

CITYLAND

DECEMBER 2006

CENTER FOR NEW YORK CITY LAW

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Landmarks designated two City and Suburban Homes buildings in Lenox Hill 16 years after the Board of Estimate removed their landmark status. See full story on page 169. Photo: LPC.

CITY COUNCIL

Stop-Work Orders/Demolition Citywide

Council passes stiffer penalties for illegal work

Developers violating stop-work orders now subject to greater fines, jail time. The City Council unanimously approved two bills, increasing the penalties for violating stop-work orders or undertaking illegal demolition work on one- and two-family homes. Council Speaker Christine Quinn explained that the changes would improve construction safety by deterring builders from working without proper permits. Council Member Vincent Gentile noted that builders would no longer be able to write off fines and penalties as a cost of doing business.

The Council raised the fines for failing to comply with a stop-work order from a flat \$500 per violation

to an incremental structure with a \$2,000 fine for the first violation, \$5,000 for the second, and \$10,000 for each additional violation. The penalties must be paid before the Department of Buildings will allow work to continue.

The bill also increased civil penalties for working without a permit. For one- and two-family homes, the civil penalty increased from two times the cost of the required permit to four times, with the minimum penalty increasing from \$100 to \$500. For all other buildings, the civil penalty increased from ten times to 14 times the cost of the required permit, with the minimum penalty increasing from \$500 to \$5,000. Any person found to have continued work despite a stop-work order will be subject to an additional penalty between \$2,000 and \$15,000 for each violation, as well as a maximum jail sentence of six months.

The second bill made unauthorized demoli- (cont'd on page 167)

Con Edison to build 17 new substations over the next ten years

Electric power, reliably delivered, is an absolute necessity for sustaining New York City's growth. Air conditioning comprises about 75% of Consolidated Edison's residential peak load and is one of the main reasons for last summer's usage peak that topped 13,000 megawatts. To sustain residential and commercial growth Con Edison must build 17 new substations over the next ten years. It will not be easy.

New substations have sometimes met community opposition such as occurred in the mid-1990s when Con Edison sought to build a substation on land that it had long owned at 24th Street and Sixth Avenue, Manhattan. The community successfully prevented Con Edison from obtaining a needed special permit. Con Edison sold the site, ultimately building a new substation on a site less centrally located on West 30th Street. Other new substations, with less controversy, have recently been constructed at 7 World Trade Center and at South Street Seaport.

Power is brought into the City through transmission lines at efficient, but extremely high voltages which must be stepped down by passing the current through massive transformers each one of which is larger than a UPS truck. Transmission substations have five and sometimes ten of these large transformers. Power is then routed beneath the streets through thick feeder cables to area substations which step the power down yet again. From area substations power is delivered to smaller transformers in the street which step the power down further to household voltage of 110-120.

On December 12, 2006, at a Manhattan Institute-sponsored program, Con Edison outlined the City's need for the new substations. Demand for electric energy throughout all five boroughs, according to Con Edison projections, will be near or exceed Con Edison's capacity by 2011 unless the new substations come on line as planned.

On the 24th Street site, which Con Edison was forced to sell, a new, block-long residential tower is nearing completion. The residents moving into the new tower will expect reliable electric power. That power will pass through Con Edison's new substation on West 30th Street. This pattern of constructing new substations to come on line ahead of the demand will have to be repeated at least 17 more times over the next ten years if New York City is to sustain its residential, commercial and industrial growth.

Ross Sandler

CITYLAND

Ross Sandler
*Executive Editor and Director,
Center for New York City Law*

Melanie Cash '02
*Associate Director
Managing Editor*

Molly Brennan
Editor, CityLand

Wessel Graphics
Design Director

Kevin Schultz '05
Morgan Kunz '06
Fellows in New York City Law

Jesse Denno
*Staff Writer
Publication Prod. Assistant*

Caitlin Hannon
*Subscription
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tion work on one- or two-family homes a misdemeanor punishable by a fine of \$5,000 to \$10,000, with a maximum jail sentence of six months.

Int. No. 216-A, amending Admin. Code §§ 26-118, 26-212.1, 26-248 (Nov. 15, 2006); Int. No. 132-A, amending Admin. Code § 26-248 (Nov. 15, 2006).

BOARD OF STANDARDS & APPEALS

Variance

Chelsea, Manhattan

Apartments OK'ed in Chelsea manufacturing district

Developer reduced overall size, but increased street wall height. A Chelsea developer applied to BSA to construct an 11-story, 187-foot tall residential building with ground floor retail space on a manufacturing-zoned lot at Seventh Avenue and West 27th Street, arguing that the small, 1,683-square-foot lot size justified the use variance. The existing two-story building, containing Rosa's Pizza and Manhattan's Heros, would be demolished.

BSA objected to the height and size, stressing that the proposal would clash with neighboring buildings. When the developer slightly reduced the building's size



Two-story building in Chelsea to be demolished. Photo: Morgan Kunz.

by 1,683 sq.ft., BSA maintained its objections. The final design called for ten stories, ten units and a total height of 130 feet, but increased the street wall height from 87 to 107 feet.

The developer submitted as-of-right feasibility studies showing that an 18-story office building would be infeasible due to the increased construction costs caused by the narrow and shallow lot and by the weak return on office space with such small floor plates.

BSA agreed, granting the variance. BSA noted that since the City required greater street wall heights in the recent South Chelsea rezoning, the increased height conformed more closely to zoning goals and nearby Chelsea buildings.

BSA: 299 Seventh Avenue (199-05-BZ) (Oct. 24, 2006). CITYADMIN

BOARD OF STANDARDS & APPEALS

Variance

Flushing, Queens

Queens Hospital expansion approved by BSA

New York Hospital Queens will add 80 beds, a new entrance and expanded cardiology and surgery facilities. New York Hospital applied for rear-yard, setback and bulkhead variances as part of a large-scale modernization and expansion of its 6.4-acre facility at 56-45 Main Street in Flushing, Queens. The 439-bed, acute care teaching hospital, occupies two blocks along Booth Memorial Avenue, employs 3,000 people and receives approximately 400 patients and 250 visitors per day.

The hospital proposed to build a five-story, 97,219-square-foot addition and a 122,368-square-foot, 372-space garage. The proposed addition would connect to the existing buildings, permitting expanded cardiology and surgery services, 80 additional beds and a new 2,098-square-foot lobby and entrance at the corner of Main Street and Booth

Memorial Avenue. The proposed garage would be located on the corner of Booth Memorial Avenue and 141st Street with two below-ground levels and one above-ground level, requiring demolition of five existing two-story hospital buildings.

The hospital argued that without the larger floor plates and flexibility permitted by the variances, the new entrance could not be built and the addition would lose 18 beds, three treatment rooms and one-third of the required mechanical equipment.

On October 11, 2006, the Planning Commission rezoned a portion of the site (R4 to R6) to permit additional floor space, granted a special permit for the garage, and allowed accessory parking anywhere on the site. The City Council approved on October 25, 2006.

At the October 24, 2006 BSA hearing, the Coalition to Preserve Queensboro Hill and other locals opposed the plan, arguing that nearby homes would be negatively affected by ambulance and pedestrian traffic. One neighbor argued that oxygen tanks in the proposed addition would be dangerously close to a nearby gas station.

On November 14, 2006, BSA granted variances for the five-story addition, allowing 20-foot and 15-foot encroachments. BSA noted that the variance would not affect essential neighborhood character and the neighbor's concern regarding the location of oxygen tanks was unfounded. BSA also granted a variance to allow stairway bulkhead encroachments in the proposed garage after the hospital reduced the garage's size by three levels in response to community concerns. BSA did not address traffic impacts in detail, noting that the Planning Commission had done so in its approval.

BSA: 56-45 Main Street (42-06-BZ) (Nov. 14, 2006); 139-24 Booth Memorial Avenue (41-06-BZ) (Nov. 14, 2006). CITYADMIN

BOARD OF STANDARDS & APPEALS

Variance

Corona, Queens

Odd lot shape and street frontage justified variance

Development site is former Queens cemetery. Queens developer, AMF Machine Corporation, applied to BSA to construct a 201,633-square-foot, 96-foot tall mixed-use building with 174 residential units in Corona, Queens. The proposed structure exceeded height limits by 46 feet and floor area limits by over 77,550 sq.ft. The development site, an oddly shaped, 14-sided, 62,041-square-foot lot, had street frontage along Corona Avenue and 90th Street, but a majority of the lot's area stretched behind existing homes. The rear of the lot faced a LIRR right-of-way.

In support of its variance, AMF argued that the additional height and floor area would compensate for the added construction costs caused by the irregular lot. AMF also claimed that proximity to the LIRR, and the long corridors required by the site's odd shape would significantly decrease the residential units' value.

Queens Community Board 4 and neighborhood residents opposed, complaining that the building would overwhelm the two-story buildings adjacent to the site and any development on the site would potentially disturb remains from a Colonial-era cemetery once located on the site.

At the first hearing, BSA advised the developer to reduce the project size. The developer reduced the project twice, finally submitting a design with a total floor area of 166,136 sq.ft. with 138 housing

units, a total building height of 92 feet, and a 42-foot height along Corona Avenue and 90th Street.

AMF also explained that it met with Landmarks and would complete an archaeological study during construction to address possible recovery of remains on the site.

BSA approved, emphasizing that due to the reduced height along the street frontages, the overall project would not negatively impact the area's character.

BSA: 90-15 Corona Avenue (47-05-BZ) (Nov. 14, 2006) (Cozen O'Connor, for AMF). **CITYADMIN**

BOARD OF STANDARDS & APPEALS

Special Permit

Chelsea, Manhattan

Special permit extended for Chelsea Piers gym

Sports Center received 10-year extension; filed house ruled as-of-right. In 1995, Chelsea Piers, L.P., owner and developer of Chelsea Piers at Piers 59-62 between West 17th and West 23rd Streets in Manhattan, received a special permit from BSA to operate a gym and sports facility on an 181,781-square-foot portion of Pier 60 that eventually became the Chelsea Piers Sports Center and Fieldhouse. The Sports Center contains an 115,960-square-foot health club with a pool and facilities for weightlifting, yoga, aerobics, boxing and pilates. The 65,821-square-foot Fieldhouse provides gymnastics, soccer, basketball, floor hockey, baseball and dance.

When the permit expired, Chelsea Piers requested a 10-year extension for the Sports Complex, but asked that the Fieldhouse be excluded from the permit since the space's use was now as-of-right. Since the Fieldhouse's use was uncertain during Chelsea Piers' development, the owner's original special permit included it. The owners ultimately decided to operate the Fieldhouse as-of-right under a

BSA PIPELINE

New Applications Filed with BSA – Nov. 2– Dec. 4, 2006

APPLICANT	PROJECT/ADDRESS	DESCRIPTION	APP. #	REPRESENTATIVE
VARIANCES				
Rusabo 386 LLC	372 Lafayette St., MN	Use	290-06-BZ	Kramer Levin
Three Partners	1976 Crotona Pkwy., BX	Legalize garage, parking lot	299-06-BZ	Cozen O'Connor
Cornerstone Res.	148 Fountain Ave., BK	Const. 2-family dwelling	301-06-BZ	Rothkrug Rothkrug
Mirr Yeshiva	1791 Ocean Pkwy., BK	Const. 2-story enlargement	302-06-BZ	Harold Weinberg
60 Lawrence LLC	50 Lawrence Ave., BK	Const. 6-story school	306-06-BZ	Sheldon Lobel, P.C.
White Star Lines	300 Columbia St., BK	Const. 3, 2-unit dwellings	311-06-BZ-313-06-BZ	Rothkrug Rothkrug
Veronica Nicastro	54-07 254th St., QN	Enlarge 1-family dwelling	293-06-BZ	Rothkrug Rothkrug
Khan Shah Nawaz	106-02 Astoria Blvd., QN	Const. 1-family dwelling	304-06-BZ	Rothkrug Rothkrug
John Massamillo	130 Montgomery Ave., SI	Rear yards, lot coverage	297-06-BZ	Glen V. Cutrona
SPECIAL PERMITS/OTHER ACTIONS				
Melody Silvers	2817 Avenue M, BK	Enlarge 1-family dwelling	309-06-BZ	Fredrick A. Becker
David Levitan	1458 E. 26th St., BK	Enlarge 1-family dwelling	308-06-BZ	Eric Palatnik, P.C.
6860 Austin Realty	68-60 Austin St., QN	Reduce parking spaces	291-06-BZ	Paul Bonfilio
John & Steven Inc.	31-11 Broadway, QN	Permit phys. cult. est. (gym)	294-06-BZ	Howard Goldman
Verrazano Apts.	1081 Tompkins Ave., SI	75-ft. radio tower/flagpole	303-06-BZ	Omnipoint Inc.
APPEALS				
67 Liberty Street	67 Liberty St., MN	14-story enlargement	310-06-A	Stadtmauer Bailkin
126 Newton St. LLC	128 Newton St., BK	Vested right to cont. development	292-06-A	Sheldon Lobel, P.C.
58th Ave. Mgmt.	86-18 58th Ave., QN	Appeal DOB decision	307-06-BZ	Alec Shtromandel
Breezy Pt. Co-op	9 Roosevelt Walk, QN	Enlarge dwell. not on mapped st.	305-06-A	Walter T. Gorman
Breezy Pt. Co-op	22 Graham Pl., QN	Enlarge dwell. not on mapped st.	295-06-A	Gary Lenhart
Breezy Pt. Co-op	37 Beach 222nd, QN	Enlarge dwell. not on mapped st.	296-06-A	Gary Lenhart
Tony Cheng	43-17 104th St., QN	Permit const. in mapped st.	300-06-A	Eric Palatnik, P.C.
John Massamillo	130 Montgomery Ave., QN	Const. mixed-use condo	298-06-A	Glen V. Cutrona

use definition allowing “gymnasiums used exclusively for basketball, handball, paddleball, racquetball, squash and tennis.”

After an October 31, 2006 hearing, BSA voted to extend the special permit for an additional 10 years and to exclude the Fieldhouse. BSA emphasized that the Department of Buildings, not BSA, was responsible for ensuring zoning compliance in areas of the complex not covered by the special permit.

Community Board 4 supported the special permit extension and amended plan.

BSA: Pier 60, 111B Eleventh Avenue (69-95-BZ) (Nov. 21, 2006). **CITYADMIN**

LANDMARKS PRESERVATION COMMISSION

Designation

Upper West Side, Manhattan

Landmarks designates one of two West Side stables

Failure to designate stable allows Related Companies' apartment project to be constructed on site. On November 14, 2006, Landmarks designated only the New York Cab Company Stable at 318 Amsterdam Avenue, but declined to landmark the Dakota Stables at 348 Amsterdam Avenue, now slated for demolition and replacement by the Related Companies with a Robert A.M. Stern-designed apartment complex. 3 *CityLand* 157 (Nov. 15, 2006).

Landmarks opened the voting with the New York Cab Company Stable, emphasizing the “intactness” of the 1890-built stable and its “exquisite” details, cornice, and rounded windows.

When the vote turned to the Dakota Stables, Landmarks Chair Robert B. Tierney explained that the actions of the owner, Sylgar Properties, had “preempted his ability to exercise judgment under the landmarks law.” Tierney explained that Sylgar planned to demolish the building and had recently obtained



Landmarks rejects the designation of the Dakota Stables, which now sits covered in scaffolding. Photos: LPC (left), Morgan Kunz (right).

valid permits to strip the building and reclad it in stucco. Landmarks Counsel Mark Silberman and the Commission’s research head Mary Beth Betts advised him that the resulting “stucco box” would not be recognizable, and the landmarks law and Charter provided no legal redress. Tierney said that he would “reluctantly follow” the advice and reject designation. In his comments, Tierney explained that he had numerous talks with the owner, architect and developer and remained hopeful that the new design would incorporate significant features of the 1894 Dakota Stables.

Commissioner Roberta Brandes Gratz strongly disagreed with Tierney’s position. Gratz claimed that Landmarks “was being tested” and advocated sending a signal that developers could no longer stop designation by obtaining permits to strip buildings under consideration. She listed Paterson Silk, P.S. 64, and the City and Suburban Homes as examples where owners destroyed building details to thwart designation. Proclaiming that the Dakota Stables had “visionary simplicity,” Gratz added that it was “not too far gone for designation” since at the time of the hearing Sylgar had not completely defaced it or buried it in stucco.

Commissioners Richard Olcott, Joan Gerner and Pablo Vengochea agreed with Tierney that if the owner retained the right after designation to alter the stable to a stucco box, they would be designating “a ghost,” as Olcott put it. Commissioner Christopher Moore chal-

lenged Landmarks to “draw a line in the sand,” commenting that “the developer did what he had to do; we should do what we can do.”

Several commissioners called for changes to the overall process to redress last minute attempts to deface buildings, with Vengochea suggesting that all buildings over 70 or 100 years be reviewed automatically. Tierney commented that such a process would require a multi-agency approach, and that Landmarks had been working with the Department of Buildings to develop a response to the concerns.

Landmarks denied designation of the Dakota Stables by a final 8 to 2 vote.

LPC: Mason Stables aka Dakota Stables, 348 Amsterdam Ave. (LP-2206) (Nov. 14, 2006); New York Cab Company Stable, 318 Amsterdam Ave. (LP-2209) (Nov. 14, 2006).

LANDMARKS PRESERVATION COMMISSION

Designation

Lenox Hill, Manhattan

Board of Estimate vote revisited 16 years later

Landmarks re-designates two City and Suburban Homes buildings carved out from 1990 designation. On November 21, 2006, Landmarks ended the controversial debate over the landmark status of the City and Suburban Homes Company’s First Avenue Estate in Lenox Hill by voting unanimously to amend its landmark status. In 1990, Landmarks

unanimously designated all 15 buildings in the First Avenue Estate, a development constructed between 1898 and 1915 over the entire block bounded by East 64th and East 65th Streets and York and First Avenues. In its last meeting before being dissolved, the Board of Estimate carved out two buildings from Landmarks designation: 429 East 64th Street and 430 East 65th Street.

The buildings' current owner, Stahl York Avenue Company, received permits from the Department of Buildings to remove cornices and parapets, enlarge window openings and stucco over the facades of the two buildings, spurring urgency to Landmarks' vote.

The City and Suburban Homes Company, a limited-dividend company funded by such luminaries as Cornelius Vanderbilt and Darius Ogden Mills, built the full city-block housing complex for working families as an alternative to the poorly ventilated tenements of the day. Built to middle-class standards with increased light and air, courtyards and aesthetic features like marble banisters, City and Suburban Homes intended the project to occupy "a middle ground between pure philanthropy and pure business." Shareholders voluntarily limited their dividends to five percent. The First Avenue Estate, designed primarily by James Ware and Philip H. Ohm, was one of the largest, pre-World War II high-density projects

in the country, and a keystone in the history of the American social housing movement.

At the November 14th Landmarks hearing, preservationists, residents and elected officials argued that a vote to re-designate the buildings would "right a wrong," pointing out that all the evidence needed for designation was present in the original designation report. Several speakers stressed that the Board of Estimate vote was "disgraceful."

Friends of the Upper East Side Historic Districts representative Seri Worden argued that even if the owner stripped the buildings of all their ornament and covered their exterior with stucco, the site's historic and social significance would remain. Moving testimony came from a neighborhood resident who grew up in a cold-water tenement and called the First Avenue Estate a "monument to what is good and decent about this city."

Carol Gilder of the Real Estate Board of New York opposed designation, claiming that, while REBNY rarely opposed designation, "it simply does not meet the standard."

Paul Selver, of the law firm Kramer Levin, represented the owners at the hearing. Selver argued that the two buildings did not meet the landmarks law standard for designation, which requires that a building be "special." This requirement represented a higher standard than "significant," according to

Selver, and Landmarks could not fulfill it by mere "lip service." Pointing out that the definition of special meant "singular," Selver argued that the buildings were not the best or only examples of well-designed affordable housing in the city. Selver read from a City and Suburban Homes brochure, which stated that the company believed housing should incorporate the "best standards at the time."

The Commission voted unanimously to designate. Landmarks emphasized in its designation report that the "similarities of size and scale between the various buildings on the block creates a strong sense of visual homogeneity" and that the First Avenue Estate "can be seen as an important achievement in the social housing movement."

.....
LPC: City and Suburban Homes Company First Avenue Estate, 429 E. 64th Street and 430 E. 65th Street (LP-1692) (Nov. 21, 2006).

LANDMARKS PRESERVATION COMMISSION

Hearing
Far West Village, Manhattan

Testimony taken on three West Village buildings

Wide support voiced for landmarking of three 19th century Far West Village buildings. On November 14, 2006, Landmarks held hearings on the possible designations of 159 Charles Street, the Keller Hotel, and the Edwin B. Brooks House, all located in the Far West Village.

The merchant Henry Wyckoff built the Greek Revival row house at 159 Charles Street in 1838 on the site of the former Newgate Prison. Wyckoff built eight houses in the area, but only 159 Charles Street remains. The building was later used to house workers from the nearby Beadleston & Woerz brewery. Donald Olsen, a shareholder in the co-op that owns 159 Charles

LANDMARKS PIPELINE

Proposed Designations – Oct. – Nov. 2006

NAME	ADDRESS	ACTION	DATE
70 Lefferts Place	70 Lefferts Pl., BK	Calendared	10/31/2006
63 Nassau Street	63 Nassau St., MN	Heard	11/14/2006
Keller Hotel	150 Barrow St., MN	Heard	11/14/2006
159 Charles Street	159 Charles St., MN	Heard	11/14/2006
Edwin Brooks House	354 W. 11th St., MN	Heard	11/14/2006
City & Suburban Homes	429 E. 64th St., MN	Heard; Designated	11/14/2006; 11/21/2006
Mason/Dakota Stables	348 Amsterdam Ave., MN	Declined	11/14/2006
NY Cab Co. Stables	318 Amsterdam Ave., MN	Designated	11/14/2006
Laboratory Admin. Bldg.	1000 Washington, BK	Heard	11/14/2006

Street, enthusiastically supported designation, asking only that the building's garage be carved out of the designation. Olsen told Landmarks that he lived through the neighborhood's destruction and development, and that 159 Charles was "the last building standing."

Hilda Regier, from the Metropolitan Chapter of the Victorian Society in America, urged designation, stating that the "history of the house reflects the history of the neighborhood: from an upper class family to dock workers and sailors to brewery workers."

The Keller Hotel, at 150 Barrow Street, received similar commendations from Far West Village residents and preservationists. The hotel was built in 1898 by Julius Munckwitz, who designed several other buildings in the Greenwich Village Historic District Extension. The hotel, originally called the Renaissance Revival Hotel, served sailors when the Far West Village was a bustling maritime center. It remains one of few waterfront hotels left in the city. Ed Kirkland of the Historic Districts Council testified that the hotel was designed to be visible to sailors and ferry riders coming into the city and was intended to "elevate and redeem seamen above fleabag hotels and brothels." Elijah Bender, the ten-year-old great grandson of William Gottlieb, the owner who passed away in 1999, testified that he "wholeheartedly" supported designation "on behalf of his great grandfather."

In contrast, the current owner of the Edwin B. Brooks House at 354 West 11th Street, Susan Selkirk, vehemently opposed designation. Selkirk testified that she had purchased the building as an investment when it was "a boarded-up ruin" and "the only neighbors were garbage companies, and the only

people on the streets were prostitutes." While Selkirk was "delighted the City noticed the restoration," she called landmarking "comparable to taking by eminent domain." Selkirk argued that it was unfair that a consequence of her work was the denial of investment potential. Preservationists countered that the Greek revival style house, built in the early 1840s, maintained a well-preserved entrance, a notable cornice and Tuscan pilasters.

Landmarks closed the hearing without comments from commissioners.

.....
 LPC: 159 Charles Street House, 159 Charles Street (LP-2211) (Nov. 14, 2006); LPC: Keller Hotel, 150 Barrow Street (LP-2212) (Nov. 14, 2006); LPC: Edwin L. B. Brooks House, 354 W. 11th Street (LP-2210) (Nov. 14, 2006).

LANDMARKS PRESERVATION COMMISSION

Designation Hearing
 Lower Manhattan

Hearing held on 1860 cast-iron building

Owner opposed, claiming that building was a "knock off" of famous cast-iron pioneer. Landmarks held a public hearing on the proposed designation of 63 Nassau Street, a cast-iron building in lower Manhattan that Landmarks' research staff attributed to the pioneer of cast-iron construction, James Bogardis. The building, thought to be constructed in 1860, contains carved medallions of George Washington and Benjamin Franklin that are similar to those on the Bogardis building at 85 Leonard Street, a designated landmark. The staff emphasized that Margot Gayle, credited with saving SoHo's cast-iron architecture due to her tireless advocacy for the buildings' preservation, attributed the building to Bogardis in her book on his work and cast-iron construction.

The owner's attorney, Robert A.



Cast-iron building at 63 Nassau Street considered for designation. Photo: LPC.

Shankill, in opposition, speculated that the building was a "knock off" of a Bogardis building and not his original work. Comparing it to buying a fake Gucci bag on the streets of lower Manhattan, Shankill pointed out that the building had sat on Landmarks' consideration list for over 40 years, "so obviously, you thought that it was not number one." Shankill described its top floors as vacant and unsafe.

Margot Gayle appeared at the hearing to underscore the importance of the designation. Gayle's comments focused on her research on Bogardis buildings in New York and Philadelphia. Several other preservationists appeared in support of the designation; all echoed that Gayle's stamp of authenticity should "not be taken lightly." Fran Eberhart emphasized that the building was very rare since few cast-iron buildings remained in Manhattan's financial district.

Landmarks Chair Robert B. Tierney closed the public comments, noting that Landmarks was honored by Gayle's attendance.

.....
 LPC: 63 Nassau Street Building, 63 Nassau Street (LP-2213) (Nov. 14, 2006).

Please note that there is no January issue of *Cityland*. The next issue will be the February 15, 2007 issue.
Happy Holidays.

Landmarks Actions Taken In Oct. – Dec.

FINAL PERMITS TO BE ISSUED AFTER LANDMARKS RECEIVES CONFORMING PLANS

ADDRESS	LANDMARK/HISTORIC DISTRICT	DESCRIPTION	CASE	APP'D
October 31, 2006				
460 Brielle Ave., SI	NYC Farm Colony	Alt. window, door openings	07-1803	Yes
66 Reade St., MN	Tribeca South HD	Const. rooftop add., storefront	05-7795	In Part
300 Canal St., MN	Tribeca East HD	Install storefront	05-6378	Yes
50 Mercer St., MN	SoHo-Cast Iron HD	Enlarge bulkhead, chimney	06-8666	Yes
120 Wooster St., MN	SoHo-Cast Iron HD	Issue report to CPC (use)	05-8455	Yes
28 Grove St., MN	Greenwich Village HD	Const. rear yard addition	07-1923	Yes
36 Gansevoort St., MN	Gansevoort Market HD	Inst. rooftop garden	07-0629	Yes
119 W. 87th St., MN	Upper West Side/CPW HD	Const. roof, rear adds.	07-0224	W/Mod
189 Lenox Ave., MN	Mt. Morris Park HD	Install storefront	07-0662	Yes
46 Henry St., BK	Brooklyn Heights HD	Install infill	07-2330	Yes
20 Henry St., BK	Brooklyn Heights HD	Const. 9-story building	05-5155	Yes
28-02 Marinette, QN	Douglaston HD	Legalize facade alterations	06-7380	No
November 14, 2006				
401 Fifth Ave., MN	Tiffany & Co. Building	Amend dev. rights transfer	07-1521	Yes
91 Chambers St., MN	Tribeca South HD	Demo bldg., const. 8-story bldg; issue report to CPC	07-1480; 07-1501	Yes
309 Canal St., MN	SoHo-Cast Iron HD	Remove iron grilles	07-3339	Yes
125 Fifth Ave., MN	Ladies' Mile HD	Replace windows	07-2414	Yes
54 State St., BK	Brooklyn Heights HD	Alt. facades, const. bulkhead	07-2366	Yes
116 Montague St., BK	Brooklyn Heights HD	Const. 3-story addition	06-6568	Yes
246 Dean St., BK	Boerum Hill HD	Const. 4-story bldg.	06-5161	Yes
November 21, 2006				
140 Nassau St., MN	The Morse Building	Install infill, signage	07-2608	W/Mod
241 W. 14th St., MN	Norwood House	Install access lift, rear add.	07-1599	W/Mod
1 Madison Ave., MN	Met Life Ins. Co. Tower	Replace windows, entrance	07-2464	Yes
1260 Broadway, MN	Hotel Martinique	Mod. storefront, leg. signage	06-4134	W/Mod
503 Fulton St., BK	Offerman Building	Alt. facade, inst. infill, signage	07-1866	Yes
40 Walker St., MN	Tribeca East HD	Install infill	07-2904	W/D
447 Clinton Ave., BK	Clinton Hill HD	Const. add., exc. rear yard	07-2469	W/Mod
473 Clinton Ave., BK	Clinton Hill HD	Modify illegal roof addition	06-8774	No
207 DeKalb Ave., BK	Fort Greene HD	Legalize garage doors	07-2209	W/Mod
230 Carlton Ave., BK	Fort Greene HD	Const. rear yard addition	07-1037	Yes
132 Pacific St., BK	Cobble Hill HD	Enlarge window openings	06-7252	W/D
325 Grosvenor St., QN	Douglaston HD	Legalize work, repl. garage	07-3062	In Part
331 Grosvenor St., QN	Douglaston HD	Replace garage	07-0675	Yes
November 28, 2006				
No hearing				
December 5, 2006				
55 Wall St., MN	Nat'l City Bank Bldg.	Install canopy, sign	06-8810	Yes
111 South St., MN	South St. Seaport HD	Remove canopy, inst. infill	07-1631	Yes
164 Duane St., MN	Tribeca West HD	Alt. steps, inst. ramp	06-7034	Yes
414 Washington, MN	Tribeca North HD	Const. new building	07-2962	Yes
623 Broadway, MN	NoHo HD	Inst. infill, create entrance	06-6578	Yes
3 Sheridan Sq., MN	Greenwich Village HD	Mod. terrace enclosures	07-1916	Yes
343 W. 20th St., MN	Chelsea HD	Alt. facade, const. adds.	06-5169	Yes
12 E. 63rd St., MN	Upper East Side HD	Alt. facade, const. adds.	06-2974	W/Mod
162 Hoyt St., BK	Boerum Hill HD	Const. rear yard addition	06-4033	W/Mod
73 Gold St., BK	Vinegar Hill HD	Const. rooftop bulkhead	07-2022	Yes
249 Ridge Rd., QN	Douglaston HD	Legalize security gate	07-1789	Yes

LANDMARKS PRESERVATION COMMISSION

Certificate of Appropriateness Woodrow, Staten Island

Cell-phone antennas approved for church spire

Telecommunications equipment will not be visible from street. Landmarks issued the final permit to allow the construction of six telecommunication antennas within the steeple of the Woodrow United Methodist Church, an individual landmark in Staten Island. The work required removal of wood framing, clapboards, and vinyl siding from the spire and construction of an equipment cabinet in the rear of the site with conduits running from the rear cabinet to the church spire antennas. Landmarks approved the application, emphasizing that the antennas would not be visible from any public street.

LPC: 1075 Woodrow Road (COFA# 07-2222) (Oct. 19, 2006). **CITYADMIN**

COURT DECISIONS

DEC Tribeca, Manhattan

DeNiro hotel fails to qualify for brownfield tax credits

Developers sought brownfield credits, but had excavated and remediated site before DEC denied claim. 377 Greenwich LLC, developers of a seven-story luxury hotel and restaurant at Greenwich and North Moore Streets, conducted soil tests on the site and discovered two 550-gallon unregistered underground storage tanks. The developers applied in 2004 to the state Department of Environmental Conservation to have the site recognized as a brownfield under a newly enacted brownfield law that offered substantial tax credits. At the time of its application, the developers, with principals Robert DeNiro, Ira Druckier and



Construction of DeNiro's luxury hotel at 377 Greenwich Street nears completion. Photo: Morgan Kunz.

Richard Born, held an approved remediation plan from DEC that addressed findings from the tests.

Under the brownfield law, if DEC determines that the site is a brownfield, it prepares a remediation plan with community comment. With DEC's investigation pending, the developers at 377 Greenwich excavated and remediated the site. The developers then submitted new soil tests showing that the contamination covered 50 percent of the site and cost \$1 million to remediate.

In 2005, DEC denied the developers' application, finding that the low levels of contamination did not complicate development of the site. The developers filed an article 78 petition, but Justice Judith J. Gische upheld DEC's determination.

The court noted that the legislature rejected a draft that would have allowed all contaminated sites to be recognized as brownfields and instead chose to limit the law to those sites where the contamination complicated development. Since the developers had already received financing for the luxury hotel's construction, the court found it rational for DEC to conclude that the hotel would have been constructed regardless of the contamination and the developer did not need tax credits as an incentive to remediate the site. Justice Gische agreed with DEC that the developers eliminated the reason for the analysis under the brownfield law by remediating the site. The court noted that tax credits

could only be obtained by completing all the steps required by the law, including a remediation plan with community involvement, and could not be applied retroactively.

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377 Greenwich LLC v. State DEC, 2006 NY Slip Op. 26453, Nov. 15, 2006 (N.Y.Cty.Sup.Ct.) (Gische, J.).

CITYLAND Comment: While the brownfield application was pending, the developers received Landmarks approval of the project design, 1 *CityLand* 46 (Dec. 2004), and a variance approval from BSA permitting the development to exceed floor area, wall height and setback restrictions. 2 *CityLand* 120 (Sept. 15, 2005). Construction of the hotel is nearly complete.

COURT DECISIONS

City of New York
Williamsburg, Brooklyn

City foils TransGas's condemnation of park site

Court rules TransGas Energy's condemnation is premature. TransGas Energy Systems proposed to construct a power plant along the East River waterfront in Williamsburg. It spent \$1.5 million in March 2001 on an option to purchase the site, and, in 2002, filed for approval from the state Siting Board.

At Siting Board hearings, the City opposed the plan, testifying that it planned to rezone the entire Williamsburg neighborhood and create a waterfront park. In 2004, the Siting Board denied the proposal and TransGas immediately filed a new application proposing to move the plant below ground to allow park space above. Thereafter in May 2005, while TransGas's second proposal waited for a decision, the City rezoned north Brooklyn, which included Planning Commission approval of plans to acquire the site for a waterfront park.

TransGas then initiated steps to condemn the property by publishing notices and holding a hear-

ing. Days later, the City filed a court action to condemn the site. TransGas then issued findings required to condemn the property and also filed a court action for condemnation. Each party challenged the others' condemnation.

In May 2006, the court ruled in favor of TransGas, finding that the City's condemnation circumvented the Siting Board's authority, but stayed the City's condemnation until the Siting Board ruled. 3 *CityLand* 63 (May 15, 2006).

In November 2006, the City won its challenge to TransGas's condemnation when the Second Department ruled that TransGas lacked authority to file the condemnation action under the eminent domain law. The eminent domain law allows parties with approval by the Siting Board to skip the hearing and findings requirements and file directly in court to condemn the property. Accordingly, the Siting Board controlled the matter and TransGas could not hold its own hearing and issue its own findings. The court voided TransGas's findings and its condemnation action, ruling that it must wait for the Siting Board's decision.

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City of New York v. TransGas Energy Services Corp., 2006 NY Slip Op 8123, Nov. 8, 2006, (2nd Dep't) (Michael A. Cardozo, Lisa Bova-Hiatt, William Plache, Fred Kolikoff, for NYC; Sam M. Laniado, Steven D. Wilson, for TransGas).

CITYLAND Comment: By virtue of the two decisions, the action returns to the Siting Board and TransGas's siting application. Until the Siting Board rules, the matter remains undecided.

COURT DECISIONS

National Park Service
West Concourse, Bronx

Federal court rejects challenge to Yankee Stadium

Bronx locals' second attempt to halt Yankee Stadium claimed bias and

ineptitude on the part of the National Parks Service. As part of the needed approvals for the Yankee Stadium development, the National Park Service approved the plan to privatize a 10.67-acre portion of the Macomb's Dam Park and replace the lost park space with 16.44 acres on three separate parcels, including the old Yankee Stadium site, to be developed with baseball and softball fields, a track, walkways and benches. Because of a 1979 federal park construction grant, the plan required NPS approval. When completed, the Yankee Stadium project would utilize 22.42 acres of existing parkland and create 24.56 acres of replacement park space. The 10.67-acre portion, protected by the federal Land and Water Conservation Fund Act, contained a running track, softball field, and two baseball fields, built with \$312,914 of federal funding.

Local watchdog group, Save Our Parks, challenged the NPS approval under federal law after it failed to halt the Yankee Stadium development through a challenge to the City's approval. 3 *CityLand* 128 (Sept. 15, 2006). According to Save Our Parks, NPS' decision was arbitrary and capricious since it failed to act independently, unduly relied on state and local project assessments, failed to explore reasonable alternatives, and expressed bias in favor of stadium development. Save Our Parks also claimed that the replacement parkland was not of equivalent value, usefulness or location to the old parkland, as required by federal law. As part of its claim of bias, Save Our Parks pointed out that NPS became involved in the project's environmental review over a year before it received the application to privatize the park space, and NPS staff sent an email to the City noting that it would ensure it met its needs without "preventing the proposed project from being developed."

Southern District Court Judge Naomi Reice Buchwald denied Save Our Parks' challenge, finding that

the law encourages the federal government to streamline its review by coordinating with state and local government, NPS looked at alternatives and the planned replacement parks only had to equal the value of the federal government's initial investment of \$312,914.

Judge Buchwald detailed the extensive public and environmental reviews the Yankee Stadium project endured under ULURP and City, state and federal environmental review laws, noting that Save Our Parks was afforded nine public hearings and that the final plan reflected significant public comment. Judge Buchwald also gave an extensive description of the final project plan, noting that it offered an increase in park space located

relatively close to the old parks and improved the park facilities.

Save Our Parks v. Kempthorne, U.S. Dist. 2006 WL 3378703, Nov. 15, 2006 (S.D.N.Y.) (Reice, J.).

COURT DECISIONS

EDC

Hunts Point, Bronx

EDC lease of Hunts Point Space to Baldor approved

Competitor challenged procedures in EDC's selection of Baldor for South Bronx lease. The New York City Economic Development Corporation issued a request for proposals for a long-term lease of two parcels across the street from the

CITY PLANNING PIPELINE

New Applications Filed with DCP - Nov. 1 - Dec. 8, 2006

APPLICANT	PROJECT/ADDRESS	DESCRIPTION	ULURP #	REPRESENTATIVE
ZONING TEXT AND MAP AMENDMENTS				
W&S Bdway Group	4640, 4648 Broadway, MN	Rezone (R7-2 to C1-2/R7-2)	070221ZMM	Slater & Beckerman
Century 21	416-450 87th St., BK	Rezone (C8-2 to C4-2A); Special permit (269-space parking)	070203ZMK; 070204ZSK	Greenberg Traurig
Mark Solow	135-01, Northern Blvd., QN	Rezone (M1-1 to R6/C2-2)	070210ZMQ	Joseph Morsellino
Tserpes Holding Inc.	N. Conduit & 135th, QN	Rezone (R3-2 to C4-2)	070194ZMQ	Vincent Petraro
SPECIAL PERMITS/OTHER ACTIONS				
Dynamic	283 W. Broadway, MN	Cert. 2nd floor for res. use	070201ZCM	Greenberg Traurig
2 Gold LLC	2 Gold St., MN	Cert. to expand plaza	070222ZCM	Bryan Cave LLP
DEP/DCAS	257 South St., MN	Site acquisition for water tunnel	070212PCM	DEP/DCAS
145 Hudson Assoc.	145 Hudson St., MN	Spec. permit (restrictive declaration); Spec. permit (convert fls. 7-10 to res.)	990488DZSM; 070223ZSM	Friedman & Gotbaum
Gala House LLC	200 11th Ave., MN	Spec. permit (15-space park. garage)	070211ZSM	Herrick Feinstein
Kibal Companies	300 E. 34th St., MN	Cert. for transit easement; Rest. Dec. (residential building)	070205ZCM; 990544BZSM	Kramer Levin
River Place Holdings	600 W. 42nd St., MN	Rest. Dec. (2 mixed-use buildings)	880753DZMM	Kramer Levin
Extell W45th St. LLC	Hirschfeld Theater	Cert. for air rights transfer	070196ZCM	Kramer Levin
Extell W57th St. LLC	161-171 W. 57th St., MN	Cert. to move subway stairs	070202ZCM	Kramer Levin
LPC	429 E.64th & 430 E.65th, MN	Landmark (City Suburban Homes)	070224HKM	LPC
LPC	318-320 Amsterdam Ave., MN	Landmark (New York Cab Co. Stables)	070217HKM	LPC
SBS	Court, Joralemon, Atlantic, BK	Business Improvement District	070214BDK	SBS
HPD	16-26 Moffat St., BK	UDAAP (senior housing)	070209HAK	HPD
LPC	1375 Dean St., BK	Landmark (Elkins House)	070197HKK	LPC
SSJ Development	2433 Knapp St., BK	Cert. for res. bldg.	070195ZCK	Sheldon Lobel
Sullivan Mountain	152nd St., QN	Special permit (day care facility)	070213ZSQ	Joseph Morsellino
CCA/DCAS	33-00 Northern Blvd., QN	Materials for the Arts expansion	070215PCQ	CCA/DCAS

City Terminal Market at Hunts Point in the Bronx. Baldor Specialty Foods and the Hunts Point Terminal Produce Cooperative Association, among others, submitted proposals. EDC chose Baldor after deciding that it had submitted the most competitive lease package. Baldor, which offered the most rent money, would invest between \$5 to \$7 million in infrastructure improvements, would retain 510 employees and add another 450 within three years, and offered to sell or lease its existing facility to displaced Bronx Terminal Market wholesalers. In contrast, the Cooperative offered to combine the premises with the existing Terminal Market. This proposal would require significant reconfiguration and cost \$400 million, which the Cooperative proposed should be financed by City, state and federal monies.

After EDC announced its decision to award the lease to Baldor, the Hunts Point Cooperative filed an article 78 petition, claiming that EDC conducted a sham bidding process, that its proposal was more beneficial than Baldor's, that the RFP's seven-day response period, instead of the usual 60-day period, showed the decision was predetermined, and that Baldor, the City and EDC had entered into a side agreement to quell the controversy over the displaced Bronx Terminal Market wholesalers.

The lower court annulled EDC's designation of Baldor, ruling that its determination was arbitrary and unfair, and enjoined EDC from entering into a lease of the premises until it implemented a new procedure for awarding the lease.

On appeal, the First Department reversed, lifted the injunction and reinstated EDC's determination. The court found that the Cooperative did not have standing to challenge EDC's award to Baldor. The Cooperative's claim that there was no competitive bidding did not establish standing because EDC was not required by law to conduct any competitive bidding process for

ULURP PIPELINE				
New Applications Certified into ULURP				
PROJECT	DESCRIPTION	COMM. BD.	ULURP NO.	CERTIFIED
269 Henry Street	Disposition of property	MN 3	070132PPM	11/13/2006
555 W. 59th St.	Special permit (190-space garage)	MN 7	060381ZSM	11/13/2006
Friendly Hands Apts.	UDAAP (7-story res. bldg.)	MN 11	070151HAM	11/13/2006
120 E. 125th St.	Disposition of property	MN 11	070133PPM	11/13/2006
136 Wythe Ave.	Disposition of property	BK 1	070135PPK	11/13/2006
299 DeGraw St.	Disposition of property	BK 6	070134PPK	11/13/2006
Junction Boulevard	Zoning map amendment	QN 4	050037ZMQ	11/13/2006
58-03 Rockaway Blvd.	Disposition of property	QN 14	070136PPQ	11/13/2006
Westchester Day Care	Acquisition of property	BX 11	060561PQK	12/4/2006
Moffat Gardens	UDAAP (72 housing units)	BK 4	070209HAK	12/4/2006

Hunts Point. In addition, the court found that a competitive injury alone did not confer standing to challenge an administrative determination. Finally, the court found that the Cooperative could not establish actual injury because it would not have prevailed as the successful responder to the RFP. Even if the Cooperative had standing, the court found that there was ample evidence of Baldor's superior proposal submission to support EDC's determination.

The appellate court noted in a footnote that the question of whether EDC was subject to an article 78 proceeding, remained undressed by the courts. The record in this case, the court reasoned, was insufficient to determine if the EDC was an "agency" for article 78 purposes.

Hunts Point Term. Produce Coop. Assn. v. EDC, 2006 NY Slip Op 08073, Nov. 9, 2006 (1st Dep't).

COURT DECISIONS

Planning Commission
West Brighton, Staten Island

City's condemnation of SI park to proceed

Three brothers owning land in Staten Island challenged use of ULURP to exempt City from condemnation procedures. In 2002, the Planning Commission approved an applica-

tion by the Department of Parks and Recreation to add 14.5 acres to the Skyline Playground, a neighborhood park in Staten Island. Six of the 14.5 acres belonged to the Putter brothers, who planned to develop the site and had a pending application with City Planning for 50 affordable townhouses.

The Putters sued in 2002, but dropped the suit when the City informed them that the map amendment would not impede their development plans. The brothers proceeded until 2004 when City Planning told the Putters that an application to down-zone large parts of Staten Island, including their six acres, could gain City approval before the Putters' application.

The Putters sued again, requesting that the court force the City to vote on their application. They claimed that City Planning purposely delayed their application while Staten Island's down-zoning initiative worked its way through the land use process. Less than a month after the Putters' suit, the City filed the required court proceeding to condemn the Putters' six acres.

A lower court ordered the Planning Commission to vote on the brothers' plan, but the court overturned the order after the City appealed. 3 *CityLand* 49 (April 15, 2006).

With the case pending, a court stayed the City's condemnation. When the condemnation proceed-

ing recommenced, the Putters claimed that the City's ULURP process in this case was insufficient to replace the hearing required under eminent domain law. The Putters claimed that the notices for the Parks map amendment referred to acquisition of private property, but did not specify acquisition through eminent domain. The City was not, as a result, acting as a condemnor when it conducted the ULURP hearings.

Justice Abraham Geroges granted the City's condemnation petition, ruling that the City's procedures satisfied the requirements of the eminent domain law. The City had considered and submitted to the Planning Commission the factors set out in the eminent domain law; the City clearly stated that its application pertained to the demapping of streets, the creation of the park, and acquisition or disposition of property related to that purpose. In addition, the court found that the Charter envisioned that property taken by eminent domain could be reviewed in accordance with ULURP. Finally, the court ruled that the Putters' claims concerning the propriety of the ULURP process should have been raised in an article 78 proceeding. If the Putters were allowed to bring claims relating to ULURP during the City's condemnation proceeding, the exemption provision of the eminent domain law would have no practical value.

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Jones Woods Park Addition to the Skyline Playground, 2006 NY Slip Op 26433, Oct. 25, 2006 (Kings Cty.Sup.Ct.) (Geroges, J.).

COURT DECISIONS

Empire State Dev. Corp.
 Fulton Ferry, Brooklyn

Plan for Brooklyn Bridge Park withstands challenge

Citizens group challenged inclusion of private residential development. In 2002, Mayor Bloomberg and



Rendering of the planned 85-acre Brooklyn Bridge Park.
 Image courtesy of Michael Van Valkenburgh Associates.

Governor Pataki created the Brooklyn Bridge Park Development Corporation as a subsidiary of the Empire State Development Corporation and charged it with the responsibility to design and build a proposed park on Port Authority land along Brooklyn's East River waterfront. The 2002 agreement required that no less than 80 percent of the acreage be park space, all revenue generated from commercial uses would be exclusively used for park maintenance and the final development plan would be guided by a master plan created for the area in 2000.

The newly-created Park Development Corporation adopted a general project plan for an 85-acre parcel in July 2005, proposing 77 acres of park space and eight acres of revenue generating space, including residential buildings, private parking, hotels and retail/restaurant space.

A not-for-profit citizens group, the Brooklyn Bridge Park Legal Defense Fund, filed an article 78 petition, challenging the plan approval as arbitrary and capricious. The Defense Fund claimed the plan violated the public trust doctrine since it called for private use of public park land. It also alleged that residential development violated the 2002 agreement between the mayor and governor

and the master plan of 2000 since neither called for residential uses and, in fact, the master plan specifically discouraged it. The Defense Fund claimed that no document required the park to be economically self-sufficient.

The state and the City responded that the governor and mayor always intended the park to be economically self-sufficient. Estimating a \$15.2 million operations and maintenance budget, the state and City claimed that self-sufficiency required high-revenue generating uses that occupied small footprints, such as residential or hotel uses. Financial projections indicated that restaurants and snack bars alone would not generate sufficient revenues, and that high-traffic uses would be incompatible with the park use. The state and City pointed to other parts of the final plan that differed from the 2000 master plan, such as a swimming pool that it later found to be infeasible, arguing that the 2000 plan was only a guide.

Justice Laurence Knipel dismissed the case, finding that the plan did not violate the public trust doctrine since the site was not designated parkland and would become parkland only after it was developed and transferred to the state. After first noting that the Defense Fund had no standing to

enforce an agreement between the mayor and governor, the court found that the agreement was not violated since it called for a “sustainable” park with revenues used towards park operations. The court relied on affidavits submitted by the City and state, concluding that it was a political decision whether the

park should be self-sustaining or funded by taxes.

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Brooklyn Bridge Park Legal Defense Fund v. NYC Urban Development Corp., 2006 NY Slip Op. 26466, Nov. 27, 2006 (Kings Cty. Sup. Ct.) (Knipel, J.) (Robert Chira & Associates, for Defense Fund; David Paget, for Empire State Dev. Corp.; Michael A. Cardozo, Carrie Noteboom, for NYC).

CITYLAND Comment: In February 2006, the Brooklyn Bridge Park Development Corporation received approval from Landmarks to demolish the Purchase Building warehouse, which stood on the project site within the Fulton Ferry Historic District. 3 *CityLand* 2 (March 15, 2006).

CITYLAND PROFILES

David Paget talks about over 20 years of environmental law in New York City

Since 1975, when New York State enacted the requirement that government agencies study the potential significant environmental impacts of land use projects, environmental studies have evolved from 20-page documents prepared by City employees into several thousand-page documents written by experts at a cost of millions. Attorney David Paget, who for more than 20 years has advised clients like the Empire State Development Corporation and Related Companies on environmental review compliance, talked to *CityLand* about his experience with the mounting complexities of the review process through his work on projects like Hudson Yards, Hunts Point Terminal Market, Brooklyn’s Atlantic Yards and Yankee Stadium.

A Fortunate Accident. Paget grew up in the Lillian Wald housing project located on East 4th Street and Avenue D. When he started at City College, he became the first member of his family to gain a higher education. After City College and New York University Law School, Paget went to Kaye Scholer and then the U.S. Attorney’s Office for the Southern District. In 1973, he joined David Sive, a pioneering environmental lawyer, to relieve Sive of his commercial litigation caseload. Gradually, he started working on environmental analyses of development projects. The Jacob K. Javits Convention Center, Paget’s first major project, came at a time when the City was emerging from an economic crisis and, for Paget, it led to over 20 years of work on the city’s major development projects. He fell into the career “utterly by accident,” noting ironically that grow-

ing up in City public housing gave him no concept of the development occurring around him.

The Main Event. Paget sees environmental impact statements as “the focal point of all major projects.” Litigation has led to the longer and more complex impact statements. He mentioned that Hudson Yards’ FEIS finished at over 8,000 pages and cost \$16 million. Although Paget sees Hudson Yards as an exception and estimates the average FEIS cost at \$600,000 to one million, he says that the exceeding complexity of environmental studies have made the environmental review process the crucible of everyone’s concern and the avenue where opposition is played out. It trumps the ULURP process and is now the dominant factor. Paget sees this as consistent with the intent of the environmental review law. But requiring a response to each comment raised creates enormous tension over what is truly due rigorous analysis and what must be responded to under the law. The threat of litigation forces the outcome: it is better to have addressed the issue in the administrative record than to have summarily dismissed it.

Paget rejects suggestions for legislating a limit on the length of documents, saying it would never work in the current litigation system. A preferable approach would be to limit court challenges to relevant issues. It is common now for a project opponent to complain about every error or omission, “no matter how ill-founded.” He thinks this is done to slow the process, but by the same token it forces developers to produce longer and

more arcane impact statements, which in turn leads to frustration on both sides.

Utility Despite Frustration. “Frustration inheres in the exercise,” Paget explains. Developers are frustrated because they need to spend millions on EIS consulting firms and legal fees. Project opponents are frustrated because, it is hard to comment on complicated EISs, “especially for people that don’t have access to experts.” Nevertheless, Paget believes the process works. It gives full expression to competing views and results in project changes. Paget says that no project is “fixed and immutable” and cites the recent federal decision on Yankee Stadium as support. The decision specifically noted that the project changed in response to community views raised throughout the EIS process.

Ultimately Political. Paget says that his practice requires much more than a detailed understanding of the law. He sees the work as “ultimately political.” To be successful he must be sensitive to community interests, compromises, and points of vulnerability. “It is critical to think about the public relations aspect of a project,” Paget says. If the community does not support a project, it can die before it ever gets off the ground. He says that there is no alternative but to attend every public meeting on your client’s project, stressing that “you need to see and hear who is commenting, and what they have to say.” He added that when you go through the process in a robust way, it is rare that the final decision will be disrupted.

— Morgan Kunz/Molly Brennan

*New Decisions Added to CITYADMIN www.citylaw.org – Nov. – Dec. 2006**

CITY COUNCIL				
RES. NOS.	PROJECT	DESCRIPTION	DATE	
616	513 W. 157th St., MN	UDAAP by HPD (1 lot)	11/15/2006	
617	Cornerstone Round 3, Site 4, MN	UDAAP by HPD (22 units)	11/15/2006	
618	511 Van Siclen Ave., BK	UDAAP by HPD (1 lot)	11/15/2006	
† 619,620	Princes Bay Rezoning, SI	Zoning map & text amendments	11/15/2006	
621	Elmhurst Rezoning, QN	Rezoning (mixed-use development)	11/15/2006	
631	2193 Bergen St., BK	UDAAP by HPD (3 lots)	11/29/2006	
632	43-5 Bradhurst Ave., MN	UDAAP by HPD (3 lots)	11/29/2006	
633	187 Edgecombe Ave., MN	UDAAP by HPD (4 lots)	11/29/2006	
634	105 Hamilton Pl., MN	UDAAP by HPD (2 lots)	11/29/2006	
635	533 W. 147th St., MN	UDAAP by HPD (3 lots)	11/29/2006	
636	145-05 178th Pl., QN	UDAAP by HPD (1 lot)	11/29/2006	
637	505 W. 43rd St. Hotel, MN	Special permit for platform in floor area	11/29/2006	
638	11-03 Irving Ave., QN	UDAAP by HPD (1 lot)	11/29/2006	
639	498 E. 165th St., BX	UDAAP by HPD (8-story mixed-use bldg.)	11/29/2006	
640	Seaview Hospital, SI	Lease for women's treatment center	11/29/2006	
641	48 E. 12th St., MN	Withdrawal of sidewalk cafe appl.	11/29/2006	
642	6720 Fort Hamilton Pkwy., QN	Withdrawal of 440-seat school	11/29/2006	
645	853 Glenmore Ave., BK	UDAAP by HPD	12/6/2006	
646	2950 Park Ave., BX	Withdrawal of UDAAP by HPD	12/6/2006	
† 647	Staten Island Savings Bank, SI	Landmark designation	12/6/2006	
648	Mott Haven School, BX	Withdrawal of school const. plan	12/6/2006	
649	Manhattan Site 5, MN	UDAAP by HPD	12/6/2006	
650	Manida Housing, BX	UDAAP by HPD	12/6/2006	
† 651	Morse Building, MN	Landmark designation	12/6/2006	
CITY PLANNING COMMISSION				
PROJECT NAME	DESCRIPTION	LOCATION	ULURP #	DATE
3313 Third Ave. Apartments	UDAAP by HPD (8-story mixed-use bldg.)	BX 3	N070111HAX	10/25/2006
R. Bright Day Care Center	Acquire prop. for day care center	BK 13	C060380PQK	10/25/2006
† Morse Building	Report to Council on designation	MN 1	N070123HKM	11/15/2006
1515 Broadway & 1032 Jefferson	UDAAP by HPD (2-story comm. bldg.)	BK 4	C060527HAK	11/15/2006
7 Saratoga Ave. & 1510 Broadway	UDAAP by HPD (2-story comm. bldg.)	BK 16	C060526HAK	11/15/2006
Staten Island Savings Bank	Report to Council on designation	SI 1	N070124HKR	11/15/2006
BOARD OF STANDARDS & APPEALS				
ADDRESS	DESCRIPTION	ACTION	CASE NO.	REPRESENTATIVE
180 Lafayette St., MN	Special permit (spa)	App'd	37-06-BZ	Leo Weinberger
499 Broadway, MN	Conversion to commercial use	App'd	58-06-BZ	Sheldon Lobel, PC.
88 Jane St., MN	Extend time for res. conversion	App'd	149-01-BZ	Eric Palatnik, PC.
111B 11th Ave., MN	Ext. of term (Chelsea Piers)	App'd	69-95-BZ	Wachtel, Masyr
299 Seventh Ave., MN	Const. 10-story, mixed-use bldg.	App'd	199-05-BZ	Joseph Morsellino
125 E. 39th St., MN	Ext. of term (eating & drinking est.)	App'd	574-85-BZ	Fredrick A. Becker
1 Park Ave., MN	Special permit (phys. cult. est.)	App'd	72-06-BZ	Rothkrug Rothkrug
32 Cent. Pk. S., MN	Change of use (restaurant to office)	App'd	595-44-BZ	Howard Goldman
2465 Broadway, MN	Ext. of term (Equinox)	App'd	182-95-BZ	Rothkrug Rothkrug
2473 Broadway, MN	Ext. of term (Equinox)	App'd	183-95-BZ	Rothkrug Rothkrug
5260 Sycamore, BX	Const. bldg. in mapped street	App'd	286-05-A	Kramer Levin
691 E. 149th St., BX	Ext. of term (gas station)	App'd	413-50-BZ	Eric Palatnik, PC.
298 W. 231st St., BX	Ext. of term (Bally's)	App'd	1289-80-BZ	Cozen O'Connor
3319 Atlantic Ave., BK	Ext. term, amend variance	App'd	341-43-BZ	Martyn Weston
1427 E. 17th St., BK	Appeal of vested right to cont. dev.	App'd	120-06-A	Eric Palatnik, PC.
1085 E. 22nd St., BK	Enlarge 1-family dwelling	App'd	234-06-BZ	Fredrick A. Becker
1410 E. 22nd St., BK	Enlarge 1-family dwelling	App'd	158-06-BZ	Lewis E. Garfinkel
1253 E. 28th St., BK	Enlarge 1-family dwelling	App'd	176-06-BZ	Lewis E. Garfinkel
1436 E. 28th St., BK	Enlarge 2-family dwelling	App'd	106-06-BZ	Sheldon Lobel, PC.
1221 E. 29th St., BK	3-story enlargement to 1-fam. dwelling	App'd	72-06-BZ	Dennis Dell'Angelo

*Bold indicates the decision is covered in this issue. The symbol † indicates that the decision was covered in a previous issue.

New Decisions Added to **CITYADMIN** *www.citylaw.org – Nov. – Dec. 2006**

BOARD OF STANDARDS & APPEALS (CONT.)					
ADDRESS	DESCRIPTION	ACTION	CASE NO.	REPRESENTATIVE	
1060 82nd St., BK	Leg. dwelling (exceeds FAR, open space)	App'd	288-05-BZ	Harold Weinberg	
110 Franklin Ave., BK	Const. 4-story res. building	App'd	328-04-BZ	Howard Goldman	
6002 Ft. Hamilton, BK	Amend variance (res./commercial use)	App'd	363-04-BZ	Mark A. Levine	
3155 Bedford Ave., BK	Enlarge 1-family dwelling	App'd	234-06-BZ	Fredrick A. Becker	
3743 Nostrand Ave., BK	Ext. of term (service station)	App'd	131-93-BZ	Eric Palatnik, PC.	
1426 Fulton St., BK	Ext. of term (eating & drinking est.)	App'd	331-98-BZ	Sheldon Lobel, PC.	
1267 E. 35th St., QN	Const. 4-story add. to school	App'd	33-05-BZ	Sheldon Lobel, PC.	
135-28 Roosevelt, QN	Const. 7-story mixed-use bldg.	W/D	334-04-BZ	Sheldon Lobel, PC.	
37 Newport Walk, QN	Enlarge dwelling not on mapped st.	App'd	135-06-A	Joseph A. Sherry	
51-17 Rockaway Blvd., QN	Enlarge commercial structure	App'd	346-05-A	Joseph A. Sherry	
68-22 North. Blvd., QN	Ext. of term (gas station)	App'd	558-51-BZ	Eric Palatnik, PC.	
176 Reid Ave., QN	Enlarge dwelling not on mapped st.	App'd	168-06-A	Valentino Pompeo	
519 Browns Blvd., QN	Enlarge dwelling not on mapped st.	App'd	167-06-A	Gary Lenhart	
9 Bedford Ave., QN	Enlarge dwelling in bed of mapped st.	App'd	90-06-A	Gary Lenhart	
41-23 156th St., QN	Const. 3-family dwelling	App'd	34-06-A	Victor K. Han	
90-15 Corona Ave., QN	Permit 6-story mixed-use bldg.	App'd	47-05-BZ	Cozen O'Connor	
56-45 Main St., QN	Variance for 5-story hospital bldg.	App'd	42-06-A	Stadtmauer Bailkin	
107 Beach 220th, QN	Enlarge dwelling not on mapped st.	App'd	230-06-A	Gary Lenhart	
43 Kildare Walk, QN	Enlarge dwelling in bed of mapped st.	App'd	125-06-A	Gary Lenhart	
1 Arcadia Walk, QN	Enlarge dwelling in bed of mapped st.	App'd	102-06-A	Gary Lenhart	
139-24 Booth Mem., QN	Const. parking facility	App'd	41-06-BZ	Stadtmauer Bailkin	
200-01 47th Ave., QN	Ext. of term (Shell station)	App'd	866-49-BZ	Carl A. Sulfaro	
93-10 23rd Ave., QN	Legalize use of basement	App'd	1888-61-BZ	Alfonso Duarte	
125-24 Metro. Ave., QN	Ext. of term (gas station)	App'd	933-28-BZ	Michael M. Robbins	
152 Ocean Ave., QN	Enlarge dwelling in bed of mapped st.	App'd	61-06-A	Miro Stracer	
2424-48 Flatbush, QN	Eliminate term limit	App'd	459-73-BZ	Sheldon Lobel, PC.	
1949 Richmond Ave., SI	Change of use (eating & drinking est.)	D'missed	558-71-BZ	Eric Palatnik, PC.	
5 Lockman Pl., SI	Const. 2-story, 2-family dwelling	App'd	92-06-A	Vito J. Fossella	
7194 Amboy Rd., SI	Appeal of DOB decision	Denied	161-05-A	Tottenville Civic Assoc.	
1390 Richmond Ave., SI	Const. 2-story commercial bldg.	App'd	298-05-BZ	Rampulla Assoc.	
LANDMARKS PRESERVATION COMMISSION					
ADDRESS	LANDMARK/HISTORIC DISTRICT	DESCRIPTION	CASE	APP'D	ISSUED
CERTIFICATE OF APPROPRIATENESS					
Central Park, MN	Heckscher Building	Construct 1-story addition	07-3237	Yes	10/30/2006
Central Park, MN	Lasker Rink	Inst. staircases, infill, railings	07-2866	Yes	10/24/2006
1075 Woodrow Rd., SI	Woodrow Methodist Church	Install telecom equip. w/in spire	07-2222	Yes	10/19/2006
53 Warren St., MN	Tribeca South HD Ext.	Alter facade	07-3470	Yes	10/16/2006
52 Wooster St., MN	SoHo-Cast Iron HD	Construct 6-story building	07-2853	Yes	10/23/2006
37 Barrow St., MN	Greenwich Village HD	Reconstruct sidewalk cafe	07-2981	Yes	10/19/2006
26 Washington Sq. N., MN	Greenwich Village HD	Const. roof stair, bulkhead	07-2637	No	10/10/2006
8 Astor Place, MN	NoHo HD	Establish master plan (window sashes)	07-3036	Yes	10/23/2006
34 W. 10th St., MN	Greenwich Village HD	Alter facade	07-3251	Yes	10/30/2006
418 W. 20th St., MN	Chelsea HD	Roof and rear additions	07-2883	Yes	10/17/2006
443 W. 22nd St., MN	Chelsea HD	Install access ramp, railings	07-3499	Yes	11/13/2006
20 E. 63rd St., MN	Upper East Side HD	Repl. infill, remove ramp, stairs	07-2551	Yes	10/17/2006
834 Fifth Ave., MN	Upper East Side HD	Repl. shed, const. roof add.	07-2894	Yes	10/20/2006
22 W. 75th St., MN	Upper West Side/CPW HD	Construct stoop	07-3494	Yes	11/13/2006
167 W. 80th St., MN	Upper West Side/CPW HD	Alter facade	07-2562	Yes	10/17/2006
248 Cent. Pk. W., MN	Upper West Side/CPW HD	Replace rooftop addition	07-2932	Yes	10/18/2006
233 Garfield Pl., BK	Park Slope HD	Legalize masonry openings	02-6641	No	9/15/2006
84 Seventh Ave., BK	Park Slope HD	Inst. storefront, 3-story rear add.	07-1392	Yes	8/18/2006
24 Remsen St., BK	Brooklyn Heights HD	Modify rooftop addition	07-2655	Yes	10/18/2006
57 Orange St., BK	Brooklyn Heights HD	Inst. pavers, steps, ramp, gate	07-2619	Yes	10/19/2006
470 Washington, BK	Clinton Hill HD	Const. 3-story rear addition	07-0366	Yes	9/21/2006

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*The Center for New York City Law
New York Law School
47 Worth Street
New York NY 10013-2960*



Macombs Dam Park four days after development began on the new Yankee Stadium project. See full story on page 173. Photo: © Geoffrey Croft/NYC Park Advocates. All Rights reserved.

CENTER FOR NEW YORK CITY LAW UPCOMING EVENTS

CITY LAW BREAKFAST SERIES 2006-2007

Friday, January 19, 2007
New York City Comptroller William C. Thompson, Jr.
Speaking on "Smart Growth and Affordability: Meeting the
Needs of New York City's Future"

Breakfasts begin at 8:15 a.m. at New York Law School,
47 Worth St., N.Y., N.Y. There is no charge,
but please reserve a seat at www.citylaw.org.

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BSA	2,217	New York City Council
Council	1,175	Well, Gotshal & Manges LLP
CPC	627	Gibson, Dunn & Crutcher
DOB	68	Kramer, Levin, Natrials & Frankel, LLP
Landmarks	1,420	
Loft Board	1,417	

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