusion on the State and/or National Register of Historic Places (pp. ES-56, 6-2.)—resources that would be lost forever.

The third of the unmitigatable impacts – transportation congestion –results primarily from the cumulative effect of all of the projected development. Thus reducing these impacts would largely involve reducing the scale of the overall rezoning. The fourth impact – construction – is temporary, and serious construction impacts are generally accepted as the price of development.

As noted above, these impacts require a more careful site by site analysis for the proposed densities and therefore we urge the City to require special permits for building over 18FAR to ensure that the impacts can be examined more carefully. The findings should directly address the impacts that are identified in the DEIS and include the relevant findings for the Superior Development special permit.

Applications for developments within the Grand Central Subarea Core should also be required to make a finding concerning the harmonious relationship of the development to Grand Central Terminal (A-text, 81-625, (b) (6) p 36).

3. Proposed Financing Structure and Oversight

Recommendations:

- The City should conduct an appraisal at the time of each transaction to ensure that the market price is up-to-date and accurate and set a floor for the price of air rights to ensure that the City doesn't negotiate a sale during an economic downturn which is not in its best interests. This appraisal should be disclosed publicly with a public comment period similar to the sale of city owned property. This will help to ensure transparency for a

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commodity which could be worth hundreds of millions of dollars. The current approach outlined in the text threatens to dramatically shortchange the public.

- Buildings receiving floor area in excess of 18 FAR must be required to go through public review. Public review is particularly important for in-kind contributions as the review process will help ensure that contributions are appropriate and that they provide adequate community compensation or benefit (A-text, 81-621, (c) p 27).

- A much more inclusive selection of stakeholders should be required to be part of the East Midtown District Improvement Fund Committee.

- A detailed description of the legal instruments and the process through which the DIF will be collected, stored and distributed should be outlined within proposed zoning text (A-text, 81-621, (d) p28).

The City's current proposal ties public realm and infrastructure improvements to future development by utilizing a District Improvement Fund (DIF). This is an unreliable way to plan for improvements, as it is unclear how much money the fund will accumulate and when the funding will be available. Although the Mayor's office has recently stated that the City will advance funding for some mass transit and open space improvements in the area upon passage of the rezoning, the City should clearly outline specifics related to the proposed DIF, should identify alternative funding sources to better ensure improvements are made, and should make building permits contingent on the improvements having been completed or well underway.

East Midtown District Improvement Fund Contribution Rate:
As written the East Midtown District Improvement Fund Contribution Rate "shall be set at $X per square foot of #residential floor area#, as determined by an appraisal study prior to (date of adoption), and $250 per square foot of #non-residential floor area# as of (date of adoption)." (A-text, 81-611 – Definitions (p 16)

Setting a market price for these development rights is a critical issue to ensure that the public captures the full value of the development right they are selling. Setting a price in 2013 for air rights based on transactions which have occurred from 1997-2008 as the City's appraisal does and for a commodity which will not be sold until 2017 creates a significant risk that the price will not accurately reflect the market price. Moreover, one price for a 73 block area does not acknowledge that the location of individual development sites matters and affects the cost of development rights. Rather than set one uniform price four and half years in advance the City should conduct an appraisal at the time of each

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transaction to ensure that the market price is up-to-date and accurate and set a floor for the price of air rights.

This appraisal should be disclosed with a public comment period similar to the sale of city owned property to ensure transparency for a commodity which could be worth hundreds of millions of dollars. The current approach outlined in the text threatens to shortchange the public and is inconsistent with the kind of transparency required when the City disposes of other assets worth significantly less.

An appraisal prepared by Jerome Haims, one of the most experienced appraisers in New York City, for Midtown Trackage raises very significant and unanswered questions about the value that the City has placed on publicly controlled development rights.

In response to these concerns raised over the course of many months the Department of City Planning staff and the Chair of the City Planning Commission argue that "predictability" is necessary for developers. No such predictability, on the other hand, is required by the private sector in the context of a zoning lot merger. In those instances a price is negotiated between two parties and there is no "predictability" with respect to value except that the seller will try to get the highest price he or she can. No rationale has been provided for why the public sector needs to provide this "predictability" to the private sector when it potentially significantly undercuts the scope of improvements that will be made as a result of this re-zoning. A far more important goal should be ensuring the public achieves a market price for a commodity it controls.

If a legal rationale is provided which requires the Department of City Planning to set a price in 2013 for a commodity which will likely be sold in 2017 and beyond then MAS strongly recommends the price be set at the value that is based on the appraisal conducted by Mr. Haims which uses more recent data, makes a more careful distinction between floating air rights and land locked air rights, and acknowledges in the analysis that location matters in setting real estate values. This methodology presents a far more compelling argument for air rights valuation.

East Midtown District Improvement Fund Committee:
A much more inclusive selection of stakeholders should be required to be part of the East Midtown District Improvement Fund Committee which should include:

1) 1 Representative appointed by affected Councilmembers
2) 1 Representative from Community Boards Five and 1 from Community Board Six
3) 1 Representative from the Borough President

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The mayoral appointees should be required to include in addition to the Director of the Department of City Planning:

1) Commissioner of DOT
2) Representative from the MTA
3) Representatives from the Grand Central Partnership & East Midtown Partnerships

4. Historic Preservation

Historic buildings retain a unique mix of materials, styles and uses that contribute to East Midtown's visual diversity and sense of place. Today, of the 587 buildings located in the City's original East Midtown study area, only 6% — 32 buildings — are designated landmarks. MAS identified an additional 17 buildings worthy of landmark designation, while several other preservation groups identified others. Several of these buildings have been identified as projected development sites in the DEIS. The Department of City Planning must work in tandem with the Landmarks Preservation Commission to ensure these historic resources are protected.

Recommendations:

- The Landmarks Preservation Commission should calendar worthy buildings immediately, including a group of 8 that they have identified as being landmark eligible.

- Within the "Qualifying Site" section of the East Midtown zoning text (A-text p 20) there should be an additional exception for Landmark buildings similar to that described in point (c) in this section. The additional point regarding Landmarks should state that any New York City landmark building or structure may remain within the minimum site geometry described in paragraphs (a) and (b) of this definition (A-text, Qualifying Site, p 20). Section 81-624, (2) p 31 should include the same provision.

- In the Northern Subarea, the transfer of development rights should be required through special permit rather than authorization. Public review should be required for all developments over 18 FAR. (A-text, 81-633, (2)(i) p 44)

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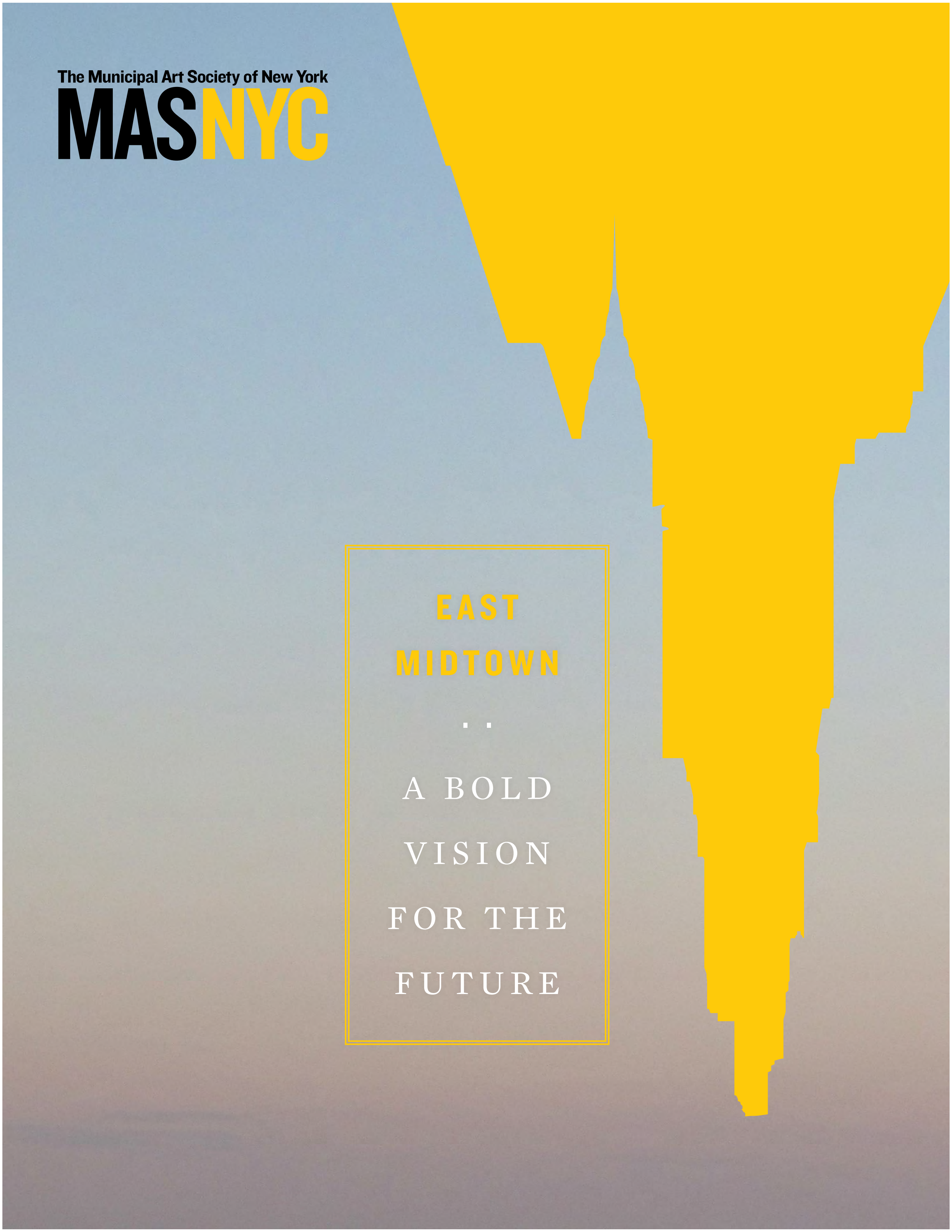
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EAST MIDTOWN
A BOLD VISION FOR THE FUTURE

FEBRUARY 2013

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ABOUT MAS

The Municipal Art Society of New York, founded in 1893, is a non-profit 501(c)(3) membership organization that fights for a more livable New York and advocates for intelligent urban planning, design and preservation. Since 1893, MAS has been working to make New York a more livable city. Please visit mas.org to learn about our unique history and successes, from championing the first municipal Zoning Code to saving Grand Central.

The Municipal Art Society of New York
111 W. 57th Street, New York NY 10019
T 212-935-3960
mas.org

The Future of EAST MIDTOWN

THE IMPORTANCE OF maintaining East Midtown as a premier business address is undeniable. The area not only supports 250,000 jobs but also serves as the gateway to millions of workers and visitors. With its extraordinary location and abundant assets, it sits at the heart of the region's economy and contributes to the nation's economic vitality. To ensure this position in the face of worldwide competition, Mayor Bloomberg recently called for the area's modernization, an effort to be accomplished through major zoning changes, outlined but not yet detailed, by the Department of City Planning. The Department's ideas first described publicly last July and since amplified, opened an important conversation that MAS, as an organization committed to intelligent urban planning, design and preservation in New York City, seeks to expand.

At stake is whether the proposals will yield the promised results — MAS fears that in the absence of a careful and comprehensive vision, the effort will fall short. As presented, the proposal with a focus on single use commercial buildings, limited improvements to the public realm and the absence of a truly integrated transportation network does not capture the elements that will ensure an attractive, vibrant and successful 21st century business district for generations to come.

MAS urges the Mayor and the Department of City Planning to re-examine this approach and work with the many stakeholders invested in Midtown's future to develop a proposal that is built upon a set of core principles that have underpinned New York City's success for decades:

Section One Page 15

A RE-INVIGORATED PUBLIC REALM. Improving the experience of all of Midtown streets and investing in public space will help create an environment which will attract new companies and retain existing firms.

Section Two Page 27

A CONNECTED MIDTOWN. Investment in infrastructure has been the key driver of East Midtown's development. Future investment and reliable funding mechanisms to secure those investments are essential to the growth of Midtown.

Section Three Page 39

A VIBRANT MIX. A plan for Midtown should nourish the diversity that draws people and businesses to New York City. Preservation is an important tool in sustaining this mix.

Section Four Page 49

DESIGN FOR THE NEXT CENTURY. New development should aspire to the highest quality design and environmental standards. Buildings should connect to transit, improve the pedestrian experience, and support an active street life. Density should be added only where it can unlock the most value and is within an appropriate urban design context.

The past 20 years have seen great changes in business needs, from technology, to globalization to neighborhood revitalization. Even ten years ago, it would have been unthinkable for some of the largest companies in the world to move to Chelsea or Dumbo. Clearly, 21st century businesses need more than large floor plates — they need to be in unique and inspiring neighborhoods with great streets and public spaces, a mix of old and new buildings, and efficient transportation.

The executive summary and full report that follow offer detailed background and many recommendations that amplify these principles.

A plan for Midtown's future needs to address comprehensively the area's transportation, public realm, preservation and economic challenges. All of these elements are not only at the heart of an optimistic future for this key job center, but are also central to creating a more livable city.

EXECUTIVE SUMMARY & RECOMMENDATIONS

A BOLD VISION *for Midtown*

East Midtown can be the model central business district of the future. However new zoning alone will not get us there. The Bloomberg administration's proposal has rightly pointed out that the economic engine of the city needs investment to ensure its future success. The Municipal Art Society of New York is supportive of the City's broad goals but believes that a more comprehensive and bold vision is necessary to truly create a 21st century business district.

First and foremost, the City's plans should incorporate key features that have long contributed to New York City's success. To this end, a new plan for Midtown must:

- Create walkable, well-designed streets, open spaces, and below grade passageways — spaces that provide settings for the chance and planned encounters of urban life.
- Provide seamless connections throughout the neighborhood, to the region and the world. Essential infrastructure must be in place before new buildings are built.
- Strengthen the energy and diversity of New York City — by embracing and encouraging a mix of uses, active retail, and a diversity of businesses.
- Celebrate and protect buildings that link to the city's storied past while encouraging those that signal its continued evolution.

New Class A office space will help, but it will not ensure a vibrant and successful business district. New York's success is built upon the historic commitments of previous generations — building Grand Central, creating some of the world's most well-known parks, open spaces and streets, and protecting and enhancing these treasures along the way. However, the City must continue to think ambitiously about these civic investments. Large buildings are only as successful as the neighborhoods around them and East Midtown can be the model central business district of the future.

Midtown needs a plan that commits to essential infrastructure and public realm investments, the preservation of critical buildings and the addition of new buildings that raise the bar for high-density development.

Four principles, developed by looking closely at the elements that have driven New York City's success, guide our recommendations:

A. ***New York City skyline, 2012***

ONE: A RE-INVIGORATED PUBLIC REALM

Although anchored by Grand Central Terminal — one of the world's greatest public spaces and transportation hubs — Midtown has fallen behind other neighborhoods when it comes to meaningful public amenities and efficient transit. Today's sidewalks, particularly along Lexington and Madison are narrow, dark and crowded. Though sprinkled with privately owned public spaces and plazas, the rezoning area has virtually no green spaces set aside for public use and over the years, pedestrian circulation has only become more challenging. In order to truly energize Midtown we need to:

CREATE an improved network of open spaces. Rather than create site-specific improvements as new buildings are built, Midtown needs a plan for improving the entire network, in particular congested sidewalks.

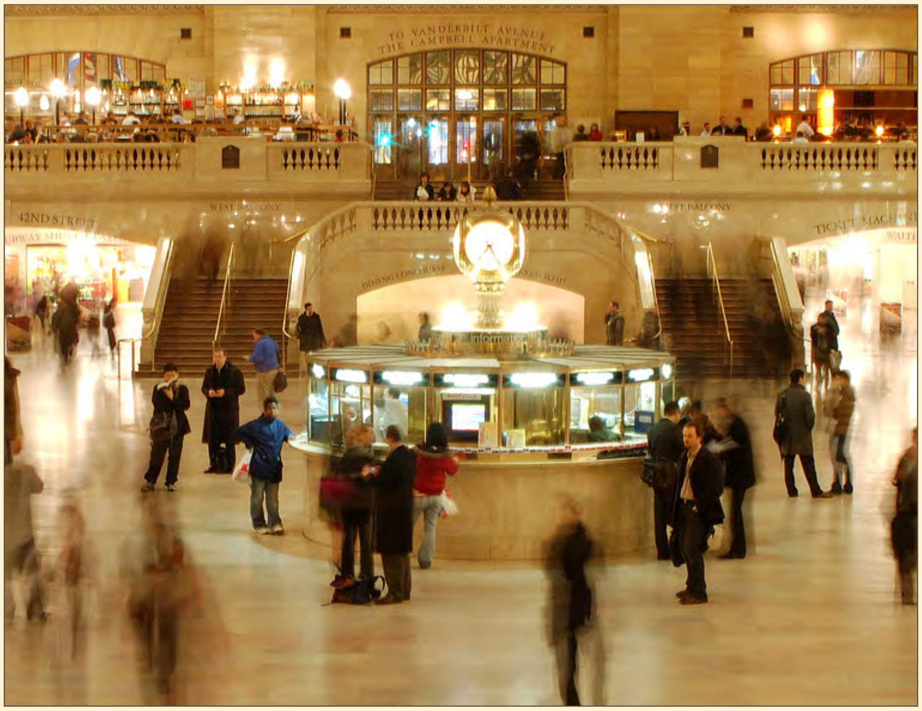
MANDATE all new development that sits on top of transit provide connections to the area's underground infrastructure. Critically this will include large and gracious passageways linking the sidewalk to the subways and rail transit.

PRESERVE significant historic buildings that contribute to the architectural context of the neighborhood.

IMPROVE existing open spaces, in particular the approximately 70 privately owned public spaces within the boundaries of the proposed rezoning. For too long these spaces have been afterthoughts; the City needs to work hand in hand with building owners to improve them.

PURSUE ambitious opportunities for new open space. There is significant potential in an expansion of Pershing Square to the south as well as a re-imagined Park Avenue. A new open space on Vanderbilt is an idea that also offers promise but new buildings along Vanderbilt must be designed so as not to overwhelm the open space.

IDENTIFY meaningful sources of funding to make critical improvements to the public realm. The City's proposed District Improvement Fund mechanism is insufficient. Improvements need to be made before any new density is added.



TWO: A CONNECTED MIDTOWN

In the central business district of the future merely having infrastructure in place will not be enough, existing infrastructure will need to be substantially augmented and improved in order to work efficiently and make commutes more convenient, even pleasant. With one of the world's greatest transit hubs, East Midtown was thrust into its central business role with the help of its extraordinary infrastructure, providing unparalleled neighborhood access. This advantage is threatened even now as the Terminal's subway lines— the 4/5/6—are currently operating at 116% capacity. New density and the arrival of East Side Access will only further strain the transit network.

INVEST in the next generation of infrastructure. New York City cannot settle for modest adjustments to circulation within subway stations. Seeking better ways to connect Midtown to the rest of the City, the region, and the world is imperative to Midtown's continued success. These investments need to be made prior to new development to ensure that there is adequate transit capacity when new buildings come on line.

CONNECT buildings to transit below grade. Underneath many of the buildings in Midtown is a network of transit access. Today many of these connections are very difficult to navigate. Re-opening existing passages and creating new connections between transit and new buildings as they are developed will improve neighborhood circulation.

CREATE a reliable transit funding mechanism. The City's proposed District Improvement Fund is an unreliable funding mechanism — it's not clear how much money will be in the fund and when that money will be there. A meaningful financing strategy needs to be developed to continue to ensure that critical investments are made to create the conditions necessary for future growth. Although municipal and infrastructure budgets are always a challenge many of these improvements belong in the capital budgets.

THINK beyond transit infrastructure. To remain globally competitive, East Midtown must adapt to the evolving needs of a diverse range of corporations and businesses. New buildings should be required to incorporate technologies that help de-centralize the power grid. The City should also invest in improving access to information and communications networks.

THREE: A VIBRANT MIX

A diversity of uses, users and architecture fosters lively neighborhoods. Encouraging a mix of uses in East Midtown will help create a more exciting and desirable neighborhood. Preservation is a tool to help encourage an economically and visually diverse central business district.

ENCOURAGE mixed-use in both new construction and existing buildings. The Time Warner Center and Bloomberg LP headquarters are good examples of predominantly commercial buildings that also include residential. As other NYC neighborhoods have demonstrated, the activity and energy of residential buildings in commercial neighborhoods supports a more dynamic environment.

ACTIVATE the ground floor. Require retail at the street level or building passageways in congested areas to create a more active and attractive environment.

LANDMARK exceptional buildings. Of the 587 properties in the East Midtown study area, 32 are designated New York City landmarks. MAS has identified 17 additional buildings that merit further consideration by the Landmarks Preservation Commission.

ENSURE that all historic commercial properties can take advantage of the Federal Historic Preservation Tax Incentives program. Properties listed on the State or National Registers can qualify for up to 20% in rehabilitation tax credits for certified projects. Approximately 41 buildings are currently listed or eligible for listing. Requests for eligibility should be made for additional properties.

EXPLORE innovative ways to incentivize rehabilitation of existing buildings. While rehabilitation tax credits make excellent economic sense for some, other municipalities' local waivers and incentives for improving historic structures should be evaluated.

RE-THINK lot size requirements that depend upon site assemblage and teardowns to make way for new construction. The proposed rezoning requires a site to be cleared in order for a new building to take advantage of the additional density. This provision encourages the demolition of buildings rather than trying to find architecturally creative solutions to incorporating existing buildings or building around them.

FOUR: DESIGN FOR THE NEXT CENTURY

The next generation of buildings must raise the standards for new construction and retrofits.

LEAD the world in environmental requirements for tall buildings. New York should set the standard for 21st century urban design. This should include standards for new buildings as well as approaches for upgrading existing buildings.

ENCOURAGE density on sites where additional density unlocks the greatest public value. Sites with potential for the greatest transit connectivity and pedestrian circulation improvements include:

- SL Green site located on 42nd Street between Vanderbilt and Madison Avenues
- Hyatt Hotel site located on 42nd Street between Park and Lexington Avenues
- MetLife Building on Park Avenue between Grand Central Terminal and 45th Street
- Park Avenue, where the width and openness of the street provides a context for larger buildings.

CREATE a more flexible landmark transfer provision that facilitates the preservation of existing and new landmarks and also allows density to be added along Park Avenue where it's more appropriate.

DEVELOP bulk controls to protect important view corridors to important buildings within the rezoning areas such as Grand Central Terminal and the Chrysler Building. Bulk controls need to be tailored to specific streets — Park Avenue has a very different context and should be a place for architectural boldness.

REQUIRE public review to evaluate the site plan, massing, and architectural merit of a proposed development to help ensure these buildings improve the character, quality and functionality of the area.

ENCOURAGE active top floor uses such as retail or observation decks on the tallest buildings to allow public access to New York City's extraordinary skyline.

SUPPORT development in other business districts such as Downtown Brooklyn and Long Island City in order to make better use of the city's transportation and utility infrastructure to help alleviate congestion in Midtown. Rather than create a five-year sunrise provision which is intended to allow the development of other parts of the New York City, a sunrise provision should be examined which is tied to development goals being met in other areas.

PERMIT a mix of uses to develop a truly 21st century Midtown office district and support the development of vibrant retail corridors.

PREFACE

The Rise of MIDTOWN

A. ***The 42nd Street façade of the first Grand Central which opened in 1871***

The history of East Midtown is not only central to understanding its development, but must also inform the decisions now being made to shape its future. East Midtown's rich history reflects a continuous cycle of careful planning, investment, and reinvestment that created the world's most important central business district. The past matters; it is this legacy that should be renewed as we look forward.

B.

THE TERMINAL CITY

THE GREATEST CIVIC DEVELOPMENT EVER UNDERTAKEN—INCIDENT TO THE NEW GRAND CENTRAL TERMINAL IN NEW YORK CITY, WHICH WILL BE

OPENED FEBRUARY, 1913

This vast undertaking comprehends the erection of a great Terminal City, a city within a city, occupying an area of thirty blocks, in New York City.

It will embrace hotels and modern apartment houses, convention and exhibition halls, clubs and restaurants, and department stores and specialty shops. In short, practically every sort of structure or enterprise incident to the modern city.

These features are all in addition to post office, express buildings and other natural adjuncts of the up-to-date terminal—to expeditiously handle diverse traffic.

All these structures will be erected over the tracks about the terminal itself, while a plaza will surround the Terminal building, reached on the North and South by a new Boulevard, [illegible] all trace of the railroad [illegible]

THE NEWLY COMPLETED GRAND CENTRAL TERMINAL

Will provide every detail [illegible] the comfort and convenience of its patrons. The Terminal itself is the physical embodiment of the latest and the highest ideal of service. Its adequate description is impossible here. It must be seen to be fully appreciated—or indeed to be completely comprehended.

The Main Terminal alone is 722 feet long and 301 feet wide on the surface, and half again as wide below the street level. It will accommodate comfortably 30,000 people at one time.

Through and suburban service occupy different levels approached by inclines, avoiding stairways, so that each level may be reached without confusion. Incoming and outgoing traffic is segregated and the two [illegible] of travel separated. Every facility is progressively arranged so that no step need be retraced, no time lost.

There [illegible] tracks for through travel and [illegible] tracks for local trains, 33 miles [illegible] within the Terminal, accommodating over 1000 cars at one time. Dedicated to the Public Service, February, 1913.

NEW YORK CENTRAL LINES

C.

B. *View of the tracks and train yards from 50th Street looking towards Grand Central, taken on November 19, 1906*

C. *This full page ad in Harper's Weekly referred to Terminal City as "the greatest civic development ever undertaken..."*

The rise of East Midtown is largely based on the expansion of New York City's railway infrastructure. This era began in the late 1800s with the consolidation of Cornelius Vanderbilt's railroad holdings into the New York Central and Hudson River Railroad. Shortly thereafter, Vanderbilt commissioned architect John B. Snook to design the first iteration of grand stations. Located at 42nd Street and Fourth Avenue, Grand Central Depot opened in 1871 and was recognized as one of the great pieces of civic architecture in the United States.

In the years that followed railroad traffic grew rapidly, necessitating several phases of rail yard and depot expansion and improvement. Towards the end of the century, the number of trains operating to and from Grand Central had grown threefold and the old depot was struggling to meet demands. To manage the increased demand, in 1899 New York Central's chief engineer William Wilgus proposed a plan involving the electric operation of trains, and the reconfiguration and construction of new tracks. The plan also introduced the idea of constructing a multi-level terminal to support the increased capacity. Although approved, the plan was set aside for several years until a tragic train accident in 1902 led to legislation outlawing steam engines south of the Harlem River. The railroad moved forward with Wilgus' electrification plan, as well as with erecting a new depot to accommodate the growing train ridership. A design competition was held and won by architecture firm Reed & Stem, who with architects Warren & Wetmore designed the current Grand Central Terminal, completed in 1913.

Wilgus devised a plan to fund the Terminal and take advantage of the newly electrified trains by covering the tracks from 42nd to 50th streets between Madison and Lexington Avenues, and selling or leasing the development rights above them to accommodate income-producing hotels, office buildings, apartments, clubs and retail stores. The "air rights" concept was born. A subsidiary company was formed by the railroad to run New York Central's real estate business, and development began prior to the completion of the Terminal. An advertisement ran in Harper's Weekly on January 25, 1913 describing the project as a "great Terminal City, a city within a city." The New York Central Railroad was responsible for transforming the area around Grand Central from a formerly sooty railway into a new business district (Middleton, 1977)

TERMINAL CITY

The master plan for Terminal City laid out a specific set of design guidelines for new buildings. The structures immediately surrounding Grand Central would be similar in height, construction materials and design, with prominent stone base, cornice and classical detailing. These new buildings were intended to complement and enhance Grand Central's architectural significance in the neighborhood.

While the Terminal City design guidelines were developed by the team of architects responsible for Grand Central, a number of other architectural firms played a role in the actual design and subsequent development that lasted through the late 1920s. Architects James Gamble Rogers, Cross & Cross, George B. Post & Sons, and Sloan & Robertson designed some of their best work in Midtown Manhattan. When fully developed in the late 1920s, Terminal City had a post office; eight major luxury hotels (among them the Waldorf-Astoria, Roosevelt, and Barclay hotels); eleven office buildings (including the New York Central, Postum, and Graybar buildings); six luxury apartment buildings lining Park Avenue; an exhibition hall (Grand Central Palace, later demolished), and the Yale Club, conveniently located for a jaunt to New Haven. The area soon emerged as a premier business district as well as one of the most architecturally significant areas of New York City.

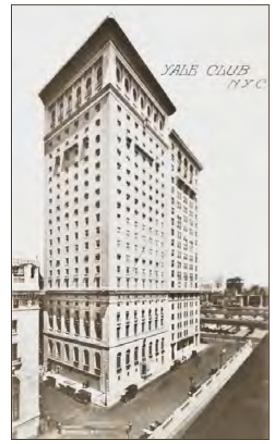
The covering of the railroad tracks and construction of Grand Central Terminal quickly transformed the neighborhood. Terminal City was an enlightened attempt at city planning in the Beaux-Arts tradition: on a very large scale and with an integrated framework: transportation, public space, and aspirational new design. It created a new fashionable district, and at its core the formerly derelict Fourth Avenue — reimagined as "Park Avenue" — became a tree-lined grand boulevard with a broad landscaped central median. Park Avenue became one of the most prestigious residential districts in the nation, further augmented to the north by the construction of luxury elevator apartment buildings. Lexington Avenue to the east became a respite for weary travelers, where several hotels were developed in the 1920s in close proximity to the city's classically-designed convention center. On the nearby side street blocks, older row houses were purchased by wealthy owners, who hired architects to design new town houses or to alter existing buildings with new facades.

POST-WAR DEVELOPMENT

The years in New York City following World War II were in part characterized by a large-scale building boom that transformed entire sections of the city's streetscape from masonry mid-rise structures to glass and steel skyscrapers. The primary period of this corporate modern development was between 1950 and 1967. It was during this time that Park Avenue below 57th Street converted from tony residential neighborhood to central business district.

This era's "Midtown Modern" structures incorporate urban design elements such as similar base heights, setbacks and materials, taking their cues from the International Style pioneered by architects Mies van der Rohe, Le Corbusier, and Walter Gropius. Lever House (Skidmore, Owings & Merrill, 1952) and

D.



D. *The Yale Club was designed by architect James Gamble Rogers and constructed on Vanderbilt Avenue in 1915 on property owned by New York Central Railroad*

E. *Once overburdened with train traffic, this image from 1921 reveals Park Avenue's transformation into one of the city's most prestigious boulevards*

F. *Glass and steel skyscrapers began to rise in East Midtown beginning in the late 1940's*

E.

F.

the Seagram Building (Mies van der Rohe, 1957) are early and iconic examples of slab and public plaza developments on which the 1961 zoning resolution was modeled. These designs were later interpreted and scaled to meet demand, ultimately resulting in a concentration of office towers that dramatically changed East Midtown.

SLOWING EAST MIDTOWN'S GROWTH

The city experienced a period of economic decline which began to reverse in the late 1970s with a resurgence of new development. At that time, plans were released for new Midtown headquarters of major companies including AT&T, IBM and Philip Morris, in addition to mixed-use skyscrapers such as the Trump Tower.

This dramatic increase in development in East Midtown was attributed to a single factor: the desire of major corporations — both domestic and foreign — to be located in one of the most well-known and desirable neighborhoods in the country. As development grew in East Midtown the City's concern shifted from encouraging growth to controlling it.

In an effort to better manage development in East Midtown, in 1982 the City created the Special Midtown Zoning District. The primary objective of this new special district was to stabilize development in Midtown Manhattan and provide direction and incentives for further growth where appropriate. To accomplish this objective, development was shifted

LANDMARK DESIGNATION AND MAS ADVOCACY

In 1967, the recently created Landmarks Preservation Commission designated Grand Central Terminal as a New York City Landmark. From the designation report:

... among its important qualities, Grand Central Terminal is a magnificent example of French Beaux-Arts architecture; that it is one of the great buildings of America, that it represents a creative engineering solution of a very difficult problem, combines with artistic splendor; that as an American Railroad Station It is unique in quality, distinction and character; and that this building plays a significant role in the life and development of New York City. — Landmarks Preservation Commission, 1967

After World War II, the automobile became an increasingly popular mode of transportation and train ridership declined nationwide. As a result, Grand Central Terminal experienced numerous financial constraints and began to fall into disrepair. In 1969, the station's owner, Penn Central Railroad, proposed to build an office building designed by architect Marcel Breuer above and across the entire south portion of the Terminal. Faced with the prospect that the city would repeat the crime of permitting the destruction of a civic monument — echoes of Pennsylvania Station, which had been torn down in 1963 — MAS immediately recognized the proposal as a threat to not only Grand Central Terminal, but New York City's Landmarks Law itself.

In February 1975, the New York State Supreme Court decided in favor of Penn Central and overturned Grand Central's landmark status. Assisted by the leadership of Jacqueline Kennedy Onassis, MAS formed the Committee to Save Grand Central Station with former mayor Robert Wagner as chair. "If we don't care about our past, we cannot hope for the future," said Mrs. Onassis at the press conference announcing the Committee, held appropriately at the Terminal's Oyster Bar. When State appellate courts overturned the New York State Supreme Court decision, Penn Central turned to the U.S. Supreme Court. Following this appeal, Mrs. Onassis and the Committee traveled by a train dubbed the "Landmark Express" to Washington D.C. in order to call attention to the Supreme Court hearing.

After an arduous campaign to save America's beloved and historic railroad station, Mrs. Onassis, MAS, and all of New York were rewarded with a triumphant outcome. In 1978 the New York City Landmarks Law was upheld by the U.S. Supreme Court, saving Grand Central Terminal and setting a precedent for the public benefits of historic preservation throughout the nation. •

west by allowing new buildings in West Midtown to be 20% larger than what was then permitted by zoning. The Special District encouraged major retail stores to be located along Fifth Avenue, protected the historic theaters of Times Square, and promoted development that helped transform the area. The 1982 Special Midtown Zoning District goals included improving pedestrian circulation and access to transit, encouraging public amenities in appropriate locations, and perhaps most importantly, protecting the area's special character. The 1982 Special Midtown Zoning District has been very successful in achieving its goals, and played a major role in shaping how Midtown looks today.

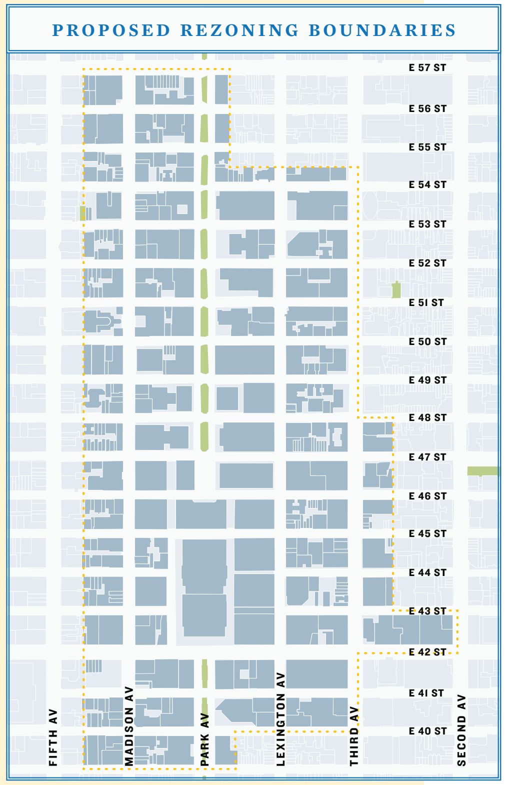
In November 1989 the City Planning Commission announced a plan that allowed the development rights above Grand Central Terminal to be transferred within a greater geographic area. This became the basis for the 1992 Grand Central Zoning Subdistrict, designed to encourage new development around the Terminal.

PROPOSED RE-ZONING

By most measures, East Midtown remains a strong business district. However, the New York City Department of City Planning is now concerned that as buildings age, the district will become less desirable to the large corporations preferring Class A space, and that these tenants will be lost to other global cities such as Tokyo or London. The City's solution is to up-zone roughly 70 blocks between 39th Street to 57th Street from 5th Avenue to 3rd Avenue.

The City's proposal encourages major development around Grand Central Terminal, additional development along Park Avenue, with more limited opportunities along northern Madison and Lexington Avenues and portions of Third Avenue. The largest buildings would be allowed through a Special Permit process that would be granted to buildings meeting specific criteria (see sidebar) and that have a superior site plan, massing, and will make a significant contribution to the pedestrian network and skyline.

Qualifying sites require:
- **Full avenue frontage**
- **Minimum site size of 25,000 sq. ft.**
- **Commercial FAR only**

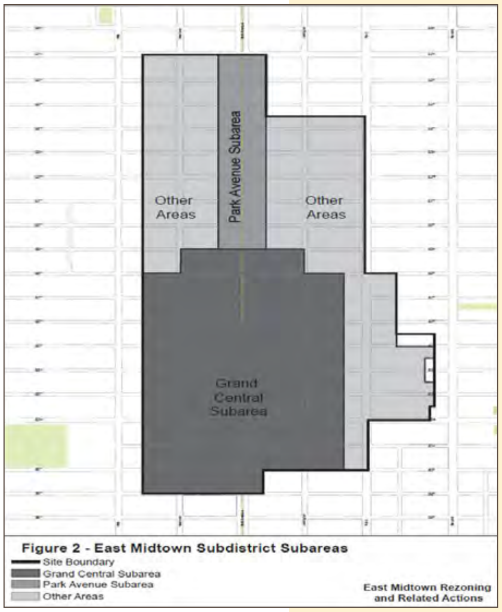


G.

H.

G. *Proposed Rezoning Boundaries*

H. *1982 Midtown District Plan*



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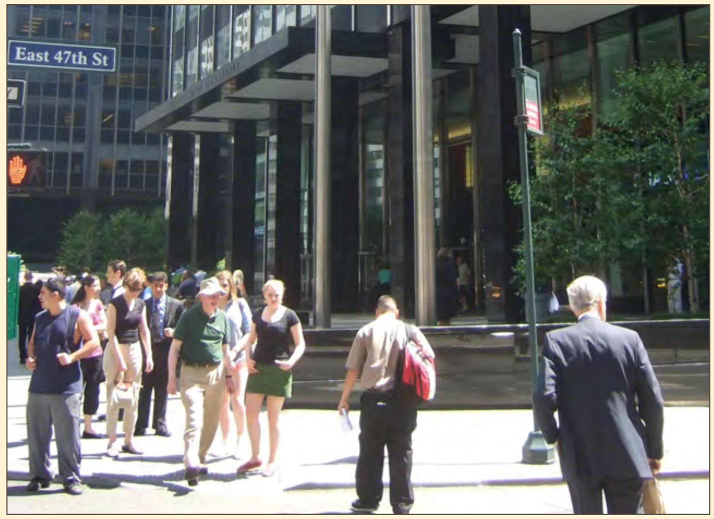


J.

I. *NYC DCP East Midtown Study Presentation - July 18, 2012*

J. *East Midtown today continues to be the city's central business district, supporting 250,000 jobs*

Identified by the City in their proposal are a few pedestrian realm improvements, including the possible transformation of Vanderbilt Avenue—adjacent to Grand Central Terminal—into a pedestrian area. Other non-specific improvements might be made to Grand Central and area subway stations. These improvements would be funded with the help of a District Improvement Bonus (DIB) which would allow developers more floor area through contribution to a fund dedicated to area-wide pedestrian network improvements. Greater floor area would also be permitted around Grand Central through floor area transfers from landmark buildings.

EAST MIDTOWN TODAY

If the City's goal is to create a business district that will thrive in the future, it is important to look beyond office space needs and recognize the additional elements that contribute to this or any neighborhood's success.

East Midtown is surrounded by a diverse mix of uses that continue to attract a range of people daily. Located just blocks away from Grand Central Terminal are the theaters of Times Square, the residential neighborhoods of Murray Hill, Turtle Bay and the Upper East Side, the retail along Fifth Avenue and the countless restaurants, bars and hotels that together keep the streets lively, safe and viable. Tourism is a big part of East Midtown's vibrancy. Every year, approximately 21.6 million visitors pass through Grand Central, spending huge amounts of money and adding to the demand for services and cultural amenities. Traditional white collar workers and the growing creative sector also want to be near this mix of entertainment and culture. Without diversity young professionals may choose to go elsewhere.

East Midtown's wide variety of office spaces, building sizes and vintages meet the needs of an ever-widening range of tenants. Yet the proposed rezoning plan — with its emphasis on the need for large, column-free Class A floor-plates, and lack of careful consideration for infrastructure and public space improvements — doesn't recognize this. This proposal is an opportunity to embark on a third great phase of development, but only with a more thorough analysis and ambitious approach will East Midtown truly become desirable to the next generation of workers and corporations.

ONE

A Re-Invigorated PUBLIC REALM

RECOMMENDATIONS

CREATE an improved network of open spaces. Rather than create site-specific improvements as new buildings are built, Midtown needs a plan for improving the entire network, in particular congested sidewalks.

MANDATE all new development that sits on top of transit, to provide connections to the area's underground infrastructure. Critically this will include large and gracious passageways linking the sidewalk to the subways and rail transit.

PRESERVE significant historic buildings that contribute to the architectural context of the neighborhood.

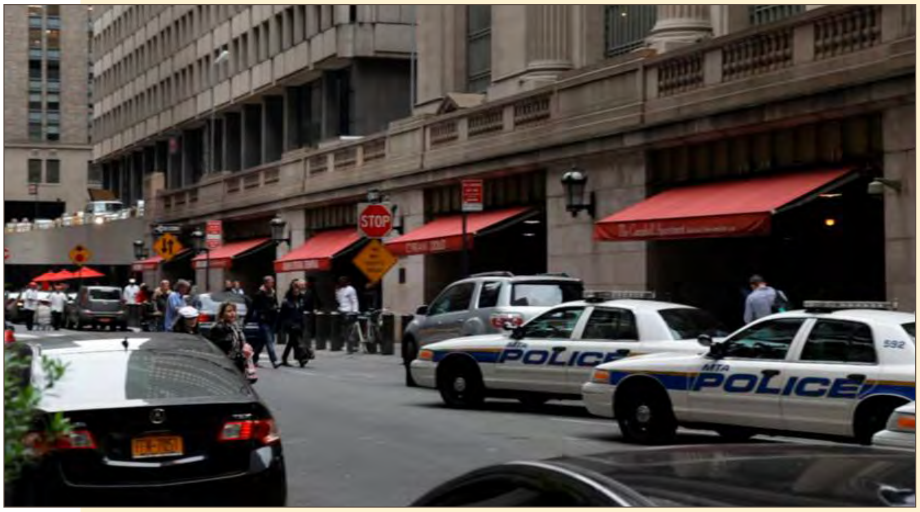
IMPROVE existing open spaces, in particular the approximately 70 privately owned public spaces within the boundaries of the proposed rezoning. For too long these spaces have been afterthoughts; the City needs to work hand in hand with building owners to improve them.

PURSUE ambitious opportunities for new open space. There is significant potential in an expansion of Pershing Square to the south as well as a re-imagined Park Avenue. A new open space on Vanderbilt is an idea that also offers promise but new buildings along Vanderbilt must be designed so as not to overwhelm the open space.

IDENTIFY meaningful sources of funding to make critical improvements to the public realm. The City's proposed District Improvement Fund mechanism is insufficient. Public space improvements need to be made before any new density is added.

A. *Grand Central at night*

At the core of the experience of any neighborhood is its shared spaces, the streets and sidewalks and open spaces and the way that buildings relate to and help define those spaces. Exciting, diverse, and vibrant streets are among New York City's greatest attractions. Fostering a public realm that moves people efficiently and pleasantly, and that is energetic both day and night will go a long way toward ensuring the continued economic success and vitality of Midtown.



B.

B. *View looking north on Vanderbilt Avenue*

Critically, this design strategy needs to be combined with a plan to fully fund those improvements.

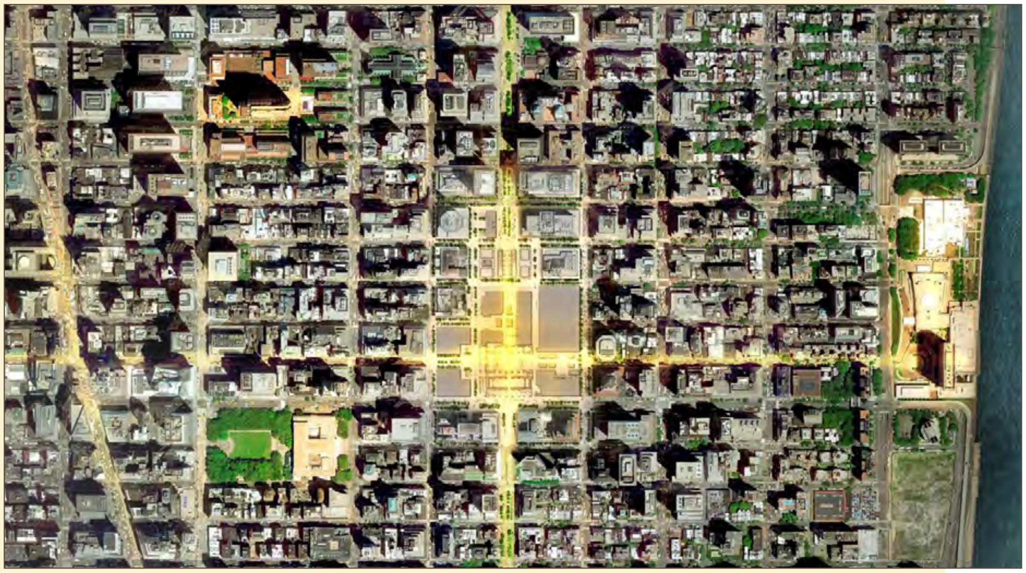
DCP FRAMEWORK

As part of its proposal, the Department of City Planning has acknowledged the poor pedestrian experience throughout East Midtown's major corridors and side streets. To finance selected public realm improvements the City has proposed creating a District Improvement Bonus (DIB), where developers contribute to a fund for area-wide pedestrian network improvements in exchange for increased density. Although if administered well, this may help produce some public realm benefits, without a comprehensive plan for future public realm improvements East Midtown may not remain the desirable business location it is today.

The principal element in the City's plan is a proposal to create a new pedestrian plaza on Vanderbilt Avenue, located along the western edge of Grand Central Terminal from East 42nd to East 43rd Street and from East 44th to East 47th Streets, allowing traffic to circulate along East 43rd and East 44th Street. A reconceived Vanderbilt represents an opportunity for a significant new public space but it must be considered in the larger context of East Midtown's pedestrian network and within a larger strategy that includes a balance between the creation of discrete places to stop and linger with improved circulation throughout the district. Critically, this design strategy needs to be combined with a plan to fully fund those improvements.

THE NEXT 100

February 2013 was the 100th birthday of Grand Central Terminal. The Warren & Wetmore, Reed & Stem design for Grand Central is a product of a competition the New York Central Railroad held in 1903 for the design of a new terminal building on 42nd Street. Since its completion in 1913, Grand Central has been recognized as one of the world's most celebrated public spaces, an incredibly vibrant and active transit hub, and the core of North America's most important central business district. With The Next 100, MAS echoed the approach used 100 years ago to generate innovative ideas to reimagine the public realm around Grand Central. We invited three distinguished firms — Foster + Partners, SOM, and WXY to consider the opportunities to re-think the public realm and many of their ideas and designs are woven throughout this discussion. •



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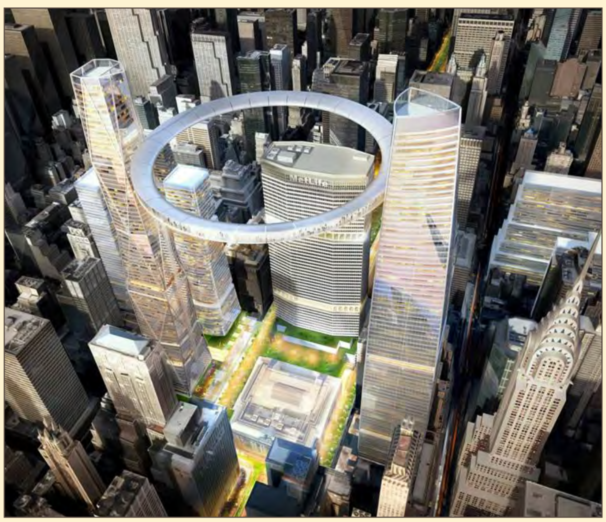

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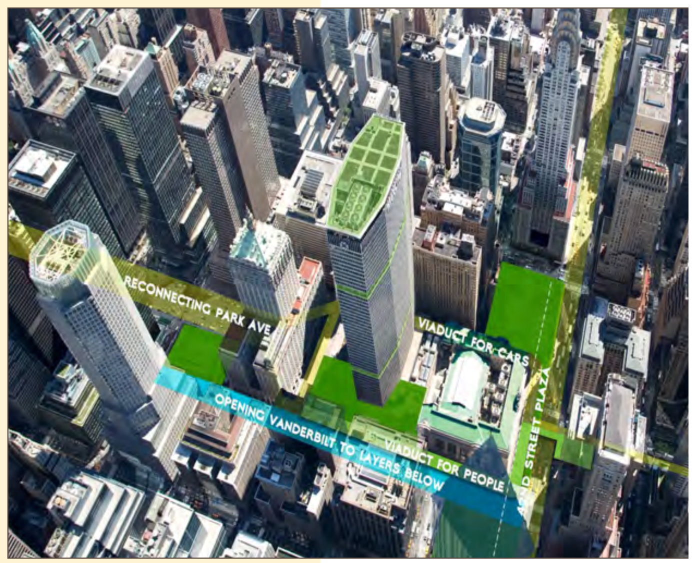


E.

A PUBLIC REALM VISION

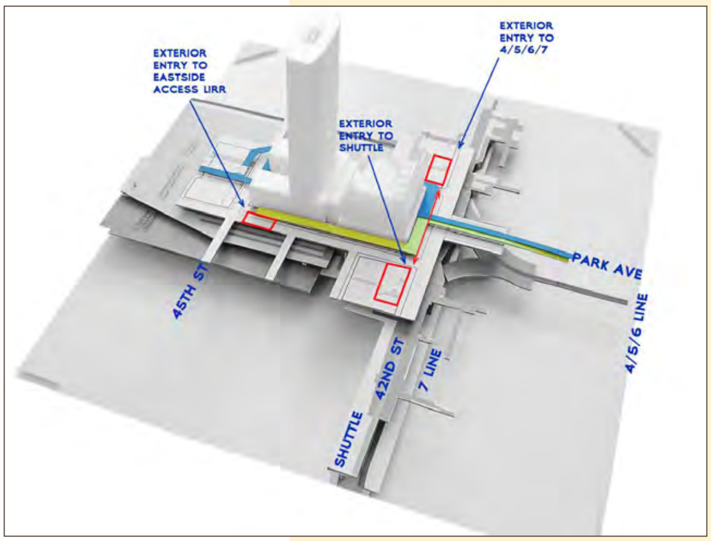
A neighborhood that was once developed to reflect the architectural and civic grandeur of its anchor, Grand Central, over time has lost this essential character. The fundamental problem is that East Midtown lacks a clear vision, and the City's proposal does not adequately address the area's public realm issues. Creating a public realm strategy will help guide development and create a more unified vision for the future. What follows is a description of where those critical improvements can and should occur in order to create an environment which will retain and attract businesses and people from around the world.

C. *Foster + Partners*

D. *Skidmore, Owings & Merrill*

E. *WXY Architecture + Urban Design*

F.



G.

F. *Section through Grand Central*

G. *WXY image of proposed network connections*

Density should be encouraged on those sites where there is the greatest opportunity for transit connectivity.

A WALK THROUGH MIDTOWN

GRAND CENTRAL SPACE

Grand Central is composed of three interconnected train stations: the subway complex for the 4, 5, 6, 7 and S trains; the historic station occupied by Metro-North; and the new East Side Access station, to be occupied by LIRR. In combination with the local streets to which they are connected, the spaces within Grand Central are the core of the neighborhood's public realm. How can these spaces be enhanced to be more easily understood and to better serve the community — workers, residents, visitors, and tourists?

What connections to transit can be created if the Commodore (Grand Hyatt) Hotel were redeveloped? What requirements should be put in place for this site and the SL Green site which sits on top of East Side Access, 7 train, and the Times Square Shuttle? How much less disorienting might North End Access be if there were openings through sidewalk and plazas along Park Avenue to provide views, light, and even air? What connections should we forge between the new East Side Access concourse and new open space and redevelopment sites along Vanderbilt? All of these sites present critical opportunities to re-think the public realm and need to be integrated into an ambitious public realm plan.

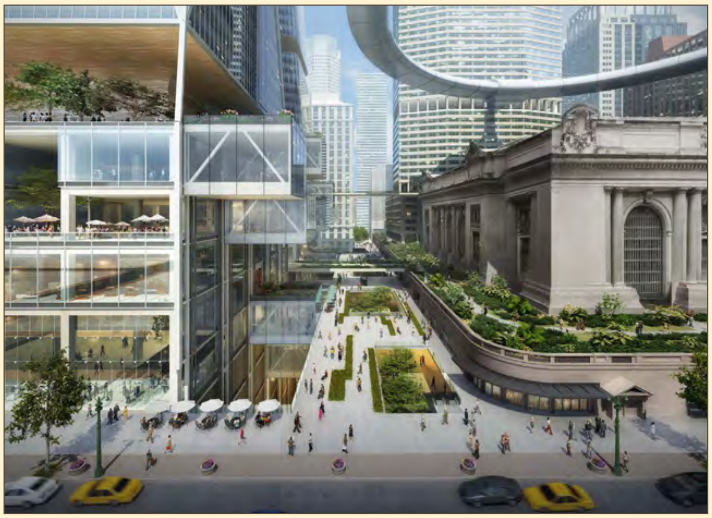
BELOW-GRADE NETWORK

Grand Central and East Midtown boast a robust network of below-grade passageways — some are heavily used while others are closed off to the public. There are specific opportunities to improve existing passages while also integrating new buildings carefully into this underground network.

BUILDING NEW CONNECTIONS

New buildings and those that are substantially renovated or converted, adjacent to Grand Central should be required to add to and improve the system of pedestrian circulation and public open space. Density should be encouraged on those sites where there

H.



I.

H. *SOM image of Vanderbilt Avenue with new buildings and transit connections*

I. *Existing subway connection at New York Life Building*

is the greatest opportunity for transit connectivity and buildings that can connect to transit should be required to with specific design criteria outlined in the zoning resolution.

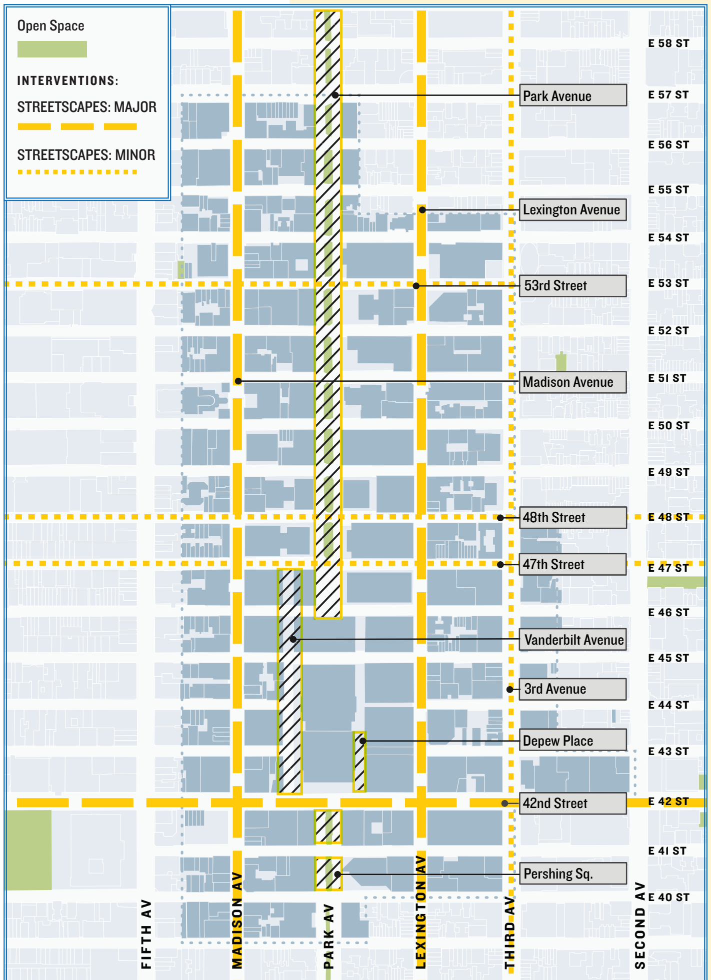
STRENGTHENING EXISTING CONNECTIONS

Historically, buildings in Manhattan were often constructed with connections to the underground network and access to transit. These connections served as amenities for building tenants, as well as for neighborhood workers and visitors. Fine examples of functional and visually appealing connections are found throughout Manhattan, where the treatment of space, light, materials and functionality combine to elevate a practical amenity into a seamless and visually appealing connection between transit, street level and building. Notable examples include the New York Life Building at E. 28th Street, and the Municipal Building at 1 Centre Street.

In the case of East Midtown, passageways and entrances were designed to assist the flow of pedestrians between Grand Central Terminal and surrounding buildings. These existing connections can be leveraged and enhanced to facilitate public realm improvements. New construction is not the sole vehicle for improvements to circulation and the public realm.

By 1934 the underground pedestrian network around Grand Central featured 26 connections from the Terminal to the surrounding buildings. These connections were among the building amenities designed to attract businesses tenants whose employees commuted through the Terminal. The passageways and entrances typically reflected the architecture of the buildings, echoing the materials and design elements of the lobbies within.

Existing, active connections include direct entrances to the Chrysler Building (Chrysler Building Entrance), Bowery Savings Bank Building (Bowery Bank Entrance), Met Life Building (Met Life Entrance), and 52 Vanderbilt (Vanderbilt Concourse Building Entrance). In addition, underground passageways lead pedestrians from the Terminal and subway to buildings such as One Grand Central Place (Lincoln Passageway), Chanin Building (Chanin Passageway),



PROPOSED PUBLIC REALM INTERVENTIONS

J.

125 Park Avenue (Pershing Passageway), Socony-Mobil Building (Mobil Passageway), and the Graybar Building (Graybar Passageway).

Certain entrances stand out as a distinguishing feature of the building, such as seen in the Bowery Savings Bank Building. But others do not fully realize the potential to enhance the pedestrian experience. With carefully executed restorations (and possibly more ambitious interventions) existing buildings can enhance and re-establish their connections with the underground network and once again serve a greater public purpose. The Department of City Planning working closely with the MTA and the property owners should explore how these connections can be opened up to facilitate access to this incredible circulation network.

OFF-SITE PUBLIC SPACE

In developing a new vision for the public realm around Grand Central and East Midtown there is an opportunity to create a significantly improved network of public spaces.

MADISON, LEXINGTON, AND 3RD AVENUES

These avenues are some of the most crowded in New York City and given the pedestrian volumes on these streets the sidewalks should be expanded by removing portions of a moving lane or curbside loading lane. In cases where sites are at particularly important intersections or streets such as the SL Green site on 42nd street and Madison Avenues, building setbacks to widen the sidewalks should be required. These setbacks should also serve to open up visual corridors helping orient pedestrians to Grand Central and the Chrysler building.

K.

J. Proposed Public Realm Interventions

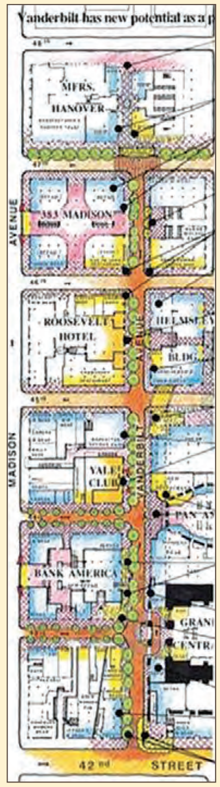
K. Foster + Partners rendering of widened sidewalks along Lexington Avenue

PERSHING SQUARE PLAZA

Located on Park Avenue between 41st and 42nd streets, the current sidewalk café area is being converted into a new public open space on the west side of the viaduct with a street closure. DOT plans to create a bike share station on the east side of the viaduct between 41st Street and 42nd Street and also close that portion of the block to traffic. There is the potential to create an integrated open space by expanding to include Park Avenue from 40th to 42nd Streets on both sides of the viaduct leaving 41st Street open to traffic as was proposed by the Grand Central Partnership. This would represent a new destination in East Midtown with a great view of Grand Central and potentially with programming or food service, seating, bike share and landscape elements which would attract tourists, commuters, and residents alike.

VANDERBILT AVENUE

Just west of Grand Central, Vanderbilt Avenue serves as a connector between 42nd and 47th streets and as a parking area for security vehicles. It also houses the taxi drop off area for Grand Central, the only such location directly outside of the Terminal. The Department of City Planning has announced its intent to convert this street into a pedestrian plaza, but is soliciting ideas for how it might be designed. Prior plans developed by Grand Central Partnership suggest approaches for allowing some limited vehicular circulation while creating meaningful open space. It is critical that building setbacks be carefully considered to provide daylight to Vanderbilt. If development overwhelms the street and daylight is very limited it will be a significant challenge to create a successful open space. More ambitiously Vanderbilt could be opened up as a street to provide access to the below grade infrastructure as well.



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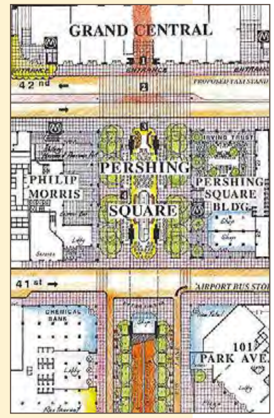


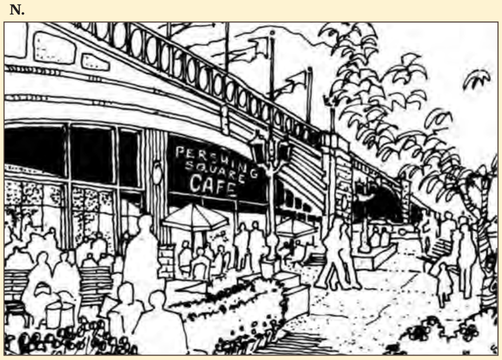
M.

L. *Grand Central Partnership site plan for Vanderbilt, 1987*

M&N. *Grand Central Partnership site plan and drawing of Pershing Square, 1987*

O. *WXY rendering of a new Vanderbilt Avenue connected to transit below-grade*

N.



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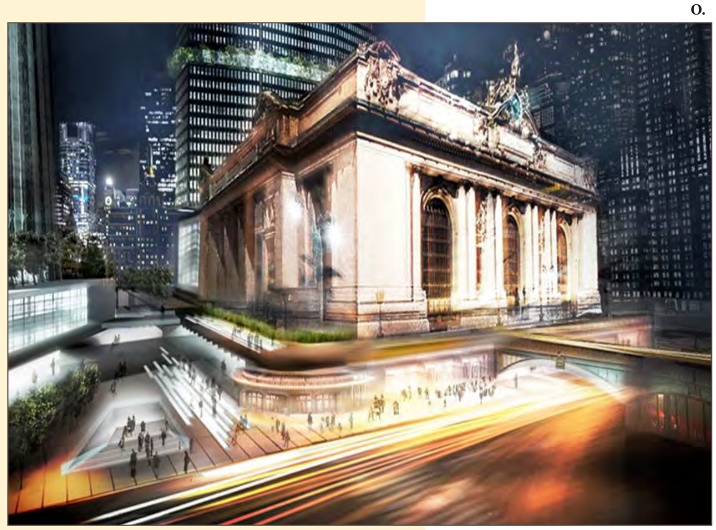

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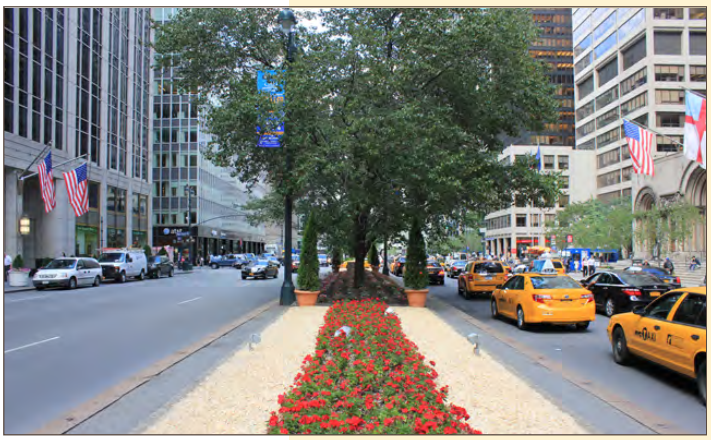


Q.

PARK AVENUE

As the primary artery emanating from Grand Central, Park Avenue has the potential to become a new kind of landscaped open space. By expanding the median to include a new walkway and seating areas, the boulevard could become a more accessible and pleasant space for pedestrians. This opportunity needs to be more carefully studied as Park Avenue unlike Vanderbilt Avenue is a much more open corridor, making it a brighter, more inviting open space.

PARK AVENUE VIADUCT/DEPEW PLACE

The Park Avenue Viaduct is an elevated roadway that connects Park Avenue from East 40th Street to East 46th Street by running around Grand Central Terminal and the MetLife Building and through the Helmsley Building. The roadway created by the viaduct is reserved only for automobiles. Although it is a critical artery in New York there may be an opportunity to allow for some pedestrian access to the viaduct. In addition, expansion of the passageway that runs through the Helmsley building offers an opportunity to better connect Park Avenue to Grand Central.

47TH, 48TH, AND 53RD STREETS

47th and 48th Streets are locations of existing entrances to Grand Central, and future entrances to East Side Access, these streets have the potential to become more inviting pedestrian connectors in East Midtown. 53rd Street connects some of the most important buildings and uses in Midtown, from the Lipstick Building to Citicorp to Seagram to MoMA further to the west, portions of the sidewalk along 53rd street have already been expanded and there are opportunities for additional improvements.

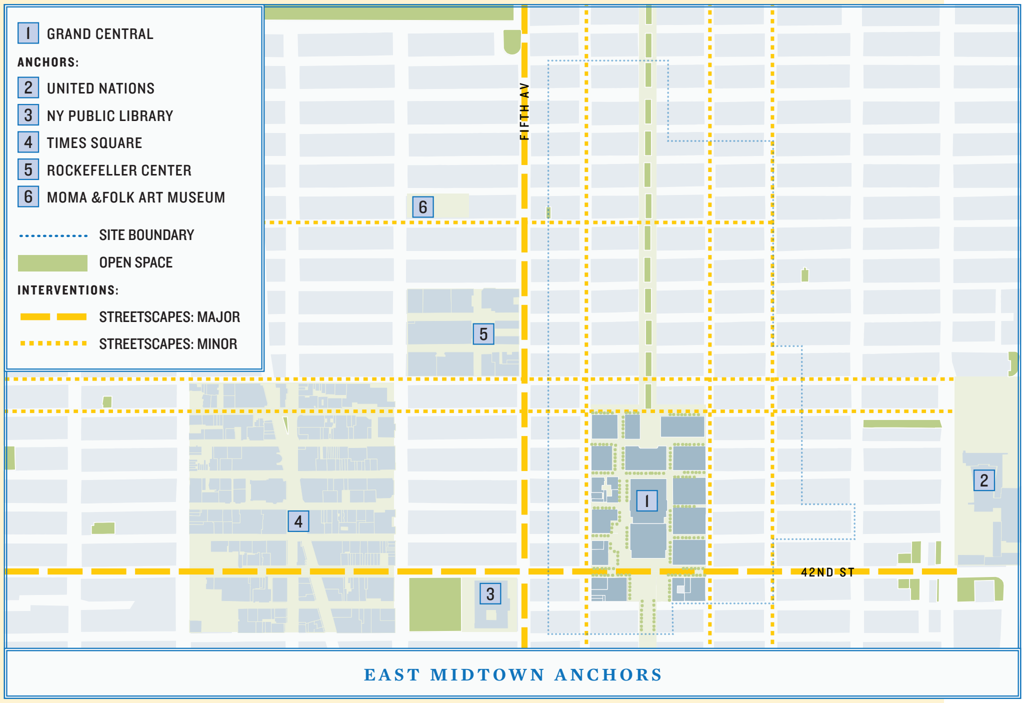
42ND STREET

R.

P. *Park Avenue in the 1920s*

Q. *Park Avenue median 2012*

R. *Expanded Park Avenue median as envisioned by SHoP*



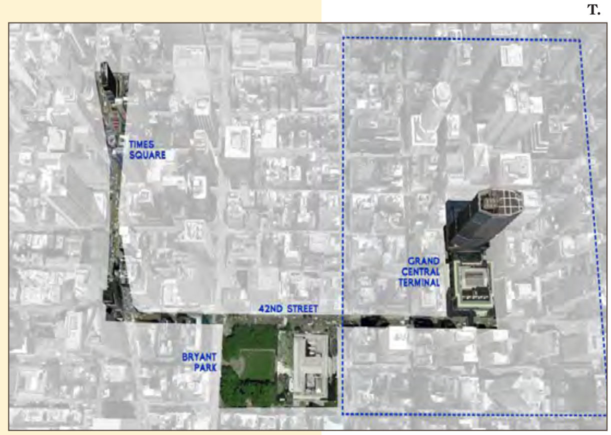
S.

S. East Midtown Anchors

T. WXY connecting 42nd Street

U. Foster + Partners re-imagining 42nd street context of Grand Central

T.



U.

At a broader scale, 42nd Street presents an opportunity to connect key anchors in Midtown Manhattan and New York City — the United Nations, Grand Central, Bryant Park and Times Square and Hudson Yards and create a more gracious entrance to Grand Central by improving the crosswalks and paving on 42nd street to clearly prioritize pedestrian movement.

UNLOCKING FUNDING

These improvements might be funded through some combination of funds from the public, the business improvement districts, and the DIB. The district improvement mechanism is far better suited to funding public space improvements which will likely run in the tens of millions of dollars (the Snohetta design for Broadway between West 42nd Street and West 47th Street was approximately $50 million) than transportation infrastructure which is in the hundreds of millions of dollars or potentially billions of dollars — not the kind of money that we can expect from a DIB mechanism in any reasonable time frame. However, in order to generate meaningful public improvement dollars the price set for the City controlled air rights should reflect the market value and should be generated by an independent appraiser such as the Independent Budget Office with a methodology which is publicly disclosed. Subsidizing development by setting a price which is below the market will work against the goal of raising sufficient resources for the critical public improvements East

Midtown needs.

As is described in the transportation discussion there are also many avenues for funding which need to be examined. Ultimately, the district improvement fund is only a supplement for a more reliable and stable funding mechanism.

City Capital Budget/MTA Capital Budget: Many of the kinds of improvements to the streetscape and described in the MTA and DCP presentations are essential improvements to keep the network running. Although municipal and infrastructure budgets are always a challenge many of these improvements belong in these capital budgets — ultimately this is one of the most important neighborhoods for New York's economic success and additional investment is needed in order to ensure its continued viability. In addition, potentially many of these critical circulation improvements are mitigation for the additional pedestrian and transit activity that is a result of the East Side Access project which will generate tens of thousands of new trips through East Midtown.

Tax Increment Financing: using the expected increases in property tax rates resulting from rising property values — in this case as a result of infrastructure investment and a rezoning to pay back a bond which is floated to fund those critical investments. In NY State this technique is used to help support school districts, state legislation would need to be amended to create this kind of provision.

PILOT financing: Used to fund the extension of the 7 train to Hudson Yards, Payment in Lieu of Taxes (PILOT) is an agreement between a municipality and a landowner to substitute the real estate tax due on a property with a negotiated payment. In some cases, PILOT financing is a tool used by municipalities to generate funds for local infrastructure projects. In the case of Hudson Yards, the money paid by developers through the PILOT program was invested in bonds that are intended to finance infrastructure improvements. This mechanism is only successful if there is sufficient new development, and in turn funds generated through the PILOT.

- **Equitable Road Pricing:** Noted transportation planner Sam Schwartz and others have developed plans for tolling roads more equitably which also generates significant revenue for transit improvements and investments. This kind of an approach not only rationalizes the cost of driving and generates transit revenue, it helps reduce vehicular congestion and in turn improve many of the environmental challenges, especially air pollution, associated with driving.

Transit assessment district: In the Department of City Planning proposal only new development will be required to support the essential improvements through the district improvement bonus mechanism. An alternative approach would be to create a special district with boundaries defined by roughly the rezoning boundaries where building owners would contribute additional revenue to help fund these necessary improvements. Because the benefit of better transit and open space is shared, the costs should be as well.

If we develop a carefully designed and funded public realm plan, which places the experience of pedestrians at the center, we will have taken an incredibly important step in improving the economic health of East Midtown.

This is one of the most important neighborhoods for New York's economic success and additional investment is needed in order to ensure its continued viability.

V. *WXY re-thinks Park Avenue Viaduct*

V.

TWO

A CONNECTED *East Midtown*

RECOMMENDATIONS

INVEST in the next generation of infrastructure. New York City cannot settle for modest adjustments to circulation within subway stations. Seeking better ways to connect Midtown to the rest of the City, the region, and the world is imperative to Midtown's continued success. These investments need to be made prior to new development to ensure that there is adequate transit capacity when new buildings come on line.

CONNECT buildings with transit below grade. Underneath many of the buildings in Midtown is a network of transit access. Today many of these connections are very difficult to navigate. Re-opening existing passages and creating new connections between transit and new buildings as they are developed will improve neighborhood circulation.

CREATE a reliable transit funding mechanism. The City's proposed District Improvement Fund is an unreliable funding mechanism — it's not clear how much money will be in the fund and when that money will be there. A meaningful financing strategy needs to be developed to continue to ensure that critical investments are made to create the conditions necessary for future growth. Although municipal and infrastructure budgets are always a challenge many of these improvements belong in the capital budgets.

THINK beyond transit infrastructure. To remain globally competitive, East Midtown must adapt to the evolving needs of a diverse range of corporations and businesses. New buildings should be required to incorporate technologies that help de-centralize the power grid. The City should also invest in improving access to information and communications networks.

In the central business district of the future ensuring that the infrastructure is in place will not be enough. With one of the world's greatest transit hubs, East Midtown was thrust into its central business role with the help of its extraordinary infrastructure. This advantage is threatened as Grand Central Station's subway lines — the 4/5/6 — are already operating at 116% capacity. New density and the arrival of East Side Access will only further strain the transit network. In order to compete with global capitals across the world New York City will need to think ambitiously about infrastructure investment.

A long term and optimistic planning framework for Midtown needs to include improvements to better connect Grand Central to the region. If we can secure these improvements we will have gone a long way towards ensuring the continued economic success of Midtown. More broadly, we need to return to a planning paradigm which places infrastructure investment at the center of a development strategy.

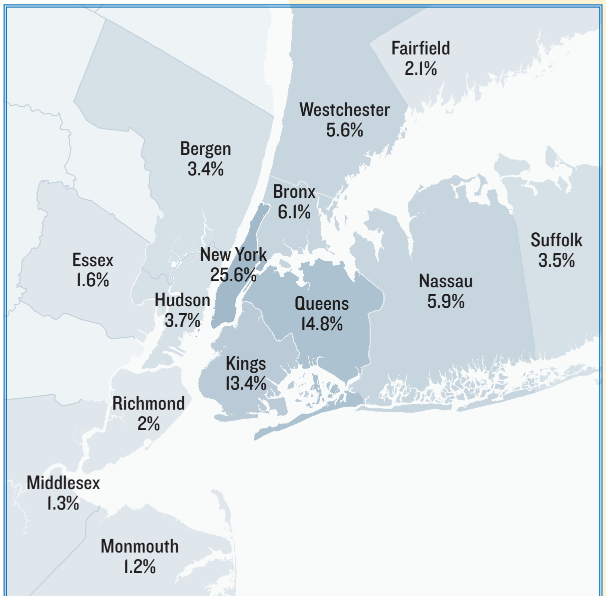
A. *Grand Central interior*

FRAMING THE PROBLEM

The essence of Midtown's attractiveness is access — to the place, the activities located there and the people nearby. With Grand Central as its anchor, East Midtown is regarded as one of the most successful central business districts worldwide. Grand Central's function in East Midtown is as an architectural landmark, a civic space, a regional transit hub and increasingly a retail destination. The neighborhood boasts seven subway lines, the Metro North Railroad, and service by 14 local and 53 express bus lines.

In 2010, there were approximately 250,000 workers commuting to East Midtown. These workers come from New York City's five boroughs, in addition to Westchester, Putnam and Dutchess counties, southern Connecticut, Long Island, Northern New Jersey and Eastern Pennsylvania. These riders rely most heavily on MTA's five types of transit service — Long Island Rail Road (LIRR), Metro North Rail (MNR), New York City Transit Subway, New York City Transit Bus and Long Island Bus.

Today, East Midtown's transit infrastructure is challenged by overcrowded conditions and a lack of capital investment for renovations and upgrades. These conditions will only worsen with New York City's continued population growth, in addition to the increased rates of public transit ridership. Another challenge to the transit infrastructure is the additional demand that will result from the rezoning. The East Midtown rezoning facilitates the development of more high-rise commercial office development in the neighborhood, adding thousands of additional riders to the already overcrowded subways and buses that travel through East Midtown. Despite this significant impact, the proposal lacks a clear strategy for improving an overburdened network.



EAST MIDTOWN COMMUTERS BY COUNTY OF ORIGIN, 2010

B.

C.

D.

Total Public Transit Passengers Entering and Leaving the Hub on a Fall Business Day

2000

5,041,114

2010

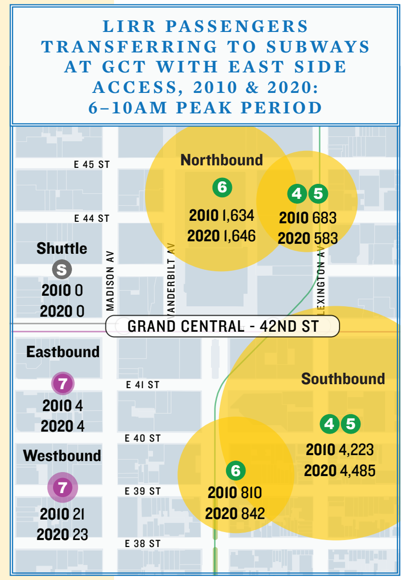
5,371,612

B. East Midtown Commuters by County of Origin, 2010

C. With 1.3 million daily riders, overcrowding on the 4/5/6 subway line strains daily commutes

D. The number of people entering and leaving Grand Central on a daily basis increased by over 330,000 from 2000 to 2010

E.



F.

E. Grand Central Terminal area showing existing and proposed entrances for East Side Access

F. Increase in transit ridership as a result of East Side Access

Investment and development of transit infrastructure has been critical to the economic growth of East Midtown since the late 19th century. The success of any plan hinges on the creation of a comprehensive infrastructure development strategy that maintains the neighborhood's legacy as the premier central business district worldwide.

Infrastructure is a driver of economic development. To remain competitive within both a domestic and global context, New York City needs to find innovative approaches to fund infrastructure developments. Many global cities are in the midst of aggressive infrastructure maintenance and development initiatives and New York cannot afford to get left further behind.

MIDTOWN REZONING: POTENTIAL TRANSIT IMPLICATIONS

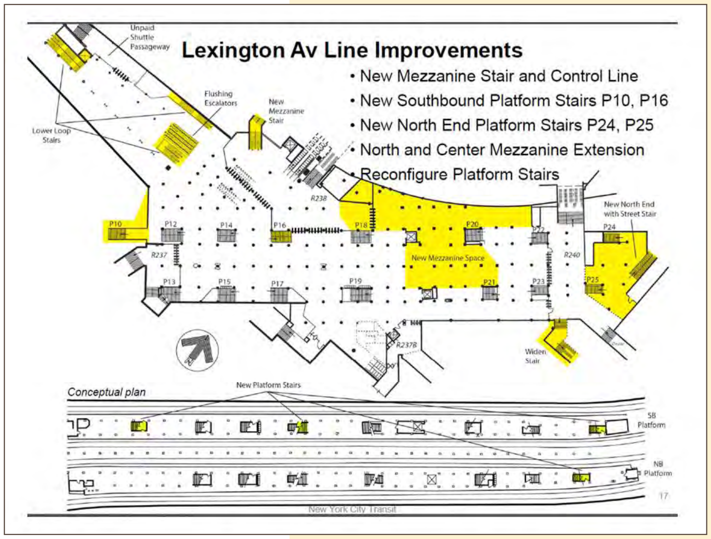
The proposed rezoning will encourage the development of new office towers and hotels in East Midtown. According to the Draft Scope of Work, the proposed rezoning will result in an increase in the population by approximately 25,000 people by 2033. This, combined with the additional riders coming from East Side Access, will overburden an already over-capacity transit system.

The MTA has made clear that additional investments in East Midtown subway stations are essential to ensure a safe condition on platforms even in the absence of additional transit riders. The MTA has proposed a number of subway station improvements to better manage circulation. Many of the improvements are located at the 42nd Street-Grand Central subway station. The total cost of the improvements to the platforms and circulation in the three subway stations located within the East Midtown boundaries is approximately $470 million dollars. These improvements are critical to improving East Midtown's pedestrian network and are key to the economic vitality of East Midtown and New York City but they're not sufficient. East Midtown needs a more ambitious transportation plan.

Many global cities are in the midst of aggressive infrastructure maintenance and development initiatives and New York cannot afford to get left further behind.

H.

G.



I.

G. *Proposed improvements to 4/5/6 at Grand Central Station*

H. *BRT on Second Avenue*

I. *Rendering of 42nd Street light rail*

In order to fund some of the needed improvements the Department of City Planning has proposed a District Improvement Bonus (DIB) scheme. This scheme allows a developer to purchase additional density from the City within the proposed East Midtown Special District. The money from the sale of these air rights is then placed in a fund, dedicated to public realm and infrastructure improvements in East Midtown. These improvements can include both at grade streetscape and subway station improvements. However, it is unclear how much money this fund will generate and when it will be generated. Depending on an unreliable mechanism to fund essential improvements is not a long-term transportation strategy.

INVEST IN THE NEXT GENERATION OF INFRASTRUCTURE

Although the proposed MTA improvements are useful, they're only a starting point for a larger conversation about the future of infrastructure in Midtown. Some of the investments outlined below represent immediate opportunities while others will take more careful time and study. But we need to think expansively and seriously if we really hope to ensure that New York City is not left behind as other cities make significant investments in infrastructure.

IMPROVED BUS SERVICE ON MADISON & FIFTH AVENUES

Fifth Avenue is one of the key downtown bus routes and Madison Avenue is the key uptown route serving most of Midtown. Madison and Fifth Avenues are the busiest corridors for bus traffic in New York City, with over 180 buses per hour during the 8:00 – 9:00 am peak hour. During the same 8:00 to 9:00 am peak hour, 64% of passengers in vehicles on Madison Avenue are carried by buses. NYC DOT has proposed to alter Madison Avenue bus lanes to allow for more buses to pass through Madison Avenue daily. Plans to do the same for Fifth Avenue should be developed. The significant increase in riders that will result from East Side Access, in addition to the increase in worker population associated with the rezoning, calls for a careful study of the potential for a bus rapid transit network on these streets. Bus Rapid Transit has been successful farther east along First and Second Avenues. Within its first year of operation, there was a 15-18% improvement in travel time for M15 service and a 9% increase in ridership.

A RE-THINKING OF 42ND STREET AS KEY CROSSTOWN ROUTE

The need for better connections from the east to west continues to be a pressing issue as Hudson Yards is built out and sites along the East Side are developed including the former Con Ed site. Light rail has been discussed at various points over the years (www.vision42.org) and DOT has implemented BRT on 34th Street — another key crosstown street. The potential for 42nd Street as a transit corridor should be re-examined.

A CLEAR COMMITMENT TO THE CONSTRUCTION OF THE SECOND AVENUE SUBWAY

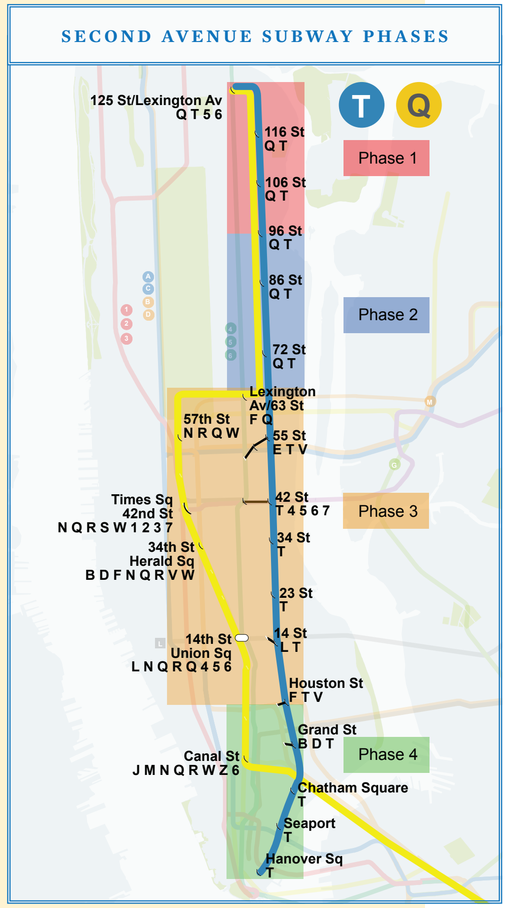
The future of the Second Avenue subway remains unclear. Phase 1 is expected to be completed in December of 2016 but there is no funding in place for subsequent phases. The Lexington Avenue 4/5/6 is a critical link to East Midtown, and is central to the neighborhoods future as a central business district but is incredibly burdened. An essential component of relieving congestion on the 4/5/6 will be the completion of the Second Avenue subway through Midtown.

IMPROVED ACCESS TO NYC AREA AIRPORTS

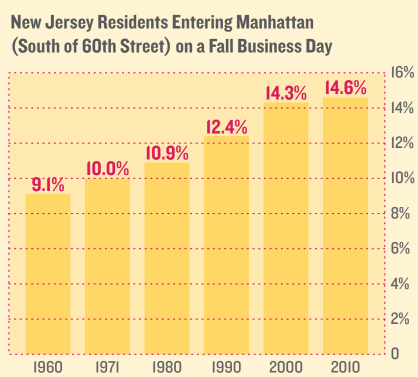
To improve connections to areas outside of Manhattan, and beyond, a careful study of the potential of creating a one seat ride from Midtown and Lower Manhattan to the New York area airports should be completed. Cities throughout the United States have created this infrastructure, which contributes to their attractiveness as centers for tourism and commercial activity. Investment in an airport connection would help New York City keep up with our global competitors and would save hundreds of thousands of taxi and vehicle trips every year. A plan to continue the N train to LaGuardia Airport met with significant opposition in the affected residential neighborhoods but other plans need to be considered. The MTA is moving forward with improvements to the bus route to LaGuardia airport which is an important step forward.

A DIRECT RAIL CONNECTION BETWEEN GRAND CENTRAL AND PENN STATION

This would allow New Jersey Transit trains to bring passengers directly from New Jersey to Grand Central and Metro-North passengers to travel directly to Penn Station. New Jersey residents comprise a significant percentage of public transit users, and this percentage has significantly increased over time. In 1960, 9.1% of persons entering Manhattan south of 60th Street came from New Jersey. In 2010, this number increased to 14.6%. Looking specifically at East Midtown, in 2000, 10% of workers commuting into East Midtown came from New Jersey. In 2010,



J.



K.

J. Second Avenue Subway Phases

K. Increase in commuters coming from New Jersey

L.

M.

L. *Adding a ferry stop at 42nd Street would help better connect Brooklyn and Queens residents to East Midtown*

M. *SOM rendering of transit connectivity*

this number increased to 14.8%. These statistics point to the need to think creatively about implementing more efficient transportation options for New Jersey residents to access both the west and east sides of Manhattan.

FERRY SERVICE AT EAST 42ND STREET

With the launch of the East River Ferry in June 2011, commuters from Queens and Brooklyn were provided with a new and in some cases more direct transit option to Midtown Manhattan. Since its launch, it has carried more than 1.6 million passengers, surpassing the three-year pilot goal of 1.3 million passengers. In December 2012, the New York City Economic Development Corporation issued a Request for Proposals that seeks a long-term operator to maintain, improve and expand service of the East River Ferry. Currently, the northern most ferry landing is located on East 34th Street on the East River. Although there are significant constraints because of the FDR elevated roadway, a ferry stop at 42nd Street should be seriously considered.

CONNECT BUILDINGS SEAMLESSLY WITH TRANSIT BELOW GRADE

New buildings and those that are substantially renovated or converted, adjacent to Grand Central should be required to add to and improve the system of pedestrian circulation and public open space. Running underneath many of the buildings in Midtown is a network of transit access. Today many of these connections are very difficult to navigate, the City should work with property owners to re-open existing passages and as new buildings are developed require new connections to transit below grade. Density should be focused on those sites where there is the greatest opportunity for transit connectivity and buildings that can connect to transit should be required with specific design criteria outlined in the zoning resolution.

CREATE A RELIABLE TRANSIT FUNDING MECHANISM

Critical investments in infrastructure should be made to help encourage the market to make additional investment in buildings. The mechanism that is being created through this rezoning — a district improvement bonus fund — ties additional revenue for the basic subway improvements to development through the purchase of city controlled development rights. Unfortunately, it is a unreliable funding mechanism — it's not clear how much money will be in the fund and when that money will be there. Just as the creation of Grand Central Terminal was an innovative approach to financing infrastructure we need to continue to innovate and seek more creative approaches including:

- **City Capital Budget/MTA Capital Budget:** Many of the kinds of improvements to the streetscape described in the MTA and DCP presentations are essential improvements to keep the network running. Although municipal and infrastructure budgets are always a challenge many of these improvements belong in these capital budgets — ultimately this is one of the most important neighborhoods for New York's economic success and additional investment is needed in order to ensure its continued viability.
- **Tax Increment Financing:** This mechanism uses the expected increases in property tax rates resulting from rising property values — in this case as a result of infrastructure investment and a rezoning to pay back a bond which is floated to fund those critical investments. In NY State this technique is used to help support school districts, state legislation would need to be amended to create this kind of provision.

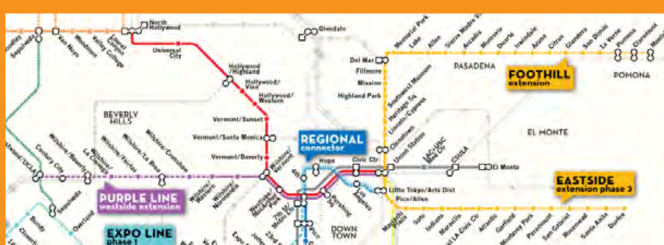
- **PILOT financing:** A technique used to fund the extension of the 7 train to Hudson Yards. Payment in Lieu of Taxes (PILOT) is an agreement between a municipality and a landowner to substitute the real estate tax due on a property with a negotiated payment. In some cases, PILOT financing is a tool used by municipalities to generate funds for local infrastructure projects. In the case of Hudson Yards, the money paid by developers through the PILOT program is invested in bonds that are intended to finance infrastructure improvements.
- **Equitable Road Pricing:** Noted transportation planner Sam Schwartz and others have developed plans for tolling roads more equitably which also generates significant revenue for transit improvements and investments. This kind of an approach not only rationalizes the cost of driving and generates transit revenue, it helps to reduce vehicular congestion and in turn improve many of the environmental challenges especially air pollution associated with driving.
- **Special Assessment District:** The current proposal depends on new development to fund infrastructure, an alternative proposal would be a modest property tax increase on all buildings within the rezoning area to fund the improvements. With a predictable funding approach, many of the improvements that are needed could begin immediately. This could operate in conjunction with any of the other funding approaches outlined above and would distribute the burden across all property owners instead of requiring only those property owners who are developing new buildings to contribute as is the case with the district improvement bonus mechanism.

THINK BEYOND TRANSIT

To develop a globally competitive central business district that attracts a diverse range of industries, East Midtown must adapt to the evolving needs of corporations and businesses. In an age of efficiency and responsiveness, among the amenities that are the most important to corporations is high speed broadband internet. In January 2013, Google announced that it would be providing internet service to the entire Chelsea neighborhood, spanning from West 19th Street to Gansevoort Street between Eighth and Tenth avenues, with plans to extend the network to 34th Street by

In an age of efficiency and responsiveness, among the amenities that are the most important to corporations is high speed broadband internet.

ANOTHER MODEL: LOS ANGELES?



For decades, Los Angeles has been a city dominated by the automobile. As a result of this trend, conditions on Los Angeles' highways and roads have been heavily overcrowded and congested. In 2008, 67% of Los Angeles voters passed Measure R, a referendum that authorized a half-cent sales tax increase. Lasting over a period of 30 years, Measure R is expected to generate $30 billion to $40 billion. The funds generated from Measure R will be designated to fund critical transportation projects — both highway, metro rail and rapid rail. According to the Los Angeles County Economic Development Corporation, Measure R would yield more than 210,000 new construction jobs and create $32 billion for the local economy.

N.

N. *High Speed Internet Access in NYC*

2014. Moreover, the MTA announced in November 2012 that it was working with multiple carriers to provide free Wi-Fi throughout Grand Central. The City should explore the development of a high-speed broadband networks which will help keep Midtown at the cutting edge of the information age and should look for opportunities to create smart grids or decentralized power grids.

TRANSIT DEVELOPMENT IN EAST MIDTOWN

At the crux of East Midtown's history are the innovative approaches to infrastructure investment made as early as the late 1800s with the consolidation of Cornelius Vanderbilt's railroad holdings into the New York Central and Hudson River Railroad. Today, the vast transit infrastructure in the neighborhood connects East Midtown to the rest of Manhattan and the region.

However, as vast and connected as New York City's transit network is, it requires maintenance, upkeep, expansion, and above all, innovation, to accommodate a growing ridership and the evolving needs of transit riders.

CURRENT TRANSIT INITIATIVES IN EAST MIDTOWN

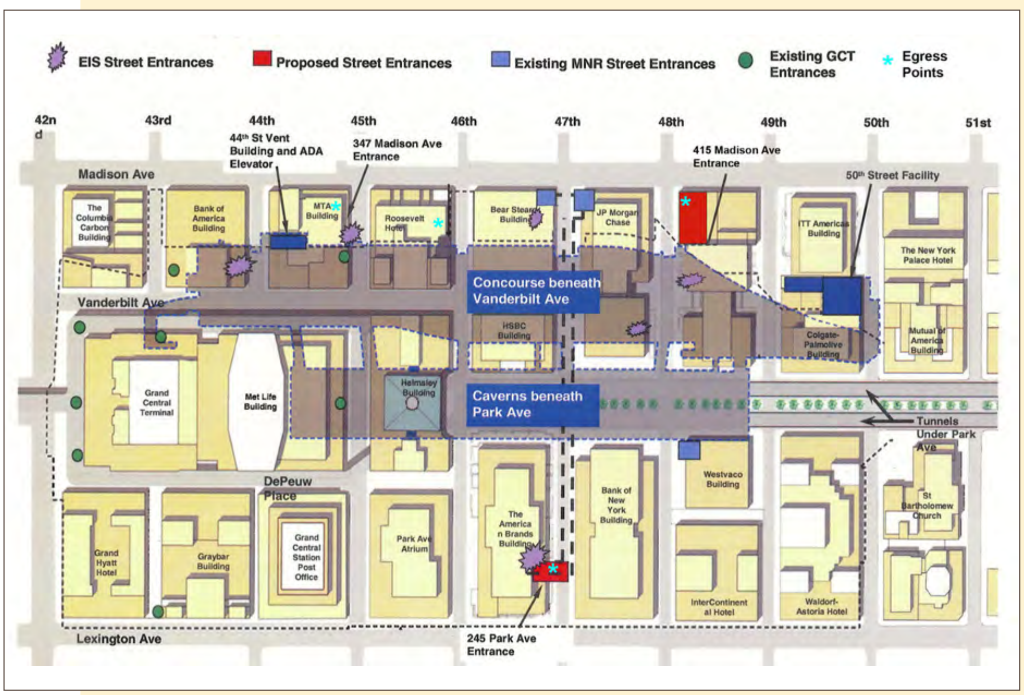
Grand Central is served by the Metro-North Railroad, the 4, 5, and 6 trains of the Lexington Avenue IRT subway, the 7 train of the Flushing IRT subway, and the Times Square Shuttle. The 4/5/6 trains are currently overcapacity, which will only worsen with the new commercial development that will be facilitated by the proposed East Midtown Rezoning and by development in other parts of the New York City including along the 7 train in Long Island City and Hudson Yards. To accommodate the ever-growing need for more efficient and well-connected regional and local transportation in New York City, and specifically, in East Midtown, two initiatives are currently in progress — East Side Access and the Second Avenue Subway. East Side Access will allow LIRR trains to serve Grand Central Terminal, while the Second Avenue Subway is intended to curb the overcapacity on the Lexington Avenue 4/5/6. However, the first phase of the project will provide limited relief.

EAST SIDE ACCESS

Currently, Long Island Railroad (LIRR) commuters who work on the East Side must take the train to Penn Station, then take a subway, bus or walk to their place of employment in East Midtown. East

O. East Side Access FEIS revealing the proposed entrances

O.



Side Access, will allow LIRR trains to travel directly to Grand Central Terminal, thus allowing approximately 48,000 current LIRR riders to access Grand Central by train. Moreover, 17,000 new riders would use LIRR instead of driving from Long Island into New York City. Combined these amount to a total of 65,000 LIRR passengers arriving directly at Grand Central during the weekday morning peak period by 2020. These additional passengers will have spillover impacts on the Grand Central area subways, buses and sidewalks. As a part of the FEIS for East Side Access some mitigation measures were identified and it's critical that they be implemented prior to the opening of East Side Access in order to manage the population growth.

SUBWAYS

East Side Access will increase the daily total ridership on Grand Central area subways by 7,583. The most significant increase in ridership will be on the already overcrowded Lexington Avenue 4/5/6, with an additional 4,485 daily riders by 2020. With Lexington Avenue trains operating 116% overcapacity from 125th Street to 14th Street, this increase in ridership associated with East Side Access is not sustainable for the continued efficient operation of this subway line.

BUSES

While East Side Access will reduce demand for bus lines that connect Penn Station to the East Side of Manhattan, there will be an increase in ridership on Grand Central area bus lines. The bus lines M101/102/103, the M42 and the M1/2/3/4, which travel directly past Grand Central Terminal, are projected to experience the greatest increase in ridership.

SIDEWALKS

East Side Access will bring with it an influx of commuters and pedestrians to Grand Central, and as a result, impact the pedestrian circulation throughout the Terminal. In 2020, 29,000 (44%) transit riders using East Side Access will arrive at Grand Central Terminal during the 8-9 AM peak hour. This represents a nearly 75% increase in the number of commuters that are projected to enter Grand Central Terminal during that time period.

The Lexington Avenue line is the primary transit option on the East Side, making it the most crowded transit line in the country.

SECOND AVENUE SUBWAY

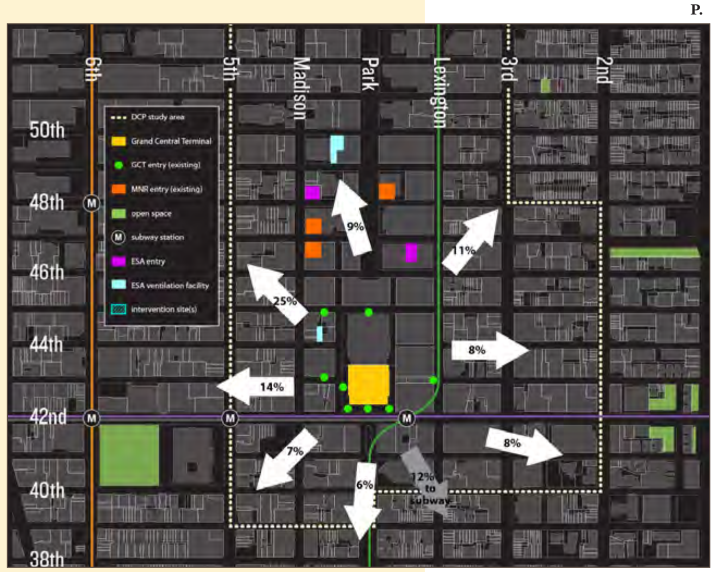
The Second Avenue Subway Line will stretch 8.5 miles from 125th Street to Hanover Square in Lower Manhattan. Sixteen new stations are planned, along with an extension of the existing 'Q' line into the Upper East Side. Under the current plan, the project will be built in four phases, with an expected completion date of December 2016 for Phase 1 (63rd – 96th streets). As part of Phase 3, a new station is planned at Second Avenue & 42nd Street.

The aim of the Second Avenue Subway is to alleviate existing and future overcrowding on the Lexington Avenue 4/5/6 subway lines. The Lexington Avenue line is the primary transit option on the East Side, making it the most crowded transit line in the country. Its average of 1.3 million daily riders exceeds the daily traffic load of the entire Washington Metro system (which has the second-highest ridership in the U.S.), and exceeds the combined daily ridership of the rail transit systems of San Francisco and Boston.

In 2000, Lexington Avenue 4/5 trains exceeded their guideline capacities — operating at 116% capacity — throughout their runs from 125th Street down to 14th Street during peak morning hours, and

P. East Side Access pedestrian distribution based on information from the project's FEIS

P.



once operational, East Side Access will further increase passenger loads. In 2025, if no measures are taken to ameliorate overcrowding, ridership on the Lexington Avenue 4/5/6 will grow by 11% on southbound trains and by 16% on northbound trains. In both scenarios, a majority of the growth would take place on the Local 6 train, as a result of at-capacity conditions on the express 4/5 trains.

The most problematic station on the Lexington Avenue line is the Grand Central-42 Street station. Lexington Avenue trains going through the Grand Central-42 Street station are on average 18% overcrowded. They have dwell times ranging from 50- to 60-seconds, which is significantly higher than the average of 30- to 45-seconds. Consequently, 25 out of an expected 29 express trains serve Grand Central during the AM peak hour.

Phase 1 of the Second Avenue Subway is scheduled for completion in December 2016. Its implementation will result in a 10.2% decrease in ridership on the Lexington Avenue Express trains. At that time, these trains will still be running at 14% overcapacity. It is not until Phase 4 that ridership on the Lexington Avenue Express trains will be under capacity. However, until funding is in place for future phases, ridership alleviation on the Lexington Avenue subway line cannot be reasonably expected.

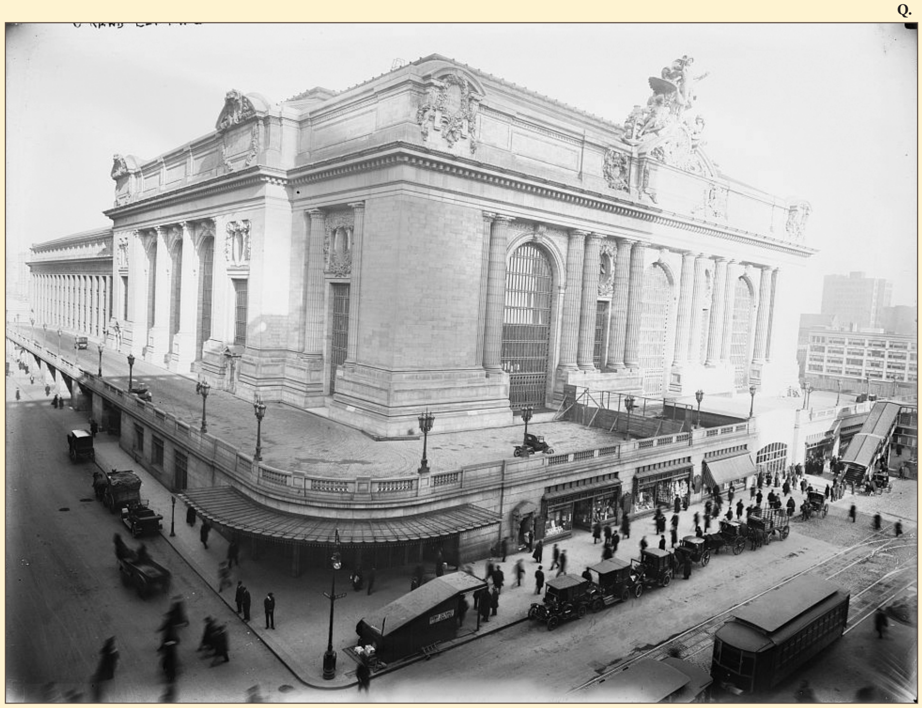
The New York City Department of City Planning notes that the proposed East Midtown Rezoning would be necessary in order to ensure that the large investment in transit infrastructure through East Side Access and the Second Avenue Subway will generate its full potential to create jobs and tax revenue for the City and region.

However, that rationale is contrary to the core argument for both East Side Access and Second Avenue Subway. Both projects were conceived to combat overcrowding of New York City's transit network caused by the increased ridership. In 2000, there were 5,041,114 public transit passengers entering and leaving the Manhattan south of 60th Street. In 2010, this number increased by 6.6% to 5,371,612. Instead of new density taking advantage of existing investments in transit, new density unless accompanied by meaningful new transit investment will only serve to further exacerbate the overcrowded conditions in East Midtown.

Transportation has been at the center of East Midtown's history and success and bold investment in transit needs to be at the center of its future. •

In 2000, there were 5,041,114 public transit passengers entering and leaving Manhattan south of 60th Street daily. In 2010, this number increased by 6.6% to 5,371,612. Instead of new density taking advantage of existing investments in transit, new density — unless accompanied by meaningful new transit investment — will only serve to further exacerbate the overcrowded conditions in East Midtown.

Q.



Q. Grand Central, 1913

THREE

A Vibrant MIX

RECOMMENDATIONS

ENCOURAGE mixed-use in both new construction and existing buildings. The Time Warner Center and Bloomberg LP headquarters are good examples of predominantly commercial buildings that also include residential. As other NYC neighborhoods have demonstrated, the activity and energy of residential buildings in commercial neighborhoods supports a more dynamic environment.

ACTIVATE the ground floor. Require retail at the street level or building passageways in congested areas to create a more active and attractive environment.

LANDMARK exceptional buildings. Of the 587 properties in the East Midtown study area, 32 are designated New York City landmarks. MAS has identified 17 additional buildings that merit further consideration by the Landmarks Preservation Commission.

ENSURE that all historic commercial properties can take advantage of the Federal Historic Preservation Tax Incentives program. Properties listed on the State or National Registers can qualify for up to 20% in rehabilitation tax credits for certified projects. Approximately 41 buildings are currently listed or eligible for listing. Requests for eligibility should be made for additional properties.

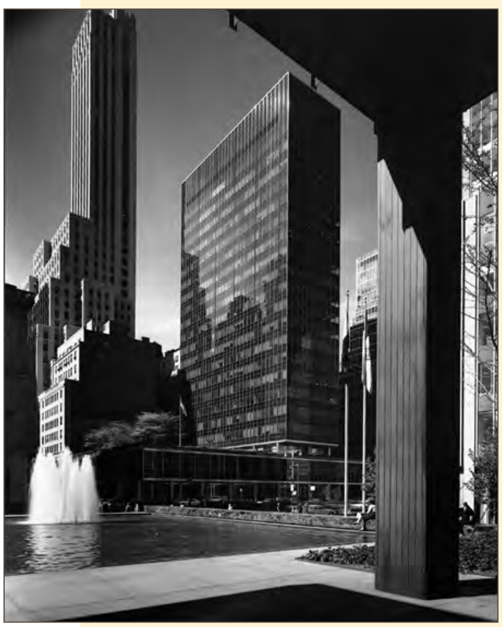
EXPLORE innovative ways to incentivize rehabilitation of existing buildings. While rehabilitation tax credits make excellent economic sense for some, other municipalities' local waivers and incentives for improving historic structures should be evaluated.

RE-THINK lot size requirements that depend upon site assemblage and teardowns to make way for new construction. The proposed rezoning requires a site to be cleared in order for a new building to take advantage of the additional density. This provision encourages the demolition of buildings rather than trying to find architecturally creative solutions to incorporating existing buildings or building around them.

Ensuring that East Midtown remains attractive means embracing and enhancing the neighborhood's unique aspects: the coexistence of Fortune 500 firms and solo practitioners; the Waldorf Astoria and the Shelton Hotel; the Four Seasons Restaurant and halal food carts. Boosting this diversity will be achieved by encouraging mixed uses and incorporating historic preservation as a tool to promote an amalgam of architectural styles, building sizes and commercial tenants into future development plans.

A. *The blocks around East Midtown swell with pedestrians at lunch and during commutes*

B.



C.

B. Google purchased this building at 111 Eighth Avenue in Chelsea in 2010 for use as their company headquarters

C. Considered a mid-century masterpiece, the Lever House (1952) located at 390 Park Avenue was designed by Gordon Bunshaft of SOM

ENCOURAGING A MIX OF USES

Focusing primarily on the development of a single use, commercial offices, is an outdated framework. Today's businesses want talent and increasingly, talent gravitates toward neighborhoods that are real places — with walkable streets, unique architecture, great restaurants and other opportunities for socializing and amusement. Midtown South, for example, has enjoyed a substantial increase in occupancy and rental prices, benefiting from an influx of tech, media and creative tenants, and the halo effect of this activity in attracting additional businesses. This has not gone unnoticed by real estate analysts:

For much of the year, Midtown South distinguished itself as the preferred destination of tenants in the Manhattan office market. While Midtown South is a favorite area for technology and new media, activity during the year was from a variety of tenants. The diversification of the tenant base further highlights the broad appeal of this area. – Avison Young Manhattan Market Overview, December 2012

Older office buildings provide affordable, flexible space and close proximity to other businesses, encouraging entrepreneurship and the cross-pollination of ideas. In East Midtown, the juxtaposition of these former Class A buildings with modern Class A office space allows smaller businesses to grow and graduate without compromising location.

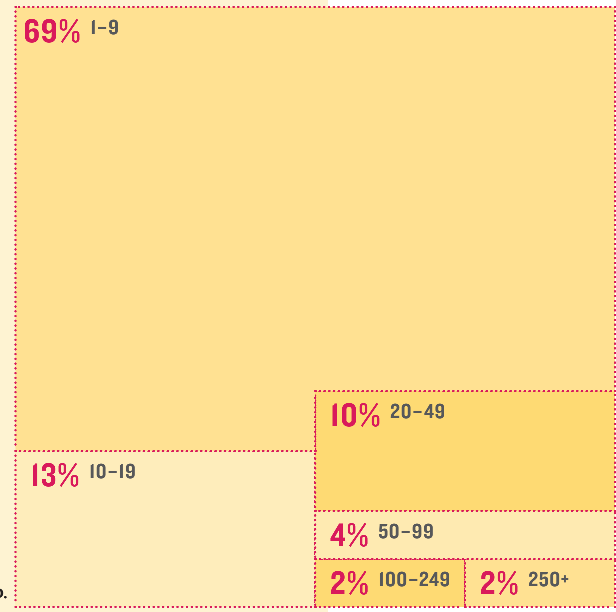
While many Fortune 500 companies call East Midtown home, the 2010 U.S. Census reports that the majority of area businesses employ fewer than nine people. Varying in size, the area businesses include: financial firms, law offices, CPA offices, marketing, advertising, custom computer programing services and related activities. The number and mix of business types are important for the economic health of the neighborhood. Yet the City's plan — with its emphasis on the need for large, column-free Class A floor-plates — contradicts these facts.

Anticipating the future need for specific types of office space must incorporate an analysis of recent trends. Company space-needs have diminished as technology advances and telecommuting have reduced overhead. Even large corporations' space needs have streamlined, partially because the recent global economic crisis has brought into question the future stability and structure of the financial industry. According to 2012 data compiled by Bloomberg L.P., financial firms announced about 60,000 job cuts worldwide. The Plaza District market — the area of Manhattan between Sixth Avenue and the East River from 47th to 65th Streets — which is about 30% financial-service firms, has felt the after-effects, having recently lost tenants such as Citigroup and General Motors. (Levitt, 2012)

Comparable central business districts have seen similar losses. London for instance, which is second to New York City in number of leading financial firms, has recently seen its financial sector shrink. As a result, technology, media and telecom companies acquired more space in the city in 2012 than firms in the finance sector. (du Preez, 2012) In other instances corporations are using their headquarter buildings more efficiently. Following the renovation of their company headquarters at 270 Park Ave which increased the building's capacity by 26%; JPMorgan Chase & Co. was able to sublet 50,000 square feet at 277 Park Avenue in March 2012. (Agovino, 2012)

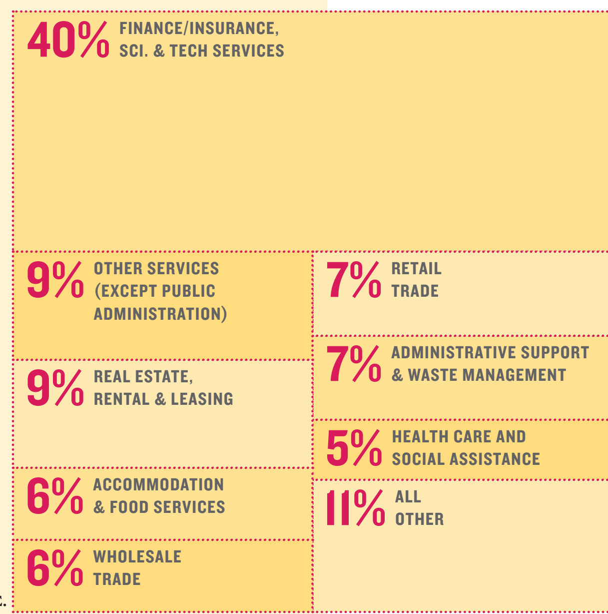
These changing dynamics bring into question the City's assertion that expansive office floor plates are necessary for East Midtown to be successful. The City is missing an opportunity to redefine East Midtown and encourage the next generation of firms, some of which occupy older buildings as their headquarters.

EAST MIDTOWN BUSINESSES BY NUMBER OF EMPLOYEES



D.

EAST MIDTOWN BUSINESSES BY INDUSTRY



E.

2010 U.S. Census County Business Patterns data.

F.

F. *Lack of variety in ground floor retail stifles vibrancy*

Older office buildings provide affordable, flexible space and close proximity to other businesses, encouraging entrepreneurship and the cross-pollination of ideas.

FOSTERING DIVERSITY

New construction is an important part of maintaining a high level of excitement in East Midtown; however at the scale currently proposed (25,000 sq. ft. minimum site size) new development may detract from the neighborhood's diversity. Class A office buildings with large floor plates often include bland retail if any at all. Such building configurations rarely offer a variety of commercial unit sizes; assortments of smaller and larger stores are preferable as they help animate the streets.

INCORPORATE RESIDENTIAL USE

To sustain a high-performing office district, new buildings must be able to offer a variety of uses, even introduce new uses to Midtown. Other New York City neighborhoods have demonstrated that residential uses create a market for retail uses which support the needs of office workers. Residential uses are allowed under the current zoning and have not meaningfully "out competed" commercial uses in East Midtown. Although very few older buildings have converted to residential use, such uses may be attractive in certain locations. A mix of uses allows people to live and work in the same neighborhood, even the same building, while retail frontage enlivens the streets, and avoids a series of deadening building lobbies. Together, these uses contribute to creating a thriving 24-hour business district for the 21st century.

PRESERVATION PROMOTES A MIX OF USES

East Midtown's streets tell a particular story of New York. A synergy exists between architecture and use, which makes preservation an essential part of maintaining an area's diversity. Protecting longstanding buildings to ensure that they remain part of the streetscape will help maintain the distinctive character of East Midtown's streets. Encouraging a smart approach to preservation is essential to supporting East Midtown's vitality.

Much of East Midtown's broad appeal relates to the variety of building stock. Many area firms

THE POSTUM BUILDING

(Cross & Cross, 1924)

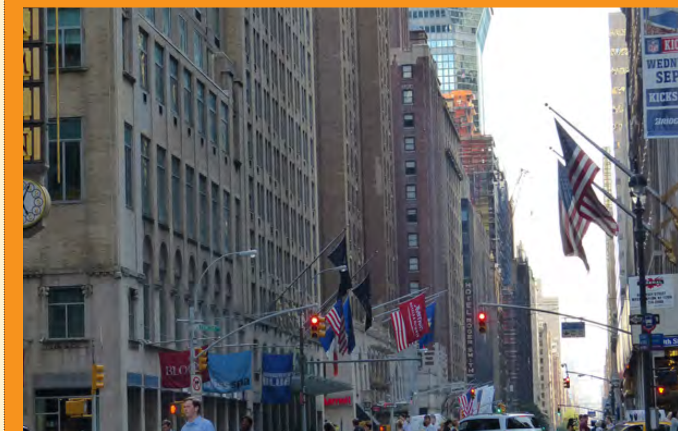
The Postum Building is an excellent historic building that appeals to a broad range of tenants. The first commercial structure to be constructed north of Grand Central Terminal, 250 Park Avenue has remained an office building for almost 90 years. In 1985 the building façade was cleaned, elevators upgraded, and the lobby restored to reveal the original vaulted ceiling. Currently owned by AEW Capital Management, in 2011 the Postum Building was certified LEED Gold following a $14 million capital improvement program led by property management firm Cassidy Turley.

Today's tenants include European liquor distribution firms Pernod Ricard (82,000 square feet) and Anheuser-Busch InBev (31,000 square feet) who appreciate the aesthetic of an older site combined with a prestigious Park Avenue address. Pernod Ricard's three full floors include a retrofit of the 17th floor setback into a terrace for the firm. (Agovino, 2012) •

remain in Midtown because the location is critical or their space needs remain static. Historically, the area's ecosystem provided a range of work spaces within the neighborhood and the buildings themselves. For example, in its early days the grand Graybar Building was home to leading commercial tenants such as Graybar Electric, Conde Nast and Remington Rand, as well as solo practitioners who occupied more modest offices. This practice endures today where a dynamic tenant mix results from locational convenience, an upscale address, distinguished architectural presence and relatively moderate rents. The best of these buildings combine well-restored façade with updated interiors. Tenants are attracted to the updated systems, energy-efficiency and flexible floor layouts.

Revered Mid-Century masterpieces such as Lever House and the Seagram Building are still considered trophy properties and continue to command top rents. (Piore, 2007) The Chrysler Building and the Waldorf Astoria too are among those universally appreciated as architectural masterpieces. These landmark buildings are still used for the purpose for which they were built, whether office buildings or hotels. Other older buildings are attractive to firms that also want midtown locations, whether to take advantage of the unparalleled transportation access or because of the importance of co-locating next to similar or complementary businesses. East Midtown needs to continue to provide the financial flexibility to

HOTEL ALLEY



Lexington Avenue's "Hotel Alley" — a cluster of early 20th century hotels between 47th and 51st Streets — provides a unique experience with its masonry buildings' bases of similar heights, round or pointed arches, flat openings, balustrades, gargoyles, rosettes, arcades, oversized and undersized openings, and tripartite windows. For 90 years, these hotels have continued to offer full service to the public, with serially-renovated facilities, enlarged guest rooms, modernized systems, and conference facilities. With the dispersal of the city's other hotel hubs, and a growing tourism industry, the function of "Hotel Alley" is more important than ever. •

New Life for a Modern Monument: A Salute to 488 Madison Avenue

The restoration of 488 Madison, formerly known as the Look Building, demonstrates that post-war buildings can be updated, can reward investors, can make a valuable contribution to the urban fabric of the city, and can continue to give pleasure to passersby and architectural aficionados alike. The Municipal Art Society salutes the building's owners, the Feil Organization and the John D. and Catherine T. MacArthur Foundation, and the architects of the restoration, Hardy Holzman Pfeiffer Associates.

The first phase of the renovation focused on restoration of the building's original skin, including brickwork, paved terraces, and steel handrails. The distinctive clear-glass strip windows were retained and given acoustically and thermally improved glazing and new mullions which differ from the originals but still accent the building's character. Work also included installation of a new HVAC system and replacement of the nine elevators. As part of phase two, the lobby was returned to its original configuration; the walls were reclad in a warm red limestone with terrazzo details and the floor recovered in white and black granite. On the upper levels, tenant lobbies and bathrooms were upgraded. Future work may include removal of the black-glass cladding on the ground floor, which was added during the late 1960s.

The importance of 488 Madison Avenue lies in the fact that it was New York's first nod to the design trends that had dominated Europe decades earlier. The twenty-three-story building, with its symmetrical setbacks, curved corners and strip windows, was seen as a commercial victory for International Style Modernism when it opened in 1949. It is legendary as the former home of Look Magazine, as a backdrop for fashion shoots, and as the offices of industrial designer Raymond Loewy. Its restoration honors its history while making the building environmentally sound and viable for contemporary business use.

No dramatic overhaul was needed to restore the freshness of 488 Madison's design. Hardy Holzman Pfeiffer Associates has shown that a sensitive renovation can turn a 1950s icon into a 1990s trendsetter.

NEW YORK'S MODERN MONUMENTS-II

THE LOOK BUILDING

(Emery Roth & Sons, 1949-50)

The 1998 restoration of 488 Madison Avenue demonstrates that post-war buildings can be updated, reward investors, and make a valuable contribution to the urban fabric. The renovation focused on restoration of the building's original facade, retaining the distinctive strip windows while thermally improving the glazing. Work also included installation of a new HVAC system and the replacement of 9 elevators.

Opened in 1950, the Look Building was considered a commercial victory for the International Style and in 2010 was designated a New York City Landmark. In November 2012 the vacancy rate in the 447,000 square foot building was only 4%, with space generally leasing in the low $60s per sf. That same month Grassi & Co., a respected mid-market accounting firm which operates out of the 21st floor acquired an additional 10,311 square feet to their 13,081 square feet. Interior office construction on the 23rd floor was scheduled for completion in January 2013. (Ewing, 2012)

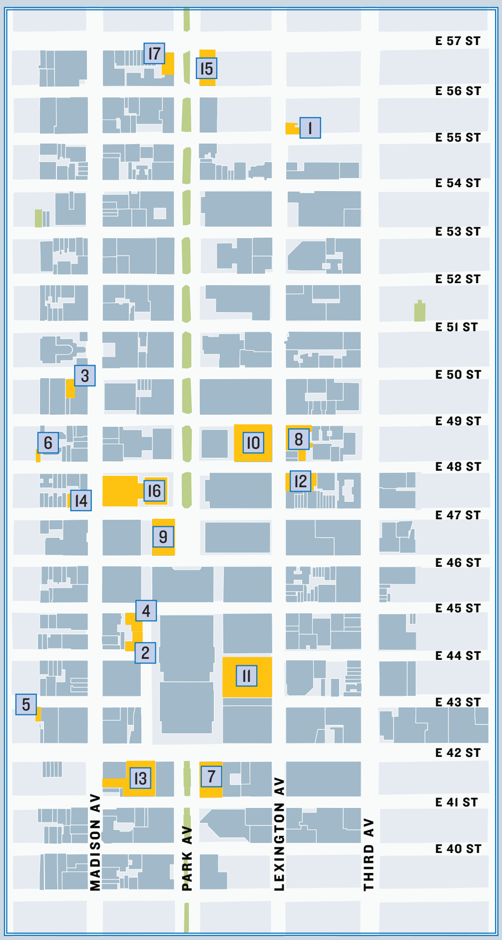
488 Madison Avenue is owned by the Feil Organization and currently undergoing a lobby renovation that will include updated elevators and a new retail façade. •

LANDMARK OUTSTANDING BUILDINGS

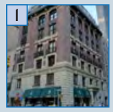
A holistic vision for the future of East Midtown supports a vibrant mix of businesses, people, and of course, the building themselves — over a century's worth of architecture.

Today, of the 587 buildings located in the East Midtown study area, only 6% — 32 buildings — are designated landmarks. MAS identified additional sites of historic and architectural merit not currently protected by New York City landmark status, as determined by site visits, research, and collaboration with experts on the MAS Preservation Committee.

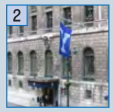
MAS proposes 17 buildings for landmark designation. These 17 buildings represent the development periods that define East Midtown, from pre-Grand Central to Terminal City to the post-war Modern Movement. They best convey historic, architectural and cultural significance, and represent a mix of materials, styles and uses that contribute to East Midtown's visual diversity and sense of place.



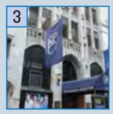
The following buildings have been submitted to the Landmarks Preservation Commission for further evaluation:



661 Lexington Avenue (former Babies Hospital); York & Sawyer, 1901-1902

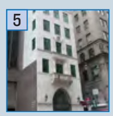


The Yale Club; 50 Vanderbilt Avenue; James Gamble Rogers, 1913-1915

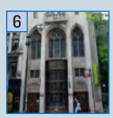


New York Health & Racquet Club (former Grand Rapids Furniture Company Building); 18-20 East 50th Street; Rouse & Goldstone and Joseph L. Steinman, 1915

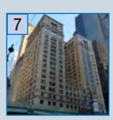
Vanderbilt Concourse Building; 52 Vanderbilt Avenue; Warren & Wetmore, 1914-1916



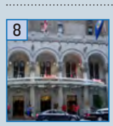
4 East 43rd Street (former Mehlin Piano Company Building); Andrew J. Thomas, 1916



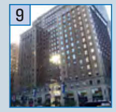
Swedish Seamen's Church (former New York Bible Society); 5 East 48th Street; Wilfred Edward Anthony, 1921



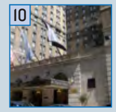
Pershing Square Building, 125 Park Avenue (100 East 42nd Street); John Sloan of York & Sawyer, 1921-1923



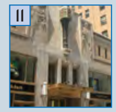
Marriott East Side (former Shelton Hotel); 525 Lexington Avenue; Arthur Loomis Harmon, 1922-1923



250 Park Avenue (former Postum Building); Cross & Cross, 1923-1924

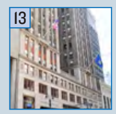


Hotel Intercontinental Barclay; 111 East 48th Street; Cross & Cross, 1925-1926

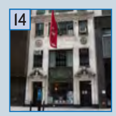


Graybar Building; 420 Lexington Avenue; Sloan & Robertson, 1925-1927

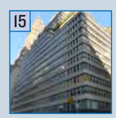
Lexington Hotel; 509 Lexington Avenue; Schultze & Weaver, 1928-1929



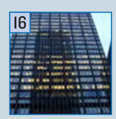
One Grand Central Place (former Lincoln Building); 56 East 42nd Street; J.E.R. Carpenter and Dwight P. Robinson, 1928-1929



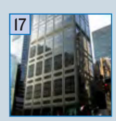
Center for Fiction (former Mercantile Library); 17 East 47th Street; Henry Otis Chapman, 1932



445 Park Avenue (former Universal Pictures Building); Kahn & Jacobs, 1946-1947



JP Morgan Chase Tower (former Union Carbide Building); 270 Park Avenue; Skidmore, Owings & Merrill, 1956-1960



450 Park Avenue (former Franklin National Bank Building); Emery Roth & Sons, 1968-1972 small and growing businesses that older buildings offer. We must learn from the city's history that relying on one or two industries to completely populate an area is not a strategy that works over time.

EXPLORE NEW WAYS TO INCENTIVIZE REHABILITATION

The avenues and major streets of East Midtown hold over a century's worth of architecture. These streets illustrate an encyclopedic history of the City's codes: apartment hotels, wedding cake configurations, privately owned public spaces. The longstanding masonry structures with their classical or neo gothic details, human-scaled entrances, random recesses, and well-detailed shop windows juxtaposed with new, tall, glass and metal slabs create an animated, syncopated rhythm. Each major surge of development left swaths of the past. From the boom that followed the Terminal's construction in 1913, to the post-World War II office building explosion and late 20th century construction and recladdings, at no time were the previous era's buildings, activities or populations completely obliterated. Together these layers help create East Midtown's sense of place.

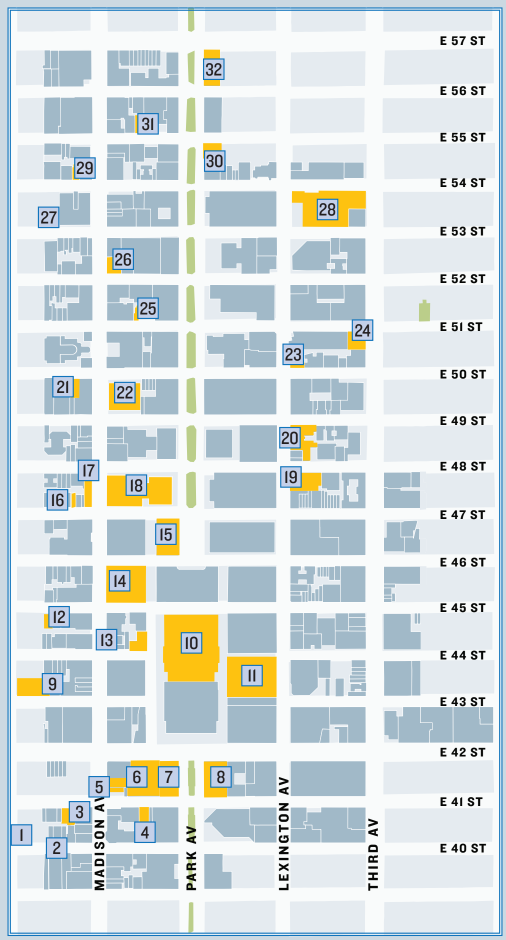
Many of East Midtown's historic buildings have been restored, in some cases, numerous times. To ensure that the streets are as appealing as possible the City should investigate programs used in other cities to foster preservation. Examples include Chicago's Cook County Class-L Property Tax Incentive, which reduces the property tax rate for 10 years for rehabilitating a landmark building in a commercial or industrial use.

A synergy exists between architecture and use, which makes preservation an essential part of maintaining an area's diversity.

CITY-IDENTIFIED HISTORIC RESOURCES

In February 2013, as part of their role in the Draft Environmental Impact Statement (DEIS) analysis, the New York City Landmarks Commission identified 32 potentially eligible historic resources in East Midtown. While eligibility is determined by the scope of the DEIS, landmark designation is subject to a separate process set out by the LPC and as defined under the New York City Landmarks law.

1 Encaustic Tile Building
2 18 East 41st Street
3 22 East 41st Street
4 Chemists' Club Building
5 299 Madison Avenue
6 Lincoln Building
7 Philip Morris Building
8 Pershing Square Building
9 Lefcourt National Building
10 MetLife Building
11 Graybar Building
12 Title Guarantee Building
13 Yale Club
14 Roosevelt Hotel
15 Postum Building
16 Mercantile Library
17 400 Madison Avenue
18 Union Carbide Building
19 Hotel Lexington
20 Shelton Hotel
21 18-20 East 50th Street
22 437 Madison Avenue
23 Benjamin Hotel
24 Girl Scouts Building
25 R&M McCurdy Building
26 503 Madison Avenue
27 Paley Park
28 Citicorp Center
29 Minnie Young Residence
30 417 Park Avenue
31 Martin Erdmann Residence
32 445 Park Avenue



G. *Layers of history are visible along Park Avenue*

G.

RETHINK LOT SIZE REQUIREMENTS

The City's lot size requirements will ensure that the area's tallest buildings will be facing avenues. However, some avenue frontage will be available for redevelopment only if adjacent historic structures are demolished. This could inadvertently result in monolithic streetscapes rather than a syncopated mix of styles and materials that is distinctly Midtown. This provision should be reevaluated to determine if certain sites could be developed to accommodate existing buildings.

CONCLUSION

A careful preservation strategy for East Midtown will help weave the past and the present into a coherent vision for the future. East Midtown is busy, complicated and energetic; old and new at the same time. Encouraging this important convergence will help Midtown maintain its lively diversity where small companies, grateful to sublet, will be able to remain proximate to Fortune 500 firms. New buildings too will help keep Midtown dynamic, however to foster an environment that thrives, the City must encourage mixed use development in order to ensure that this neighborhood continues to attract workers and businesses well into the next century. •

REGULATORY INCENTIVES FOR LANDMARK DESIGNATION

The Federal government offers monetary incentives to property owners to restore historic and older buildings. The Federal Historic Preservation Tax Incentives program, established by the Tax Reform Act of 1986 (PL 99-514; Internal Revenue Code Section 47 [formerly Section 48(g)]) include:

- 20% tax credit for the certified rehabilitation of certified historic structures
- 10% tax credit for the rehabilitation of non-historic, non-residential buildings built before 1936

Examples of major tax credit projects in New York City include 48 Wall Street, an office building in Lower Manhattan. The former Bank of New York & Trust Company Building was designed by architect Benjamin Wistar Morris and constructed from 1927-1929. The building was designated an individual landmark by the New York City Landmarks Commission in 1998, and its $55 million dollar rehabilitation was completed in 2003. Today, tenants range from financial and business services groups to law and architectural firms.

In 1907 the Hotel Seville opened at 22 E. 29th Street, and in 2005 was listed on National Register of Historic Places. That same year the hotel, now known as The Carlton, began a $48 million dollar rehabilitation project that qualified for the federal tax credits.

A third example is the iconic Lever House in East Midtown, designed by Skidmore, Owings & Merrill and opened in 1952. Thirty years later this 24-story glass and stainless steel skyscraper was designated a New York City Landmark, and in 2003 SOM returned to conduct a $20 million dollar restoration of the signature glass curtain wall.

Projects must follow the Secretary of the Interior Standards, which take precedence over local regulations and codes. Resulting in extraordinarily careful restoration work, these projects are major endeavors that require significant amounts of time and financial investment, and government review. Many area historic properties are potentially eligible for this program. •

FOUR

Design for THE NEXT CENTURY

RECOMMENDATIONS

LEAD the world in environmental requirements for tall buildings. New York should set the standard for 21st century urban design. This should include standards for new buildings as well as approaches for upgrading existing buildings.

ENCOURAGE density on sites where additional density unlocks the greatest public value. Sites with potential for the greatest transit connectivity and pedestrian circulation improvements include:

- SL Green site located on 42nd Street between Vanderbilt and Madison Avenues
- Hyatt Hotel site located on 42nd Street between Park and Lexington Avenues
- MetLife Building on Park Avenue between Grand Central Terminal and 45th Street
- Park Avenue, where the width and openness of the street provides a context for larger buildings

CREATE a more flexible landmark transfer provision which facilitates the preservation of existing and new landmarks and also allows density to be added along Park Avenue where it's more appropriate.

DEVELOP bulk controls to protect important view corridors to important buildings within the rezoning areas such as Grand Central Terminal, and the Chrysler Building.

REQUIRE public review to evaluate the site plan, massing, and architectural merit of a proposed development to help ensure these buildings improve the character, quality and functionality of the area.

ENCOURAGE active top floor uses such as retail or observation decks on the tallest buildings to allow public access to New York City's extraordinary skyline.

SUPPORT development in other business districts such as Downtown Brooklyn and Long Island City in order to make better use of the city's transportation and utility infrastructure to help alleviate congestion in East Midtown. Rather than create a five-year sunrise provision which is intended to allow the development of other parts of the New York City, a sunrise provision should be connected to benchmarks in these other neighborhoods.

PERMIT a mix of uses to develop a truly 21st century Midtown office district and reinforce the development of vibrant retail corridors.

Nowhere is New York City's skyline more recognizable than in Midtown Manhattan. The Chrysler building, the Empire State building and 601 Lexington (formerly Citigroup Center) are iconic structures that have helped define New York City's identity. The unique development history of Midtown has created an extraordinary architectural richness. It is imperative that going forward, new development responds to the area's existing context. Aggressive policies should be established to help ensure the highest quality design and environmental standards are achieved and that East Midtown's reputation for exceptional development continues on into the next generation of buildings.

A. *East Midtown's skyline boasts some of New York City's most recognizable icons*

B.

C.

B. *View of early East Midtown skyscrapers; pictured from left to right is the Chrysler, Daily News, Chanin and Lincoln buildings*

C. *View of the New York Central building, 1929*

"While bigger cities offer a greater pool of labor and higher demand, as well as potential economies of scale, if they are not planned correctly, congestion and other issues can actually impede their competitiveness."

Economist Intelligence Unit report, Hot spots: Benchmarking global competitiveness

CONTINUING AN EXTRAORDINARY LEGACY

Sophisticated development is an East Midtown legacy. Without buildings like New York Central (1929), the Graybar Building (1927), Lever House (1952) and the Seagram Building (1958), New York would feel like a very different place. The question now is: What's next? What is the 21st century equivalent of these extraordinary buildings and will iconic buildings alone continue to make East Midtown desirable enough to attract large corporations and the talented workforce these companies need?

The City's answer to these questions is to rezone a significant portion of East Midtown to encourage a new phase of development. City Planning argues that encouraging this type of development will make East Midtown more competitive both regionally and globally. This strategy however, does not live up to the legacy of innovative development that has defined the neighborhood's past. A plan for the next generation of buildings should support goals beyond the economic growth of East Midtown.

The new iconic buildings of tomorrow should be about more than how they look or stand out in the skyline. Expansive floor plates alone will not attract the most sought after tenants. As Google's headquarters in Chelsea demonstrates, the surrounding neighborhood does matter. Tall buildings should not be considered an answer themselves, rather they should be considered as part of an urban design framework. This will ensure that new buildings are appropriate to the surroundings and serve an important public purpose, as well as help create an atmosphere that will continue to draw businesses to East Midtown.

The three key areas discussed below — enhanced public realm, environmental aspiration, and aesthetic design — are crucial aspects that should be carefully considered when developing policy for the next generation of buildings.

ENHANCED PUBLIC REALM

As discussed in the Public Realm section of this report, Midtown Manhattan's success relies heavily on efficiently moving the hundreds of thousands of people that populate East Midtown streets each day. To ensure the neighborhood's continued success, new buildings must be required to connect to area transit and make significant improvements to help enhance the public realm.

A great deal of neighborhood efficiency and success of the public realm relies on determining the proper size and bulk of new buildings. New buildings, particularly those as large as would be allowed by the City's proposal, add density, which leads to more crowded streets, subways and buses. Smart city planning distributes density, spurring investment in neighborhoods that would benefit from an economic boost while ensuring that areas of the city that are largely built out do not become overcrowded thereby becoming less desirable places to live, visit and work.

Once large buildings are built, congestion can become an enduring problem. In 1980, such a problem was identified in East Midtown prompting the Department of City Planning to relieve congestion and pressure on the area's overtaxed public facilities by establishing the Special Midtown District, which encouraged growth in Midtown South and West. In 1981 the NYC Department of City Planning report stated:

"Excess growth can impair the very conditions that inspire it. We want to relieve the further congestion of East Midtown and the pressure on its overtaxed public facilities."

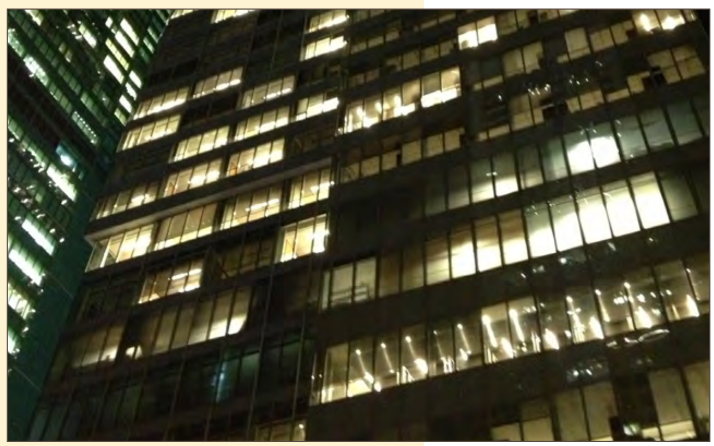
East Midtown's density continues to be unparalleled compared to anywhere else in the city, bringing into question the logic for encouraging the development of massive buildings in the area. Rather than focusing solely on East Midtown development, the City should look to supporting business districts such as Downtown Brooklyn or Long Island City, to make better use of the city's transportation and utility infrastructure and help alleviate congestion in East Midtown, thereby allowing pedestrians to move efficiently while retaining everyone's access to light and air.

When new buildings are appropriately sited, they can significantly improve the public realm. One recent example can be seen at One Bryant Park. Designed by COOKFOX Architects and completed in 2009, the building is one of the city's tallest at approximately 1,200 feet. The building is on West 42nd Street and Sixth Avenue on two wide streets that still allow for daylight to get down to the sidewalk. The site is also located adjacent to

D. *The 55 story One Bryant Park building is the first new skyscraper in the world to receive a LEED Platinum rating from the U.S. Green Building Council (USGBC)*

E. *The One Bryant Park development included a new subway entrance and pedestrian tunnel*

F. *One Bryant Park includes a privately controlled and operated indoor space containing tables, chairs and sculptures, which is open to the public daily*



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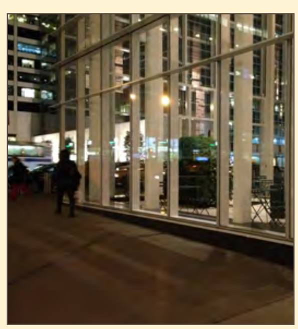

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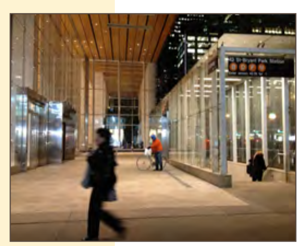


E.

a subway station allowing for the creation of a new subway entrance and increased sidewalk space to better manage pedestrian traffic. Public spaces were also provided including an "Urban Garden" room at the corner of Sixth Avenue and 42nd Street. (Buildipedia, 2012) Although this building at 24FAR is one of the City's densest the width of the streets and adjacency of subway provided a context where this density is well integrated.

In addition to sites that can significantly improve transit access, the other appropriate location for density is along Park Avenue which is a very wide street

Given the extraordinary density in East Midtown — one of the densest places in the Western world — additional density should be added only on those sites where it can unlock the most public value and where the urban design context accommodates larger buildings which will not totally overwhelm the street.

There are three critical sites around Grand Central which deserve more careful focus:

- The SL Green site bounded by East 42nd Street, Madison Avenue, East 43rd Street, and Vanderbilt
- The Hyatt Hotel site bounded by East 42nd Street, Lexington, East 43rd Street and Grand Central
- The MetLife building just to the north of Grand Central.

All of these sites if redeveloped could potentially significantly improve transit access. The SL Green site would allow for access to the LIRR in the form of East Side Access and the Times Square shuttle and potentially the 7 train. The Hyatt Hotel, probably the most important site, would allow for far better access into the 4/5/6 train. Today this entrance is very difficult to navigate. If this site were redeveloped, then access to this subway station — one of the most important in New York City — would be far easier and safer to navigate. Finally, the MetLife building

RETHINKING TRANSFER OF DEVELOPMENT RIGHTS

New York City was the first city in the country to enact a transfer of development rights (TDR) program. The program enables owners to sell unused development rights above their landmark buildings to nearby buildings generating an important revenue stream. Generally, air rights are transferred between adjacent properties or those located within relatively close proximity (such as across the street).

The proposed rezoning creates a mechanism — through the District Improvement Bonus — which would allow the City to sell these district improvement air rights throughout the entire rezoning area — introducing a new stream of development rights which competes with the air rights controlled by landmarks. These landmarks, which include prominent houses of worship and non-profits such as St. Bartholomew's Church would, as a result of this-rezoning, be in competition with the City for revenues generated by the sale of air rights. Many of these landmarks have understandably raised concerns about this proposal.

In the years following the designation of Grand Central Terminal several special subdistricts were created which allow broader, more flexible transfer provisions. In light of this precedent, and considering the City's proposal, now is the time to rethink the TDR provision in East Midtown. Currently there are proposals which call for broader transfer districts, providing landmarks with larger areas in which to transfer their excess development rights. They range from creating an expanded transfer area within the East Midtown rezoning area

to allowing the transfer of development rights from landmarked not-for-profit buildings to anywhere in New York City.

A more liberal transfer provision would help protect existing landmarks and promote future landmark designations while supporting the ongoing development of new buildings. We do not have to choose between funding critical improvements to our infrastructure and allowing landmarked buildings the opportunity to generate revenue from unused development rights. As is described in more detail in the infrastructure and public realm discussions there are alternate sources of funding which should be examined to fund transit improvements and do not compete with landmark's air rights.

A broader transfer district should be included in the East Midtown proposal or an alternative proposal should be developed to fund the needed improvements. The proposal in its current form creates an unreliable funding stream and in the process undercuts landmark air rights outside of the Grand Central Subdistrict. •

at 18FAR is a very large building and unlikely to be redeveloped in the near term, but in the long term if this site were redeveloped it would allow for significantly improved access to Grand Central Terminal. Because there is value to be unlocked by allowing these sites to be more densely developed, these blocks — and potentially similarly defined sites — are where density should be added.

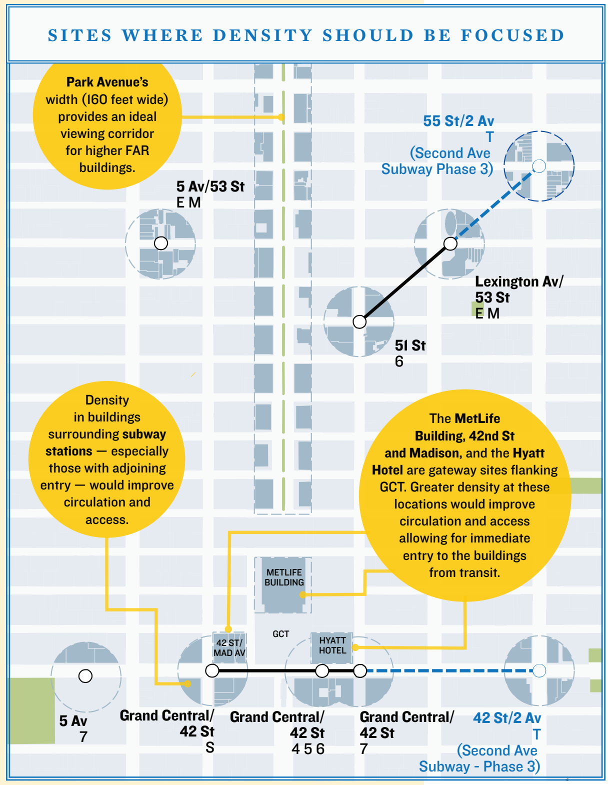
The precise density should be defined with a careful urban design analysis; but the proposed density of 30FAR raises very serious concerns about the impact on surrounding buildings and open spaces. Furthermore, the existing height and setback regulations which are designed to protect access to light and air would need to be significantly manipulated to permit buildings of this size and alternative height and setback regulations would therefore need to be carefully studied.

In addition to sites that can significantly improve transit access, the other appropriate location for density is along Park Avenue. Because the Avenue is a very wide street, new large buildings will have a limited impact on the context of the avenue, unlike the tighter blocks on Lexington or Madison which are canyons with very large buildings along both sides of the street. Buildings along Park Avenue are also largely full block front buildings which makes them ready candidates for the kinds of buildings the Department of City Planning believes should be built in East Midtown.

AESTHETIC DESIGN

Investing in prominent buildings that will be around for decades warrants substantial consideration. As discussed above, locational decisions should be based on more than meeting full avenue frontage and minimum site size requirements. A rigid lot area requirement may not allow for the inclusion of historic buildings into a new development site. There are many important aspects to consider. New buildings should respond to the context or their surroundings, both on the street and the skyline.

Street level: Buildings should be appropriately setback from the street in order to create view corridors and bring light to the street. For instance, new buildings built in the direct vicinity of Grand Central Terminal should not overwhelm what is considered one of the most important buildings in New York City. Over the years the Terminal has become hidden amongst the surrounding towers, shrouding in darkness the building's iconic light-filled interior spaces. Redeveloping sites along Vanderbilt provides the opportunity to rethink the surrounding buildings' relationship to the Terminal and ensure that some degree of prominence is restored to Grand Central.



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H.

G. *Sites Where Density Should Be Focused*

H. *SOM rendering of a through block passage*

I.

J.

K.

I. *The width combined with the many setback buildings bring much more light to Park Avenue than the surrounding streets of Lexington and Madison*

J. *View corridors such as this one along 42nd street allow pedestrians to view the Chrysler building — a NYC icon- and should be protected*

K. *Observations centers like this one at Rockefeller Center give the public a chance to experience spectacular views of the city*

The city should look carefully at each street and avenue within the proposed rezoning area to determine what the appropriate building setback and other design criteria should be. A defining feature of much of Park Avenue, for instance, is the setbacks on the ground floors of the buildings, particularly between the Seagram Building and the Lever House down to Grand Central Terminal. These setbacks help open up the streetscape by pulling the buildings back creating a far sunnier and more spacious corridor than many of the area's surrounding streets. Along Park Avenue there should be additional flexibility for this kind of approach.

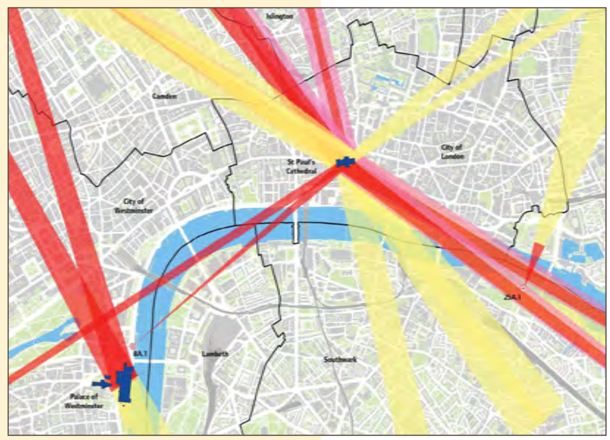
Skyline: A new tall building can change the image of the city as a whole. With the tall buildings in East Midtown playing such a crucial role in this image, it is important that any new skyscrapers be built with proper consideration given to the area's iconic structures. For instance important view corridors, such as those along 42nd Street looking towards the Chrysler building should be considered.

In addition, encouraging creative uses at the tops of these buildings — some of which could be the tallest in the city — should provide opportunities for spaces that will allow the public to engage with the skyline. Encouraging uses such as rooftop restaurants, bars and observation centers, like Rockefeller Center, Empire State or the Rainbow Room, allows the public to experience the neighborhood in an unusual way and also helps make the area a desirable location both day and night. It would be a missed opportunity to not allow the public additional access to the skyline.

ENVIRONMENTAL ASPIRATION

In the past, the buildings were not recognized as a matter of environmental concern. Today however, with buildings comprising 55% of New York City's land area, they are the largest contributors of greenhouse gas emissions as well as the largest consumers of electricity and potable water. Buildings also cause urban heat island effect, where lack of plant life combined with heat-absorbing roofs and paving

L.



M.

materials make the city 5 to 10 degrees hotter than surrounding areas.

New York City also contends with a combined sewer overflow, where combined sewage and storm-water overflow into area rivers about half the time it rains. According to the NYC Sustainable Stormwater Management Plan, 75% of New York City's land area is covered by impervious surfaces, exacerbating the problem of stormwater runoff.

These environmental realities require that any new development must be guided by aggressive policies that will help ensure that these issues and others are effectively mitigated and that the highest level environmental standards are achieved.

Such progressive policies may include requiring the use of green infrastructure to reduce the heat island effect and manage stormwater. For instance, requiring the implementation of technologies such as vegetated roofs will help decrease heat absorption and requiring that all new surfaces incorporate methods to enhance drainage will help reduce stormwater runoff.

It is also important that new construction employ sustainable construction practices, utilize green materials, and install efficient systems and fixtures. At One Bryant Park for instance the installation of their 4.6-megawatt co-gen plant allows the building to generate approximately 65% of its energy. This element was a key component in achieving enough points to win LEED Platinum certification. Ensuring new buildings are as environmentally sound as possible is essential to Midtown leading trends instead

The city should look carefully at each street and avenue within the proposed rezoning area to determine what the appropriate building setback and other design criteria should be.

L. Rendering imagining future "green" buildings in Midtown courtesy of WXY Architecture + Urban Design

M. London protects views from key parks and public spaces to defining buildings and landscapes with view corridors where development is more stringently regulated

N.

N. *In 2011, JPMorgan Chase's headquarters at 270 Park Avenue underwent a major systems overhaul and renovation to earn a LEED Platinum rating from the USGBC*

of catching up to them. However, building reuse avoids many of the environmental concerns caused by tearing down existing structures and building anew — for instance eliminating demolition debris and conserving the energy needed to manufacture and deliver new construction materials. Preservation and building reuse is an integral component of 21st century sustainable development and City policy should focus on fully utilizing its existing built assets. In February 2012 the National Trust for Historic Preservation's Preservation Green Lab released The Greenest Building: Quantifying the Environmental Value of Building Reuse. The report concluded the following benefits:

- The retrofit and reuse of a historic building is almost always a more environmentally sustainable option than new construction.
- Energy retrofits for existing buildings bring immediate benefits. The majority of newly constructed buildings, even one built to be 30% more energy efficient, will take between 20 to 30 years to compensate for the climate change impacts that occurred during the construction process.
- The quality and quantity of materials used in construction, whether for new construction or renovation, significantly affect its environmental impacts. Careful space planning and careful selection of materials can help to reduce such impacts.
- One example of a post-war building located in East Midtown and that has achieved a LEED Platinum ranking is 270 Park Avenue (Skidmore, Owings & Merrill, 1957-1960). The post-war years in New York City were in part characterized by a large-scale building boom that transformed Park Avenue from masonry mid-rise apartment houses and hotels to the glass and steel skyscrapers that define it today. Built for the Union Carbide company, 270 Park Avenue is one of the great buildings of that era. At the time of completion, the Union Carbide Building was the tallest stainless-steel-clad building in the world and Park Avenue's tallest skyscraper, as well as Manhattan's tallest building constructed since 1933.

Currently 270 Park is the headquarters of JP Morgan Chase. In 2011 the financial services giant completed a major systems overhaul, which at the time was the largest renovation project to earn a LEED Platinum rating. Features of the renovation include a 54,000 rainwater collection tank, designed to save more than 1 million gallons of water per year, and 16,500 square feet of landscaping, including green roofs to help lower building temperatures during hot months. Perhaps most significant was the reuse of over 99 percent of the original building and the recycling of more than 85 percent of the construction waste, diverting over 12,000 tons of construction waste from landfills. (Del Percio, 2012)

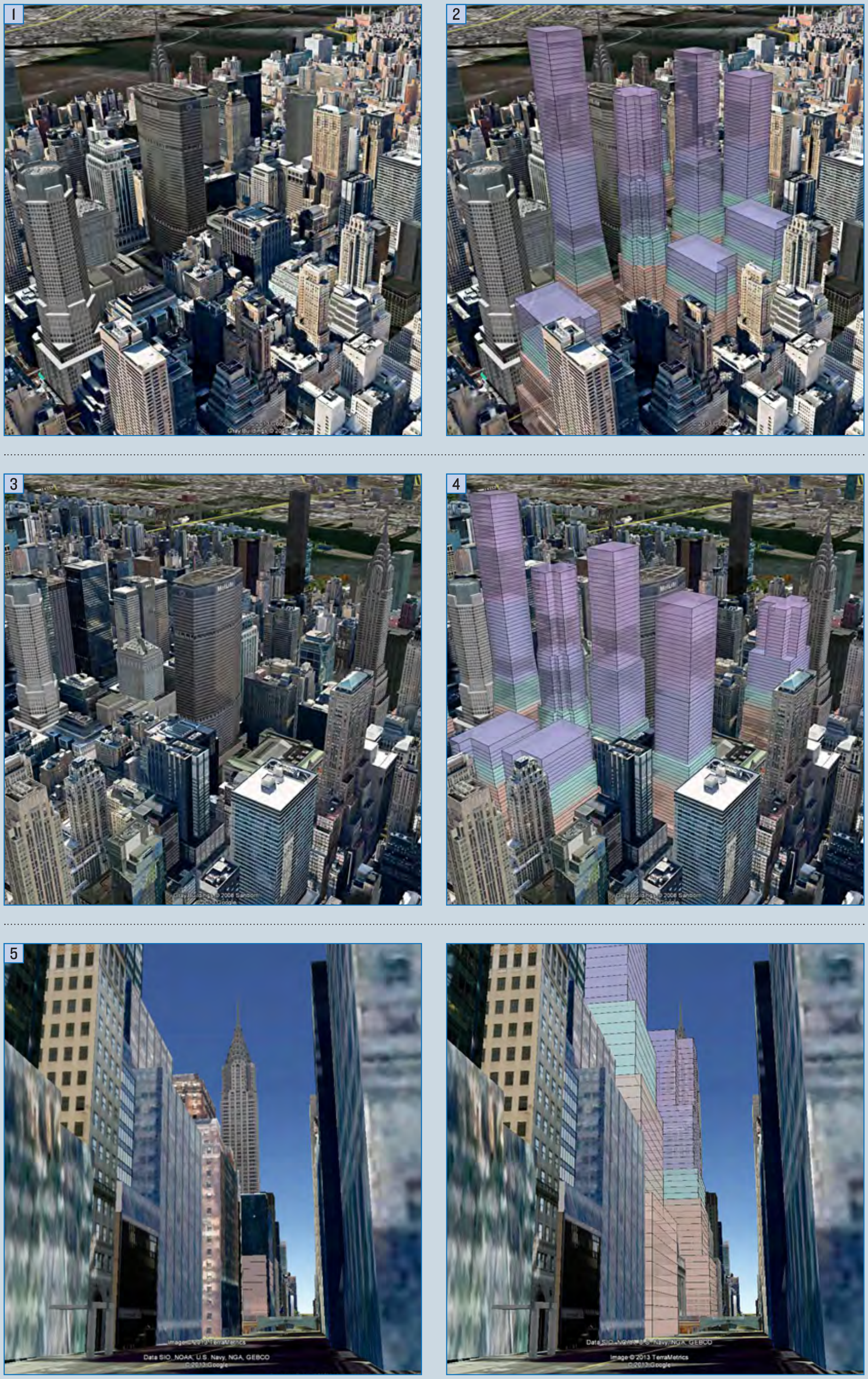
IN LONDON, In London, two groups charged with providing guidance on tall building development — Commission for Architecture and the Built Environment (CABE) and English Heritage — advise local planning authorities. It is suggested that this study take into account the historic context of the wider area and undertake a character appraisal of the immediate context, which identifies the elements that create local character. The checklist of elements to consider includes:

- natural topography
- urban grain
- significant views of the skyline
- scale and height
- streetscape
- landmark buildings, their settings, backdrops and views •

CONCLUSION

Great architecture has always been synonymous with New York City. Cultivating innovation is key to ensuring that the city continues its architectural legacy into the next century. By requiring new building design to provide significant public realm contributions and incorporate the latest advances in green design — all while paying careful attention to the building's context within New York City — we can ensure that the next generation of building will live up to the legacy of some of New York City's greatest buildings. •

IS THIS HOW EAST MIDTOWN SHOULD LOOK?



To illustrate how the City's plans might look once realized MAS employed the Environmental Simulation Center to create a series of renderings showing the size of office buildings the rezoning would permit. The City's proposal would allow the construction of some of the largest buildings in the city, in some cases adding 60% more space than what is currently allowed. As shown in these before and after images, world famous landmarks, such as the Chrysler Building, would disappear from view from many vantage points. The renderings also reveal the clustering that would occur around Grand Central Terminal. Allowing so many buildings of such great height in one location would darken area streets, and increase the number of people in the direct vicinity of the Terminal, further congesting already crowded streets.

View of East Midtown from the Northwest
1 Existing Conditions
2 Potential build-out (30.0 FAR) under City's proposal

View of East Midtown from the Southwest
3 Existing Conditions
4 Potential build-out (30.0 FAR) under City's proposal

View of the Chrysler building from 42nd Street & Fifth Avenue
5 Existing Conditions
6 Potential build-out (30.0 FAR) under City's proposal

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ACKNOWLEDGMENTS

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Stephen M. Raphael
Ethel Sheffer
John West
Barbara E. Wilks

MAS STAFF

Hazel Balaban
Edith Bellinghausen
Aileen Gorsuch
Jessica Halem
Joel Kolkmann (former)
Raju Mann
Mary Rowe
Ronda Wist

MAS INTERNS

Cassandra Ballew
Cortez Crosby
Anastassia Fisyak
Nika Taubinsky

EAST MIDTOWN STAKEHOLDER GROUP

Joseph J. Aliotta *American Institute of Architects New York Chapter*

Eric Anderson *Argent Ventures*

Richard Anderson *New York Building Congress*

Vikki Barbero *Manhattan Community Board 5*

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Sandra Bloodworth *MTA*

Teresa Boemio *Community District 4, Council Member Garodnick*

Melissa Braverman *Westin New York Grand Central*

David Brown *Archdiocese of NY*

Susan Chin *Design Trust for Public Space*

Brian Cook *Office of Manhattan Borough President Scott M. Stringer*

Fredericka Cuenca *Corporate Initiatives, MTA*

Robert Del Bagno *New York Transit Museum*

Randall J. Fleischer *MTA Metro-North Rail Road- GCT*

J. Scott Glascock *Yale Club*

Andrea Goldwyn *The New York Landmarks Conservancy*

Karolina Grebowiec-Hall *Office of Manhattan Borough President Scott M. Stringer*

Julie Greenberg *Kasirer Consulting*

David Haase *MTA NYCT*

Alex Herrera *The New York Landmarks Conservancy*

Andrew Hollweck *NY Building Congress*

Jordan Isenstadt *Association for a Better New York*

Erik Johanson *Denihan*

John Kennard *Metro-North*

Peter J. Lempin *Grand Central Partnership*

Brenda Levin *Land Use Consultant*

David Levinson *L&L Holdings*

Zachary Lockett *Waldorf Astoria*

Ken Lustbader *JM Kaplan Fund*

Nancy Marshall *MTA*

Edward Maynard *W New York, Starwood Hotels and Resorts*

Judy McClain *MTA NYCT*

Betsey Moser *Denihan*

Terrence O'Neal *Manhattan Community Board 6*

Robert Paley *MTA*

Gordon Pelavin *Jones Lang Lasalle*

Andrew Penson *Argent Ventures*

Joe Petrocelli *MTA NYCT*

Nancy Ploeger *Manhattan Chamber of Commerce*

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Rob Schiffer *SL Green*

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Michael Slattery *Real Estate Board of New York*

Laura Starr *New York Chapter American Society of Landscape Architects & Starr Whitehouse*

Margaret Sullivan *Open House New York*

John Tauranac *Mapmaker*

Eftihia Thomopoulos *Association for a Better New York*

Mark Thompson *Manhattan Community Board 6*

Stefano Trevisan *Manhattan Community Board 5*

Carol Van Guilder *Real Estate Board of New York*

Lori B. White *Grand Central Terminal Centennial*

Douglas Woodward *Land Use Consultant*

Matt Zolbe *The Waldorf Astoria*

MAS would like to thank the designers that participated in Grand Central Terminal: The Next 100 design challenge:

Foster + Partners:

Brandon Haw

Pedro Haberbosch

Peter Han

Alonso De Garay

Anthony Stahl

Tola Rebello

Skidmore, Owings & Merrill LLP

Roger Duffy

Kenneth Lewis

Colin Koop

Frank Mahan

Christian Kotzamanis

Jongwon Lee

WXY Architecture + Urban Design

Claire Weisz

Mark Yoes

Jacob Dugopolski

MAS would also like to thank those who participated in the 2012 MAS Summit for New York City sessions, The Future of Midtown East and Grand Central Terminal. The Next 100:

Amanda Burden

Charles Bagli

Michael Chappell

Tony Hiss

Edith Hsu-Chen

John West

Architizer

Jenna McKnight

Justin Davidson

Roger Duffy

Sir Norman Foster

Claire Weisz

Special thanks to:

Hugh Hardy *H3 Hardy Collaboration Architecture*

Eric Galipo *H3 Hardy Collaboration Architecture*

Michael Kwartler *Environmental Simulation Center*

Christopher Rizzo, Esq.

Janet Ross

DESIGN

Michael Kelly Designs
www.mlkelly.com

STATEMENT OF
PARK AVENUE PROPERTIES ASSOCIATES LLC
TO THE CITY PLANNING COMMISSION
REGARDING THE PROPOSED EAST MIDTOWN REZONING

AUGUST 7, 2013

Park Avenue Properties Associates LLC ("PAPA") is the owner of 445 Park Avenue, a 1940's office building that occupies the full blockfront between East 56th and East 57th Street on Park Avenue and anchors the northern end of the proposed East Midtown Subdistrict ("Subdistrict"). 445 Park Avenue is also a building identified as eligible for designation as a New York City landmark in the Draft Environmental Impact Statement for the East Midtown Rezoning.

PAPA is filing this statement (i) in support of the application of the Department of City Planning ("DCP") to establish the Subdistrict; (ii) to ask that CPC, as lead agency under the City Environmental Quality Review ("CEQR"), remove 445 Park Avenue from the list of East Midtown's historic resources in the preparation of the Final Environmental Impact Statement or, if not, state clearly in its CEQR findings that the designation of 445 Park Avenue as a landmark would directly frustrate the goals of the East Midtown Rezoning; and (iii) to ask that the DCP and the City Planning Commission ("CPC") consider further amending the proposed Subdistrict text to allow existing overbuilt buildings on full blockfront sites of slightly less than 20,000 square feet – 445 Park Avenue's site has an area of 18,000 square feet – to be treated as "qualifying sites" for the purpose of reconstruction and permitted floor area ratio.

The Importance of the East Midtown Rezoning

PAPA supports fully the goal of the East Midtown Rezoning "to ensure the area's future as a world-class business district and major job generator for New York City. The rezoning plan provides incentives to promote the development of new, state-of-the-art commercial buildings over coming decades so that East Midtown's office stock remains attractive to a broad range of businesses, including major corporate tenants. Development under the rezoning is expected to expand the City's tax base, add thousands of permanent jobs in East Midtown and fund improvements to the subway and pedestrian network in the area. The East Midtown plan is also the first initiative to require a higher standard for energy efficiency, ensuring that new office towers in East Midtown utilizing the zoning incentives will be at the leading edge of energy efficiency." The redevelopment of the 445 Park Avenue site with a state-of-the-art, energy efficient and attractive office building will both contribute to achieving those goals and will symbolically anchor a key intersection at the northeast corner of the Subdistrict.

445 Park Avenue is Not an Historic Resource

The treatment of 445 Park Avenue in the Draft Environmental Statement for East Midtown as eligible for designation as a New York City landmark is both unwarranted and in direct conflict with the goals of the East Midtown Rezoning.

The Report of CivicVisions LP dated August 8, 2013 and filed with this statement demonstrates that the building does not meet the statutory standards for landmark designation because it does not have the "special character and interest" required for designation by the New York City Landmarks Law and because its exterior has been so compromised by unsympathetic alterations that it lacks the physical integrity necessary for designation. More specifically:

- 445 Park Avenue has neither the architectural distinction nor historic importance of such true landmarks as the Seagram Building and Lever House.
- Previously designated buildings such as the Look Building on Madison Avenue between East 50th and East 51st Streets are more exemplary and better preserved examples of buildings which, like 445 Park Avenue, are full blockfront wedding cake buildings marked by strip windows. Moreover, it is less than clear that the strip window style should even be treated as important today. No less an architectural authority than Robert A. M. Stern has pointed out that the strip window became an architectural cliché in post- World War II New York.
- The building is one of the lesser and more derivative works of Kahn & Jacobs, a prolific firm that produced the designated 2 Park Avenue and the finer and still undesignated 1407 Broadway, which after it was completed, was a featured work by Kahn & Jacobs in its firm brochures.
- The claims that the building is of historic and cultural importance are either exaggerated or untrue. It is not the first office building on Park Avenue (that distinction belongs to the designated Helmsley Building); it is not the City's first post-World War II air conditioned office building (the ESSO Building in Rockefeller Center, which was started in 1945 and completed in 1946, came before it); and there is an absence of clear evidence that it was actually designed by a female architect.
- Both the original base and the original window pattern have been materially changed, altering fundamentally the original design intent of the building.

That is why it is not surprising that **the staff of the Landmarks Preservation Commission has twice in the past five years determined that the building does not meet the criteria for designation**. LPC's letters dated November 3, 2008 and November 18, 2010 and evidencing these decisions are filed with this statement. Nothing has changed, nor has anything new about the building been discovered, in the past five years, to justify LPC's reversal of this position. DCP should therefore follow LPC's twice-affirmed guidance and remove the 445 Park Avenue from the list of historic resources that will be included in the Final Environmental Impact Statement.

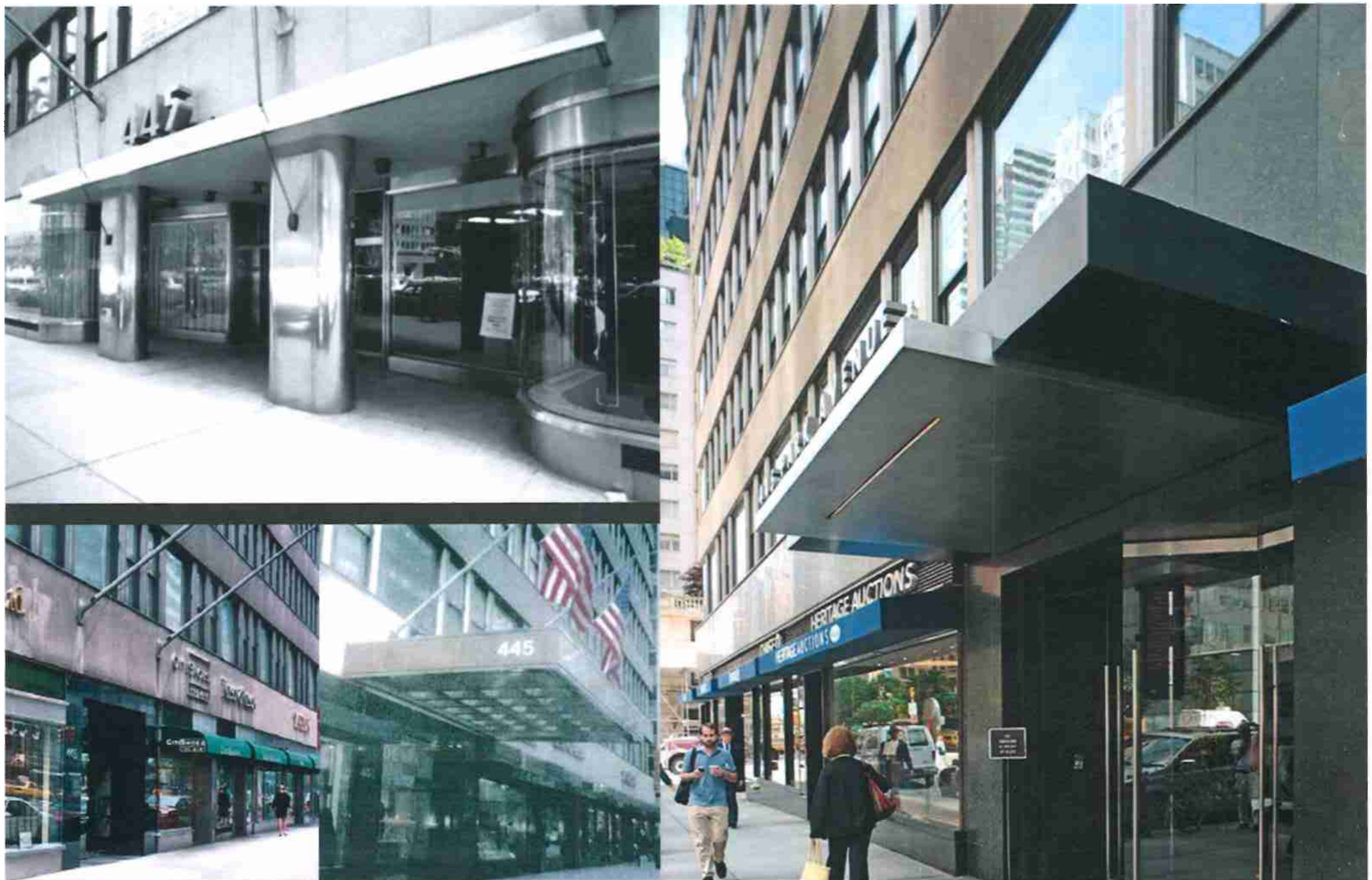
Even if 445 Park Avenue were deemed to have some architectural or historic merit, its preservation would still be inconsistent with the goals of this rezoning because the building does not meet the design, engineering and environmental standards for modern office buildings. Its floor to floor heights above the second floor are 10'9", barely enough for 8' to 8'6" foot hung ceilings, rather than the 13'6" or 14' slab-to-slab heights sought by today's users. Its columns are spaced 20 feet on center, rather than the 30 to 35 foot dimension that has become the standard for office space and the 40 or greater foot standard that is sought for trading floors. In fact, many of the newest office buildings in New York are being constructed with concrete cores and steel perimeter supports with minimal or no interior columns. The buildings energy efficiency is compromised by the minimal amount of exterior insulation behind the limestone spandrels, the outdated and mismatched air handling ductwork that is the result of various tenant renovations over many years and air balancing problems caused when tenants open operable windows for outside air.

In short, designating 445 Park Avenue would freeze in place a building that is second-rate architecture, that is lacking in historic importance, that has lost its architectural integrity, and that cannot, over the long term, serve the needs of the businesses that New York City wants to attract and keep. We believe, first, that it deserves to be called out specifically as a building which, after consideration of the record, is not an historic resource and, second, even if it is considered to have some minimal value, that its preservation should be called out as being inconsistent with the goals of the East Midtown Rezoning. Landmark designation should not be indiscriminately imposed on buildings like 445 Park Avenue, especially because designation would mandate the preservation of an aging and increasingly obsolete building and would frustrate directly the City's plans to redevelop East Midtown for the 21st century.

445 Park Avenue Should Be a Qualifying Site

We also ask that CPC consider a modification to the proposed East Midtown text change that would allow non-complying sites such as 445 Park Avenue's to be treated as "qualifying sites" where, as here, the site is "landlocked" by condominiums and cannot expand and where its location – at the intersection of two key wide streets – is one at which additional bulk is reasonable. This is because its site, at 18,000 square feet, offers the same opportunities as a practical matter as a 20,000 square foot site; because it will promote the full replacement of what is likely in the future to become a building with obsolete features and more limited appeal; and because it will generate additional contributions to the District Improvement Fund to improve East Midtown's infrastructure. We believe that this change may be within the scope of the current text. However, if it cannot be done during this public review process, it is an appropriate amendment that should be part of a follow-up action.

Thank you for your consideration.



445 Park Avenue

445 Park Avenue Report
on the
Inappropriateness for New York City Landmark Designation

for

Balmer Parc LLC
445 Park Avenue
New York, NY 10022

by

CivicVisions LP
2029 Walnut Street
Philadelphia, PA 19103

Engineering Appendix
Thornton Tomasetti
51 Madison Avenue
New York, N.Y. 10010-1603

08.08.2013

Executive Summary

CivicVisions has been asked to review and evaluate the architectural, historical and cultural significance of the office building at 445 Park Avenue. This Kahn & Jacobs designed building was constructed in 1946-1947. We have examined the building's physical integrity by comparing the existing building with historic photographs and with original, contemporary architectural drawings for related buildings by the firm at the Avery Library of Columbia University. We have evaluated the building in the context of other New York City office buildings designed and built in the same time period, particularly those that have already been landmarked. Further, we have analyzed the building in the context of the career of its architects, Kahn & Jacobs. Finally, we examined the significant structural deficiencies of the building with Michael Gerasopoulos, PE of Thornton Tomasetti of New York.

Based on the extent of replacement of, and alterations to, the entire lower facade features along the base of the building up to the window line of the second story, and replacement of all of the windows in the building, the generally agreed upon minor historical significance of the building in the development of post-World War II commercial architecture, together with issues of the physical condition that will continue to undermine the integrity of the design, it is our conclusion that 445 Park Avenue does not rise to the standard that is appropriate for an individually designated landmark in the economic heart of New York City.

Summarized, our findings are as follows:

1. Lack of Physical Integrity

The office building at 445 Park Avenue has been significantly altered in ways that critically diminish its architectural integrity. Such changes rarely occur in a building that has the "special character or special historical or aesthetic interest or value" that warrants designation as a New York City landmark.

- In the 1970s, 1980s and 1990s the entire original, architecturally-rich commercial base, characterized by handsome late Art Moderne motifs, including stainless steel-clad piers, decorative canopy, and curved glass store front windows flanking the entry, was replaced in multiple phases. The current condition creates a visual effect of a massive base supporting the upper levels. This change has fundamentally altered the original design intent of floating planes, seemingly supported by insubstantial panes of glass, and in its place has substituted the contrary visual effect of a massive base supporting the upper levels. The facade was altered even more when the lowest band of limestone at the second story was replaced with dark polished stone that enlarges and alters the proportion of the base and further undermines the original design by changing the proportions of the facade.
- A generation ago the original window pattern of the upper levels that mimicked the so-called Chicago window of fixed panes flanked by operable sash was replaced with modern 1/1 windows without the change of pace and scale of the fixed panes. The new sash are themselves bulkier in profile than the original steel with the result that the visual sense of floating planes is destroyed.
- Repeated and harsh cleaning of the limestone fascia has changed the original gray of the limestone to a lighter tan and the new polished stone, black base and the darkened bands of glazing have permanently altered the color balance of the façade.

These changes have caused 445 Park Avenue to lose the physical and aesthetic integrity that should be considered as essential to an individually designated New York City Landmark.

2. Lack of Special Historical & Aesthetic Significance

In the history of the great commercial architecture in New York City, 445 Park Avenue is a minor building that does not rise to the level of "special historical or aesthetic interest" that is required under the New York City Landmark's law. In the context of the remarkable midtown post-World War II office buildings that have already been landmarked, it is significantly less important.

- Previously landmarked office buildings include the Look Building which displays similar horizontal planes of glass and masonry in the so-called wedding cake formulation and occupies its entire site. The Look Building was a superior candidate for landmarking because the base and the original fenestration are closer to the original. Just to the south of 445 Park Avenue are the true landmarks of post-World War II modernism, Lever House (NYCL) and the Seagram Building (NYCL) each of which transformed the office building's urban role with plazas and public space as setting and marked the shift toward post-war high-modernism.
- As Robert A. M. Stern points out, the horizontal stripe building became a cliché in New York City after World War II.[1] 445 Park Avenue is just one of many such structures several of which were designed by Kahn & Jacobs in more interesting colors and materials than this building.
- In the career of its architects, Kahn & Jacobs, 445 Park Avenue is a lower caliber building that looks back to their pre-war work in New York City and is in turn derived from pre-World War II design ideas, most immediately reflecting the GM Futurama project designed by Norman Bel Geddes in 1938,

[1] Stern et al, New York 1960, *Architecture and Urbanism Between the Second World War and the Bicentennial*, (New York, Monacelli Press, 2nd ed. 1997) illustrates the building on the Lever House site, p. 331.

but also borrowing from other east coast modern designs.

- Ely Jacques Kahn's best work blended the color and detail of the jazz age in a group of remarkable mid-1920s commercial office blocks such as 2 Park Avenue (NYCL). By the end of the 1920s he made the shift toward the modern stark light hues in buildings such as 136 E. 57th Street, 120 Wall Street and the Squibb Building cornering on the Grand Army Plaza. After the war, his 1407 Broadway, designed simultaneously with 445 Park Avenue but built later because of post-war shortages, was the building that Kahn & Jacobs chose to represent their firm on later brochures.
- The best of New York's landmark office buildings such as the Lever House and the Seagram Building have striking and identifying characteristics that make them special examples of their time and as a result give these buildings roles in New York culture in novels, movies, and more recently television. 445 Park Avenue lacks these qualities and as a result has had at most bit parts in other media that do not rise to cultural capital status.
- The claims that 445 Park Avenue is of particular merit because it was the first office building on Park Avenue, the first post-World War II office building, or the first post-World War II air conditioned office building, or that it was the design of Elsa Gidoni (1899-1978) and is important as the work of a woman architect, are all at best demonstrably exaggerated and largely untrue. Office buildings had been on Park Avenue since the 1920s with the focal point of the Avenue the New York Central (now Helmsley Building) and with a commercial building built in the 1930s on the site of the later Lever House. The nearby Esso Office Building at Rockefeller Center was begun in 1945 after the end of the war, was completed in 1946, and also was fully air-conditioned. Elsa Gidoni certainly worked in the Kahn & Jacobs office but she does not list this building in her personal AIA career outline making it clear that while she may have worked on the project, she did not regard herself as the principal designer. As demonstrated in the firm's AIA dossier of 1953, she was clearly not a principal of the office.
- On November 18, 2010 the New York Landmarks Preservation Commission staff determined that 445 Park Avenue would not be recommended to the full Commission for review because it did not appear to "rise to the level of an individual landmark" based on its architectural or historical merits and as it "compares to other buildings designed by Ely Jacques Kahn and his associates."

Conclusion

The office building at 445 Park Avenue has never been viewed as a significant work of architecture and therefore it has been significantly altered over its history—without comment by preservation groups. As a consequence of these changes it has lost its architectural integrity to a degree that is inappropriate for a New York City Landmark. It is neither the best example of the type nor is it an example of Kahn & Jacobs' best work and as a result it does not meet the test of "special character or special historical or aesthetic interest or value." In its present altered state, it is a throwback to pre-Depression designs that are disconnected from the future of New York's commercial architecture. These design issues were played out in the designs of the Secretariat of the United Nations and later SOM's Lever House during the same years as 445 Park Avenue's construction. Designation of 445 Park Avenue would diminish the meaning of a Midtown landmark. It would not contribute to the heritage of New York City. It would not significantly advance the public's understanding of post-World War II skyscraper design. It is neither the best example of Kahn & Jacob's career, nor does it add to the history of the commercial and retail development of Midtown.

Description

Location: 445 Park Avenue; east side between 56th and 57th Streets on Park Avenue; block 1311 /lot 1.

Original Design: office building

Dates: 1946-47

Architect: Kahn & Jacobs

Current Use: office building

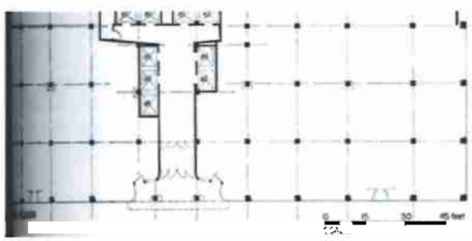
445 Park Avenue is a twenty-two story office building built in 1946-1947 at the southeast corner of East 57th Street and Park Avenue. It is located at the north end of the Midtown commercial zone that terminates at the south with the Helmsley (originally New York Central) Building in the center of Park Avenue and at the north with 57th Street. Its line of office buildings includudes Warren & Wetmore's Heckscher Building (1920-1921, now called the Crown Building), the New York Trust Company Building (1930, Cross & Cross, now the Louis Vuitton Building) Walker & Gillette's Fuller Building at 57th and Madison Avenue (1929) and Buchman & Kahn's Tishman Building (1929) at Lexington Avenue. All of these office buildings had their origins in the 1920s and first years of the 1930s making it clear that this area would develop as the premier office-tower zone of midtown.

When 445 Park Avenue was built in 1946 to 1947, the immediate vicinity to the south remained largely apartment houses with a scattering of small low-rise residential buildings from the late 19th century—but before World War II nearby properties had already been acquired for the new mid-century use as office buildings. In 1938 the residential building between 53rd and 54th Streets was demolished for a three-story commercial "taxpayer" building that would become the site for Skidmore, Owings, & Merrill's Lever House building of 1949-52.[2] With office buildings reaching north as far as 47th Street and Park Avenue in the 1920s and surrounding Park Avenue on the east, west, and north, also by the 1920s, the area was the obvious location for transit-centered office development because of its proximity to Grand Central Terminal. 445 Park Avenue was not a catalyst for the future development of Park Avenue. Those changes had begun a decade earlier before World War II.

[2] Stern et al, New York 1960. *Architecture and Urbanism Between the Second World War and the Bicentennial,* (New York, Monacelli Press, 2nd ed. 1997) p. 331.

Original façade

Original entrance



Original plan

Building Fabric Lack of Integrity: Base

As was typical of the late moderne mid-century office buildings, the design of 445 Park Avenue was manifested in two signature aspects: the base which the pedestrian encountered at eye level and which provided a detailed sense of the stylistic intent of the architects, and the upper levels which were viewed against the skyline. In the case of 445 Park Avenue, the base has been significantly and irretrievably altered.

- The original street level was designed as a standard 1930s commercial front with a glittering plane of glass interrupted by slender structural piers that carried through the glass and were augmented by the narrowest possible architectural bronze muntins. At the bottom of the façade the shop window projected forward slightly over a light-hued stone base that was interrupted by horizontal vents; above the shop windows was a band of shiny enameled metal that was subdivided and accented by a stainless steel band. These materials curved from the street front into a broad entrance that was visually set off by a shallow stainless steel canopy, above which were the zig-zag modern numbers 445, flanked by projecting flag poles angled from the facade. A pair of oval stainless clad piers framed the entrance and furthered the sense of traditional design within a modernistic vocabulary.
- In the case of 445 Park Avenue, all of the original elements of the base have been removed and replaced in multiple phases with a variety of materials including stainless steel and most recently planes of dark stone with dark stone piers at the corners. The entire base was replaced in 1998 from designs by Der Scutt: "FILING NEW MARQUEE AND NEW REFINISH FRONT OF ENTIRE BUILDING UP TO THE TOP OF THE FIRST FLOOR, AS PER PLANS SUBMITTED HEREWITH."[3] The visual impact of these changes is to create an old fashioned stone base that appears to physically support the upper levels. This undermines the original idea of hovering planes that visually sit on glass and instead returns to the standard pre-modern design of weight carried to the ground.
- The destruction of the street level extends onto the upper levels of the main façade with the replacement of the first spandrel tier that was originally limestone like the rest of the mid-zone of the building. In 2005 the original limestone of the second floor was replaced by a band of dark polished stone that extends the base onto the plane of the upper levels.[4] This work further disrupts the original architectural intent. Where the base was originally similar to the window levels in height, it is now significantly taller distorting the proportions of the facade.
- Every element of the base has been removed and the impact on the exterior is significant. The present

[3] NYC Building permit Job No: 101692072, approved 3/18/ 1998

[4] New York City Building Permit Job No: 104010605, 5/25/05 "Installation of Exterior Stone Panels over the existing facade on the 1st floor and a portion of the 2nd floor."

Original recessed entrance on Park Avenue

Fourth Park Avenue entrance (2009): new canopy, new stone base

Middle left: Second Park Avenue entrance: only the flag poles remain. Recess filled in, columns enclosed, canopy and address removed, curved glass removed.

Bottom left: Third Park Avenue entrance: metal canopy with recessed lighting added.

Original limestone panels and stainless steel storefront base

New dark stone base replaces original limestone panels

The original windows were given a strong pattern of alternately fixed panes flanked by operable sash on either side. This created a pattern of A-B-A-B-A-B across the entire front and continuing to the uppermost levels.

When the windows were replaced in 2004, they were replaced without regard to the original pattern. In place of the fixed and operable sash in the so-called Chicago window pattern (A-B-A), the present scheme is simply one over one sash in modern wide-frame aluminum sections, a B-B-B pattern.

canopy is at least the fourth on the building. This element with its Darth Vader massing dates from 2009 and is contrary to the sleek detail of the original entrance, canopy and numbering. In short nothing remains of the base as originally designed.[1] Similar alterations continue around onto the side facades as well.

- Other removed elements include the original zig-zag moderne numbers on the facade above the canopy that Lewis Mumford liked for their large scale clarity. This interesting period element helps pin down the design inf uence as derived from the futuristic 1930s rather than the new minimalism of the coming 1950s corporate mode.

Lack of Integrity: Mid-levels

The mid-levels of 445 Park Avenue were characterized by horizontal bands of light-hued limestone for the spandrels and dark bands of steel sash interrupted by vertical bright stainless clad V-channels as mullions between the sash.

The limestone was given no articulation and simply sits on the shelf angles of the façade structure. It has been cleaned multiple times and in the process has changed color from the usual cool gray toward an orange-tan that differs from the original expression.

The original windows were given a strong pattern of alternately fixed panes

[1] New York City Building Permit Job. No: 104429815; 5 / 5/ 2009. "Replacement of portion of existing Facade Finish Panels and Building Entrance Awning on part of the 1st floor."

Patchwork limestone repairs

Top shows original steel window with narrow frame profile. Bottom shows modern wide aluminum window frame profiles. The original alternating A-B-A pattern is now B-B-B.

445 Park Avenue
9

2013: alterations to the original exterior building fabric that affect the building's physical integrity

At top of building there is visible evidence of vertical cracks in the brick barrier wall construction where mositure has penetrated into the masonry and damaged the steel behind. The image on the right shows mis-matched brick repairs and on-going vertical cracks.

flanked by operable sash on either side. This created a pattern of A-B-A-B-A-B across the entire front and continuing to the uppermost levels. The pattern had a broader fixed sash on the second story that spanned two window bays (A-B-A-A-B-A) while on the upper levels the bay units were the same with two operable sash for each fixed pane.

When the windows were replaced in 2004, they were replaced without regard to the original pattern above the second floor. In place of the fixed and operable sash in the so-called Chicago window pattern (A-B-A), the present scheme is simply one over one sash in modern wide-frame aluminum sections.

Lack of Integrity: Top

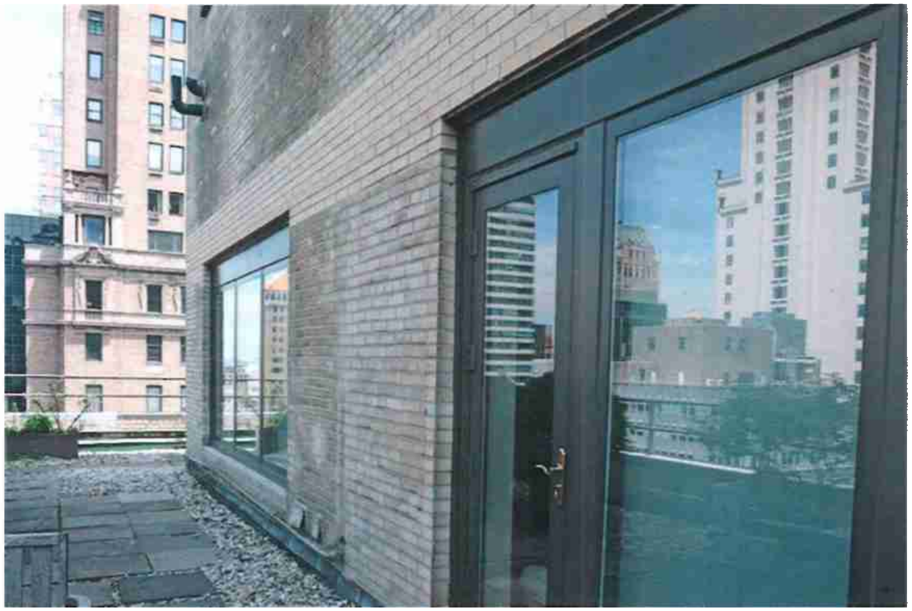
The top stories of 445 Park Avenue continue the setbacks of the zoning envelope but the material switches for the top several stories to an economical alternate of light gray tan brick, presumably because it was far enough from the street to not be particularly visible.

The brick spandrels and piers of the upper stories show the typical damage that characterizes mid-century barrier wall construction, suggesting that despite its later date, 445 Park Avenue was constructed with the same deficiencies in method that have damaged so many other buildings of the period.

The construction methods raise questions about the condition of the shelf angles that carry the limestone of the lower levels. These have been a problem in similarly designed buildings of the period, notably the Look Building, where the

Mis-matched brick repairs and vertical cracks in masonry at corner

Bulges in the brick masonry of the cooling tower are suggestive of deterioration that will need expensive repair.



Modern aluminum windws and door system at upper level.

Mis-matched brick repairs where steel lintels have been replaced over openings in brick barrier wall.

shelf angles had to be replaced at the expense of removing the lower courses of brick, pinning the masonry while the steel was replaced, and then replacing the brick. Similar damage is apparent on the nearby office building by William Lescaze at 711 Third Avenue where large areas of the original masonry have been rebuilt, replacing the shelf angles and incorporating weep holes.

On the upper levels, evidence of the missing flashing marks areas where rain water can penetrate into the masonry and damage the steel. In addition, bulges in the brick masonry of the cooling tower are suggestive of deterioration that will need expensive repair. The visual evidence of the repair work done to date shows that it has been difficult to match the original gray brick with modern brick. The present repairs in a tan hue contrast with the original gray brick. Over time, the upper levels will be subject to the standard facade deterioration problems of mid-century buildings.

Conclusion

445 Park Avenue has undergone generations of unsympathetic alterations that are not what would be expected of a true landmark. These changes have altered beyord repair the most critical zone of the building at the base, where the original design intention was most evident to the pedestrian. Together with the modern aluminum windows of the upper levels these changes undermine the original architectural design of the building and mark it as not having the level of integrity required for a New York City landmark.

1931: Raymond Hood's McGraw Hill tower (NYCL)

1932: Starrett-Lehigh

The Critical and Historical Record

445 Park Avenue has recently been promoted for landmark status 1.) on the grounds of its seeming International Style design of hovering planes of masonry visually carried on transparent planes of glass; 2.) as the first post-World War II modern office building in New York City or alternately as the first office building on the upper portion of Park Avenue, 3.) as the first air-conditioned office building in New York City, and 4.) as the work of a woman architect, Elsa Gidoni. Each of these statements can be demonstrated to be misleading or inaccurate.

Lack of Design Originality

Even after World War II, 445 Park Avenue was designed on the formulaic planning model determined by the 1916 Zoning Code. This had already resulted in numerous buildings across Manhattan being designed in what was called the "wedding cake" style. The conservative plan was countered with motifs from the weightless and ornament-free facade designs advocated in the 1932 Museum of Modern Art International Style exhibit. This effect was achieved by hanging horizontal bands of limestone on shelf angles across the upper levels of the façade with the vertical loads surreptitiously carried on stainless steel-covered columns masquerading as mullions between windows. Despite the modernist touch. this design missed the directions that would better integrate urban planning and architecture. By demanding full site coverage in a full wedding cake scheme, the developer and the architects missed the direction of building on a plaza that had been demonstrated with the Rockefeller Center planning in the 1930s. By 1947, the United Nations project was underway and in 1950, Lever House had already been the subject of a Museum of Modern Art exhibit and the die was cast toward the direction of the sleek tower on a plaza that would be the hallmark of the future. 445 is the end of the old rather than the beginning of the new.

In the question of its relative design originality, 445 Park Avenue is far back in the pack of designs that looked to the future. By the late 1930s, the idea of hovering masonry planes, rising from a wedding cake form was old-hat in New York City. The scheme had been essayed in the continuous strip windows of Raymond Hood's McGraw Hill tower (NYCL) of 1931, the only New York City building that was included in the 1932 Museum of Modern Art exhibit that gave the name to the International Style. A similar use of the form appeared on the Starrett-Lehigh warehouse and distribution center of the same years by Russell & Walter Cory. Their giant warehouse sets back at the fifteenth floor. providing a clear image of what a set-back tower would look like.

Buchman & Kahn, the predecessor of Kahn & Jacobs, had been moving in the direction of a horizontally expressed base that countered the usual verticality of 1920s design in several earlier buildings beginning with the 120 Wall Street Building. Its design began in 1928 and its plans were filed in February of 1929. On that 30 story tower. the architects created a multi- story base whose fenestration differentiated the base with its broad shop windows separated by masonry piers at street level,

1928: Buchman & Kahn's 120 Wall Street

1929: Buchman & Kahn's Squibb Building at 745 Fifth Avenue

1933: William Lescaze's own house at nearby 211 East 48th Street (NYCL)

1938: Philip Goodwin & Edward Durell Stone's Museum of Modern Art

to a second zone at the second, third and fourth stories in which windows in groups of three and four create a broad horizontal band that was primarily windows with openings separated by broad structural piers marking the structural bays and narrow window mullions between the grouped windows, before rising in the standard vertical system of narrow piers and windows. In the estimation of Stern & Stuart, the recent authors on Kahn, "More than any other Kahn building, 120 Wall Street has an iconic presence associated with the city."[6]

The next building in the sequence of their work, the Squibb Building, had its beginnings in a 1929 design as a "showroom and office building" not unlike Walker & Gillette's earlier Fuller Building (1928-9) that was under construction as the Squibb project began. The Fuller building was located just around the corner at East 57th Street and Madison Avenue and was given an extraordinary street presence with multiple stories of broad shop windows that were aimed at attracting art galleries to the building. The Squibb Building at 745 Fifth Avenue shifted from the high contrast black and white of the Fuller Building to a monochromatic white that connected to its context at East 58th Street across from Bergdorf Goodman and in the vicinity of the Plaza Hotel and the Savoy Plaza. Again horizontal banks of windows, here in the Chicago window pattern of a fixed pane flanked by narrow sash provided show windows for hoped-for tenants. In the case of the Squibb Building, Lewis Mumford praised the consistency of the design: "... Mr. Kahn almost parted with his deplorable practice of boldly differentiating the lower floors with their show windows from the mass of the building."[7]

Both 120 Wall Street and the Squibb Building followed the standard formula of full site coverage with the formulaic wedding cake shape. Each of these design components would reappear in 445 Park Avenue. By 1946 when 445 Park Avenue was being designed on its old fashioned site plan and formulaic massing, the horizontal spandrel with the vertical structural elements underplayed also had become a commonplace feature of contemporary architecture in New York City. This motif had arrived in William Lescaze's own house at nearby 211 East 48th Street (1933, NYCL) It reached public consciousness in Philip Godwin and Edward Durell Stone's linear and hard-edged winning design for the façade of the 1938 Museum of Modern Art. They had countered the planarity of the upper levels of the museum with a voluptuous curvilinear canopy that projected as a hovering plane above the entrance. The entrance was placed at the east end of the façade, emphasizing the doctrinaire asymmetry of the International Style.

There were additional manifestations of the horizontal motif in the 1939 New York World's Fair which served as a testing ground for the future stars of the post-war generation including Harrison & Abramowitz and Skidmore & Owings. The most obvious source for designs based on horizontal planes without expressed structural verticals came from Norman

[6] Stern & Stuart, p. 146. They refer to 120 Wall Street on p. 147 as "one of Kahn's finest works."

[7] Lewis Mumford, "Notes on Modern Architecture: The Squibb Building," *New Republic* 66 (March 18, 1931), p. 121.

1936-8: William Lescaze's CBS Building, Los Angeles

1939: Norman Bel Geddes' Futurama exhibit at the New York World's Fair

1947: Emery Roth's 505 Park Avenue

1949: Emery Roth's Look Building (NYCL)

1950: Emery Roth's 575 Madison Avenue

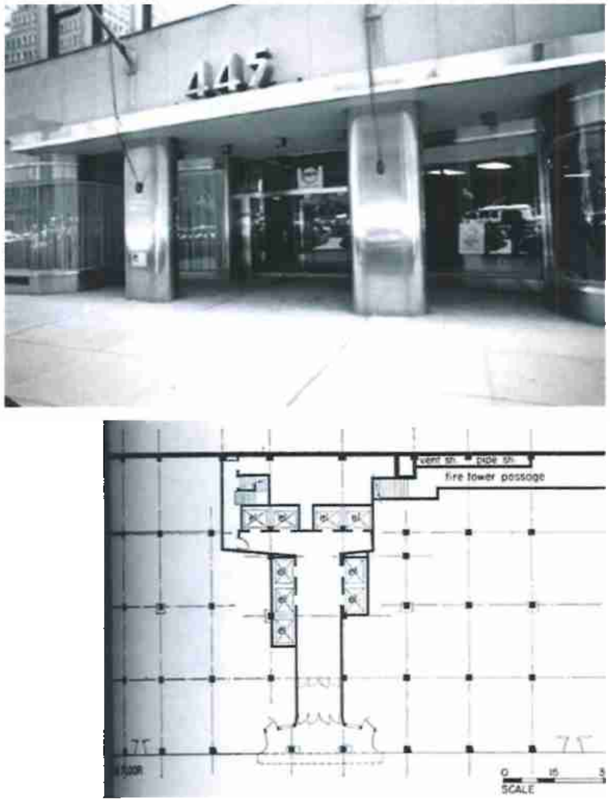
1953: Emery Roth's 720 Fifth Avenue, former Sabena Airlines with new base

Bel Geddes. His Futurama exhibit at the New York World's Fair of 1939 presented an image of futuristic cities of towers and mid-rise buildings represented in models as floating planes and voids.[8]

In 1936-8 William Lescaze had used a similar motif for the CBS building in Hollywood and reused the horizontal motif in the Longfellow Building in Washington, D.C. of 1940. That design was remarkably like the later 445 Park Avenue with upper levels of horizontal sheets of limestone separated by bands of metal framed windows and with its base sheathed in large sheets of glass for shop fronts that turned in a curved recess into the entrance which was sheltered by a slightly projecting canopy.[9] Whether derived from the Museum of Modern Art, Lescaze's Longfellow Building, or from the Bel Geddes models at the fair, the horizontal motif became the basis for an astonishing number of knock-offs that also included Emery Roth's 505 Park Avenue (1947), 575 Madison (1950), and the Sabena Airlines Building at 720 Fifth Avenue (1953). In his

[8] For a remarkable overview of the NBG model and its meaning in later planning and architectural theory see Adnan Morshed, "The Aesthetics of Ascension in Norman Bel Geddes's Futurama," *Journal of the Society of Architectural Historians*, Vol. 63, No. 1 (Mar., 2004), pp. 74-99. The article makes it clear that the genesis of the model reached back into the mid-1930s in work that Geddes was doing for Shell Oil, and of course that the model was the design of Mr. Geddes. There is no mention of Elsa Gidoni in the article.

[9] An image of the Longfellow Building on Connecticut Avenue in Washington, D.C. can be found in the Ezra Stoller archive, image number: 8461200009 (24D.009) [RM]. This is remarkably like 445 Park Avenue and is probably its most immediate source. Lescaze was using these motifs in his own house around the corner at 211 East 48th Street and they were clearly visible on the Philadelphia Savings Fund Society building in Philadelphia as well.



Original façade & plan

Despite its seeming modernity in the end this was a moderne version of a symmetrical, columned Beaux Arts design based on axial symmetry that was the chief theme of the design and was emphasized at the base with a centered entrance flanked by oval stainless steel-clad piers.

New York: 1960 Stern reported that "the diagrammatic formula of the Look Building (Emery Roth, 1949) became stale very quickly."[10]

- Ironically given Kahn & Jacobs' attempt at modernity in the upper levels of the facade and perhaps again imitating the Museum of Modern Art with its abstract planarity countered by the curvilinear canopy at the base, the first floor of 445 Park Avenue was a moderne version of a symmetrical, columned Beaux Arts design with curvilinear accents in the broadly curved shop window glazing that turned the plane from the façade to the entrance.
- Despite its seeming modernity in the end this was a Beaux Arts scheme based on axial symmetry that was the chief theme of the design and was emphasized at the base with a centered entrance flanked by oval stainless steel-clad piers. With a tiny modernistic canopy centered above the entrance and with zig-zag modernistic numbers above and centered on the canopy and in turn were flanked by flag poles, the center axis was emphasized in the standard Beaux Arts manner.
- Instead of the asymmetry of doctrinaire modernism this was more an old-fashioned Beaux Arts design adhering to the 1916 zoning code volumes with applied horizontal stripes. By concealing the vertical structure in the structural mullions, and alternating strips of windows with continuous horizontal spandrels Kahn & Jacobs created a design that at first glance appeared modern—but in fact was strongly conservative.

Kahn and Jacobs returned to the horizontal motif but with striking color in their contemporary design for 1407 Broadway, a project that had its beginnings as early as 1944, before the beginnings of 445 Park Avenue, but was stalled by the war.[11]

- It is important to note that the chronology of Kahn & Jacob's work is not exactly clear. Because of World War II, projects might begin and then be delayed. In the case of 1407 Broadway, drawings for that building were under way in the summer of 1944 but the actual construction did not occur until 1950. As a result it overlapped with the design development of 445 Park Avenue that had its beginnings in 1945 and shows many of the same details, particularly the V shaped mullions between windows units—at 1407 Broadway in painted iron and on 445 Park Avenue in stainless steel.

In New York, the tower as vertical shaft in an open plaza had been anticipated in several of the buildings of the Rockefeller Center complex. As World War II was ending this was the form taken by the Esso Building by Carson & Lundin (1946-47) that

[10] Stern, *New York*, 1960 p. 417.

[11] See Avery Library, 1407 Broadway building [at] 39th St. [to 38th St.], N.Y.C. Kahn & Jacobs collection, NYDA.1978.001.07307. The first group of drawings for 1407 Broadway is dated July, 26, 1944. Clearly work had begun on this project before that date. The property for 445 Park Avenue was not purchased by the Tishmans until December of 1945 more than a year and a half after work had begun on 1407 Broadway. Jewel Stern and John A. Stuart, *Ely Jacques Kahn, Architect: Beaux-Arts to Modernism* in New York (New York: W. W. Norton & Company, 2006), p. 203.

Drawings for 1407 Broadway were under way in the summer of 1944 but the actual construction did not occur until 1950. As a result it overlapped with the design development of 445 Park Avenue that had its beginnings in 1945 and shows many of the same details, particularly the V shaped mullions between windows units—at 1407 Broadway in painted iron and on 445 Park Avenue in stainless steel.

1407 Broadway

445 Park Avenue

was constructed in exactly the same period as the Kahn & Jacobs 445 Park Avenue project. The Esso Building was visually conservative in its punched windows—a motif that had the purpose of connecting to the fenestration of the Rockefeller Center group—but that method also had the advantage of limiting solar gain for the air-conditioning system which again was exactly contemporary with, if not ahead, of 445 Park Avenue. A *New York Times* article makes clear the chronology of the Esso Building: with the steel skeleton well up in February of 1947 and the opening of the building expected in the fall.[12] The Esso Building was as early as 445 Park Avenue, as modern, and as air-conditioned—but would these facts make it a landmark?

- Clearly what should matter in a New York City Landmark is whether a building influenced other important buildings and marked a critical point in the evolution of the New York architecture not whether it was constructed a week or a month before or after another. Insofar as architecture is about ideas, the ideas should matter.

Lewis Mumford analyzed the horizontal bands of windows in relation to contemporary factory design and supposed that the end result of such a design would be a more pleasant office interior.[13] The reality was that the buildings' tenants defeated the open edge with small compartmentalized offices along

[12] See "Esso Building is Part of Rockefeller Center," *New York Times* (5 February 1947). This article reports that the steel was up to the 22nd floor and that occupancy was set for the fall.
[13] Lewis Mumford, "The Best is Yet to Come," *The New Yorker* (13 December 1947) pp. 87-88.

1407 Broadway

445 Park Avenue

While slender outside columns contribute a certain lightness, heavy masonry facing disguises the true structural pattern of the building in a horizontal counterpart of the still persistent vertical style (FORUM, '46). Though the striking alternation of dark and light strips creates an impression of continuous fenestration, the building appears no more open than the articulated frame of the Portland office building (page 98), wherein pairs of windows are treated as individual units. In further quest of lightness, corner columns have been omitted, angle windows substituted.

"Work in Progress: Office Building on New York's Swank Park Avenue," Architectural Forum (March 1947 (p. 95 -97).

The Portland building referred to is Pietro Belluschi's Equitable Building of 1944-48 which is described as the first fully air-conditioned and sealed modern building. Describing it as "a horizontal counterpart of the still persistent vertical style" it is clear that the editors saw it more successful than 445 Park Avenue.

1944-48: Pietro Belluschi's Equitable Building

the periphery—taking advantage of the module of a fixed and an operable window as the minimum office size. When 445 Park Avenue was reviewed in the 1947 Architectural Record it was noted that in fact it was like other buildings of the period in its general openness and not unlike the earlier Equitable Building by Pietro Belluschi in Portland, Oregon, that was constructed beginning in 1944. The Architectural Forum compared the facades of 445 Park Avenue and the Equitable Building in Portland and concluded that the Equitable Building more honestly expressed its construction and provided as much light for interior work spaces as 445 Park Avenue.

In the career of Kahn & Jacobs, the more interesting building that began before 445 Park Avenue and was developed essentially at the same time is their design for 1407 Broadway. It shares the motifs of the horizontal banding of masonry above horizontal strip windows, and the design motif of the V shaped mullions between the window units. However, with its colorful brickwork it broke with the conventional whiteness of the previous decade and heralded the color of the coming 1950s.

The 1407 Broadway project brought together Kahn & Jacobs and visionary developer William Zeckendorf (1905-1971). The 1407 Broadway building incorporated parking and provided for off-street loading docks. It too was intended from the beginning to be air-conditioned. More importantly 1407 Broadway exemplified the new design strategy of height over bulk. Stern and Stuart report that Zeckendorf argued that "the trend is toward higher-buildings occupying only 65 percent of the plot or less."[14] In 1407 Broadway, the architects were able to convince the owner that instead of covering every developable inch of site, there would be greater value in light, air, and visibility that would result from forgoing some of the base for a rising shaft of offices.[15] In 1950, 1407 Broadway was proclaimed by *Fortune* as the "best-looking of the new skyscrapers in New York."[16] In every aspect, 1407 Broadway was found to be more interesting, better planned, richer in color and better detailed: "In contrast to the Universal Pictures Building, the lobby of 1407 Broadway was a luxurious and more complex design... the play of light and dark, of various planes on different levels... and the variety of materials brings to mind the attention to detail in the lobbies that characterized Kahn's great garment district of the 1920s and early 1930s."[17]

This assessment was affirmed by the architects who selected 1407 Broadway as the cover image for their firm brochure of 1963. They chose a high-contrast photograph that emphasized the asymmetry of 1407 Broadway because it represented the modern direction that

[14] Jewel Stern and John A. Stuart, *Ely Jacques Kahn, Architect: Beaux-Arts to Modernism in New York* (New York: W. W. Norton & Company, 2006), p. 211. Stern and Stuart quote Zeckendorf's Autobiography for the comment on the value of smaller footprints and more open space.

[15] Notably when Lewis Mumford criticized the building at 1407 Broadway for only seeking to maximize the rentable space allowed by law, "... Jacobs, Zeckendorf and others immediately corrected him, and Mumford apologized to Jacobs personally and in the *New Yorker* for being deplorably inaccurate.

[16] "Office Building Bonanza," *Fortune* 41 (January 1950), p. 50.

[17] Stern & Stuart, p. 211.

Kahn & Jacobs' 1949 100 Park Avenue viewed as more progressive than 445 Park Avenue

the firm wished to connect to their work. In Kahn & Jacob's estimation, it was 1407 Broadway that was important to their firm identity.

In the criticism of the developing office building of the post-war period, Kahn & Jacobs' 100 Park Avenue received more praise than 445. It too was under design as World War II ended and continued the evolution of the office tower in New York City. Thomas Creighton, writing in Progressive Architecture termed 100 Park Avenue "the best of the new office buildings that has yet been erected in New York or in most other cities."[18]

A survey of historical sources and casebooks does not find a critical awareness of 445 Park Avenue. Needless to say it is not in the principal histories of modern architecture. In Stern & Stuart's recent biography *Ely Jacques Kahn , Architect: Beaux Arts to Modernism* (New York: W. W. Norton & Co., 2006) it plays a minor role with other buildings again and again held up as better examples of the firm's work.

The New York Preservation Archives suggests that Kahn's best years were before the Depression:

> Though Kahn's firm shrank during the Depression, he continued designing until 1965, and his firm, by then renamed Kahn & Jacobs, continued well after that. However, Kahn never recovered the clarity of vision that he demonstrated in the 1920s. He died in 1972. Later that year, his firm merged with Hellmuth, Obata & Kassabaum, which dropped the name Kahn & Jacobs in 1977. In April of 2006, The Landmarks Preservation Commission designated Landmark status to Kahn's 1928 creation, 2 Park Avenue, in order to highlight the architect's unique contributions. His son was Ely Jacques Kahn Jr., the noted writer for the *New Yorker.*[19]

Coupled with its extraordinary loss of integrity due to the reconstruction and replacement of the entire first floor and the lower portion of the second floor, together with the replacement of all of the windows in both pattern and detail, 445 Park Avenue, in its derivative character and formulaic mode does not meet the high standard appropriate for a New York City landmark.

[18] Thomas Creighton quoted in Jewel Stern and John A. Stuart, *Ely Jacques Kahn, Architect: Beaux-Arts to Modernism in New York* (New York: W. W. Norton & Company, 2006), p. 219.

[19] New York Preservation Archive Project: http://www.nypap.org/content/ely-jacques-kahn#footnote5_qaoqylg

Technical Innovation

It is claimed that 445 Park Avenue was the first office building in New York City to be fully air-conditioned. This sounds like a quote from the developer's public relations pieces but it is far from accurate. A survey of the mechanical engineering histories of the period finds air conditioning inserted into the New York Stock Exchange in 1902—using waste steam from the electrical generation, and being inserted into existing office buildings in the 1920s. Office buildings in the south were fully air-conditioned as early as 1928 in the Milam Building in San Antonio, TX.[20] The Milam building was not the first integrally designed air conditioned building, an honor that goes to the Larkin Building by Frank Lloyd Wright in 1904. Years later, Wright remembered the innovative qualities of that building:

> "It is interesting that I, an architect supposed to be concerned with the aesthetic sense of the building, should have invented the hung wall for the w.c. (easier to clean under), and adopted many other innovations like the glass door, steel furniture, air-conditioning and radiant or 'gravity heat.' Nearly every technological innovation used today was suggested in the Larkin Building in 1904."[21]

[20] See: "The Milam Building, San Antonio, Texas, A National Historical Mechanical Engineering Site, Designation Ceremony, August 23, 1991" This was an early Carrier system in a building designed by George Willis, a Frank Lloyd Wright protégé. https://www.asme.org/getmedia/b0ab0ff1-c44b-45af-97a5-fb5f53e80630/155-Milam-High-rise-Air-Conditioned-Building.asp (accessed June 2013).

[21] Frank Lloyd Wright as quoted by Edgar Kauffman, ed. *An American Architecture*, pp. 137-138.

By the 1920s movie theaters were commonly using air conditioning as a come-on during the hot months of the summer. The first air conditioned movie theater in New York City appears to have been Paramount's Rivoli Theater on Times Square which was fully air conditioned in 1925 and it was soon followed by other theaters.[22] In 1928 the U. S. Capitol was air conditioned by Willis Carrier and the Federal Triangle offices included air conditioning in their original design.[23] In 1930, the White House was air conditioned.[24] While Frank Lloyd Wright solved many of the issues of air conditioning in the Larkin Building in Buffalo, NY, the most up-to-date and successful version was introduced in Howe & Lescaze's Philadelphia Savings Fund Society skyscraper, completed in 1932. It was fully air-conditioned and introduced critical improvements like a mid-level mechanical plant room on the 21st floor which reduced duct sizes and energy costs.[25] In the history of design, central air conditioning enabled the architects to make many of the critical design statements associated with International modernism. In this role, the PSFS building in Philadelphia was the critical building in the introduction of air conditioned office space—fifteen years before the construction of 445 Park Avenue. Constructed by the George A. Fuller Company of New York City, its success led to post-war office buildings being air conditioned.

[22] Margaret Ingels, *Willis Haviland Carrier: Father of Air Conditioning* (1952: Country Life Press) p. 67.

[23] Caroline Alderson, "HVAC Upgrades in Historic Buildings," Technical Preservation Guidelines, April 2009 provides a chronology of air conditioning in federal buildings in Washington, D. C. It was not standard until 1955.

[24] http://www.whitehousehistory.org/whha_timelines/timelines_technology-03.html (accessed June 2013). Source William Seale, *The President's House* (Baltimore: Johns Hopkins University Press, 1986).

[25] David Arnold, F. R. Eng. "The Evolution of Modern Office Buildings and Air Conditioning, "*ASHRAE Journal* (June 1999), pp. 40, ff. See also L. S. Tarleton, "Air Conditioning the Philadelphia Savings Fund Society Building," *Heating and Ventilating* (July 1932) pp. 28-30.

The previously noted Equitable Building in Portland, Oregon, designed in 1944 by Pietro Belluschi had the further distinction of being both air conditioned and heated by the first heat pump system, making it an early Historic Mechanical Engineering Landmark in 1980. Two years later that building received the AIA 25 Year Award, following New York's Lever House.[26] There have been no such awards for 445 Park Avenue, nor is it mentioned in the literature of HVAC.

In the case of earlier New York office buildings that were air conditioned, it is clear that the Esso Building by Carson & Lundin in the Rockefeller Center group was at least contemporary with 445 Park Avenue and it too was air conditioned. Robert Stern reports that the Esso Building was the "tallest air conditioned building," but fudges the date as 1947 when it was clearly begun early in 1946. It is notable that in all of the articles on air conditioning reviewed for this report, 445 Park Avenue is not mentioned, making it clear that it was not considered to be particularly early or particularly innovative in that respect. Given its distance in time from the earliest buildings to be air conditioned, the claim is not meaningful.

[26] "The Equitable Building Heat Pump System," http://files.asme.org/asmeorg/communities/history/landmarks/5541.pdf (accessed June 2013)

The Equitable Building
Heat Pump System

A National Historic
Mechanical Engineering
Landmark

Dedicated May 8, 1980
in Portland, Oregon

A Century of Service 1880·1980

The Equitable Building in Portland, Oregon, designed in 1944 by Pietro Belluschi had the further distinction of being both air conditioned and heated by the first heat pump system, making it an early Historic Mechanical Engineering Landmark in 1980

445 Park Avenue was not the first office building in New York City to be fully air-conditioned nor was it among the first air-conditioned buildings:

1902: New York Stock Exchange

1904: Larkin Building, Buffalo by Frank Lloyd Wright

1920s: Movie theaters were commonly using air conditioning

1925: Paramount's Rivoli Theater on Times Square

1928: Milam Building, San Antonio, TX

1928: U. S. Capitol

1930: White House

1932: Philadelphia Savings Fund Society skyscraper by Howe & Lescaze

1944: Equitable Building in Portland, Oregon, by Pietro Belluschi

1946: Esso Building by Carson & Lundin in Rockefeller Center

The Question of Authorship for 445 Park Avenue

It has recently been suggested that this building was, to some extent, the design of Elsa Gidoni (1899-1978), a Latvian- born, St. Petersburg-educated, European refuge who arrived in New York as World War II broke out.[27] In part this is an effort to redress the loss of identity of many woman architects in the early twentieth century—but reattribution should not be undertaken at the expense of more likely authors of the design.

No original drawings for 445 Park Avenue have been found but contemporary drawings for 1407 Broad (1944-1950) exist in the Kahn & Jacobs collection at Columbia's Avery Library and provide evidence of the roles of various architects in the Kahn & Jacob's office when 445 was being designed. In the case of 1407 Broadway, various hands are involved in most of the drawings. Some drawings were initialed with "E.G." indicating Gidoni while others were labeled by Shooman Nadir, an Indian architect in the office in the same years who always represented his contribution with his full last name. None however are signatures or indicate any sense of design authorship. Instead they are in the careful, mechanically precise block lettering common to architectural drawings of the period, demonstrating their role in the team that made the drawings rather than as a designer / author.

From her AIA listings, the evidence of Kahn & Jacobs drawings of contemporary projects at the Avery Library, and elsewhere, it seems clear that Gidoni's involvement in the design of 445 Park Avenue was at most as a participant in the team, perhaps even as the project architect, but not as a lead designer. The firm principals, Kahn & Jacobs both list the building in their AIA directory citations, but with Jacobs listing it as a work of 1945 and Kahn listing it as his project in 1946.[28]

> JACOBS, ROBERT ALLAN. AIA 40, FAIA 53. New York Chapter
>
> Kahn & Jacobs, 2 Park Avenue, New York 16.
>
> b. N.Y.C, Sept. 16, 05. Educ: Amherst Col, B.A, 27; Col. Univ. Arch. Sch, 34.
>
> Winner of Hamlin Prize. Interpreter to le Corbusier on 3 mo. Lecture Tour of U.S. Dftsmn. & Desr. le Corbusier in Paris, 34-35; Dftsmn, Harrison & Fouilhoux, 35-38; Desr, Ely Jacques Kahn, 40. Present Firm: Kahn & Jacobs, org. 70, succession of partners, Joined firm 41. Reg: Colo, Conn, Mass, NJ, N.Y, Pa, Va; NCARB Cert. Gen. Types: 1,2,3,4,5,6,7,8,9,10,11,12,14,15,16. Prin. Wks: Munic. Asphalt Plant, E. River Dr, 41; 445 Pk. Ave, 45; 100 Pk. Ave, 48; 1407 Broadway, 49; Saks Fifth Ave, White Plains, N.Y, 54; Mt. Sinai Hosp, Fifth Ave. & 100th St, 50, AA, York & Sawyer. Hon. Awards: Best Off, Off. Man. & Equipment Mag. 50, Philip Morris; Mayor's Award, Cry of White Plains, 51, B. Altman & Co; Saks Fifth Ave, 54, & Best New Bldg.[29]

In addition, Stern & Stuart single out several architects who were major figures in the development of designs in the Kahn & Jacobs office in the period. These include the aforementioned Shooman Nadir, an Indian-born 1926 graduate of the University of Pennsylvania who had studied under Paul Cret. Nadir worked in the firm from 1926-1929, and after independent practice in Britain returned to the office in the 1940s.[30] His name appears on many of the elevation drawings in the Kahn & Jacobs collection at the Avery Library around the time of 445 Park Avenue.[31] Another designer who joined the office in the early 1940s was Pierre "Pete" Bezy, who was described by Jacobs as a "brilliant architect" and who would become the firm's chief designer and a partner.[32] In the mid-1940s when Gidoni was in the office, it was Nadir who was reported as handling the renderings for 100 Park Avenue. In a 1971 tax dispute, the partners in Kahn & Jacobs were listed as Robert Jacobs, 45%; Ely J. Kahn, 25%, James B. Newman, 10%, Pierre Bezy, 10% and Roy S. Bent, 10%.[33] Gidoni, though in the office, was

[27] Miss Gidoni appears to have dropped a couple of years from her birth date to shift it into the 20th century, a common and useful tactic in the days before clear birth records and as older architects came to be viewed as less original than younger architects. However in her ship registry when she came to the United States in the spring of 1938 she listed herself as "39" an age which would indicate a birth date in 1899. The travel register of the Conte di Savoia, arriving in New York on 28 April 1938 is available on Ancestry.com: http://kg.ikb.kit.edu/arch-exil/326.php (accessed June 2013); the same birth year is inferred in her Petition for Naturalization," dated 3 January 1944 when she listed herself as 44. Ancestry.com: http://kg.ikb.kit.edu/arch-exil/326.php (accessed June 2013). This would again put her birth year in 1899.

[28] R. R. Bowker. *AIA 1962 Directory*. Jacobs is listed on p. 343; *Kahn is listed on p. 363.*

[29] R. R. Bowker, *AIA 1962 American Architects Directory*, p. 343.

[30] *Book of the School*

[31] Stern & Stuart, 112-114

[32] Stern & Stuart, p. 214.

[33] The listing comes in a tax dispute in 1971: http://www.nysdta.org/STC/UBT/1971_K_Z_0001.pdf (accessed

not listed as an owner. Newman had been the business manager from the 1920s but was also a registered architect in multiple jurisdictions and claimed responsibility for several projects in the office; Bezy graduated from Columbia where he had placed second in the 1931 Paris Prize, entering the office in 1943. Bent was the associate in charge of the American Airlines Building at Idlewild Airport.

Gidoni's own record in the 1962 AIA Directory also provides information on her role as an associate in the firm but lists no projects as being particularly hers:

> "Miss Elsa Gidoni, (AIA)
>
> 113 E. 39th St, N Y 16
>
> GIDONI, ELSA, AIA, 43 New York Chapter, Kahn & Jacobs, 2 Park Avenue, New York, B. Riga, Latvia, Educ. Imperial Academy of Art & Arch, St. Petersburg, Russia, 16-17; continued studies Germany; Designer Antonin Raymond; Fellheimer & Wagner. Previous firms: Own office, Berlin Germany, 1928-33; Tel Aviv, 33-38; Present firm Associate Kahn & Jacobs, Architects, Reg. NY"[34]

In the previous AIA directory for 1956, she only listed herself at "113 E. 39th Street, New York, 16.[35] In 1970 she again listed herself at the same address.[36] The address is of interest in that it was not that of the firm but rather for a small building that was her residence. She lived there with her husband, Alexis L. Gluckmann, who appears to have been an engineer.[37] Gidoni's chronology in the United States can be established with a fair degree of certainty. She arrived in New York in the spring of 1938 on the S.S. Conte di Savoia.[38] In the early 1940s she appears to have worked for a time as an apprentice with Antonin Raymond at his New Hope, PA farmhouse office.[39]

Further clarification of her likely role in Kahn & Jacobs projects can be gauged from several published references to the fact that she as a woman was working in the man's realm of architecture. In 1960 Thomas Ennis published an article on "Women in Architecture" in the New York Times that reported that Gidoni had been in the office for 16 years, therefore arriving around 1944 and continuing into the 1960s. She is listed as an "associate," the typical role for a long-tenured professional who had passed the registration exams—but she was never listed as a partner which indicates ownership in the firm. Ennis' account also reported that she was particularly known as a "hospital specialist." She is not listed in this account as having had any particularly significant role in the mid-town office towers.

A brief biography of Gidoni is available in the Jewish Women's Encyclopedia. The account of Gidoni's purported role in General Motors Futurama exhibit is clearly inaccurate and calls into question other assertions in the piece:

> Fewer personal and professional details are known about another pioneering woman architect and interior designer, Elsa Gidoni-Mandelstamm (1901–1978), who was born in Riga (Latvia) and studied architecture at the same Institute of Technology in [Berlin-] Charlottenburg as Lotte Cohn. She had her own architectural firm in Berlin from 1929 until emigrating to Palestine in 1933. Involved in building projects for young pioneer women such as Beit ha-Halutzot in Tel Aviv, she also planned apartment houses, the Swedish Pavilion at the Levant-Fair (1934) in Tel Aviv and, together with Genia (Eugenie) Averbuch, the Café Galina, which are all examples of the progressive "International Style." The buildings have cubist shapes, flat roofs, characteristic horizontal windows and smooth mortar walls.
>
> Elsa Gidoni, as she is known, was a modest and politically engaged woman architect. She lived and worked in Tel Aviv until moving to New York in 1938. In the United States she designed the General Motors Futurama pavilion at the 1939 World's Fair and later worked in the architectural firm of Kahn & Jacobs.[40]

Other than a family legend, there is no

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[34] R. R. Bowker, *AIA 1962 American Architects Directory*, 2nd Edition., p. 195.

[35] R. R. Bowker, *AIA 1962 American Architects Directory*, p. 195.

[36] R. R. Bowker, *AIA 1970 American Architects Directory*, p. 321.

[37] *New York City Directory* (1949) p. 562.

[38] Ancestry.com provides information about Gidoni: http://interactive.ancestry.com/7488/NYT715_6146-0131/20860798?backurl=http%3a%2f%2fsearch.ancestry.com%2fcgi-bin%2fs; she became a naturalized citizen in 1944, and in the same year is listed at 113 E. 39th Street in the *New York Directory*, p. 389.

[39] Kurt Helfrick, ed. William Whitaker, ed. *Antonin Raymond: Crafting a Modern World* (New York: Princeton Architectural Press, 2006) p. 50, n. 25, p. 62.

[40] Other biographical materials can be found in http://kg.ikb.kit.edu/arch-exil/326.php

Kahn & Jacobs, designer of office buildings, apartment houses and airline terminals among many other kinds of structures, has had Elsa Gidoni as an associate for the last sixteen years.

Miss Gidoni, educated in pre-Hitler Germany, has been in the United States since 1938. She spent the war years here designing chemical engineering buildings.

A Hospital Specialist

With Kahn & Jacobs, she has been designer-in-charge of several major structures, including the new sixteen-story office buildings of the Travelers Insurance Company in Boston, and the new power plant of the Connecticut Light and Power Company in Norwalk harbor.

Thomas Ennis, "Women in Architecture," New York Times, November 13, 1960 describes her principally as a hospital expert.

obvious source for the description of her as the "designer" or "even co-designer" with Norman Bel Geddes for the General Motor's Futurama pavilion. The building itself is known to be the work of Detroit industrial architect Albert Kahn, and the design for the Futurama display by Norman Bel Geddes was well underway long before Gidoni arrived in the United States in the spring of 1938. Perhaps she helped make the models of the new city during her first year in New York City.[41]

Conclusion

The authorship of 445 Park Avenue should certainly be accorded to Kahn & Jacobs, the named firm of the project. Within the firm, both Kahn and Jacobs list it in their career lists in the 1962 AIA directory. Stern & Stuart refer to Elsa Gidoni as the project architect for 445 Park Avenue. Project architect is typically a management position and does not indicate personal authorship of the design of a building.[42] In any event, a hearsay attribution cannot be the basis for designation of 445 Park Avenue as a New York City Landmark.

[41] The model was made by the George R. Wittbold Company, see Eugene Du Bois, "Building the Fair," *Brooklyn Eagle* 16 January 1939, http://fultonhistory.com/Newspaper 5/Brooklyn NY Daily Eagle/Brooklyn NY Daily Eagle 1939 Grayscale/Brooklyn NY Daily Eagle 1939 (accessed June 2013).
[42] Her role as project architect for 445 Park Avenue is discussed in Stern & Stuart, p. 204.

Conclusion

Because 445 Park Avenue has never been viewed as a significant work of architecture it has been significantly altered and as a consequence it has lost much of its architectural integrity. This has resulted in massive alterations to the critical street level façade with alterations reaching every level of the building.

- 445 Park Avenue has had no significant role in the creation of New York's cultural capital in terms of its architecture or its position in New York's office building typology.
- 445 Park Avenue is neither the best example of the post-World War II office building type nor is it particularly exemplary for Kahn & Jacobs' work. Earlier examples of the "wedding cake" typology including their 120 Wall Street (1930, Ely Jacques Kahn) and their Tishman Office Building, now 137 E. 57th Street both better exemplify the layered massing of the 1916 zoning code. The recently designated Holland Plaza Building (now One Hudson Square, 1930, Ely Jacques Kahn) better exemplifies the firm's loft designs.
- Of the major post-World War office buildings in midtown by Kahn & Jacobs, the most interesting for evoking the new dimensions of the tower skyscraper rather than the wedding cake block is the elegantly colorful 1407 Broadway which continued the color and richness of their 1920s work. This was the building that the architects chose to represent their firm in later brochures.
- Instead of evoking the possibilities of the post- WW II city, 445 Park Avenue was looking backward marrying its 1920s set back form with the 1939 Futurama horizontal strip windows that had little to do with the International Style—and at best marked the demise of the social relevance of the style as a commercial office mode. The ease with which the Futurama modern could be ripped-off led to the host of buildings that made the style repetitious and stale.
- 445 Park Avenue does not meet the test of "special character or special historical or aesthetic interest or value" either as a design or as part of the "development, heritage or cultural characteristics" of the City to which a building must rise to become a New York City landmark.

These conclusions are consistent with a very recent New York City Landmarks Commission evaluation of 445 Park Avenue. On November 3, 2008 in response to a request for evaluation from the Co-Chairs of the Modern Architecture Working Group, a letter from LPC said that 445 Park would not be recommended to the full Commission for further consideration as a NYC landmark. On November 18, 2010 the New York Landmarks Preservation Commission communicated to Stephen F. Bryns who had submitted a request for evaluation (RFE) to the LPC for the building that the Universal Pictures Building would not be sent on to the Commission for review based on how it "compares to other buildings designed by Ely Jacques Kahn and his associates."

Our research is in full agreement with these recent evaluations by the LPC. As a result of significant alterations to the base and windows of the building, the loss of significant historic design fabric, the lack of social significance or mechanical innovation, and the lesser importance of the building in the work of Kahn & Jacobs, 445 Park Avenue does not "rise to the level of an individual landmark based on architectural or historical merits."

- *Universal Pictures Building (136 E. 57th Street)* – this decision is based on this building as it compares to other buildings designed by Ely Jacques Kahn and his associates.

While these properties do have some architecturally interesting details, they do not appear to rise to the level of an individual landmark based on their architectural or historical merits.

November 18, 2010: excerpt from the New York Landmarks Preservation Commission response to Stephen F. Bryns who had submitted a request for evaluation (RFE) to the Landmark Preservation Commission for the building.

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Architectural Forum, December 1949, p. 88.

Page 23
Cover: Dedication Ceremony, National Historic Mechanical Engineering Landmark, May 8, 1980

CivicVisions

Susan Nigra Snyder, a registered architect, and George E. Thomas, Ph.D., a cultural and architectural historian are partners in CivicVisions, based in Philadelphia. CivicVisions merges knowledge of a place's history with the ability to see how history and context can be used to create a future that responds to contemporary lifestyle forces. CivicVisions has created a downtown Las Vegas Arts District, an economic/identity initiative for Pennsylvania's colleges and communities, a Getty Grant exhibit about Haverford's campus identity and projects for developers and institutions nationwide. In 2012 they created *Furness 2012: Inventing Modern*, a citywide celebration of the work of Frank Furness that included seven concurrent exhibits at Philadelphia cultural institutions, lectures and website, FrankFurness.org. Their work has been published in *The Journal of Decorative and Propaganda Arts*, *Journal of Planning Education and Research* and *New Geographies*. Together they teach an Urban Studies seminar at the University of Pennsylvania. In 2011 they were asked to create a foundation theory seminar for the new Critical Conservation program at Harvard's Graduate School of Design where they are now co-directors.

Ms. Snyder investigates how local identity is expressed, maintained and able to develop while being responsive to larger global and media forces that affect the realms of contemporary life. Her teaching for more than twenty five years at the University of Pennsylvania includes seminars and design studios that investigate the forces of consumption on urban form. Ms. Snyder's research on contemporary systems seeks to understand the changing shape of urban retail/distribution and the relation between the automobile and contemporary community form. She has received two University of Pennsylvania Research Foundation grants to study processes of urban identity. Public service includes serving as chair of Philadelphia Redevelopment Authority's Advisory Board of Design, a member of the Fine Arts Committee and of the Delaware Valley Smart Growth Alliance jury. Her work has been published in *Quaderns Magazine, Modulus, A.D.* and *Arch+*.

For more than thirty years Dr. Thomas has taught at the University of Pennsylvania where his courses seek to understand the interconnection between history and patterns of modern life. In 1978 he was one of the founders of Penn's Program in Historic Preservation where he taught until 2002. In 1995 he was awarded the University's Provost's Award for Distinguished Teaching. Dr. Thomas has written and lectured widely on nineteenth and early twentieth century American architecture with a focus on the relationship between cultural innovation and architectural design. His research has broadened our understanding of the origins of modern design in the work of Pennsylvania architects serving industrial clients. His books include *Cape May: Queen of the Seaside Resort; Drawing Toward Building: American Architectural Graphics 1732-1986; Frank Furness: The Complete Works; Building America's First University: An Architectural and Historical Guide to the University of Pennsylvania; William L. Price: From Arts and Crafts to Modern Design; Philadelphia and Eastern Pennsylvania: Buildings of the United States* and forthcoming, *The Poetry of the Present: Architecture in the age of the great machines.*

Engineering Appendix

445 Park Avenue-New York, NY
Engineering Evaluation of Building Façade

by

Thornton Tomasetti
51 Madison Avenue
New York, N.Y. 10010-1603

07 August 2013

Thornton Tomasetti

Memorandum

TO	E. Ann Gill
COMPANY	Balmer Parc LLC
FROM	Michael Gerasopoulos, PE
DATE	August 7, 2013
CC	Joel Weinstein (TT)
RE	445 Park Avenue-New York, NY
	Engineering Evaluation of Building Façade
PROJECT NO	N13251.00
PROJECT NAME	Evaluation of Building Facade

On June 5, 2013, Thornton Tomasetti, Inc. (TT) visually assessed 445 Park Avenue exterior. Our assessment concentrated on noted deficiencies and alterations to the building exterior. TT also reviewed existing drawings and documents related to past alteration work performed on the exterior.

General Building Construction

- The building exterior consists of a brick and stone façade with aluminum and glass windows. Limestone spandrel panels and double hung windows clad the building between the 3rd and 22nd floor on the north, south and west elevations. Granite stone panels clad the retail canopies and marquee from the street level to the 2nd floor. The façade on the east elevation is faced with brick masonry. Setbacks occur at the 14th, 17th, 20th and 22nd floors.
- The limestone spandrel panels are supported on each floor via relieving angles hung from the steel spandrel beams. Vertical steel struts consisting of back to back steel angles support each spandrel beam on the perimeter north, south and west façades. In between and equally spaced between the steel struts is mechanical piping running vertically along the perimeter of the building. The vertical piping and steel struts are encased to form a slender mullion spaced approximately 4'-10" on center. The mullion is caped on the exterior with a stainless steel cover.
- The building is steel framed construction. The floor construction consists of cinder concrete slabs, reinforced with wire mesh, spanning between concrete encased steel beams.

Observations / Changes to Original Facade

- In 2004 the windows on the 2nd floor through 22nd floor were replaced with double hung thermal windows.
- The parapet walls were reconstructed on the upper most roof of the west elevation and half the length on the north and south elevations. The coping stones were replaced on all the parapets.
- Cracking was observed on the exterior brick masonry column enclosure on the penthouse bulkhead adjacent to the cooling towers. Vertical cracking was also observed in the interior surface of the brick masonry adjacent to the column enclosure in the penthouse. The observed cracking may be presumably caused by rusting of the underlying steel column.
- Removal and replacement of several rows of brick masonry was observed over the windows of the 22nd floor setback to allow for repairs/replacement of the steel lintels and flashing. The replacement brick and mortar are dissimilar to the original.

- Localized removal and replacement of the brick masonry was observed at the penthouse structure between the 22nd floor setback and roof specifically at the corner locations. Cracking was also observed adjacent to the recently replaced brick masonry. The observed cracking may be presumably caused by thermal expansion of the brick. Control joints were not observed in the brick masonry on the penthouse structure. The replacement brick and mortar are dissimilar to the original.
- The roof terraces at the 12th, 14th, 17th and 20th floors are paved with quarry tiles over the roofing membrane with copper base flashing around the perimeter. The terrace on the 22nd floor is paved with concrete pavers and crushed stone over the roofing membrane with copper base flashing around the perimeter. The main roof is covered with a built up roof membrane and base flashing around the perimeter. Roof leaks were not reported by the building.
- The limestone panels were recently pressure washed and appear to be in serviceable condition. Repairs to the limestone panels were observed at the northeast column face. At these locations the limestone was patched with material that did not match the color of the existing stone.

Review of Documents:

- The past local law 11 inspection report (cycle 6) filed in 2007 indicated a safe with a repair and maintenance program (SWARMP) building exterior condition.
- The recent local law 11 inspection report (cycle 7) filed with the Department of Buildings in 2013 indicates a safe with a repair and maintenance program (SWARMP) building exterior condition. According to the LL 11 report localized brick masonry replacement is required at the vertical crack locations of the brick façade on the penthouse structure.

Conclusions:

The bulk of the restoration work to the 445 Park Avenue building exterior consisted of window and coping stone replacement, reconstruction of the roof parapet, localized limestone repairs and brick masonry repairs at the penthouse structure. Future repairs to the limestone spandrel panels will be required since originally the steel lintels supporting the stone were not protected against corrosion occurring from moisture infiltration.

The building exterior at the penthouse structure will eventually require extensive brick masonry removal and replacement to allow for repairs to the underlying steel columns located at the building corners since these elements are subject to moisture infiltration and were never effectively protected against corrosion under the original building construction. At the penthouse building corners the steel columns create an interruption in the coursing and brick wythes. Temperature changes (increases) cause expansion of the brick masonry which in turn creates cracks at the plane of weakness at these corners. The cracks allow for moisture to infiltrate causing corrosion to the underlying steel. Introducing vertical control joints at corners and changes in planes is a common method for addressing this condition; however this changes the original appearance of the façade.

Our site observations indicate that ongoing historic masonry building repairs and restorations have gradually altered many buildings' original appearance; this is noticeable at 445 Park Avenue and repairs will continue as systems continue to degrade. Most repairs have changed the masonry details and substituted materials that are structurally but not visually compatible because they do not match the original. In the case of 445 Park Avenue, brick color used in the penthouse exterior does not match, mortar colors vary. Thus, the building has gained engineering integrity but given up on the original aesthetic. In the changing technological world where it is impossible to match bricks or limestone from one generation to the next, it is difficult, if not impossible, to recreate the original in material and form while providing for the building envelope integrity.

Inherent vice:

445 Park Avenue presents particular issues that are inherent to the materials of the original construction, the manner in which the building was finished and the understanding of the exterior wall construction of the period. Each of these items presents significant issues for the future.

In the light of the continuing deterioration of the exterior finish a critical issue is the inability to replace or match portions of the original brick and limestone in either material or size. The limitations of contemporary masonry construction for a landmark designation will place the owner in a nearly impossible situation of not being able to maintain the visual appearance of the building at a reasonable cost.

The future of the building's exterior will be a challenge to maintain. The choice will be to try to maintain by preserving the structural integrity or to entirely reconstruct with new age materials and construction techniques. An alternative would be to remove the facade and reclad with a modern type curtain wall system which will provide greater energy efficiency, less maintenance and increase the longevity of the building.

Thornton Tomasetti

Thornton Tomasetti is a leader in engineering design, investigation and analysis serving clients worldwide on projects of all sizes and complexity. With practices in building structure, building skin, building performance, construction support services, property loss consulting and building sustainability, Thornton Tomasetti addresses the full life cycle of a structure. The firm has supported clients working in more than 50 countries, with projects that include the tallest buildings and longest spans to the restoration of prized historic properties. Founded in 1956, today Thornton Tomasetti comprises more than 700 engineering and architectural professionals who collaborate from offices across the United States and in Asia-Pacific, Europe and the Middle East.

445 Park Avenue

The New York City Landmarks Preservation Commission

1 Centre Street, 9th Floor North New York NY 10007 (212) 669-7801 Fax (212) 669-7818

http://nyc.gov/landmarks

Mary Beth Betts
Director of Research
mbetts@lpc.nyc.gov

November 3, 2008

Mr. John Jurayj & Mr. John Kriskiewicz
Co-Chairs, Modern Architectural Working Group
175 West 13th Street Apt. 5A
New York, NY 10011

Re: Universal Pictures Building, MN
New York City Board of Transportation, MN
Sheraton Centre / former Americana Hotel (811 7th Ave), MN

Dear Mr. Jurayj & Mr. Kriskiewicz:

In response to the information you submitted concerning the properties referenced above, a senior staff committee of the Landmarks Preservation Commission has carefully reviewed the properties for consideration as potential individual landmarks. At this time, the properties do not appear to meet the criteria for designation and will not be recommended to the full Commission for further consideration as New York City individual landmarks.

We want to thank you for your interest in historic preservation and in the work of the Landmarks Preservation Commission.

Sincerely,

Mary Beth Betts

Landmarks Preservation Commission

Robert B. Tierney
Chair

1 Centre Street
9th Floor North
New York, NY 10007

212 669 7888 tel
212 669 7797 fax

November 18, 2010

Mr. Stephen F. Byrns
4602 Palisade Avenue
Bronx, New York 10471

Re: Requests for Evaluation, Manhattan

Dear Mr. Byrns:

I write to follow up on the status of various requests for evaluation you recently submitted. A senior staff committee of the Landmarks Preservation Commission has reviewed the following properties for consideration as potential individual landmarks and finds that they may merit designation and will be further considered in the context of the criteria for designation contained in the Landmarks Law and the Commission's overall priorities for the city:

- *Tiffany & Co. Studio (333-341 Park Avenue South and 102 East 25th Street)* – these buildings may merit designation based on their historical significance;
- *Bowker Building (419 Park Avenue South)* – this building may merit designation based on its architectural significance.

The senior staff committee's evaluation finds that the building at *1270 Broadway* may merit designation as part of a historic district and further finds that the building is located within a potential extension of the Madison Square North Historic District.

The senior staff committee's evaluation finds that, at this time, the following buildings will not be recommended to the full Commission for further consideration as New York City landmarks:

- *Marlin Rockwell Corporation Building (366 Madison Avenue)* – this decision is based on this building as it compares to other buildings designed by Warren & Wetmore;
- *Newsweek Building (444 Madison Avenue)* – this decision is based on this building as it compared to other buildings designed by Robert D. Kohn;
- *Universal Pictures Building (136 E. 57th Street)* – this decision is based on this building as it compares to other buildings designed by Ely Jacques Kahn and his associates.

While these properties do have some architecturally interesting details, they do not appear to rise to the level of an individual landmark based on their architectural or historical merits.

Landmarks Preservation
Commission

I am pleased to inform you that the Commission will be voting in November on the proposed designation of three buildings that you requested we evaluate: Alderbrook, the Pyne-Nadelman Residence; the Greyston or Dodge Estate Gatehouse; and the Union Reform Church of Highbridge.

Thank you for your submission and for your interest in the work of the Landmarks Preservation Commission.

Sincerely,

Robert B. Tierney

L E S T E R A. E P S T E I N & A S S O C I A T E S L L C
Real Estate - Investments

11 EAST 47TH STREET
NEW YORK, N.Y. 10017

TELEPHONE
(212) 371-7810

August 19, 2013

Robert Dobruskin, AICP, Director
Celeste Evans, Deputy Director
NYC Dept of City Planning
22 Reade Street, New York, N.Y. 10007-1216 Room 4E (212) 720-3423
FAX (212) 720-3495
rdobrus@planning.nyc.gov

RE: EAST MIDTOWN REZONING AND RELATED ACTIONS
DRAFT ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Dobruskin,

Please be advised that we are the owners and managers of 9 & 11 E 47 Street (Block 1283 Lots 9& 10 Manhattan) within the area of East Midtown affected by the DEIS for the proposed East Midtown Rezoning. Our comments address both stakeholder specific and public policy matters.

We hereby submit the following comments concerning the proposed action:

1. Sunrise Provision: Proposals of comparable scale and impact, and many of lesser impact, have been subject to far more lengthy discussion and professional and community input prior to scheduling the certification and scoping process. I recommend slowing down this process- political concerns cannot push aside your obligation to due diligence on behalf of the people of the city. The sunrise provision demonstrates that there is no need to rush the rezoning at this time and that planning need not be done in haste. Market and economic conditions as of the sunrise date are an unknown variable. Having this zoning modification on this extremely fast track at this time appears to be nothing but legacy planning for the current administration. If development can wait as indicated by the sunrise provision, so should rezoning.

2. Socioeconomic Conditions, Community Needs, DIB, DIF: Smaller and older buildings in the project area are assumed to be functionally or economically obsolete buildings in the proposal however some of the said buildings serve a purpose as a small start up business incubator much as lesser priced space does elsewhere in the City providing a creative function not possible in new larger buildings due to economic feasibility and market conditions or are community institutions which besides their community use provide for continuity of neighborhood character and may be eligible for landmarking or listing on Nation and State Historic Registers. This business incubator attribute of lesser priced older office buildings is not discussed in the DEIS despite the great entrepreneurial business history of NYC. The effect of the rezoning on other parts of the City is likewise not considered in the DEIS. This proposal does not coordinate with other economic efforts underway elsewhere in NYC such as in other boroughs or in other areas of Manhattan including but not limited to the Hudson Yards for which an arbitrary sunrise date under this proposal is not enough consideration. The largest supporters of this rezoning, besides the current administration, who may have a legacy motive, are the real estate industry and

construction and building trade unions that stand to gain economically. This calls into question the public purpose of such a rezoning especially with its contingencies such as the sunrise provisions and its failure to address matters noted elsewhere herein. Under the proposal, the City may be competing with holders of unused development rights elsewhere within the action area with regards to the DIB process particularly Landmark properties. The DEIS does not appear to have studied the effect of City issued FAR available through the DIB/DIF proposal on the market for unused development rights especially those of landmarked properties. Counting on the DIB to fund public improvements does not provide for a stable or consistent income stream projection regarding such funding. An analogy to this would be a housing co-op that funds its capital improvements on "flip charges" or assessing the seller of a unit in the development at the closing of a sale. If there is no sale there is no funding and either the infrastructure suffers or alternate funding must be found likely at great expense.

3. Community Boards 5 and 6: Community Boards Five and Six issued a resolution rejecting the proposed rezoning together with an analysis by the Multi Board Task Force on East Midtown Zoning that raises significant questions. Without community support, the proposal should not proceed at this time.

4. Regarding Midblock Zoning in 12.0 FAR Areas (C5-2.5 Zone): Assuming the proposed rezoning action is needed at this time which assumes a lot considering future economic and market conditions particularly for office space are unknown, the midblock areas within the proposed action area which were downzoned in the 1980's from 15.0 FAR to 12.0 FAR creating an economic disincentive for mid block owners with aging office properties to consider redevelopment are belong largely ignored by the proposal. The result then is a situation inconsistent with the stated intent of the project action with regards to meeting challenges that must be addressed in Midtown East including but not limited to redeveloping aging office stock with contemporary structures to maintain East Midtown as a premier job center and generate tax revenue. While midblock properties would be included for bonus FAR through District Improvement Bonus (DIB), this would only affect mid block properties if an avenue property were to be included in a qualifying development site. The City should restore the earlier 1961 15.0 FAR as of right before bonus midblock perhaps with some minimum plot size and other restrictions to avoid sliver building and other inappropriate development potential as this would further the goals of the action. For example, The effects of existing setback requirements by deed restriction within the project area such as exists on East 47th & East 48th Streets Fifth to Madison Avenues could be extended to other blocks to require wider sidewalks for new construction and upper story setbacks for light and air in the event such FAR is restored. Manhattan Borough President Scott Springer in his comments dated July 31, 2013 on this action confirms the foregoing stating "The 1982 Special Midtown District established the district's built density. The Special Midtown District lowered allowable densities in an effort to stabilize development in East Midtown and encouraged larger developments in Times Square and other parts of Midtown. This approach was particularly effective: since 1982, 75 percent of development in the Special Midtown District has occurred outside of the East Midtown area" citing the DEIS itself Pages 1-8 and 1-9 as authority for the midblock development reduction which brings out an inconsistency in the DEIS between its stated goals and the actual proposal and shows how the 1982 rezoning has inhibited development and continuation of it under the current proposal will continue to inhibit development.

5. Development Site 11: A correction should be made with regards to the proposed and now failed hotel development at Site # 11 which should correctly include the former religious property at 12 E 48 St. (Block 1283, Lot 63), the religious property at 14 E 48 (Block 1283 Lot 62) and 13 East 47 Street (Block 1283 Lot 11) as consistent with documents recorded at the City Register (see ACRIS filings for said lots) and exclude our properties at 9 & 11 East 47 Street (Block 1283 Lots 9 & 10) not part of the site. It appears that this erroneous inclusion within Site 11 resulted in a Notice of "E" Designation under the proposed action to be sent to us which we believe should not have been issued since we are otherwise largely unaffected directly as a proposed development site and are only affected by the action as a stakeholder with regards to impacts created by the City and others regarding other potential or likely developments. We commented on correcting the configuration of Site 11 at scoping as well but our comments have been ignored by DCP. Our properties should not be shown as proposed for demolition on Page 6-155. We also do not believe that the failed hotel development included the Mercantile Library at 17 East 47th St. as stated in the DEIS Section 6. Especially since hotel uses are now discouraged by DCP within the action area and the proposed hotel has failed, we question whether the Site 11, as reconfigured pursuant to the foregoing excluding our properties, our neighbors to the west at 5 & 7 East 47 St. and properties to the east at 15 & 17

East 47 St. but including 13 East 47, 12 East 48 St. and 14 East 48th St as mentioned above, should be labeled for potential office use.

6. Regarding Water and Sewer Infrastructure at East 47th St.: To the best of our knowledge, the sewer on East 47 St. 5th to Madison Avenues where our properties are located is aging infrastructure put in service prior to several large buildings being constructed in the area. Stormwater runoff on this 47th St block has caused back ups into our properties on numerous occasions from the City combined sewer during heavy rainfall. Without new and larger capacity sewer infrastructure being installed preferably with separate stormwater infrastructure for new development we see this condition worsening and fail to see how the new DEP Stormwater management regulations for new development will alleviate this problem. The problem has been ignored by DEP in the past and DCP is not considering this in the DEIS presently. While green infrastructure in the new development is heartily welcomed, this does not address the issues and inadequacies with current infrastructure which are not covered under stormwater or mitigation in the DEIS. While DEP and DEC are addressing CSO into waterways no one is addressing combined system back ups into buildings. The DEIS does not consider and study capacity of the sewer infrastructure to handle system overflows at peak periods such as intense rainstorms which have caused back ups into our properties repeatedly during such inclement weather events. This is a failure in the DEIS to address a significant environmental impact.

7. Regarding Visual Resources, Shadows, and Density: Visual simulations from the Environmental Simulation Center show the effect of the rezoning at various heights/FAR levels near Grand Central Terminal. These contrast to the figures in DEIS Section 7 and show a vastly altered skyline with the iconic Chrysler Building no longer visible from various vantage points and the historically significant Terminal City mostly replaced by mega-buildings blocking light and creating shadows in the Grand Central area creating great density with congestion impacts to pedestrian flow and public transportation. Shadows are cast elsewhere in the action area concerning Landmarked buildings.

8, Regarding Historic and Cultural Resources and Neighborhood Character: It is inconsistent to state on page ES-50 that the proposed action would not result in significant adverse impact to neighborhood character while stating on E-56 that the action could result in the demolition of 14 properties that are eligible for landmarking or NHR while on ES-38 states that "The Proposed Action could potentially result in construction-related impacts to 24 eligible resources located within 90 feet of the projected and potential development sites." It should also be noted that numerous other properties eligible for Landmarks and/or the National and State Historic Registers are at risk under this proposal as discussed during public comment on the project by the Historic Districts Council, the Municipal Art Society, the Landmarks Conservancy and the Multi Board Task Force on East Midtown Zoning.

10. Green Infrastructure and Renewable Resources: While Section 11 under Energy mentions LEED standards and NYC DCP "Zone Green" the discussion does not provide recommendations or code requirements for new buildings except meeting NYCECC and ECCCNYS and in Section 14-7 stating "that sites utilizing the District Improvement Bonus be designed to meet standards for reduced energy consumption that exceed code compliance" which is also further described on Page ES-22 under sustainability as 15% above such code. Making Green Infrastructure and Renewable Resources a hallmark of the action might go a ways towards improving public reception of the proposed action provided other impacts are properly addressed and mitigated however the tables in the DEIS Section 11 may not support this. Section ES.6.10 and Section 11 discuss NYCECC but also discuss non-renewable sources of energy. Section 11 Page 11-6 states that "no significant adverse energy impacts would result from the Proposed Action." which is inconsistent with Table 11-3 shown on the same page which shows approximately 40% increased consumption over the no action alterative. The DEIS does not discuss whether the amount of increased energy demand anticipated would accelerate hydrofracking in the Marcellus Shale.

11. MTA Headquarters Redevelopment: The effect of the MTA marketing their properties at this present time for net lease and redevelopment with media reported terms to include right to demolish their Madison Ave buildings one year after the MTA is said to be vacating at the end of 2014 would be premature under the sunrise provisions in the proposed zoning thereby removing a significant parcel from the proposed rezoning area. This calls into question the sunrise provision again. If the MTA, a public agency and an apparent proposed beneficiary of the rezoning action cannot benefit under the

proposal, and is going forward without it, we fail to see the public need for the proposal at this time except as legacy zoning for an outgoing administration.

12. Traffic, Pedestrian and Subway congestion, Construction issues: Mitigating pedestrian issues by widening crosswalks may actually worsen traffic congestion physically taking away space for vehicular traffic in the street unless measures are taken to reduce vehicular traffic in the action area to necessary commercial vehicles and public transportation such as buses and taxis during business hours to avoid massive congestion likely to result from the action. Regarding construction, we have serious concerns as stakeholders in the action area about the construction traffic impacts described in DEIS Section 18 as well as noise, air and sidewalk congestion impacts and the potential for construction accidents. Pedestrian studies contained as part of the DEIS notwithstanding, Madison and Lexington Avenues with their narrow sidewalks and the IRT Lexington Ave subway platforms at Grand Central are already overcrowded. Mitigation for this may be impossible despite the DEIS studies which may amount to wishful thinking. The funding and timetable for transit and pedestrian projects should be predictable, stable, and not dependent on possible and uncertain development spurred contributions to the proposed District Improvement Fund which subject such contributions and public improvements to the vagaries of market conditions.

Thank you for considering our comments. Please do not hesitate to contact us with any questions.

Very truly yours

Kevin McEvoy, Member
Lester A. Epstein & Associates LLC
Epstein Family Holdings LLC

GoldmanHarris LLC
Attorneys at Law

475 Park Avenue South
New York, New York 10016
www.goldmanharris.com

T. 212 935.1622
F. 212 935.2651
charris@goldmanharris.com

Caroline G. Harris

August 16, 2013

Via Email
The Honorable Amanda Burden
Chairperson
City Planning Commission of the City of New York
22 Reade Street
New York, NY 10007

Re: East Midtown Rezoning

Dear Chairperson Burden:

We are writing on behalf of The Roosevelt Hotel to support the proposed rezoning of East Midtown. The proposed rezoning represents an important initiative to provide for future development of the East Side in keeping with modern standards. This is especially vital near Grand Central Terminal and the East Side Access, a key transportation hub.

We also support the amendment of the East Midtown Rezoning that allows for contributions-in-kind as a method of contributing to the District Improvement Fund in order to reach the maximum as-of-right floor area ratio. Such a provision makes provision of the amenities feasible in conjunction with development of eligible sites. We urge Vanderbuilt Avenue, both above and below grade, to be included in the scope of the pedestrian network that would benefit from this treatment.

We appreciate your consideration of our views.

Sincerely yours,

Caroline G Harris

cc: E. Hsu-Chen
F. Ruchala

Sent: 08/04/2013 18:57:55

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Ms

First Name: Lori

Last Name: Zabar

Street Address: 565 West End Avenue

Address Number: 16D

City: New York

State: NY

Postal Code: 10024

Country: United States

Work Phone #: 212-874-6043

Email Address: lorizabar@hotmail.com

Message: Dear Chair Burden,I am writing to oppose the East Midtown Rezoning project. I believe the swift timetable for considering this project is unnecessary and inadequate, solely driven by the Mayors desire to complete approval before his term is up. This does not serve the public good, only the special interest groups who will gain from development. In particular, the plan does not safeguard historic buildings or clearly provide for the amenities required. I ask you to slow down the process and listen to the concerns of community groups who oppose the project.Sincerely, Lori Zabar

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REMOTE_HOST: 47.17.44.212, 208.111.129.108
HTTP_ADDR: 47.17.44.212, 208.111.129.108
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10_4_11; en) AppleWebKit/533.19.4 (KHTML, like Gecko) Version/4.1.3 Safari/533.19.4

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Sent: 08/04/2013 11:55:00

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

First Name: Susanna

Last Name: Margolis

Street Address: 170 West End Ave

Address Number: 24T

City: New York

State: NY

Postal Code: 10023

Country: United States

Work Phone #: 9172328433

Email Address: susanna@susannamargolis.com

Message: I write to oppose the Midtown East rezoning plan on the simple grounds that it is dumb. Being dumb, it will harm the City and its citizens, of whom I am one.

REMOTE_HOST: 199.231.81.86, 208.111.162.47, 68.142.110.249
HTTP_ADDR: 199.231.81.86, 208.111.162.47, 68.142.110.249
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.8; rv:22.0) Gecko/20100101 Firefox/22.0

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Sent: 08/04/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Dr.

First Name: James

Middle Name: W

Last Name: Farer

Suffix: DDS

Street Address: One Lincoln Plaza

Address Number: 14K

City: New York

State: NY

Postal Code: 10023-7147

Country: United States

Work Phone #: 212-877-2612

Email Address: jim144@earthlink.net

Message: New York will better off in the long run if the East Midtown rezoning is minimized and the Landmarks Preservation Commission landmarks the 32 buildings under consideration in East Midtown. Thank you,Dr. Farer

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REMOTE_HOST: 24.215.169.64, 68.142.81.137, 68.142.110.249
HTTP_ADDR: 24.215.169.64, 68.142.81.137, 68.142.110.249
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_8_4) AppleWebKit/536.30.1 (KHTML, like Gecko) Version/6.0.5 Safari/536.30.1

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Sent: 08/03/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mr.

First Name: Michael

Middle Name: S

Last Name: Cutler

Street Address: 307 West 79th

Address Number: 117

City: New York

State: NY

Postal Code: 10024

Country: United States

Work Phone #: 212-769-4780

Email Address: gfwork@copper.net

Message: Wisdom tells us that the rezoning of Midtown East is bad for New Yorkers--those citizens that care about historical architecture, sense of place and quality of life. New York doesnt need this unbridled disrespect for community tranquility. We dont need more development in Midtown-East to placate Bloombergs ego.

REMOTE_HOST: 38.125.52.197, 208.111.129.153
HTTP_ADDR: 38.125.52.197, 208.111.129.153
HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 8.0; Windows NT 5.1; Trident/4.0; BTRS125127; GTB7.5; Media Center PC 3.0; .NET CLR 1.0.3705; InfoPath.2; .NET CLR 2.0.50727; .NET CLR 3.0.4506.2152; .NET CLR 3.5.30729)

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Sent: 08/03/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mr.

First Name: John

Last Name: Tweddle

Street Address: 308 West 103 Street

Address Number: 308 West 1

City: New York

State: NY

Postal Code: 10025

Country: United States

Work Phone #: 212 7492117

Email Address: jftnyc@verizon.net

Message: NYCs current infrastructure isnt able to handle current population. Massive new buildings will add to the problem. These new overly tall buildings are already compromising our lives. 157 W 57th St sticks into Central Park, ruining its beauty. Roads and mass transportation are congested.Please be responsible for making our city a place where people want to live, work and visit.

REMOTE_HOST: 68.174.93.104, 68.142.91.156
HTTP_ADDR: 68.174.93.104, 68.142.91.156
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_7_5) AppleWebKit/536.30.1 (KHTML, like Gecko) Version/6.0.5 Safari/536.30.1

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Sent: 08/02/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mr.

First Name: Sanford

Last Name: Malter

Company: Sanford Malter RA Architect - Consultant

Street Address: 771 West End Ave

City: New York

State: NY

Postal Code: 10025

Country: United States

Work Phone #: 212-666-1032

Email Address: smalter1@earthlink,net

Message: Dear Commissioner,I take strong exception to the proposed major rezoning of midtown Manhattan which is presently at capacity of its public transportation, vehicular and pedestrian traffic. It is incredible that this initiative has not been accompanied by a visionary master plan that will control density and improve circulation. One can only conclude that it will become a giveaway for the citys major developers.

REMOTE_HOST: 64.131.190.200, 68.142.118.240, 68.142.119.44
HTTP_ADDR: 64.131.190.200, 68.142.118.240, 68.142.119.44
HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 8.0; Windows NT 5.1; Trident/4.0; GTB7.5; .NET CLR 1.1.4322; InfoPath.2; .NET CLR 2.0.50727; .NET CLR 3.0.4506.2152; .NET CLR 3.5.30729; AskTbORJ/5.15.23.36191)

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Sent: 08/02/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: No

State: NY

Country: United States

Message: Our midtown is the worlds best. We dont fear Hong Kong or Singapore. It cant take any more density.

REMOTE_HOST: 198.228.201.163, 208.111.129.41
HTTP_ADDR: 198.228.201.163, 208.111.129.41
HTTP_USER_AGENT: Mozilla/5.0 (iPhone; CPU iPhone OS 6_1_4 like Mac OS X) AppleWebKit/536.26 (KHTML, like Gecko) Version/6.0 Mobile/10B350 Safari/8536.25

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Sent: 08/02/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Dr.

First Name: Mark

Last Name: Koppel

Street Address: 172 west 79th st

City: NY

State: NY

Postal Code: 10024

Country: United States

Work Phone #: 1234567890

Email Address: Mak221@aol.com

Message: MS, BURDEN,I AM COMPLETELY OPPOSED TO REZONING MIDTOWN EAST.
IT IS TOO CROWDED ALREADY. WE DO NOT WANT OR NEED MORE MEGABUILDINGS.THIS IS ONLY A GIFT FOR BLOOMBERGS BILLIONAIRE FRIENDS.NO NEED TO BE AFRAID OF BLOOMBERG. HES A LAME DUCK WHO CANNOT HURT US ANYMORE.THANK YOU.

REMOTE_HOST: 71.183.161.222, 208.111.129.108
HTTP_ADDR: 71.183.161.222, 208.111.129.108
HTTP_USER_AGENT: Mozilla/5.0 (iPad; CPU OS 6_1_3 like Mac OS X) AppleWebKit/536.26 (KHTML, like Gecko) Version/6.0 Mobile/10B329 Safari/8536.25

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Special Agency Projects/Initiatives

Contact Info: Yes

M/M: Ms

First Name: Gail

Last Name: Gregg

Street Address: 1 West 64th St 9A

City: New York

State: NY

Postal Code: 10023

Country: United States

Email Address: gailgregg@gmail.com

Message: Thank you for calling the hearing Wednesday on the Midtown East Rezoning plan, known to many as Mr. Bloombergs Shanghai. This is a tremendously important issue that should be studied carefully and not rushed into effect to please a departing mayor.

REMOTE_HOST: 68.174.110.52, 208.111.129.162
HTTP_ADDR: 68.174.110.52, 208.111.129.162
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.7; rv:22.0) Gecko/20100101 Firefox/22.0

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Other

Contact Info: Yes

M/M: Ms

First Name: Andrea

Last Name: Jeromos

Street Address: 1777 First Avenue

City: New York

State: NY

Postal Code: 10128

Country: United States

Message: Please do not support the Midtown East rezoningplan. It is horrible.

REMOTE_HOST: 173.52.3.221, 208.111.128.54
HTTP_ADDR: 173.52.3.221, 208.111.128.54
HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 8.0; AOL 9.6; AOLBuild 4340.5004; Windows NT 5.1; Trident/4.0; Media Center PC 3.0; .NET CLR 1.0.3705; .NET CLR 2.0.50727)

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Sent: 08/05/2013 09:07:27
This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mrs.

First Name: Jill

Last Name: Gill

Company: �

Street Address: 90 Riverside Drive

Address Number: 9F

City: New York

State: NY

Postal Code: 10024

Country: United States

Work Phone #: 212 362 8440

Extension: -

Email Address: jillfgill@aol.com

Message: please do not rezone midtown. it is crowded enoughand transportation not adequate for hoards more.protect those lovely, dignified midtown buildings.PLEASE!

REMOTE_HOST: 207.237.214.141, 208.111.129.22
HTTP_ADDR: 207.237.214.141, 208.111.129.22
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_7_5) AppleWebKit/536.30.1 (KHTML, like Gecko) Version/6.0.5 Safari/536.30.1

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

First Name: Norma

Last Name: Barbacci

Street Address: 451 East 16th Street

City: Brooklyn

State: NY

Postal Code: 11226

Country: United States

Extension: Norma

Email Address: normabarbacci@yahoo.com

Message: Please reconsider the rezoning of Midtown.

REMOTE_HOST: 64.115.223.106, 208.111.129.41
HTTP_ADDR: 64.115.223.106, 208.111.129.41
HTTP_USER_AGENT: Mozilla/5.0 (compatible; MSIE 9.0; Windows NT 6.1; Trident/5.0)

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mr.

First Name: Vincent

Last Name: Konetsky

Street Address: 165 East 99 Street

Address Number: 9

City: New York

State: NY

Postal Code: 10029

Country: United States

Email Address: vkonetsky@nyc.rr.com

Message: I oppose the East Midtown Rezoning Plan on the grounds that it is a bad plan being rushed through only to benefitthe Citys real estate community, and not the interests and needs of individual property owners, businesses and residents of East Midtwon in any way whatsoever.

REMOTE_HOST: 74.68.158.134, 69.28.154.220
HTTP_ADDR: 74.68.158.134, 69.28.154.220
HTTP_USER_AGENT: Mozilla/5.0 (compatible; MSIE 9.0; Windows NT 6.0; Trident/5.0)

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Dr.

First Name: Nancy

Middle Name: B

Last Name: Austin

Suffix: PsyD

Company: Psychologist

State: NY

Postal Code: 10025

Country: United States

Email Address: nbaustin@earthlink.net

Message: Please REJECT the midtown rezoning plan. It is too big and comprehensive at this time and makes no sense. Nancy B Austin

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REMOTE_HOST: 71.218.125.203, 208.111.144.226, 208.111.144.109
HTTP_ADDR: 71.218.125.203, 208.111.144.226, 208.111.144.109
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; U; Intel Mac OS X 10_4_11; en) AppleWebKit/533.19.4 (KHTML, like Gecko) Version/4.1.3 Safari/533.19.4

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mrs.

First Name: Barbara

Last Name: Orlando

Company: retired from NYC Transit

Street Address: 180 Riverside Drive

Address Number: 3F

City: New York

State: NY

Postal Code: 10024

Country: United States

Work Phone #: 212-362-3296

Email Address: bborlando@earthlink.net

Message: Dear Commissioner Burden and team: PLEASE take the lead you are known and respected for to block the Mayors outlandish Midtown East Rezoning Plan that will benefit developers at the publics and our Citys expense, and undermine the history and architectural character of this beloved area of Manhattan for good! An outgoing mayor should not have such sweeping power! With thanks and respect, Barbara Orlando Manhattan Upper West Side

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REMOTE_HOST: 67.247.22.39, 208.111.129.153
HTTP_ADDR: 67.247.22.39, 208.111.129.153
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_7_5) AppleWebKit/536.30.1 (KHTML, like Gecko) Version/6.0.5 Safari/536.30.1

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mrs.

First Name: mosette

Last Name: broderick

Company: NYU faculty

Street Address: 303 Silver Center Washington Square

City: New York

State: NY

Postal Code: 10003

Country: United States

Work Phone #: 212 998 8196

Email Address: mosette.broderick@nyu.edu

Message: The midtown rezoning is unhealthy, financially unsound and destructive.
Needs to be retracted and reconsidered

REMOTE_HOST: 128.122.97.189, 68.142.91.156
HTTP_ADDR: 128.122.97.189, 68.142.91.156
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_6_8) AppleWebKit/534.59.8 (KHTML, like Gecko) Version/5.1.9 Safari/534.59.8

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Complaint

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Dr.

First Name: mark

Last Name: koppel

Street Address: 172 West 79th st

City: NY

State: NY

Postal Code: 10024

Country: United States

Work Phone #: 1234567890

Email Address: mak221@aol.com

Message: NO MORE LIGHT AND AIR BLOCKING SKYSCRAPERS FOR EAST MIDTOWN. ITS FINE JUST THE WAY IT IS.

REMOTE_HOST: 71.183.161.222, 69.28.154.222
HTTP_ADDR: 71.183.161.222, 69.28.154.222
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.8; rv:22.0) Gecko/20100101 Firefox/22.0

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Mr.

First Name: Ernest

Last Name: Barbieri

Street Address: 1550 York Ave

City: NYC

State: NY

Postal Code: 10028

Country: United States

Message: I urge you to vote against the proposed east side rezoning we dont need it.

REMOTE_HOST: 172.254.77.157, 69.28.154.220
HTTP_ADDR: 172.254.77.157, 69.28.154.220
HTTP_USER_AGENT: Mozilla/5.0 (compatible; MSIE 10.0; Windows NT 6.1; WOW64; Trident/6.0)

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Zoning and Land Use Questions/Information

Contact Info: No

State: NY

Country: United States

Email Address: siekevitz@yahoo.com

Message: The danger of the Midtown East rezoning is we may well create a wasteland. What was once an area of mixed uses/buildings would become in the evening a desolation of office towers and absentee billionaire high-rises. As for the day, is this the kind of area people want to work in? The younger generation (NYs future!) craves reuse of older interesting buildings. We all know that. Let common sense prevail.

REMOTE_HOST: 149.39.250.11, 208.111.129.108
HTTP_ADDR: 149.39.250.11, 208.111.129.108
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_6_8) AppleWebKit/534.57.2 (KHTML, like Gecko) Version/5.1.7 Safari/534.57.2

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Other

Contact Info: Yes

First Name: Zack

Last Name: Winestine

Street Address: 92 Horatio Street

City: New York

State: NY

Country: United States

Email Address: info2@statesofrcontrol.com

Message: Dear Chair Burden,I strongly urge the City Planning Commission to reject the proposed East Midtown Upzoning.This ill-concieved plan would increase congestion in an already dense area and lead to the loss of historic architecture which contributes so greatly to New Yorks unique urban fabric. The plan would provide no benefit either to the city as a whole or the immediate community, and would serve only to line developers pockets.Sincerely,Zack Winestine

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REMOTE_HOST: 96.224.40.199, 69.28.154.222
HTTP_ADDR: 96.224.40.199, 69.28.154.222
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_6_8) AppleWebKit/534.57.2 (KHTML, like Gecko) Version/5.1.7 Safari/534.57.2

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Sent: 08/05/2013

This form resides at
http://www.nyc.gov/html/mail/html/maildcp.html

Message Type: Misc. Comments

Topic: Zoning and Land Use Questions/Information

Contact Info: Yes

M/M: Ms

First Name: Betty

Last Name: Lynd

Street Address: 565 West End Ave

Address Number: 1B

City: NY

State: NY

Postal Code: 10024

Country: United States

Email Address: blynd2@nyc.rr.com

Message: The density of the area around Grand Central Station is already overwhelming. We do not have to rival Hong Kong or Dubai and all their towers. Bloomberg is wrong about this change in zoning.

REMOTE_HOST: 72.225.238.74, 208.111.129.61
HTTP_ADDR: 72.225.238.74, 208.111.129.61
HTTP_USER_AGENT: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.7; rv:22.0) Gecko/20100101 Firefox/22.0

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