

**THE COUNCIL OF THE
CITY OF NEW YORK**



**THE NEW YORK STATE
SENATE**

Joint Testimony to the Board of Standards and Appeals

**New York City Council Member Ben Kallos
New York State Senator Liz Krueger
and
New York City Council Member Keith Powers**

**Tuesday, April 10, 2018
RE: 2017-320-BZY, 428-432 East 58th Street, Manhattan
In Opposition to Request for Exemption from Zoning Change**

I. Summary

Thank you to Chair Perlmutter and the members of the Board of Standards and Appeals for the opportunity to testify today.

We are here to strongly oppose Sutton 58 Holding Company LLC's request to exempt its development at 428-432 East 58th Street from zoning text that is the result of a community-led grassroots zoning text change approved by Community Board 6, Manhattan Borough President Gale Brewer, the City Planning Commission, and the City Council. We are proud to represent the community surrounding the site that is the subject of today's hearing.

The Sutton rezoning, which was enacted November 30, 2017, was the result of a grassroots effort led by a group called the East River Fifties Alliance (ERFA), which consists of 45 buildings, represented by co-op boards, condo boards and individual owners, and over 2,600 individual supporters living in more than 500 buildings within and beyond the rezoning area. Along with ERFA, Borough President Gale Brewer, and then-Councilmember Dan Garodnick, we both were co-applicants on the rezoning application. We are now joined in support by Council Member Keith Powers. The rezoning was also supported by Congress Member Carolyn Maloney, Community Board 6, and numerous civic organizations including the Sutton Area Community, CIVITAS, Friends of the Upper East Side Historic Districts, and the Municipal Arts Society.

This is relevant here because the effort to rezone the narrow streets east of First Avenue between 51st and 59th Streets and the progress being made in the ULURP proceeding for that rezoning were publicly known to the developers, not only before they began laying their foundation, or before they applied for the permits, but before they even purchased the property.

As the Board is aware, the vesting provisions of the Zoning Resolution are designed to protect owners of real estate from unforeseen zoning changes which unfairly restrict development after properties are acquired. In this instance, however, the applicant acquired the property with full

knowledge of the planned zoning restrictions, and thereafter, rather than slowing construction activity to avoid potential prejudice, increased it, often working beyond the hours permitted by existing permits. **The applicant is seeking to turn the vesting provisions of the Zoning Resolution upside down.** Section 11-331 of the Zoning Resolution, which allows construction under certain conditions, is being subverted by the applicant for the purpose of creating an unfairness. After the zoning change was adopted, the applicant continued to perform construction work on the building, proceeding at its own risk and in bad faith, even though a full stop work order had been served on December 1, 2017.

II. The Story of this Development

The Bauhouse Project

Sutton Area residents, led by the Sutton Area Community neighborhood association's then-president Dieter Selig, first alerted Council Member Kallos in April 2015 to a proposed 90-story building, being planned by the Bauhouse Group at the site we are discussing today. The building quickly garnered press attention, with an article in the *Our Town* newspaper on April 7 of that year and an opinion editorial in opposition to the out-of-scale tower, which Council Member Kallos published in the same newspaper (See Exhibit 1). Community Board 6 passed a resolution calling for height caps in the neighborhood on May 13, 2015, which was sent to the Department of City Planning (See Exhibit 2). By August, the *New York Times* had covered the community's efforts to rezone the neighborhood (See Exhibit 3).

On January 21, 2016, as covered by the *Daily News*, ERFA submitted its rezoning proposal to the City Planning Commission, with Borough President Brewer, Senator Krueger, and Council Members Kallos and Garodnick as co-applicants (See Exhibit 4).

In the time between January of 2016 and June of 2017, when the proposal was ultimately certified by the City Planning Commission, we worked with Department of City Planning staff through the process of preparing a final application for the Commission. At the same time, we expanded our outreach, holding countless public meetings and town halls, as well as publishing reports and op-eds on the issue.

Changes at the Bauhouse Site

During this time period, a lot changed at the development site on 58th Street as well. In February, 2016, Gamma Real Estate, which had provided the loan to the Bauhouse Group for the site, sought a foreclosure auction on its \$147 million loan, as the Bauhouse Group reportedly struggled to raise the necessary construction financing (See Exhibit 5). After failing to win a restraining order, on February 26, 2016, Joseph Beninati, principal of the Bauhouse Group, filed for bankruptcy for the limited liability company that owned the site, halting the foreclosure auction.

Following a failed lawsuit, the property officially went into bankruptcy in April 2016 and was approved for sale in September 2016. Finally, near the end of 2016, a corporate entity owned by

Gamma Real Estate, the firm that had initially loaned money to the Bauhouse Group, won the auction for the site, paying \$86 million for the property and \$12 million to secure additional air rights, according to the *Real Deal*. The community's efforts were well publicized ahead of this sale, from real estate trade publications, to the *New York Times*, *Wall Street Journal*, *Daily News*, and *Bloomberg News*.

Crucially, the rezoning was referenced in court documents related to the bankruptcy sale, showing that the current developers purchased the property in full knowledge of the risks inherent to the project (See Exhibit 6).

Legally Distinct Corporate Entities

While the applicants seek to appear as individuals with controlling ownership interests in multiple companies, those companies must be treated as legally distinct entities by the Board of Standards and Appeals. The applicant should not be entitled to all the benefits of their corporate forms including their instant creation or termination without facing the reality that the companies are legally distinct. The entity before us today was a new entity that chose to purchase the property in bankruptcy, with full knowledge of the benefits and risks of the collateral, as explicated in the bankruptcy court filings.

According to the New York State Division of Corporations Entity Information, the following companies were formed and made active and inactive on the following dates (See Exhibit 7):

- **Sutton 58 Owner, LLC** was formed as a Domestic Limited Liability Company in New York County on **June, 13, 2014**, and is currently inactive.
- **Sutton 58 Owner, LLC** was registered as an Unauthorized Limited Liability Company with jurisdiction in Delaware on **March 17, 2015** set to inactive with the notation "merged out" on the same date.
- **Sutton 58 Owner, LLC** was registered as a Foreign Limited Liability Company in the County of New York with a jurisdiction of Delaware with service of process care of Bauhouse Group in Connecticut on **March 18, 2015**, and is currently active.
- **Sutton 58 Associates LLC** was registered as a Foreign Limited Liability Company in the County of New York with a jurisdiction of Delaware with service of process at 101 Park Avenue (the same address as is used by Gamma Real Estate) on **June 4, 2015**, and is currently active.
- **Sutton 58 Holding Company LLC** was registered as a Foreign Limited Liability Company in the County of New York with a jurisdiction of Delaware with service of process at 101 Park Avenue (the same address as is used by Gamma Real Estate) on **December 8, 2016** and is currently active.

Each entity is separate and distinct, with its own identification number, date of registration, jurisdiction, and status. It is of note that the entity applying to the BSA today, Sutton 58 Holding Company LLC, was registered on December 8, 2016 nearly a year after the rezoning was filed with the Department of City Planning on January 21, 2016.

According to testimony before the City Council on November 20, 2017, the entity that made the loan to Sutton 58 Owner LLC was Sutton 58 Associates, while the entity that purchased the estate at Bankruptcy was Sutton 58 Holding Company LLC (Exhibit 8 at pages 279 - 283).

The rights of Sutton 58 Associates terminated with the satisfaction of the bankruptcy estate and the individuals with ownership of Sutton 58 Associates could have been made whole to fullest extent of the law through the bankruptcy process by accepting a bid from a company that they did not own. In particular, according to the same testimony, Isaac Hager's Cornell Realty bid \$81 million, but was outbid by Sutton 58 Holding Company LLC (Exhibit 8 at page 282).

Sutton 58 Holding Company LLC is a new entity registered on December 8, 2016 for the apparent purpose of purchasing the property in question at Bankruptcy. The purchase price was far below what was paid by the original developer, in part because of the pending rezoning which introduced a risk for which Sutton 58 Holding Company LLC paid a substantially lower price.

Communications with Gamma Real Estate

Our first contact with Gamma Real Estate occurred on March 21, 2017, when Jonathan and Richard Kalikow of Gamma sent a letter to the elected official co-applicants requesting a meeting. As reported in depth by the Commercial Observer, Senator Liz Krueger, Council Members Ben Kallos and Dan Garodnick, and a representative of Borough President Gale Brewer met on May 11, 2017 with Jonathan Kalikow, his lawyers Stanley Schlein and Gary Tarnoff, as well as additional representatives from Gamma Real Estate, to discuss Gamma's plans for the site (See Exhibit 9).

Mr. Kalikow indicated that while he understood the community and elected officials' desire for buildings in context with the neighborhood, his intention was to "make whole" on the initial loan given to Bauhouse, and that doing so was only possible with the revenue that mega-units at the top of a super-tall building could bring. Gamma Real Estate indicated that their new plan for the building would bring the height down roughly 100 feet, from 900-plus feet to 800-plus feet, mechanicals included, and that it would have a design more in context with the aesthetic of the neighborhood. We stated our intention to continue supporting ERFA and the residents of the Sutton Area in their rezoning effort to fix the zoning for the whole area.

We also discussed the lot and air-rights assemblage it had taken to allow for the possibility of building a supertall on a side street in the Sutton Area. Mr. Kalikow acknowledged that the assemblage utilized inclusionary housing air rights from another site, which could still be used at a separate site in Community Board 6 or within half a mile of the site from which the FAR had been purchased. Alternatively, the air rights could still be sold to another developer. Aware of these options and the community's ongoing effort to bring contextual rezoning to the neighborhood, Mr. Kalikow indicated that he planned to move forward with the construction of a supertall tower.

The Public Review Process

On June 5, 2017, the City Planning Commission certified our rezoning application (*N 170282 ZRM*), allowing it to move forward through the formal public review process. After Community Board 6 held two public hearings, one conducted jointly with the Manhattan Borough President, the board issued a resolution on June 28 supporting the proposal. The rezoning passed the City Planning commission on November 15 and was sent to the City Council for review.

III. The Grandfathering Clause

When the City Planning Commission approved the ERFA application, it did so with one significant modification, the inclusion of a grandfathering clause to make the particular building being considered here today exempt from the new rezoning. Senator Krueger and all other co-applicants called for the grandfathering clause to be removed at the City Council's hearing on the rezoning application on November 20. Ultimately, the clause was resoundingly overturned by the City Council, with a vote of 45 in favor, 0 against, and 1 abstention. While the text of the rezoning as passed by the Council and enacted is clear, Council Member Kallos highlighted this the removal of the clause in his remarks at the Council vote, stating, "We removed the grandfathering provision that the City Planning Commission has added erroneously." It is clear that the rezoning was intended to and should apply to all properties in the zoning district.

The applicant has since argued that Council Member Kallos intended for the developer to seek recourse through the appeal process to the BSA under the vesting provisions of ZR 11-331, as they have done. The intent of this comment was only to state that it was the developer's right to appeal to the BSA, and in no way an endorsement of the validity of such an appeal, which the Council Member wholeheartedly opposes.

IV. Illegal After Hours Work Variances (AHVs)

Following *In Re Perrotta* (107 A.D. 2d 320), the Board of Standards and Appeals must determine if any of the permits or variances were granted properly by the Department of Buildings or if they were never legally granted and thus invalid *ab initio*.

After Hours Work Authorization may only be granted for one of five reasons specifically enumerated under §24-223(e) of the Administrative Code: (1) Emergency Work, (2) Public Safety, (3) City Construction Projects, (4) Construction Activities with Minimal Noise Impact, and (5) Undue Hardship. On June 6, 2017 and thereafter, Council Member Kallos communicated with the Department of Buildings regarding the granting of After Hours Work authorizations in violation of the law (See Exhibit 10).

The After Hours Work Variances began on Saturday, June 3, 2017, continuing (See Exhibit 11):

Saturday, June 10 – Saturday, June 17
Saturday, June 24 – Saturday, July 1
Saturday, July 22 – Saturday, July 29
Saturday, August 5 – Saturday, August 12
Saturday, August 19 – Saturday, August 26
Saturday, September 2 – Saturday, September 9
Saturday, September 16 – Saturday, September 23
Saturday, September 30 – Saturday, October 7
Saturday, October 14 – Saturday, October 21
Saturday, October 28 – Saturday, November 4
Saturday, November 11
Saturday, November 18
Saturday, November 25 – Saturday, December 2
Saturday, January 13, 2018
Saturday, January 20
Saturday, January 27

The After Hours Variance applications cited a reason of “Public Safety” and were approved for “Other.” An example description of work from June 3 reads, “EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE,” none of which qualifies for “Public Safety” that could not otherwise occur during regular hours. The description of work continued to be much the same, throughout all of the After Hours Variances. In fact all of the work described as necessary for “Public Safety” also occurred during regular hours, meaning that either the same work during regular hours endangered the public safety or there was no danger to public safety at all.

The Department of Buildings has on occasion applied a strict interpretation of the Administrative Code, denying similarly situated applications in my district, but in this case continued to grant After Hours Variances in violation of the law. The Department of Buildings may grant authorizations or take other actions in violation of the law, but its doing so does not render the authorized illegal activity legal. In fact, it remains illegal, just not subject to enforcement action. The Board of Standards and Appeals, though appointed by the Executive, is a quasi-judicial body empowered by the City Charter to interpret the meaning or applicability of the Zoning Resolution, Building and Fire Codes, Multiple Dwelling Law, and Labor Law.

The Board of Standards and Appeals must make a finding of fact as to each of the After Hours Work Variances. It must determine whether such authorizations were properly based on any of the five enumerated reasons. Any work authorized for “Public Safety” reasons must not include work that is also done during regular hours without that same public safety concern. Finally, any foundation work done under an After Hours Variance in violation of the law may not be counted for the purposes of establishing a foundation. Given the facts, the Board should find that none of the After Hours Variances were properly issued, thereby disqualifying any and all of the foundation built during those illegal After Hours Variances.

V. A Scofflaw Foundation

Pouring without Permits

Once the rezoning application was nearing a final vote, the developers began to take last resort actions in an attempt to convince this board that their property should be exempted from the impending rules. These actions included doing work for hours after their permits expired and simply doing work with no permit at all. This was a cynical attempt to ignore the law in hopes that the City's response would be too slow to properly enforce the new rules and that this Board would not see through this deception.

On November 11, 2017, the developers took the extreme action of closing 58th Street without a city permit in order to pour, according to the applicant's filing, 880 cubic yards of cement, representing approximately 50% of the mat foundation. Countless constituents saw the unauthorized work and reported it to my office, 311, and the 17th Precinct. We reached out to the relevant city agencies and were ultimately informed that the applicant did not have a permit. However, in the meantime, the cement had been poured.

A week later, on November 18, it happened again. The developers continuously poured cement from 7am until 10pm, according to contemporaneous reports by neighbors sent to our offices, despite the after-hours construction permit's expiration at 6pm. Again, they illegally disrupted traffic, closing one lane without a permit from the Department of Transportation or any other City agency. Traffic on nearby streets was also blocked by employees of the applicant, without a permit. This day resulted in a pour of 893 cubic yards, representing approximately the other half of the foundation mat pour.

Burying the Evidence

Although the BSA only considers, for the purposes of vesting, foundation poured before the adoption of a zoning change, the applicant continued to pour foundation on the day of adoption and afterwards, despite a Stop Work Order from the Department of Buildings.

At a November 20, 2017 City Council hearing, the developer stated under oath that over 100 workers would be laid off during the holiday season. However, after a stop work order was issued on November 30 at 5:21pm, work resumed the next day, on December 1. This work continued for weeks, far beyond the standard procedure of cleaning and shoring up a work site to make it safe during a stop work order. Council Member Kallos personally reached out to officials at the Department of Buildings on December 5, 2017 with evidence that, among other types of activity, rebar work was occurring on the site after the stop work order was issued.

It is hard to imagine that the foundation was supposedly at 80% completion on November 30, 2017, but necessitated another two months of work, with After Hours Variances issued through Saturday, January 27, 2018, to be completed (See Exhibit 11).

The issue of fact in this proceeding is whether the foundation is substantially complete, and the Board of Standards and Appeals has a long tradition of independently inspecting sites. However, while the developer was preparing their appeal to the Board of Standards and Appeals, and even after filing this appeal, the developer continued work on the building in question, concealing, altering and destroying the physical evidence of progress at the time of the zoning change.

In light of the concealment and alteration of the physical evidence of the building's construction on the day of the rezoning preventing any independent evaluation and analysis, the BSA must not reward this act, and must assume that the building was not substantially complete. Should the BSA not make this assumption, it must require that the developer provide details and supporting documentation for all work done since adoption.

The foundation today that is almost at street level is not indicative of the amount of foundation that was completed at the time of adoption, and it bears no resemblance to the small portion of the foundation completed without violating the law.

Ignoring All Work Following Adoption

The Zoning Resolution is clear in considering only work completed prior to adoption. Although the applicant may seek to introduce evidence of work following adoption, it must not be counted toward substantial completion.

VI. Floating Air Rights

In Bankruptcy, Gamma Real Estate purchased the lot and the air rights separately.

The air rights purchased were from 11 surrounding buildings, as well as over 70,000 feet of affordable housing inclusionary certificates purchased from a development on 39th Street, within Community District 6, according to testimony at the November 20th City Council hearing (Exhibit 8 at page 277). These air rights can be used anywhere in Community District 6 or within half a mile of the 39th Street site. The developer can use the air rights on another development site they own or they can sell them to another developer. Without the floating air rights of 70,000 feet of FAR, the building would only have 60,000 feet of FAR and could more easily be built within the form required by the zoning text, while allowing the developer to earn additional revenue from the sale of the floating air rights. The BSA has no requirement to guarantee a developer the right to use FAR they purchased on a specific site that has been rezoned.

VII. Conclusion

This Board serves a crucial purpose, to ensure New York City's Zoning Resolution is not so rigid that commonsense and fairness are erased by rules for rules' sake. Specifically, the power to vest properties into the zoning code as written at the time the building's foundation is completed is an important way of ensuring that developers are not surprised by changes to city law, finding themselves in a situation where they have just poured their savings into something they can no longer afford.

The scenario you are considering today is a distortion of the spirit of this law. The developers did not find themselves stuck with a foundation they could do nothing with. They poured their foundation illegally, partially in the final hour and partially after midnight, as a last-ditch effort to convince this Board that they were stuck with it and should thus receive special dispensation. A total of 1701 cubic yards of this foundation was poured utilizing unpermitted street closures. Of that, 180 cubic yards of cement was poured after the applicant's permit expired. An additional 300 cubic yards was poured on the day of the zoning change's adoption, and so it is not considered. Only 93 cubic yards of cement was poured without cutting any corners, with the permission of our city's agencies. All the while, the developer did work utilizing illegally granted After Hours Variances.

This is not substantial completion of a foundation. This is an attempt to avoid the law. Please vote against approving this applicant's request, in order to maintain the integrity of the zoning code and of this residential neighborhood.

NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibits

NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 1

OUR TOWN



**SPRING
ARTS
PREVIEW**
CITYARTS,
P.12

WEEK OF APRIL
9-15
2015

THE CITY THAT NEVER SLEEPS, THANKS TO A BOOM IN LATE-NIGHT CONSTRUCTION

NEWS

The Department of Buildings is handing out a record number of after-hours work permits, according to new data

BY DANIEL FITZSIMMONS

Every New Yorker knows the sound: the metal-on-metal clang, the hollow boom, the piercing beeps of a truck moving in reverse. A glance at the alarm clock and you can hardly believe it: it's the middle of the night, and yet construction carries on full-tilt.

You can call 311 or your local police precinct, but chances are the work is being done legally -- thanks to a boom in the number of after-hours construction permits throughout the city.

Over the past three years, the number of after-hours work permits granted by the city's Dept. of Buildings has jumped 30 percent, according to DOB data provided in response to a Freedom of Information Act request. The city classifies any construction work between 6 p.m. and 7 a.m., or on the weekend, as after-hours.

The surge in permits has generated millions of dollars in fees for the city agency, and left some residents convinced that the application process is a mere formality for developers looking to complete their projects quickly.

"They pick out their own hours," said Mildred Angelo, who lives on the 19th floor in one of the Ruppert Houses on 92nd Street between Second and

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LUXURY MEGA-TOWER COMING TO SUTTON PLACE

EXCLUSIVE

East Side officials already gearing up to fight the project

BY DANIEL FITZSIMMONS

Plans have been drawn up for a luxury 900-foot condo tower in Sutton Place, which, if completed as planned, would rank as one of the tallest buildings in Manhattan.

The 268,000-square-foot tower will become the second-tallest on the Upper East Side, behind the in-progress 432 Park Avenue at 1,400 feet, and one of the tallest in the city.

Construction permits have not yet been filed for 426-432 East 58th St., allowing the massive project to fly mostly under the radar until now. Councilmember Ben Kallos, whose district includes Sutton Place, was only made aware of the project last week, as were members of Community Board 6.

A sales brochure put together by Cushman and Wakefield dubs the project as the "Sutton Place Development," and notes it is "an ultra-luxury, as of right, ground up, opportunity which will reach over 900 feet tall and feature unparalleled 360

degree views of Midtown, Downtown Brooklyn and Manhattan, Central Park and the East River."

The 268,000 square feet of buildable space and air rights, which includes 58,000 square feet of inclusionary housing rights, have already been delivered. It's unclear if the affordable housing will be offered on- or off-site, or how many units of affordable housing will be included. Representatives for The Bauhouse Group, which owns the site, declined to field questions about the Sutton Place Development, but a representative of the company provided a press release to *Our Town* that said the project will include about 96 units.

"In the upcoming weeks we will present our specific plans for the site and conduct an open dialogue with members of the Sutton Place community," said Chris Jones, co-founder of The Bauhouse Group in the press release. "We're looking forward to this discussion and the next phase of this exciting development."

Cushman and Wakefield's brochure goes on to say that the assemblage making the development possible consists of four building lots totaling 80

CONTINUED ON PAGE 23



A rendering of the proposed Sutton Place tower, which would be among the tallest in Manhattan.

In Brief

MORE HELP FOR SMALL BUSINESS

Thankfully, the effort to help small businesses in the city seems finally to be gathering steam.

Latest evidence? The move by two city councilmembers, Margaret Chin and Robert Cornegy, to introduce legislation that would create a new "Office of the Small Business Advocate" within the city's Department of Small Business Services.

The new post, which Chin told us she'd like to have up and running this year, would serve as an ombudsman for small businesses within city government, helping them clear through the bureaucracy to get things done. (If you thought this was the job of the Small Business Services department, so did we.)

Perhaps even more importantly, the ombudsman also will tally the type and number of complaints by small business owners, the actions taken in response, and some policy recommendations for ways to begin to fix things. If done well, the ombudsman's report would give us the first quantitative taste of what's wrong with small businesses in the city, an important first step towards fixing the problem.

"Small businesses need help," Chin told us this week. "They really don't know who to call or who to talk to."

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Passover, Thursday, April 9 - 7:11 pm
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For more information visit
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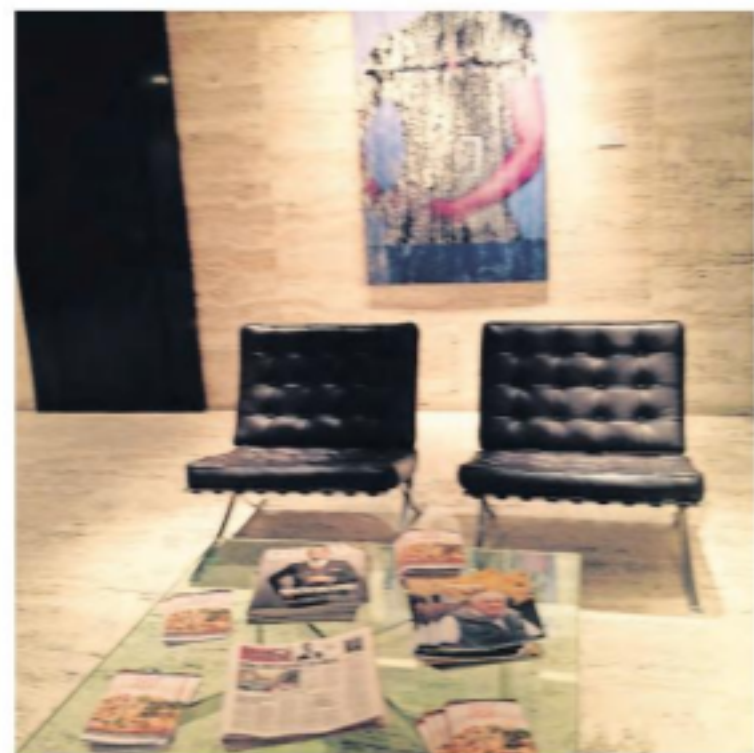
Voices

Letter

NO FAN OF PEDESTRIAN PROPOSAL



To the Editor:
Irv Lepselter's so-called solution for pedestrian safety (Voices page, April 16) is ridiculous. Having cars come to a stop before a pedestrian crosswalk while having the favorable light will cause more congestion at intersections. What the city should do at the "biggest" intersections is install turn arrow signals, while having the Do Not Walk signal continue for pedestrians, until turn cycle is completed. For this to work, the pedestrians would have to WAIT ON SIDEWALK for walk signal, highly UNLIKELY. Pedestrians and bicyclists need to ALSO obey the rules of the road, or be ticketed. **Richard Hecht**



OUR TOWN IN GOOD COMPANY

Our Town shows up in the swankiest of places! Recently, we noticed a fresh stack of the papers at the Four Seasons restaurant in midtown, making us the only newsweekly to hold that place of honor.

OP-ED

LET IN THE LIGHT

BY BEN KALLOS

Welcome to the age of the super-scraper, where new luxury development is not just unaffordable but also blocks light and air from our communities, streets and parks. 432 Park Avenue, which will be the tallest residential building in the western hemisphere, has become a symbol of the flaws in our housing trends. Fortune magazine called it "a monument to the epic rise of the global super-wealthy," but it does not begin and end at 432 Park Avenue.

You may have read the news about a possible 900-foot super-scraper planned for Sutton Place on 58th Street, or developers snapping up properties along Second Ave. Sky-high properties are the new trend in luxury development, blocking light and air for the rest of us. Nine hundred foot towers cast neighborhoods into darkness and contribute to soaring rents borough-wide — all so a developer can profit by selling more unobstructed views.

I will be pursuing zoning reforms that would improve transparency and protect against massively tall super-scrappers that block sunlight. "As of right" does not mean there is nothing we can do. It will be an uphill battle, but we can affect change. In 1916, New York City adapted to the technology of the skyscraper with a zoning resolution intended to protect our city by establishing setback and height restrictions. Again in the 1980s, most recently, in

1989, Contextual Districts were adopted to preserve the character of neighborhoods.

Indeed, cities have long sought to ensure zoning that protects quality of life. This means balancing affordability, growth, sunlight, and quality of life. Regulations protecting resident access to sunlight have been adopted in England, Japan, and, in the United States, San Francisco.

We can revise the outdated city zoning rules to stop the march of the super-scrappers, allow for more transparency and community input, and protect light and air for all of us.

The marketing for the 58th Street mega-tower tells the story: It is deemed an "ultra luxury" development with "unparalleled 360 degree views" that will "impact the New York City skyline." They do not even bother noting the scenery from the first 10 floors, because the property is being marketed on unprecedented views alone.

We cannot allow the only people who get light and air to be the ones who can afford the 90th floor — until, of course, a 150-floor tower gets built next door.

We all have a right to light and air, and not to live in shadow. Even in famously dense Manhattan, it is possible — and necessary — to balance development and density with livable neighborhoods.

From Sutton Place to Second Avenue to Manhattan as a whole, luxury development must not trump community needs. You can



lend your voice to the cause by signing the petition at benkallos.com/petition/SuttonPlace or contacting me at bkallos@benkallos.com. Please spread the word to your neighbors and friends so you can all be heard. To take on this issue, I will need your support.

This is our neighborhood, and it belongs to us.

We cannot afford to allow luxury developments to cast our parks and communities into shadow as neighborhoods become increasingly unaffordable. Light and air should be the right of everyone, not the privilege of a few.

Ben Kallos represents the Upper East Side on the New York City Council.

STRAUS MEDIA-MANHATTAN President, Joanne Straus nyoffice@strausnews.com

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NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 2

SANDRO SHERROD
CHAIR

VICE-CHAIRS
RICHARD EGGERS, 1ST
CLAUDE L. WINFIELD, 2ND



THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
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NEW YORK, NY 10017

DAN MINER
DISTRICT MANAGER

BEATRICE DISMAN, TREASURER
CHARLES BUCHWALD, ASST. TREASURER

AARON HUMPHREY
SECRETARY
KATHY THOMPSON
ASST. SECRETARY

VIA E-MAIL: mviverito@council.nyc.gov; cweisbrod@planning.nyc.gov

May 19, 2015

Hon. Melissa Mark-Viverito
Speaker
New York City Council
250 Broadway, 18th Fl.
New York, NY 10007

Mr. Carl Weisbrod
Chairman
New York City Planning Commission
22 Reade Street
New York, NY 10007

RE: Proposed new residential tower at 426-432 E 58th St; Discussion of other mid-block R10 Districts

Dear Speaker Mark-Viverito & Chairman Weisbrod:

At the May 13th Full Board meeting of Community Board 6, the Board adopted the following resolution:

WHEREAS, 426-432 East 58 St. is a mid-block site that is, and has been, zoned "R10" since 1961; and,

WHEREAS, according to a sales brochure and published reports with renderings, a building is planned on this site that is proposed to be "over 900 feet tall"; and

WHEREAS, over 100 persons from the Sutton Place community attended the May 2015 meeting of the Land Use & Waterfront Committee to express very strong concerns regarding what the community and elected officials believe is the inappropriate scale of the proposed building; and,

WHEREAS, the community expressed strong opinions that the proposed construction will ruin the scale and character of their neighborhood; and,

WHEREAS, according to news reports, the proposed new building is "as of right"; and,

WHEREAS, Community Board 6 (CB6) invited the developer or representatives to the meeting and the response was that plans are not yet prepared for presentation; and,

WHEREAS, in a sales brochure and news reports, the developer has indicated that they look forward to conducting "an open dialogue with members of the Sutton Place community..."; and,

WHEREAS, the "R10" zoning designation includes no height limit and is throughout the Sutton Place neighborhood, both on the avenues and mid-blocks; and,

WHEREAS, since most R10 districts exist on the avenues and not mid-blocks, CB6 will support rezoning the mid-block areas to a lower density such as R10A or R8; and

WHEREAS, residents of the vicinity have acted urgently, aggressively, and in overwhelming numbers to request that Manhattan Community Board 6 take immediate action;

WHEREAS, such immediate action could include 1) rezoning the area, which will take several months, or 2) a moratorium on super-high towers, of which there are several under construction or planned in Manhattan;

WHEREAS, other Manhattan community boards, and, in recent days CB6, have explored a moratorium, which would require action by city council, and such a moratorium appears to be very realistic if certain conditions are met; and

WHEREAS, recent advances in building technology have made these super-high towers possible, and they were not conceivable in 1961 when the zoning districts were created;

WHEREAS, the impacts of these super-high towers, a recent innovation, cannot be fairly and completely assessed, including their impacts on the infrastructure, traffic, parking, waste removal, fire, and ambulance, thus further investigation and study is needed, especially since this development at 426-432 E. 58 St. appears to be as-of-right;

NOW, THEREFORE, BE IT

RESOLVED, that CB6 urges City Council to seriously consider such action as may be necessary, including the possibility of a moratorium on all super-high towers city wide, with a strictly defined time limitation, to further study the impacts of this proposed building BEFORE the plans proceed further;

AND, BE IT FURTHER

RESOLVED, that CB6 requests the Departments of Buildings and City Planning review the proposed plans for the building at 426-432 East 58 St to confirm that the construction is “as of right,” and report their findings so as to ensure that permits for the construction of the facility will not be issued in error;

AND, BE IT FURTHER

RESOLVED, that CB6 urgently requests a meeting with the Department of City Planning and the Manhattan Borough President’s office, as quickly as possible, to discuss out-of-context building heights as well as a limitation on overall building heights on parcels that might be assembled by zoning lot mergers and the purchase and transfer of “air rights”;

AND, BE IT FURTHER

RESOLVED, that CB6 supports rezoning the area to a lower density, in response to community concerns, and CB6 will work with the community and the Department of City Planning to determine the best possible rezoning for the future of the neighborhood;

AND, BE IT FURTHER

RESOLVED, that CB6 urges the owner of 426-432 East 58 St. to take note of the overwhelming community opposition to the proposed building height, so that the property might be developed in an open dialogue with the goal of full community support.

VOTE: 41 In Favor; 2 Opposed; 1 Abstain; 1 Not Entitled

Yours Truly,



Dan Miner
District Manager

Cc:

Honorable Gale Brewer
Honorable Liz Krueger
Honorable Dan Quart
Honorable Ben Kallos
Martin Rebholz, R.A., Department of Buildings
Terrence O'Neal, FAIA

SANDRO SHERROD
CHAIR

VICE-CHAIRS
RICHARD EGGERS, 1ST
CLAUDE L. WINFIELD, 2ND



THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
866 UNITED NATIONS PLAZA, SUITE 308
NEW YORK, NY 10017

DAN MINER
DISTRICT MANAGER

BEATRICE DISMAN, TREASURER
CHARLES BUCHWALD, ASST. TREASURER

AARON HUMPHREY
SECRETARY
KATHY THOMPSON
ASST. SECRETARY

VIA E-MAIL: cweisbrod@planning.nyc.gov

May 26, 2015

Mr. Carl Weisbrod
Chairman
New York City Planning Commission
22 Reade Street
New York, NY 10007

RE: Proposed new residential tower at 428-432 East 58 St and; Discussion of other Mid-block R10 Districts.

Dear Chair Weisbrod:

At the May 13th Full Board meeting of Community Board 6 the Board adopted the following resolution:

WHEREAS, 426-432 East 58 St. is a mid-block site that is, and has been, zoned "R10" since 1961; and,

WHEREAS, according to a sales brochure and published reports with renderings, a building is planned on this site that is proposed to be "over 900 feet tall"; and

WHEREAS, over 100 persons from the Sutton Place community attended the May 2015 meeting of the Land Use & Waterfront Committee to express very strong concerns regarding what the community and elected officials believe is the inappropriate scale of the proposed building; and,

WHEREAS, the community expressed strong opinions that the proposed construction will ruin the scale and character of their neighborhood; and,

WHEREAS, according to news reports, the proposed new building is "as of right"; and,

WHEREAS, Community Board 6 (CB6) invited the developer or representatives to the meeting and the response was that plans are not yet prepared for presentation; and,

WHEREAS, in a sales brochure and news reports, the developer has indicated that they look forward to conducting "an open dialogue with members of the Sutton Place community..."; and,

WHEREAS, the "R10" zoning designation includes no height limit and is throughout the Sutton Place neighborhood, both on the avenues and mid-blocks; and,

WHEREAS, since most R10 districts exist on the avenues and not mid-blocks, CB6 will support rezoning the mid-block areas to a lower density such as R10A or R8; and

WHEREAS, residents of the vicinity have acted urgently, aggressively, and in overwhelming numbers to request that Manhattan Community Board 6 take immediate action;

WHEREAS, such immediate action could include 1) rezoning the area, which will take several months, 2) requesting governmental action such as a delay by the Department of Buildings upon receipt of the application for approval of plans, or 3) a moratorium on super-high towers, of which there are several under construction or planned in Manhattan;

WHEREAS, other Manhattan community boards, and, in recent days CB6, have explored a moratorium, which would require action by city council, and such a moratorium appears to be very realistic if certain conditions are met; and

WHEREAS, recent advances in building technology have made these super-high towers possible, and they were not conceivable in 1961 when the zoning districts were created;

WHEREAS, the impacts of these super-high towers, a recent innovation, cannot be fairly and completely assessed, including their impacts on the infrastructure, traffic, parking, waste removal, fire, and ambulance, thus further investigation and study is needed, especially since this development at 426-432 E. 58 St. appears to be as-of-right;

NOW, THEREFORE, BE IT

RESOLVED, that CB6 urges City Council to seriously consider such action as may be necessary, including the possibility of a moratorium on all super-high towers city wide, with a strictly defined time limitation, to further study the impacts of this proposed building **BEFORE** the plans proceed further;

and, be it further

RESOLVED, that CB6 requests the Departments of Buildings and City Planning review the proposed plans for the building at 426-432 East 58 St to confirm that the construction is “as of right,” and report their findings so as to ensure that permits for the construction of the facility will not be issued in error;

and, be it further

RESOLVED, that CB6 urgently requests a meeting with the Department of City Planning and the Manhattan Borough President’s office, as quickly as possible, to discuss out-of-context building heights as well as a limitation on overall building heights that might be assembled by the purchase of “air rights”;

and be it further

RESOLVED, that CB6 supports rezoning the area to a lower density, in response to community concerns, and CB6 will work with the community and the Department of City Planning to determine the best possible rezoning for the future of the neighborhood;

and be it further

RESOLVED, that CB6 urges the owner of 426-432 East 58 St. to take note of the overwhelming community opposition to the proposed building height, so that the property might be developed in an open dialogue with the goal of full community support.

VOTE: 41 in Favor 2 Opposed 1 Abstention 1 Not Entitled

Yours truly,



Dan Miner
District Manager

Cc: Hon. Gale Brewer
Hon. Ben Kallos
Sutton Area Community

Man. Community Board 8
Terrence O’Neal

NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 3

Planned Skyscraper Encountering Opposition in Sutton Place

By CHARLES V. BAGLI

Herndon Werth met with several lawyers last week in a restaurant around the corner from his home of over 40 years, on a sleepy stretch of 58th Street near luxurious Sutton Place on the East Side of Manhattan.

They offered to give him an apartment rent-free for life, moving expenses and, by one account, \$1 million, if only he would vacate his rent-regulated studio on the top floor of a six-story brownstone.

A developer has already bought three other small adjoining buildings on the block and plans to demolish them to erect New York City's latest opulent supertower: It would soar over 900 feet, some 80 stories, above the street in what the developer calls "Manhattan's quintessential luxury neighborhood."

But Mr. Werth, 81, whose longtime neighbors refer to him as the Sage of 58th Street, said his response was blunt: "I told them," he said, "I ain't going nowhere."

Mr. Werth is only one obstacle in the

A sign of weariness among some New Yorkers over constant construction.

quest by the developer, Joseph P. Beninati, to build the deluxe skyscraper. Opposition to his project has spread among the well-heeled in the Sutton Place area in a sign that at least some New Yorkers are exhausted by the relentless pace of construction that has transformed one neighborhood after another.

Slim, super-tall towers are fueling an extraordinary building boom, particularly along a stretch of 57th Street known as Billionaire's Row, where at least eight skyscrapers are underway with apartments selling for tens of millions of dollars, primarily to foreign investors.

The lure of oversize profits is unmitigable. Builders are now planning resi-

dential skyscrapers as tall as the Empire State Building in areas once unthinkable: Downtown Brooklyn; Long Island City, Queens; and on a parcel next to the South Street Seaport in Lower Manhattan.

"This is the first time that a billionaire's tower is going up in a residential neighborhood," Mr. Beninati said. "New York has always been a city that reaches for the sky to express the aspirations of the people who live and work here."

But residents of 16 co-op and condominium buildings near Mr. Beninati's site have formed an alliance to try to stop the project, hiring lawyers and political strategists, and enlisting civic groups and elected officials, including City Councilman Benjamin Kallos, who represents the area, and the Manhattan borough president, Gale A. Brewer.

"This is about preserving our residential neighborhoods and the light and air for the people who live there," Mr. Kallos said. "The community is finally fighting back against superscrapers."

In a sense, the battle pits the "haves"

of Sutton Place who want to preserve the genteel qualities of their neighborhood against the international 1 percent from Russia, the Middle East and Latin America who would be the likely buyers of condos in the tower, even if they, like many foreign buyers, lived in them just a few weeks of the year.

"It's like sticking a Freedom Tower in a residential area," said Lisa Mercurio, a local resident and member of the East River 50s Alliance, the group opposing the development. "This building is an investment bank for overseas oligarchs. It's not meant to house real people in the neighborhood. What happens to the environment when the skyline is so cluttered up that the sun can't shine down to the ground?"

Some of the fiercest critics live at the Sovereign, a 47-story co-op directly across 58th Street from Mr. Beninati's proposed construction site. Built in 1975, it was the ultraluxury building of its era.

The architecture critic Paul Goldberg, writing in *The New York Times* at the time, described the building as

Continued on Page A21

From Page A19

"brutally destructive of the scale of 58th Street and Sutton Place."

Mr. Beninati's tower, opponents say, would loom 400 feet over the Sovereign. "I don't think you can compare a 900-foot needle tower with the Sovereign," said Gail Haft, a member of Sutton Area Community, a local organization.

The alliance is hoping to enlist the help of the de Blasio administration to rezone the area in the coming weeks before Mr. Beninati can get construction permits.

"It's just way too big for the neighborhood," Ms. Brewer said.

Still, the last time the neighborhood tried to stop a project, in 2000, its lawsuit against the developer was dismissed. That developer was Donald J. Trump, who ended up building a 72-story condominium at First Avenue and 47th Street.

In the meantime, Mr. Beninati says he has already acquired enough property and development rights, or air rights, from surrounding buildings to erect his tower even without Mr. Werth's building. Mr. Beninati wants to buy Mr. Werth's building and others nearby to make room for a bigger base for his proposed tower.

"We can't have a city where people can just change the rules when they feel like it," he said of the opposition's effort to rezone the neighborhood.

So far, Mr. Beninati said he had spent about \$120 million for land and tenant buyouts. He hired Cushman & Wakefield to find a financial partner and construction financing for the project, which will cost about \$650 million to complete.

After months of fruitless hunting, Mr. Beninati said he remained confident he would find a partner. He said the apartments should sell for an average of \$5,500 per square foot, or more than \$43.5 million for a penthouse. Mr. Beninati is also actively trying to buy additional parcels on three sides of his site in order to expand the base of the tower, if not add to its height.

"It's a real opportunity to do something special," Mr. Beninati said, "but if a joint venture partner doesn't show up, I'll have no choice but to sell."

Mr. Beninati started his career on Wall Street, and by the early 2000s he and his partners formed Antares Investment Partners, a



MARK KAULZARICH/THE NEW YORK TIMES

Herndon Werth, 81, was offered a rent-free apartment and moving expenses if he would vacate his rent-regulated studio to make way for a skyscraper on the East Side of Manhattan. Mr. Werth declined. "I told them I ain't going nowhere," he said.

real estate company that at its height claimed \$6 billion in assets. The novice developers built speculative mega-mansions in Greenwich, Conn., and gained control of Harbor Point, a \$3.5 billion development site on 82 acres in Stamford, Conn.

But in a classic case of overleveraging, Antares stumbled in the early days of the recession and lost control of most of its assets to lenders and investors.

Mr. Beninati resurfaced in Manhattan, forming the Bauhouse Group, which bought a building on West 29th Street in Hudson Yards with plans to convert it to condominiums and retail. But little has happened there since Bauhouse obtained a \$35 million construction loan 14 months ago.

A stocky man whose salt-and-pepper hair falls to the collar of his custom-tailored suit, Mr. Beninati has the supreme confidence of a promoter who believes he can personally persuade

building owners, tenants and others to come around to his way of thinking.

Late last year, a broker, Adelaide Polsinelli of Eastern Consolidated, brought Mr. Beninati to the owner of three buildings on 58th Street, which he bought in January. The rent-regulated residents of the buildings were protected under New York tenant laws, so he could not simply evict them. Instead, he called the tenants personally, talked with them for hours and offered them millions of dollars and assistance in finding new homes.

Unlike Mr. Werth, Jack Lesko took the money.

"I love the guy," Mr. Lesko said of Mr. Beninati. He said he decided to leave his rent-regulated unit after the developer offered him a substantial sum, which he declined to disclose. "I had mixed feelings. But I'm now living in Florida with a 30-foot terrace and a cognac in my hand."

Mr. Beninati's company

bought the air rights from several buildings on the block, including a co-op composed of two small buildings. It paid the co-op more than \$11 million with Mr. Beninati's partner, Chris Jones, telling the co-op members he expected to build a "13-story" building next door, according to the board's notes from the meeting.

Mr. Beninati claims Mr. Jones never said 13 stories.

Whatever the truth, some co-op members were dismayed to learn what Mr. Beninati had in mind. Residents worried about the noise and inconvenience of construction. Others said they should have gotten more money.

But they are now resigned to the tower and are negotiating to sell their buildings entirely to Mr. Beninati for about \$45 million. But the deal requires that four rent-regulated tenants, including Mr. Werth, agree to move.

Elias C. Schwartz, a lawyer for the co-op who recently met with Mr. Werth, said he conveyed an

offer from the developer to Mr. Werth that included \$1 million, although Mr. Werth said there was never a cash offer.

"The best thing for him is to avail himself of an extremely generous offer from the developer," Mr. Schwartz said.

But Mr. Werth said he had no desire to leave a block where he knows many residents, the doorman and even the drugstore clerk who once kept the store open late to fill his prescriptions.

A Princeton graduate, Mr. Werth never married, but he said he still had a few lady friends. His career took him from the Army to American Airlines, Bankers Trust, the city's redevelopment board and self-employment.

He wants to remain close to the bus lines that take him to his doctors and the Hospital for Special Surgery. "It's like being in a small town," he said. "Even if they paid me lots of money and got me into an apartment around here, it wouldn't be the same."

NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 4

East Side skyscrapers could be capped under zoning plan

BY ERIN DURKIN

NEW YORK DAILY NEWS Thursday, January 21, 2016, 6:25 PM



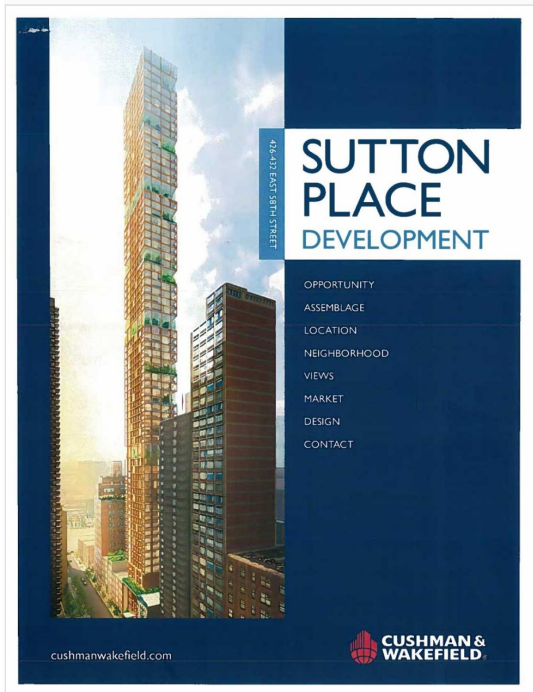
Councilman Ben Kallos, left, is proposing a plan that would restrict the height of apartment buildings on the East Side. (SHAWN INGLIMA)

East Side pols filed a zoning plan Thursday to block super-tall towers from rising in the neighborhood around Sutton Place. The application would cap buildings from 52nd St. to 59th St. east of First Ave. at no more than 260 feet.

"We are drawing a line on the march of superscrapers at billionaire's row to protect our city's residential neighborhoods," said Councilman Ben Kallos (D-Manhattan), who submitted the plan along with Councilman Dan Garodnick (D-Manhattan), Manhattan Borough President Gale Brewer, and Sen. Liz Krueger (D-Manhattan).

The proposal takes aim at a 90-story, 900-foot luxury condo tower planned for E. 58th St. by developer Bauhouse Group, one of the biggest residential buildings in the city.

The developers have the right to build it under current zoning rules.



“We are moving forward with our project on an as-of-right basis and have already begun demolition. Our project will be nearing completion by the time any rezoning would be heard,” said Bauhouse spokesman John Marino.

The proposed building is the latest in the string of tall luxury towers that have risen along a stretch of 57th St. known as Billionaire’s Row, and begun to spread to other areas.

The new zoning plan would also require the inclusion of affordable housing, an idea that Mayor de Blasio is attempting to implement citywide.

An artist rendering shows the 900-foot, 90-story tower planned by the Bauhouse Group at 3 Sutton Place.

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NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 5

** Will print automatically! If it doesn't, click [here](#). **

CRAIN'S

NEW YORK BUSINESS

Developer of troubled supertower files for bankruptcy to hold onto his building

Joseph Beninati, who wanted to build a 950-tall tower in Sutton Place, is trying to hold onto his East 58th Street property

[Daniel Geiger](#)



Buck Ennis

These apartment buildings would come down for a Sutton Place spire.

Published: February 29, 2016 - 12:01 am

The developer planning a 950-foot tall condo tower on a site in Sutton Place has pushed the project into bankruptcy protection in order to stop a foreclosure auction that would have likely stripped him of the property and put it in the hands of his lender.

On Friday, Joseph Beninati, who operates the real estate firm Bauhouse Group, along with another executive, plunged a limited liability company that they control and that owns the development site on East 58th Street into Chapter 11 bankruptcy. The move halted the Feb. 29 [auction of the site](#) by the property's lender, Gamma Real Estate, which holds more than \$180 million of debt tied to the parcel. Joseph Maniscalco of the law firm of Lamonica Herbst & Maniscalco, Beninati's bankruptcy attorney, confirmed that the auction was canceled.

Last week, [Beninati failed to win a restraining order](#) in State Supreme Court that would have prevented Gamma from foreclosing on the property for another 45 days. Beninati's lawyers in that case, Stephen Meister and Kevin Fritz, were asking for a delay to give Beninati more time to try to arrange a sale of the site or refinance it and pay off Gamma. After losing that case, Beninati told *Crain's* in court in lower Manhattan, that he stood to lose millions of dollars he invested in the development and two years of his time.

Bankruptcy documents list Beninati and Herman Carlinsky as executives of the company that owns the East 58th Street property. Carlinsky's role in the project had not previously been disclosed and was not immediately clear.

Beninati and Carlinsky have left a trail of creditors in addition to Gamma. According to the filing, \$3.5 million is owed to at least 20 architecture, engineering, construction, legal and brokerage firms. Among the list of

creditors are well known companies in the real estate industry: Tishman Construction, real estate services firm Douglas Elliman and the law firm of Herrick Feinstein LLP.

The Real Deal [reported](#) that Beninati is also being sued by brokerage firm JLL for allegedly failing to pay the company almost \$2 million in commissions owed for arranging the loan with Gamma a year ago. And a broker Nathaniel Christian has also sued Beninati for allegedly not paying him a \$600,000 commission for arranging the sale of a property at 515 W. 29th St. to Bauhouse.

Pushing the company that owns the East 58th Street property into bankruptcy could buy its owners time to restructure and pay off its debts, as well as forestall the building auction. But it could also saddle Beninati and his partners with heavy financial liabilities. In a foreclosure, creditors generally can only try to seize the assets of the limited liability company that owns the real estate tied to the debt. Some loans, however, have provisions that open a developer up to personal liability if they file for bankruptcy, meaning it is possible Gamma may be able to try to not only take the East 58th Street property but also Beninati and his partners' personal assets such as their houses, cars or other possessions of value. Bauhouse defaulted on its debt with Gamma in January triggering the foreclosure.

Joseph Beninati purchased three contiguous five-story apartment buildings at 428, 430 and 432 E. 58th St. last year, with a plan to knock them down and erect a soaring, ultra-luxury tower in their place. The [proposed spire inflamed some of its neighbors](#), along with a handful of city officials. For months, Beninati struggled to secure a construction loan for the site that would have allowed him to pay off Gamma and begin building, but lenders have backed off extending funds to such projects because of growing fears about a glut of multimillion-dollar apartments being built in the city.

CRAIN'S

NEW YORK BUSINESS

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NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 6

§ 9(d)(iv)(D). The Mezz Loan documents, in turn, prohibit Sutton Mezz from incurring any debts, other than short-term trade obligations in the maximum aggregate amount of \$50,000. Exh. C at § 4.16, Exh. L at § 4.16.

43. I understand that the Debtor's bankruptcy petition contains a schedule of alleged unsecured creditors, whose claims in the aggregate are ostensibly approximately \$3.5 million. If these claims are indeed against the Debtor, these debts were taken on in violation of Sutton Mezz's own Operating Agreement (as well as the Mezz Loan documents). As noted in paragraphs 35 and 36 above, however, Lender has seen liens filed by two of these creditors listed in Debtor's bankruptcy petition, and they name *non-debtor Sutton Owner*, not Sutton Mezz, as liable on their claims. This is consistent with the expectation that these parties would have been providing services on behalf of the Property owned by the non-debtor Sutton Owner. In addition, the other alleged unsecured claims also appear to be almost entirely trade obligations owed to architects, engineers, and contractors, among other things, that relate to the underlying property owner, and not the Debtor. Accordingly, Lender is skeptical that the alleged creditors listed in the Debtor's bankruptcy petition are actually (or properly) creditors of Sutton Mezz.

Lender Is Concerned About the Value of its Collateral

44. Lender is concerned about various recent events that may jeopardize the development of the Property and the value of Lender's collateral with respect to the Membership Interest, specifically, and the Property, generally.

45. There have been reports of community opposition to the Project. Specifically, on January 21, 2016, the East River Fifties Alliance published a press release stating that it, joined by several city and state representatives, including the Manhattan Borough President, submitted a proposal to the Department of City Planning to create new zoning for the Property's location that would "Banish Megatowers." According to this press release, the proposed zoning restrictions

would limit the height of buildings in the district to no more than 260 feet, a fraction of the height that Sutton Owner planned. Exh. O. Similarly, on February 8, 2016, *Curbed NY* reported that the project “has received a great deal of pushback from community groups like the East River 50s Alliance” and already “has taken a significant height cut going down from the original planned 80 stories down to 62 stories.” Exh. P.

46. Lender is also concerned about reports about fluctuations in the lending and economic environment. On February 4, 2016, *The Real Deal* reported that “[w]ary of a slowdown in high-end apartment sales and a potential supply glut, lenders are beginning to retreat from Manhattan’s luxury condominium market. Many banks are either cutting down their luxury condo construction lending or stepping away from the market altogether, according to brokers and lenders.” Exh. Q. The article states that after a three-year period of record-setting luxury condominium sales, “the market is showing signs of a correction.” *Id.*

47. Lender is similarly concerned by the liens filed against the Property. These liens indicate that the value of Lender’s collateral is at risk and is not adequately protected by the Debtor (or its subsidiary, Sutton Owner), as creditors take action against the underlying Property due to nonpayment. Exhs. EE, FF and GG.


48. For the reasons described in Lender’s accompanying motion papers, this case should be dismissed or, in the alternative, the automatic stay should be lifted so that Lender can pursue its state law remedies against Sutton Mezz.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true
and correct.

Executed this 10th day of March 2016.



JOANN CAMPONE
Notary Public, State of New York
No. 01CA6171737
Qualified in Bronx County
Commission Expires July 30, 2019



N. Richard Kalikow

NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 7

Current Entity Name:	DOS ID #:	Initial DOS Filing Date:	County:	Jurisdiction:	Entity Type:	Current Entity Status:	DOS Process
SUTTON 58 OWNER, LLC	4592052	6/13/2014	NEW YORK	NEW YORK	DOMESTIC LIMITED LIABILITY COMPANY	INACTIVE	HOWARD W. MUCHNICK, MUCHNICK, GOLIEB & GOLIEB, P.C. 200 PARK AVENUE SOUTH SUITE 1700 NEW YORK, NEW YORK, 10003
SUTTON 58 OWNER, LLC	4726918	3/17/2015	BLANK	DELAWARE	UNAUTHORIZED LIMITED LIABILITY COMPANY	INACTIVE - Merged Out (Mar 17, 2015)	C/O BAUHOUSE GROUP 500 WEST PUTNAM AVE 4TH FLOOR GREENWICH, CONNECTICUT, 06830
SUTTON 58 OWNER, LLC	4727672	3/18/2015	NEW YORK	DELAWARE	FOREIGN LIMITED LIABILITY COMPANY	ACTIVE	C/O BAUHOUSE GROUP 500 WEST PUTNAM AVENUE 4TH FL. GREENWICH, CONNECTICUT, 06830
SUTTON 58 ASSOCIATES LLC	4769383	6/4/2015	NEW YORK	DELAWARE	FOREIGN LIMITED LIABILITY COMPANY	ACTIVE	SUTTON 58 ASSOCIATES LLC 101 PARK AVENUE SUITE 2602 NEW YORK, NEW YORK, 10178
SUTTON 58 HOLDING COMPANY LLC	5049823	12/8/2016	NEW YORK	DELAWARE	FOREIGN LIMITED LIABILITY COMPANY	ACTIVE	SUTTON 58 HOLDING COMPANY LLC 101 PARK AVENUE SUITE 2602 NEW YORK, NEW YORK, 10178

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through April 6, 2018.

Selected Entity Name: SUTTON 58 OWNER, LLC

Selected Entity Status Information

Current Entity Name: SUTTON 58 OWNER, LLC

DOS ID #: 4592052

Initial DOS Filing Date: JUNE 13, 2014

County: NEW YORK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: INACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

HOWARD W. MUCHNICK, MUCHNICK, GOLIEB & GOLIEB, P.C.

200 PARK AVENUE SOUTH

SUITE 1700

NEW YORK, NEW YORK, 10003

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 13, 2014	Actual	SUTTON 58 OWNER, LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through April 6, 2018.

Selected Entity Name: SUTTON 58 OWNER, LLC

Selected Entity Status Information

Current Entity Name: SUTTON 58 OWNER, LLC

DOS ID #: 4726918

Initial DOS Filing Date: MARCH 17, 2015

County:

Jurisdiction: DELAWARE

Entity Type: UNAUTHORIZED LIMITED LIABILITY COMPANY

Current Entity Status: INACTIVE - Merged Out (Mar 17, 2015)

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O BAUHOUSE GROUP

500 WEST PUTNAM AVE 4TH FLOOR

GREENWICH, CONNECTICUT, 06830

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
MAR 17, 2015	Actual	SUTTON 58 OWNER, LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through April 6, 2018.

Selected Entity Name: SUTTON 58 OWNER, LLC

Selected Entity Status Information

Current Entity Name: SUTTON 58 OWNER, LLC

DOS ID #: 4727672

Initial DOS Filing Date: MARCH 18, 2015

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O BAUHOUSE GROUP

500 WEST PUTNAM AVENUE

4TH FL.

GREENWICH, CONNECTICUT, 06830

Registered Agent

NONE

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***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
MAR 18, 2015	Actual	SUTTON 58 OWNER, LLC

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through April 6, 2018.

Selected Entity Name: SUTTON 58 ASSOCIATES LLC

Selected Entity Status Information

Current Entity Name: SUTTON 58 ASSOCIATES LLC

DOS ID #: 4769383

Initial DOS Filing Date: JUNE 04, 2015

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

SUTTON 58 ASSOCIATES LLC
101 PARK AVENUE SUITE 2602
NEW YORK, NEW YORK, 10178

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
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No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 04, 2015	Actual	SUTTON 58 ASSOCIATES LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

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NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through April 6, 2018.

Selected Entity Name: SUTTON 58 HOLDING COMPANY LLC
Selected Entity Status Information

Current Entity Name: SUTTON 58 HOLDING COMPANY LLC

DOS ID #: 5049823

Initial DOS Filing Date: DECEMBER 08, 2016

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

SUTTON 58 HOLDING COMPANY LLC
101 PARK AVENUE SUITE 2602
NEW YORK, NEW YORK, 10178

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
DEC 08, 2016	Actual	SUTTON 58 HOLDING COMPANY LLC

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

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NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 8

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

SUBCOMMITTEE ON ZONING AND FRANCHISES

----- X

November 20, 2017

Start: 9:48 a.m.

Recess: 4:17 p.m.

HELD AT: Council Chambers - City Hall

B E F O R E: DONOVAN J. RICHARDS
Chairperson

COUNCIL MEMBERS:

DANIEL R GARODNICK
JUMAANE D. WILLIAMS
ANTONIO REYNOSO
RITCHIE J. TORRES
VINCENT J. GENTILE
BARRY S. GRODENCHIK
DAVID G. GREENFIELD
BEN KALLOS

1
2 We, we are in the IBZ's every day and we see
3 businesses being shuttering and leaving because of
4 the real estate rents, we're seeing businesses trying
5 to locate here but they're not able to because of the
6 expensive costs. So, now two years later we're
7 looking at what was a common sense industrial policy
8 that would preserve and protect industrial jobs in
9 New York City to an amended text which actually
10 provides a bonus density and further incentive to
11 develop self-storage within the IBZ's. And any
12 evidence that self-storage... self-storage provides
13 jobs in the IBZ's or... for New Yorkers these jobs are
14 not well paying and on a 200,000-square foot facility
15 five jobs that are not paying well. So, I urge you to
16 pass or put forth the original proposal and strike
17 down any amendment that has been put forth today.
18 Thank you.

19 CHAIRPERSON RICHARDS: Thank you all for
20 your testimony today. Thank you. Alright, are there
21 any other members of the public who wish to testify
22 on this issue? Alright, seeing none I will now close
23 the public hearing on Land Use Item Number 817. We'll
24 take a five-minute recess and our next hearing is on
25 preconsidered Land Use East River Fifties/Sutton

1
2 Place, an application for a zoning text amendment by
3 the East River Ferry... Fifties Alliance. This text...
4 this text amendment would establish a modified
5 version of the standard tower on a base regulation
6 for certain zoning lots in R10 districts roughly
7 bounded by the Queensboro Bridge, 1st Avenue, East
8 51st Street and the East River in Community Board six
9 in Manhattan. And once again we'll take a five-minute
10 recess and then we'll begin. Well good afternoon we
11 are back, and we are joined by Council Member Kallos
12 who... is one of the... is the applicant, wow, Jane
13 Jacobs would be proud. So, we are joined by Senator
14 Liz Krueger who will begin and Jim Caras, Manhattan
15 Borough... from the Manhattan Borough President's
16 Office; Karen Mehra, one of the applicants for the
17 East River Fifties text amendment and then Sandy
18 Hornick, East River Fifties Alliance as well. So,
19 with that I'm going to turn it over to our State
20 Senator... oh actually we'll go to Council Member
21 Kallos first and then we'll go to our State Senator
22 who has been so patient with us and we are so
23 grateful to have you and I got some great lessons on
24 how to shop at Costco's from her during our
25

1
2 intermission so I'm forever grateful to you for that.
3 Alright, we're going to go to Council Member Kallos.

4 COUNCIL MEMBER KALLOS: Thank you to
5 Chair Richards, thank you to our State Senator for
6 being on time for our 11:30 a.m. hearing on the East
7 River Fifties Alliance Application that has now
8 starting at 1:05. I also want to... [cross-talk]

9 CHAIRPERSON RICHARDS: That is pretty
10 timely considering...

11 COUNCIL MEMBER KALLOS: I, I, I also want
12 to acknowledge that we were joined by Council Member
13 Dan Garodnick who is the co-applicant on this however
14 he is currently chairing a hearing on East Midtown
15 rezoning at 22 Reed Street so I, I read this on
16 behalf of our community and the city as a whole.
17 We're seeing super tall buildings go up in commercial
18 midtown at 432 Park, 111 West 57th Street and we
19 believe they have no role in quite side streets in
20 fully residential neighborhoods. When I first took
21 office, I began discussions with the City Planning
22 Department, the City Land... City Council Land Use,
23 Community Board six and eight on how to provide
24 contextual zoning to my districts. Soon however I
25 learned that the situation was most serious in the

1
2 far East Fifties where super tall buildings can be
3 built under the current zoning on quite side streets
4 in a fully residential neighborhood. I wanted to do
5 something about this so that Billionaires Road does
6 not expand to become Billionaires Island. We work... we
7 worked with residents from the Sutton area to form
8 the East River Fifties Alliance, the community
9 coalition leading this application which consists of
10 over 45 buildings representing co-op boards, condo
11 boards, individual owners and over 2,600 individual
12 supporters living in more than 500 buildings within
13 and beyond the zoning area. Joined by three more
14 elected officials and we filed the rezoning that
15 we'll be hearing today. As you'll hear the rezoning
16 corrects an accident of history that left Sutton area
17 the only residential neighborhood in the city with
18 uncapped R10 zoning without any further protections.
19 This application supports real housing for real New
20 Yorkers including affordable housing instead of 800-
21 foot-high, full story penthouse built to serve as
22 investments often for foreign speculators, seeks to
23 impose tower on base zoning which would result in
24 squatter more human scaled buildings with a dense
25 space and shorter tower adding more units to our

1
2 housing stock which will be filled with real New
3 Yorkers not foreign investments for billionaires. We
4 began this effort very publicly in 2015... in April
5 2015 writing a op in our local paper and by May 2015
6 the community board passed a resolution requesting a
7 zoning change to provide contextual height caps. Our
8 organizing efforts soon caught the attention of the
9 New York Times and on January 2016 we submitted the
10 first ever community led rezoning. There's a... in, in
11 April 2016 the developer named Bauhaus Group entered
12 bankruptcy on the site at East 58th Street and fell
13 within the catchment area of our proposed rezoning,
14 the site was approved for sale out of bankruptcy in
15 September of 2016 to Gamma Real Estate who had pre...
16 provided initial funding. The sale took place over a
17 year. After our effort was first publicized on the
18 intentions of the community to rezone the district
19 were cited in the bankruptcy case. Further when
20 representatives of Gamma reached out to my fellow
21 elected officials and I we made it clear that our
22 rezoning was moving forward and would affect their
23 site if they intended to build a super tall as had
24 been reported. Despite this Gamma moved forward with
25 their plans for a super tall in full knowledge, by

1
2 the time they were ready to build it may no longer be
3 allowed in the zoning text. Fortunately the City
4 Planning Commission chose to add a grandfathering
5 clause to... so... in the negotiations the City Planning
6 Chair suggested that we move forward with the tower
7 on base in, in replacing an, an initial affordable
8 housing... sorry, let me just restart this for a
9 second... we started the conversation before MIH even
10 came to the council, in that conversation we talked
11 about trading height for affordability what we
12 eventually got to was proposing even before MIH, 210
13 on the side street with 260 feet for affordable
14 housing. After we had this negotiation and we had
15 this proposal that's actually very similar to what
16 the city actually ended up adopting for MIH. With
17 that being said based on guidance from Department of
18 City Planning MIH was not appropriate for this
19 location though I continued to pressure the Mayor to
20 bring MIH to my district and so what we put forward
21 was an optional inclusionary housing program that
22 would have bought... brought affordable housing to
23 Sutton area that the community wanted. With that
24 being said the City Planning Chair felt that given
25 differences between inclusionary housing the best

1
2 thing we could actually do for affordable housing was
3 to bring a tower on base with the existing
4 inclusionary housing program to this location. We
5 accepted the Chair's recommendation which did not
6 include a grandfathering clause. Unfortunately, the
7 City Planning Commission chose to add a
8 grandfathering clause to allow this building to
9 proceed in the event the council passes this rezoning
10 change. I believe this unusual move undercuts the
11 purpose of the zoning as one super tall building
12 completely changes the character of a small
13 residential neighborhood, it was also against
14 everything that we did to begin with. The city
15 already has a mechanism for ensuring that developers
16 in this situation have recourse through an appeal to
17 the Board of Standards and Appeals, for these reasons
18 I will be supporting the council not only pass this
19 rezoning but will be making motion to remove the
20 grandfathering clause thus treating this rezoning and
21 this development the same way we do every other
22 zoning change, I want to thank my... again the Land Use
23 team, our Subcommittee on Zoning Chair for his
24 support, I will be taking over and we now turn to our
25 State Senator Liz Krueger who is one of our co-

1
2 applicants, has been with us since the start and it
3 has, has been moving mountains for our community.

4 LIZ KRUEGER: Thank you very much. I have
5 full testimony that I have submitted but I don't
6 think I'm going to read this whole testimony because
7 frankly Council Member Kallos pretty much just went
8 through every item I was going to testify on. I am
9 glad to be here as a co-applicant with the ERFA
10 Rezoning Coalition. It is clear after two years of
11 working together that we need these changes and we
12 need you to move rapidly as the city council. As
13 you've already heard we went through the process
14 multiple times with City Planning, this is a
15 community that is very much in support of affordable
16 housing not hostile to development per se but rather
17 recognizing that we need to think through what kind
18 of development there is and that it's actually... if we
19 have this rezoning we are far more likely to get more
20 affordable housing in this community rather than
21 super tall towers for perhaps the absent owners which
22 we're seeing in other parts of my district in the
23 Fifties going across from the East to the West where
24 we're building super tall towers, we're giving tax
25 exemptions, we're getting no affordability and

1
2 your application was not going to be re... not going to
3 be approved.

4 COUNCIL MEMBER KALLOS: So, I, I think
5 just to, to establish I think... [cross-talk]

6 GARY TARNOFF: And, and to answer your
7 question if you heard what Mr. Kalikow said, if you
8 listened to him... [cross-talk]

9 COUNCIL MEMBER KALLOS: Uh-huh... [cross-
10 talk]

11 GARY TARNOFF: ..Mr. Kalikow said that he
12 was involved in lending in this property from... since
13 2014 which is well before you had any idea of
14 rezoning the... rezoning the area.

15 COUNCIL MEMBER KALLOS: And so, I, I
16 think it's clear to all of us that you are aware of
17 all the things we have been up to as a community and
18 as an elected official in terms of the rezoning and
19 the fact that we're also seeking to do this for my
20 entire district, so I guess the next question along
21 that is when a... when money is loaned is there risk
22 and is there ever compensation for that risk?

23 STANLEY SCHLEIN: Yes, usually in the
24 form of interest.

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COUNCIL MEMBER KALLOS: Was this a high-risk loan?

STANLEY SCHLEIN: We thought it was a high-risk borrower, we didn't believe it was high risk loan based on the as of right nature of the underlying collateral.

COUNCIL MEMBER KALLOS: And, and, and so that, that was reflected and what was the maximum interest on this project, on the initial financing?

STANLEY SCHLEIN: The initial financing when you include points and fees it was around 20 percent.

COUNCIL MEMBER KALLOS: And, and... I... in reviewing the bankruptcy filing I believe it may have actually exceeded 25 percent.

STANLEY SCHLEIN: We made a second loan and on the second loan there were fees that would have brought it up closer to that number, yes.

COUNCIL MEMBER KALLOS: And, and I guess just to be clear there is no request by the, the, the opposition for the city to guarantee the loans and the, the loans... sorry, there's no... we shouldn't have to guarantee the loans and make sure that if a loan is made that the person making the loan... [cross-talk]

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STANLEY SCHLEIN: That... [cross-talk]

COUNCIL MEMBER KALLOS: ...makes money back
on that loan?

STANLEY SCHLEIN: That's absolutely
correct, nor do we believe... but we believe we have
the right to protect our investment which means
playing by the rules as dictated in the zoning code
of New York.

COUNCIL MEMBER KALLOS: And I... we, we...
before this we started with a, a... we, we, we do these
hearings all, all, all the time and we make laws that
have effects on people's pecuniary interest so I
guess was the, the rezoning that was happening or, or
at least the, the conversations around it, the
resolution from the community board do you believe
that that had an impact on, on the project or its
value?

STANLEY SCHLEIN: Oh absolutely... [cross-
talk]

COUNCIL MEMBER KALLOS: Or anyone on the
application, I don't want to single you out just
folks can feel free to jump in.

STANLEY SCHLEIN: We think that the press
around the project has certainly been a negative to

1
2 value for sure, nobody likes to be in the spotlight
3 when it comes to something like this. However, we
4 believe that in playing by the rules we've certainly
5 met and then basically exceeded all that would be
6 necessary to get grandfathered so at this point it's
7 not about protecting our investment because this
8 building is going to get built, it's about who's
9 getting hurt now. Yeah, it's going to cost us several
10 million dollars to go through BSA but we're at 95
11 percent, we're almost done, the only people that are
12 going to really get hurt are the... are the workers at
13 the site.

14 COUNCIL MEMBER KALLOS: So... and, and I
15 just want to make clear this isn't personal, this
16 isn't about you, it's not about the previous
17 developer this is about I think at least for me and
18 what you heard from the Senator and the Borough
19 President's Office is just a concern with super tall
20 development and trying to work within the zoning
21 framework to ensure that we have buildings that are
22 in context. So, I think just with regards to the
23 bank... yeah... [cross-talk]

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JONATHAN KALIKOW: Let me just... let me just interject, if... with the Council Member's... [cross-talk]

COUNCIL MEMBER KALLOS: Sure... [cross-talk]

JONATHAN KALIKOW: ...permission at this point, I think your point is exactly right, you don't want to super tall building or the other sponsors of this ERFA application don't want this singular super tall building plus there is no other component of that site that is encompassing the text amendment that can be built on to create anything other than this site. So, let us focus on the reality and the reality is it was as of right when it started, it was as of right during its development, the initial ERFA application to put a height limitation on that site was rejected by City Planning, an alternative zoning methodology came to the fore and now two weeks before a complete and thorough completion of the foundation is the question that comes before this council, who gets punished, these workers so that the leadership of this ERFA group can take a victory lap that we delayed the construction of a project because that project will be built under all rational

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understanding of the laws of this city and of this state. So, that's the question that all of you need to face when you vote on this proposed amendment.

STANLEY SCHLEIN: If I could add one thing Council Member?

COUNCIL MEMBER KALLOS: I, I would love to get back to question and answer if... [cross-talk]

JONATHAN KALIKOW: I'm sorry... [cross-talk]

COUNCIL MEMBER KALLOS: ...if no, no, no worries just trying to run through and just get the facts out into the record. Please.

STANLEY SCHLEIN: Oh, thank you. I know that the proponents of... or... on behalf of ERFA Karen and Sandy earlier mentioned a 35-story building according to our zoning experts and architects in, in order to build a building that tall we would have to displace at least eight rent stabilized tenants in order to increase the mass of our base. Given our current owned 6,000 square foot lot it would be impossible to go that high.

COUNCIL MEMBER KALLOS: And, and I think that's where I'd like to... let me just get a little bit... take a couple steps back so there's been Baohaus

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2 they've secured funding from you and so, so can you
3 tell me a little bit about what happened with the
4 previous developer and what happened between when
5 they secured the original funding, the second loan
6 and then the bankruptcy which you... and, and who may
7 have initiated the bankruptcy situation... proceedings?

8 STANLEY SCHLEIN: The first loan was a
9 short term loan meant to secure the fee simple area
10 upon which the development will be built, it was
11 three townhomes with all the in place tenants being
12 under contract to be purchased bought out prior to
13 our getting involved, it was the condition of our
14 loan that we would lend on vacant buildings because
15 we wanted to ensure that we could have a site that
16 was developable as of right however we never in any
17 of those instances spoke to any of those tenants. The
18 loan, the second loan which was made six months later
19 enabled the FAR to be increased by purchasing air
20 rights from the surrounding buildings and I believe
21 it was 11 buildings. Additionally, over 70,000 feet
22 of affordable housing inclusionary certificates were
23 purchased on behalf of the project from a Fisher
24 Brothers Project on 39th Street also within community
25 board six. Once the total massing was complete Mr.

1
2 Beninati had about eight months to either secure a
3 development partner or sell the site, he decided to
4 not sell the site go forward and he eventually ran
5 out of runway and defaulted. At his default we
6 offered him his investment back in exchange for the
7 title on the property to avoid any messy conflict
8 instead of doing that he declared bankruptcy threw
9 out a whole bunch of allegations against us during
10 bankruptcy, we were stuck in bankruptcy for nearly a
11 year at which point our hands were really tied being
12 not the owner of the property although we petitioned
13 the court to do things like finalize the raising of
14 the building which were in, you know very terrible
15 shape having had demolition stopped halfway through.
16 We also petitioned the court to allow us to speak to
17 our... the neighboring buildings so they knew that in
18 the event that we were to gain the title, you know
19 things would be different under us and as a matter of
20 fact one of the first things we did after getting
21 title was speak to those neighboring buildings and
22 assure them that we were not looking to harm them in
23 any way and any ill effects from our construction we
24 would, you know remedy as quickly as possible and
25

1
2 that's actually has been what's been happening
3 especially with the property to our East.

4 COUNCIL MEMBER KALLOS: So, you're,
5 you're in bankruptcy, where... what... was the same
6 institution that you are here representing today
7 Gamma Real Estate the lender or was it a different
8 commercial... corporate vehicle?

9 STANLEY SCHLEIN: No, it was... well Gamma
10 Real Estate is the parent entity, the vehicle lending
11 was Sutton 58 Associates I believe at the time.

12 COUNCIL MEMBER KALLOS: Okay, so Sutton
13 58's associates, an individual corporation recognized
14 by Citizens United as practically a person made a
15 loan, there was a bankruptcy and was Sutton 58
16 associates one of the, the lead creditor or the...
17 what... where... what was your... [cross-talk]

18 STANLEY SCHLEIN: Sole... well it was the
19 sole first lien holder, there were... [cross-talk]

20 COUNCIL MEMBER KALLOS: Okay... [cross-
21 talk]

22 STANLEY SCHLEIN: ...some unsecured
23 creditors with whom we cut deals to make sure they
24 got paid because Mr. Beninati was unable to pay them
25 so... [cross-talk]

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COUNCIL MEMBER KALLOS: Okay, so they were the sole creditor, you... at... so, so... and you're also affiliated with the Sutton 58 Associates?

STANLEY SCHLEIN: Yes.

COUNCIL MEMBER KALLOS: So, Sutton 58 Associates goes to the bankruptcy estate says we would like to be made whole, the bankruptcy estate sells the property... sorry, sorry, sells, sells it... sorry, if, if you can... [cross-talk]

STANLEY SCHLEIN: Yeah, sure... [cross-talk]

COUNCIL MEMBER KALLOS: ...talk without having me butcher it... [cross-talk]

STANLEY SCHLEIN: So... [cross-talk]

COUNCIL MEMBER KALLOS: ...if you can just go into the technicalities of the parties, the amounts of the estates, how the estate was split up and what was purchased by whom?

STANLEY SCHLEIN: So, our... part, part of what happens in bankruptcy is the size of our claim, you have adjudicate it, essentially, we had both the first lien and M.E.S. debt we told the court to ignore our M.E.S. debt for a sake of speed and ease and essentially the size of our first lien was at

1
2 that time, again I'm going to round, 175 million
3 dollars which meant that when the property went for
4 sale in order for it to exit bankruptcy we as the
5 senior creditor could bid up to that amount without
6 having to essentially come out of pocket. So, when
7 the auction was held at the culmination of bankruptcy
8 there wound up being only one other bidder and we
9 wound up being the successful purchaser of the
10 property at approximately 86 million dollars.

11 COUNCIL MEMBER KALLOS: So, we in this
12 case is which entity?

13 STANLEY SCHLEIN: I'm using them
14 interchangeably, the parent and the actual lending
15 entity. Part of our business in making loans has a
16 bunch of different entities that make the actual
17 loans but I'm referring to it as one organization.

18 COUNCIL MEMBER KALLOS: So, did 58
19 Associates after being able... so, let, let me just
20 simplify, do, do you know who the other bidder was?

21 STANLEY SCHLEIN: Yes.

22 COUNCIL MEMBER KALLOS: Who were they and
23 how much did they bid?

24 STANLEY SCHLEIN: It was a group, I
25 believe it's called Cornell run by a fellow named

1
2 Isaac Hager out of Brooklyn. The bidding started at
3 81 million dollars went a few rounds, they bowed out
4 after we bid 86.

5 COUNCIL MEMBER KALLOS: And, and just to,
6 to be clear and, and, and it may have been a loss but
7 58... Sutton 58 Associates could have allowed Cornell
8 to purchase for 81 million or, or more because they
9 made a bid and could have taken that and, and that,
10 that.. you, you made the loan for 175, you get 81 back
11 you don't lose all your money you lose a, a large
12 portion but half but you, you still walk away from
13 something from the table as bankruptcy tends to be
14 getting fifty cents on the dollar and the bankruptcy
15 is actually better than most people have done
16 especially with like Delphi and others that I worked
17 on.

18 STANLEY SCHLEIN: We could have done that
19 however we believed that it was not the optimal
20 strategy.

21 COUNCIL MEMBER KALLOS: And, and, and
22 that, that is fair and so the entity that purchased
23 the asset was Sutton 58 Associates?
24
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2 STANLEY SCHLEIN: Or, or a similarly
3 named wholly owned entity, it, it could have been
4 Sutton 58 Holdings I don't want to... [cross-talk]

5 COUNCIL MEMBER KALLOS: But same, same
6 partnership... [cross-talk]

7 STANLEY SCHLEIN: Same, same exact
8 ownership, yes.

9 COUNCIL MEMBER KALLOS: Fair enough so,
10 so... but I, I think just the key thing that I want to
11 just have there on public is that there, there was a
12 bankruptcy piece that gets handed to the estate, it
13 got... it got purchased back and, and I think we've had
14 conversations and it is fair to say you're, you're
15 allowed to try to... still try to make, make money on
16 it, there's no reason folks have to lose. So, we...
17 you, you do the bankruptcy and so when did that all
18 wrap up, when did you take title?

19 STANLEY SCHLEIN: We took title in mid-
20 March of 2017.

21 COUNCIL MEMBER KALLOS: Okay, so you take
22 title in mid-March, at the time that you did were you
23 aware that the East River Fifties Alliance was in
24 preapplication with the City Planning Commission?
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that is three weeks away from completion, is that a fair characterization?

GARY TARNOFF: Well without the grandfather it would stop it, it, it would require us to stop as we would not go forward until we were vested by the BSA, correct.

COUNCIL MEMBER TORRES: And I want to understand more clearly how many workers are affected?

STANLEY SCHLEIN: There are over 100 on the project right now and by mid-summer should the grandfathering remain there would be approximately 300.

COUNCIL MEMBER TORRES: And if, if the text amendment without the grandfathering clause were to go forward what is the immediate impact on the workers.

STANLEY SCHLEIN: Work, work has to fully stop.

COUNCIL MEMBER TORRES: Okay, in the midst of the holidays?

STANLEY SCHLEIN: In... yep.

COUNCIL MEMBER TORRES: So, I want to know what does that mean for your families?

1
2 JONATHAN KALIKOW: And may I add, these
3 workers... and I'll let you answer that certainly,
4 these workers do not receive unemployment benefits,
5 they are hourly workers and they're paycheck stops
6 forthwith, the first week in December.

7 ANTHONY AUSTIN: If this movement was to
8 stop it would technically stop my life, it would.. it
9 would stop everything that I worked for all year, it
10 would stop me from going down to Florida in March to
11 see my daughter graduate, I promised that I would buy
12 a little car for her graduation, it would stop
13 everything that I love, it would stop all my fellow
14 workers from workers and you got to understand if it
15 stops me it stops my wife, it stops my kids, it stops
16 my grandkids, it stops all the generations that comes
17 after us and that's what we're trying to instill in
18 this world to keep people working, to keep people
19 honest so people don't have to walk down the street
20 looking over their shoulders to see if somebody's
21 going to hurt them or something just to try to get a
22 dollar for something to eat. It's, it's, it's
23 something.. I, I feel like I'm a leader now, I lead
24 people and I lead by example because Lendlease gave
25 me this chance to do this now if you stop the

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grandfather that's coming in from coming my life stops so, you want to know what happens, my life stops, their lives stop also that's as clearly as I can bring it... [cross-talk]

COUNCIL MEMBER TORRES: And, and I guess... we're going to destabilize your life, we're going to destabilize your family and I... the question is toward what end because the truth is that... [cross-talk]

ANTHONY AUSTIN: I mean... [cross-talk]

COUNCIL MEMBER TORRES: Yeah... [cross-talk]

ANTHONY AUSTIN: ...after, after it's all said and done, I mean you can't just lay down and die, you know you can't... you can't stop moving forward with your life and everything like that but... [cross-talk]

COUNCIL MEMBER TORRES: There is no... [cross-talk]

JONATHAN KALIKOW: May I... may I?

COUNCIL MEMBER TORRES: Okay.

JONATHAN KALIKOW: The three requirements for grandfathering has to be have a full building permit in place, we've had one for quite a period of time now; complete your excavation of your

1
2 foundation, that's been done finished and over with;
3 and have substantial progress on the construction of
4 the foundation. Substantial progress can be defined
5 as low as 30 percent, there's case law on that. We
6 will be 95 plus or minus percent complete if the city
7 council votes in its current schedule to eliminate
8 the grandfathering. So, what will have been achieved
9 and I've said this in my direct testimony, I said it
10 in response to Council Member Kallos's question, I
11 will say it again, what will be achieved is that
12 these gentleman will be put out of work with no check
13 and then six months later the project... or seven
14 months later when the BSA finally conducts its
15 hearing and hears the testimony we'll recommence,
16 we'll reconvene and tell DOB we have substantially
17 made progress, give us our permits back seven months
18 later at a cost of a million plus or whatever it
19 costs, they will be out of work for that seven month
20 period.

21 COUNCIL MEMBER TORRES: So, it sounds
22 like just to sum up we're not actually changing an
23 outcome here, we're simply... [cross-talk]

24 JONATHAN KALIKOW: No... [cross-talk]

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COUNCIL MEMBER TORRES: ...delaying an outcome and doing so... [cross-talk]

JONATHAN KALIKOW: You're delaying the inevitable... [cross-talk]

COUNCIL MEMBER TORRES: ...and, and doing so at the cost of dislocating... [cross-talk]

JONATHAN KALIKOW: Right... [cross-talk]

COUNCIL MEMBER TORRES: ...hundreds of workers and causing what would seem to be senseless suffer?

JONATHAN KALIKOW: May I just say one more thing about the history of this council... [cross-talk]

COUNCIL MEMBER TORRES: Sure... [cross-talk]

JONATHAN KALIKOW: ...of recent history... [cross-talk]

COUNCIL MEMBER TORRES: ...a history that preexists... [cross-talk]

JONATHAN KALIKOW: Recent history Council Member Torres. You have considered under, under Council Member Greenfield's leadership a number of zoning initiatives over the last number of years, the net result of most of them when... to be up zoned

NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 9

Sutton Strike: Gamma's Jonathan Kalikow on the War Over 3 Sutton Place

Developer talks legal battle with Bauhouse Group's Joseph Beninati, opposition from local community

BY MACK BURKE AND CATHY CUNNINGHAM SEPTEMBER 27, 2017 9:00 AM



JONATHAN KALIKOW. PHOTO: SASHA MASLOV/FOR COMMERCIAL OBSERVER

“I believe in completely disproportionate retaliation,” Jonathan Kalikow told Commercial Observer, “like *Count of Monte Cristo*, but to the 10th power. As in, now you’ve fucked with the wrong person.”



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 REPRINTS

JONATHAN KALIKOW. PHOTO: SASHA MASLOV/FOR COMMERCIAL OBSERVER

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SEE ALSO: [Greg Kalikow Talks Family Pride and His Southeast Strategy](#)

Kalikow has reason to be angry. He’s talking about 3 Sutton Place—the subject of three years of lawsuits, bankruptcies, foreclosures, political haggling and endless 311 calls.

Kalikow, the 47-year-old married father of four girls ages 8, 10, 12 and 17, is the president of [Gamma Real Estate](#) and a man of real estate pedigree par excellence. He is the son of N. Richard Kalikow—the chairman and chief executive officer of Gamma and cousin of Peter Kalikow, the former Metropolitan Transportation Authority chairman and the founder of real estate firm H.J. Kalikow and Co. And as we sat down with him for lunch at the 101 Club, we got the sense that he doesn't pull punches.



Between courses, he opined on some of New York City's most buzzed-about projects: "I like the Related [Companies] guys as individuals a lot, I really do," Kalikow said, "but I don't really understand Hudson Yards. Anything you build that's residential proximate... is going to be expensive. And you have a lot of traffic and logistical issues to overcome. This building [101 Park Avenue] is next to Grand Central [Terminal], whereas it could take you another 40 minutes to get over there. I'm sure it'll be successful because there are a lot of powerful people involved who are smarter than me, but I don't see us building new tunnels or bridges or subway lines any time soon."

But that's a different discussion.

"I tend to be a very under-the-radar person," Kalikow explained. "My family is in real estate, and everyone in the real estate business likes to have the press. But we've been very under the radar when it comes to lending. I guess it's hurt a little bit in terms of [business driven by] word of mouth, but because we have a 50-year history of doing this, we're [easily vetted]. Also, our amount of repeat borrowers is huge."

Still, Gamma Real Estate nevertheless found itself embroiled in a real estate battle and forced into the spotlight after it financed [Joseph Beninati's Bauhouse Group's](#) 87-story residential development at [3 Sutton Place](#) between East 57th and East 58th Streets. When Beninati defaulted on the \$147 million loan from Gamma, the lender foreclosed on the property and later acquired it in a foreclosure auction for \$86 million (\$98 million including air rights), outbidding Brooklyn investor Isaac Hager. Oh, and there was a bankruptcy filing in between.

Last December, Gamma filed plans for its own 844-foot, 67-story tower at 3 Sutton Place, for which construction has recently commenced.



The Kalikows aren't exactly wet behind the ears when it comes to real estate lending. Gamma has originated billions of dollars of loans on hundreds of properties over the past half-century. (Kalikow was insistent that he does *not* loan to own, even if that turned out to be the case for 3 Sutton Place. "It's a pain. If I want to buy it, I'll buy it, but I want the borrowers to be successful at the end of the day," he said.)



And lending is only one feather in their cap: Gamma has also owned and built over 12,000 multifamily units across the U.S.—9,000 in the southeastern U.S.—and owns 10 million square feet of office space in Manhattan alone.

But, it's 3 Sutton Place that has been the subject of the most industry chatter (and headaches for Kalikow) over the past couple of years, and the embattled property isn't out of the woods yet. A zoning war is now underway with Sutton Place City Council officials and the surrounding community, which is fighting to cap the proposed development's height at 260 feet.

But before getting there, it's worth examining the origins. After all, this started out as a beautiful dream.

"[Three Sutton Place] is in a residential neighborhood that we find unique, and it has these really strong water views," Kalikow said about Beninati's plan for a 950-foot tower when it first crossed his desk in 2014. "Not to mention its proximity to the FDR Drive, to Connecticut, to the airports and to the Hamptons. There are parts of this deal that made a lot of sense to us."

Back then, the site was comprised of three low-rise apartment buildings. To build the cloud-piercing tower he envisioned, Beninati would have to buy those buildings (for \$32 million), empty them of their rental tenants, demolish them and buy 267,000 square feet of air rights from other properties. And Beninati and his business partner Chris Jones had plenty of experience raising millions of dollars in financing, having overseen several large-scale development projects totaling \$4 billion, according to the post-bankruptcy trial memorandum of decision dated Dec. 1, 2016.

Banco Inbursa was one of the first lenders out of the gate, entering into negotiations for the project's financing and executing a term sheet for a \$70 million loan. But, according to the post-trial memo, Inbursa backed out a week later because, the bank claimed, the value of the collateral would not be sufficient to satisfy its 45 percent LTV requirement.

"We understood [Beninati's] shortcomings but we saw a lot of embedded value," Kalikow said. "We made one loan then we made a second loan to complete the purchase." Gamma

provided an 18-month loan that then was refinanced with a seven-month, \$147 million loan in June 2015. It comprised a \$145.9 million single loan to refinance the previous loan and a \$1.4 million building loan to fund the demolition of the existing properties at the site.

Under the terms of the second loan, Beninati had to either find a partner or find a buyer for the development, according to Kalikow. “But some of the ridiculous things he was asking for led us to believe that he would never find a partner,” Kalikow said, one example being a \$50 million step-up in basis cashed-out to him. (Beninati, officials at Bauhouse Group and their legal counsel never returned CO’s requests for comment.)

Beninati, on the other hand, claimed that it was Gamma that made unreasonable demands around a potential sale in the company’s Chapter 11 disclosure statement; he attempted to reach a resolution with Gamma to ensure that creditors were paid, but Gamma demanded it be paid “almost \$50 million more than it was owed before creditors would be paid.”

Three to four months before the second loan matured, Beninati told Kalikow he had three potential buyers lined up for 3 Sutton Place with one lead candidate.

“[Beninati] would have made \$50 million after paying us off, had he done the sale,” Kalikow said. “But he met with us, and it was clear that he did not intend to make the sale.”

Kalikow said that his team explained to Beninati that in almost no other scenario would he cash out for \$50 million.

“He asked, ‘What sell-out price are you using?’ and we replied, ‘\$4,000 a foot.’ He said, ‘What if you use \$7,000 a foot?’ We said that if you use \$7,000 a foot you probably make half a billion dollars. So then one of my associates jokingly said, ‘Well, what if you use \$12,000 a foot?’ Joe runs the numbers and says, ‘Oh my god. I’d make over a billion!’ ”

Kalikow added, “It was very clear that the money was not nearly as important to him as his name in lights.”

The loan maturity date of Jan. 19, 2016, arrived and Bauhouse Group hadn’t repaid any amounts under the loan agreements, according to court filings. One day later, Gamma sent Bauhouse notices of maturity defaults as well as a notice that it would conduct a foreclosure sale of the collateral the following month.

“We have it in our [loan] documents that if you do anything to fight a foreclosure you’re fully personally liable, but if you turn over the deed, you’re not personally liable,” Kalikow said. “So, to make things even easier we said [to Beninati] we’d give him back all

of his cash invested in the property, and if we sold the property within a year, we'd give him 20 or 25 percent above a threshold so he could retain a portion. He agrees—but then goes radio silent.”

When Beninati resurfaced later with new legal counsel, it kick-started another (ongoing) lawsuit in the 3 Sutton Place saga, and another player entered the picture: Philip Pilevsky, the CEO of real estate owner and property management company Philips International.

“I surmise that [Pilevsky] was introduced to Joe, who told him, ‘Woe is me, I don’t want to lose my baby,’ ” Kalikow said. “Pilevsky says, ‘We know how to deal with lenders, we’ll handle this for you.’ So they try to get an injunction to stop the foreclosure.”

On Feb. 17, 2016, Bauhouse filed a suit seeking a preliminary injunction to stop the foreclosure sale. On Feb. 23 the motion was denied on the merits that the borrowers would not be irreparably harmed by the sale and that the equities favored allowing Gamma to enforce its contractual rights.



3 SUTTON PLACE. PHOTO: COSTAR GROUP PHOTO: COSTAR GROUP

And, then, it got even stickier: Beninati declared bankruptcy.

Gamma filed a complaint against Pilevsky, plus his sons Michael and Seth Pilevsky, for “tortious interference,” in a filing dated Sept. 16, 2016. The complaint alleges that the three of them, as “strangers to the project,” caused Beninati to breach contractual obligations following his maturity defaults and helped him file for bankruptcy “in a scheme to benefit themselves and obtain an ownership interest in [3 Sutton Place].”

“We’re suing Pilevsky for over \$100 million,” Kalikow said. “Our loan, plus the interest... we’ll call it \$185 million. Our bid out of bankruptcy [for 3 Sutton] was \$86 million, so that’s a \$100 million crystallized loss. The fact of the matter is, lawsuits cost a lot of money. So why they would want to get into a fight with us literally makes no sense. It’s like a bunch of seventh graders picking a fight with a Navy Seal platoon. You’re not winning this one.”

Gamma’s lawsuit firstly alleges that Philip Pilevsky caused Prime Alliance Group (of which he is president) to lend Beninati \$50,000 to retain a law firm, LaMonica, Herbst & Maniscalco, to file a bankruptcy petition which then prevented Gamma from executing the foreclosure sale. The suit also notes that another Pilevsky, Jordan, is a partner at said law firm.

Secondly, the suit claims that the Pilevskys altered the treatment of 3 Sutton Place, as a “Single Asset Real Estate” in the bankruptcy filing by transferring three small cooperative apartments at 504 Merrick Avenue in Lynbrook, N.Y., over to Beninati. In return for the apartments, plus \$150,000 in cash, the lawsuit alleges that the Pilevskys received an indirect equity interest.

“They changed the bankruptcy law for real estate in 2005 to say that if you’re a single real estate asset it’s a faster track—so, you as the developer can’t tactically declare bankruptcy and indefinitely hold up your lender,” Kalikow explained. “But [Beninati’s counsel] filed a document that said [3 Sutton Place] is *not* a single real estate asset. One of our lawyers called up his lawyer and said, ‘Did you guys make an error?’ They said, ‘No. We didn’t make an error.’ ”

In July 2016, Beninati brought a 26-count lawsuit against Gamma, alleging improper conduct and that Gamma breached contracts between the two parties. Bauhouse also alleged that Gamma “had a different motivation than a traditional lender” and seized greater control by refusing to fund the project in accordance with loan documents.

Half of the 26 counts were dropped before the trial, and over five days of hearings last November, the Southern District of New York’s bankruptcy court held a trial regarding the remaining claims.

The roster of those who testified included Beninati, N. Richard Kalikow, JLL’s Keith Kurland (as debt and equity adviser to Beninati, tasked with sourcing the project’s financing) and Jon Kalikow. The court concluded that Beninati had failed to establish a basis for relief on 12 of the remaining 13 counts. The only count left was criminal usury, for which the court ruled that the building loan had a rate higher than the New York statute.

“I was on the stand for seven hours,” Kalikow said. “There were so many little fights during this war. What we think—and again, we don’t know—is that Pilevsky believed that we had used leverage like everybody else does on [this type of] loan.”

Which Gamma did not, Kalikow said.

Like Beninati and Bauhouse, the Pilevskys did not respond to CO’s requests for comment.

Beninati also alleged that Gamma was not a lender but a partner and acted as equity, Kalikow said.

“One of his reasons [for believing this] was that we had attended a meeting at the architect’s office, and my father sat at the head of the table,” Kalikow recalled. “They deposed the architects who attended the meeting, who didn’t remember whether we

☰ were there or not, but said that if we were there, we said nothing. We were at the meeting doing our due diligence and checking on the project like any good lender would. Another was that my father remarked to one of the borrowers that he liked his pen, and they said that showed the closeness of the relationship—I shit you not. 🔍

“At the end of trial, one of their defenses was they never read the documents that they signed.”

Beninati had a different perspective, describing Gamma's role as “active” in court documents, saying that the lender demanded that the developers make dozens of changes to the project design, implementation and construction.

While the war ensued in the Downtown courtroom, another battle was flaring up with 3 Sutton's zoning approvals.

“[In 2015], Beninati goes and describes the enormity of the project, which pisses off all the neighbors, who then raise money for their councilman [Ben Kallos], who then starts a rezoning proposal,” Kalikow said.

When Bauhouse filed its plans for the 87-story tower, Sutton Place locals made a bid for a zoning change that would block super-tall skyscrapers in Sutton Place. The proposal—brought forth in January 2016—would ban commercial development between East 52nd and 59th Streets east of First Avenue and cap the height of new structures at 260 feet. While the community groups argue that the zoning law would protect the area from super-talls, Kalikow maintains it does nothing but protect the views of wealthy residents at The Sovereign, a 485-foot residential neighboring co-op.

In its suit against the Pilevskys, Gamma said that the delay allowed groups like the East River Fifties Alliance (ERFA) to organize against its development.

But the community was up in arms long before Gamma took over the property.

New York City Council District 5 representative Ben Kallos first discovered news of Bauhouse's planned development from a local resident while attending an Easter egg hunt in April 2015.

“Somebody in the neighborhood [said to me], ‘Did you know there is going to be a tower? Somebody wants to put up 1,000 feet here,’ ” Kallos told CO. “And I'm like, ‘You mean at 432 Park?’ They said, ‘No, [East] 58th Street and Sutton [Place].’ I said, ‘There's no way. Is this an April Fool's Day joke?’ ”

By January 2016, the ERFA—backed by Kallos and Manhattan Borough President Gale Brewer as well as State Senator Liz Krueger and Councilman Dan Garodnick—had formed

and filed its first rezoning application with the Department of City Planning, looking to cap the height of the building and also secure a section of the residential development for affordable housing units.

This April, CO reported that Gamma had spent the previous few months demolishing the three tenement buildings that had previously occupied the site. The company is now prepared to go forward with the tower's construction, according to Kalikow. But, the surrounding community, two years into a fight against super-tall neighboring commercial buildings, is determined to halt the project.

Brewer first met with Bauhouse to discuss the site, prior to Gamma taking it over and recalled, "We met with [Bauhouse], and I'll admit I said, 'This is an awfully tall building. Do you know what you're doing?' I think I said, 'You have to be kidding me?'" she said.

Kallos, Krueger, Garodnick and a representative of Brewer met with Kalikow on May 11 to discuss controversies surrounding the site, including the community's firm opposition and how steep a climb Gamma would have to complete the project.

"[We told them] we're not Beninati: We know what we're doing, and we're building for New York buyers because this is a New York enclave," Kalikow said. "They said, 'We don't care, it's too high.'"

Kallos said that during the meeting, he flagged the height of the building and warned Kalikow that it might be in Gamma's best interest to scale down the project to fit the neighborhood's context or use its air rights elsewhere.

Kalikow interpreted that as a threat and that Kallos was "going to do something with these tenants to hurt us," he said.

The councilman said he simply brought forth community concerns.

"I offered them options such as using their air rights in other parts of the city," Kallos added. "We also talked to them about the fact that the rezoning we were proposing would actually give them additional floor area ratio on site—that wasn't on site and already there—in order to build affordable housing. It was not a threat; it was a specific explanation of the fact that I had hoped that we could work together."

One of the ways Kalikow believes Kallos followed through on what he thought was a "threat" was through the community's increased use of 311 calls this past summer, specifically around the Fourth of July weekend, which invited greater scrutiny on the site. (The city must log and address each complaint as it relates to construction safety.)

“I am proud of it,” Kallos responded cheerfully to Kalikow’s accusation that he urged residents to call 311. “Every day I get complaints from residents about construction noise. Any person who is being bothered by construction at [the Sutton Place development] or at any site in my district, I ask them to call 311; I ask them to reach out to me personally. I’m proud.” (When asked about a stop-work order issued on June 28 by the New York City Department of Buildings, Kallos said, “I wish I could take credit for that stop-work order. The DOB was doing their job. It actually took us some time to figure out what happened.”)

A spokesman for the DOB said that between May 1 and Sept. 25, 18 DOB-related 311 complaints were made regarding the property. The spokesman also said that after the stop-work order was issued, workers were allowed to “remediate” the “inefficient” underpinning of a neighboring building and make the site safe, but that no other construction work was allowed.

Kalikow said he has been told that the ERFA, which has grown to include 45 buildings and roughly 2,600 individuals living within and outside the proposed rezoning area, spent \$1.3 million to \$1.4 million trying to fight 3 Sutton Place’s height, speculating the bulk came from residents of The Sovereign.

ERFA President Alan Kersh responded to Kalikow’s assertion by saying, “Together, [ERFA] building owners and city residents have reached into their pockets and donated funds to support our rezoning efforts. The Sovereign has taken the laboring oar, no doubt, but there are many buildings that have contributed substantially.”

One would assume that some of the shine would come off 3 Sutton Place amid the war raging around it, but Kalikow isn’t walking away. “We’re prepared to build it. We think it’s a very unique property, and we haven’t put it on the market. Not until the grandfather issue is resolved”—one way around a zoning change would be to be grandfathered in to previous zoning laws—“I’m happy to take a profit because there is some deal fatigue. But I’d love to stay in.”

That’s not to say there haven’t been interested suitors. Kalikow has been approached a half-dozen times by potential buyers, he said. “Five of those six were trying to assess my strength and desire to hold it—to see if they can get in at a cheap price.”

For now, Kalikow’s eyes are firmly on the finish line.

“I think there’s a group of potential buyers that would find living in that area exciting,” he said. “[The] Corcoran [Group], our sales team, will say, ‘Oh, well people will go anywhere,’ and maybe they will, but my father would absolutely sell Fifth Avenue to move to Sutton [Place]. When you’re looking at this building in the skyline as you come over the 59th Street Bridge, it’s center stage. It’s a powerful image.”

And, the battle wages on.



RECOMMENDED: [Commercial Observer's 2nd Annual Financing Commercial Real Estate Forum on April 11](#)




KEYWORDS: [3 Sutton Place](#), [430 East 58th Street](#), [Alan Kersh](#), [Banco Inbursa](#), [Bauhouse Group](#), [Ben Kallos](#), [Dan Garodnick](#), [East River Fifties Alliance](#), [Gale Brewer](#), [Gamma Real Estate](#), [JLL](#), [Jonathan Kalikow](#), [Joseph Beninati](#), [Keith Kurland](#), [Liz Krueger](#), [N. Richard Kalikow](#), [New York City Department of Buildings](#), [New York City Planning Commission](#), [Peter Kalikow](#), [Philip Pilevsky](#), [Philips International](#)

Organizations in this story

 Lender
Banco Inbursa

 Organization
Gamma Real Estate

 Diversified
JLL


 Organization
Bauhouse Group


 Owner
Philips International


 Government
New York City Department...


People in this story

 **Keith Kurland**
Executive Vice President, JLL

 **Joseph Beninati**
Managing Member, Bauhouse Group

 **N. Richard Kalikow**
Chairman and CEO, Gamma Real Estate

 **Gale Brewer**
Borough President, City of New York

 **Dan Garodnick**
City Councilman, City of New York

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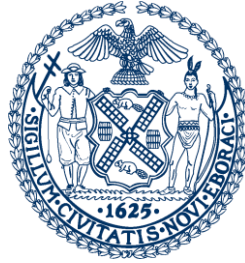
NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 10

BENJAMIN J. KALLOS
COUNCIL MEMBER, 5TH DISTRICT

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**THE COUNCIL OF THE
CITY OF NEW YORK**

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June 6, 2017

Martin Rebholz
Manhattan Borough Commissioner
Department of Buildings
280 Broadway
New York, NY 10007

RE: AHV Permit Reference Number: 00728818

Dear Borough Commissioner Rebholz,

Several of my constituents have reached out to my office with concerns regarding the After Hours Variance permit for 430 East 58th Street granted this Saturday, June 3, 2017 from 9AM to 5PM.

My office has received numerous complaints about the AHV permits however After Hours Work Authorization may only be granted for one of five reasons specifically enumerated under §24-

- 223(e): (1) Emergency Work,
(2) Public Safety,
(3) City Construction Projects,
(4) Construction Activities with Minimal Noise Impact, and
(5) Undue Hardship.

The After Hours Variance Permit application cited a reason of "Public Safety" approved for "Other" with a description of work of "EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE" none of which should qualify for "Public Safety." Given the applicants admission against their own interest that there in fact a "Public Safety" issue on the site this early in the construction process, I hereby request an immediate stop work order be issued while the Department of Buildings investigates underlying threats to public safety.



BENJAMIN J. KALLOS
NEW YORK CITY COUNCIL MEMBER
DISTRICT 5, MANHATTAN

Furthermore, to the extent the construction is not for a city project, or investigation finds there appears to be no emergency or threat to public safety and by virtue of the complaints we have received there appears to be more than a minimal noise impact. This leaves only Undue Hardship which requires the applicant to “substantiate a claim of under hardship resulting from”:

- unique site characteristics,
- unforeseen conditions,
- scheduling commitments and/or
- financial considerations

All of which must be outside the control of the applicant. Additionally the construction site must have an Alternative Noise Mitigation Plan under §24-221, specifying activities and devices that will be used with additional mitigation measures, above and beyond those measures already required, that the applicant will use to significantly limit noise emissions from the construction site.

Please provide a digital copy of the Alternative Noise Mitigation Plan as well as information submitted with the PW5 form to “substantiate a claim of under hardship ... outside the control” of the applicant or statement that no plan or substantiation was provided and that no further after hours variances will be granted for this construction site.

Finally, to the extent that there is an outstanding zoning challenge to the partial approval, a stop work order should be issued until there is a determination as to whether the buildings plan is in compliance with the law.

Sincerely,

A handwritten signature in blue ink that reads "Ben Kallos".

Ben Kallos
Council Member

NEW YORK CITY COUNCIL MEMBER BEN KALLOS
NEW YORK STATE SENATOR LIZ KRUEGER
NEW YORK CITY COUNCIL MEMBER KEITH POWERS

Exhibit 11

After Hours Variances Issued to 428-432 East 58th Street, Beginning June 3, 2017

#	Entry Date	Status	Start Date	End Date	Initial/Renewal	Reason for Applying	Description of Work	Which Floors
1	05/23/2017	ISSUED	Saturday, June 3	Saturday, June 3	INITIAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE	CELLAR, 1ST
2	06/06/2017	ISSUED	Saturday, June 10	Saturday, June 17	RENEWAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE.	CELLAR, 1ST
3	06/21/2017	ISSUED	Saturday, June 24	Saturday, July 1	RENEWAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE.	CELLAR, 1ST
4	07/18/2017	ISSUED	Saturday, July 22	Saturday, July 29	INITIAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE. AND UNDERPINNING WORK.	CELLAR, 1ST-62ND & ROOF
5	08/01/2017	ISSUED	Saturday, August 5	Saturday, August 12	RENEWAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE. AND UNDERPINNING WORK.	CELLAR, 1ST-62ND & ROOF
6	08/07/2017	WITHDRAWN	Saturday, August 19	Saturday, August 26	INITIAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE, UNDERPINNING WORK AND ROCK CHOPPING.	CELLAR, 1ST-62ND & ROOF
7	08/08/2017	ISSUED	Saturday, August 19	Saturday, August 26	INITIAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE, UNDERPINNING WORK AND ROCK CHOPPING.	CELLAR, 1ST-62ND & ROOF
8	08/28/2017	IN PAYMENT	Saturday, September 2	Saturday, September 9	INITIAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE, UNDERPINNING WORK AND ROCK CHOPPING.	CELLAR, 1ST-62ND & ROOF
9	08/28/2017	ISSUED	Saturday, September 2	Saturday, September 9	INITIAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE, UNDERPINNING WORK AND ROCK CHOPPING.	CELLAR, 1ST-62ND & ROOF

After Hours Variances Issued to 428-432 East 58th Street, Beginning June 3, 2017

#	Entry Date	Status	Start Date	End Date	Initial/Renewal	Reason for Applying	Description of Work	Which Floors
10	09/12/2017	ISSUED	Saturday, September 16	Saturday, September 23	RENEWAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE, UNDERPINNING WORK AND ROCK CHOPPING.	CELLAR, 1ST-62ND & ROOF
11	09/25/2017	ISSUED	Saturday, September 30	Saturday, October 7	RENEWAL	Public Safety	EXCAVATION, DRILLING, INSTALLATION OF SUPPORT OF EXCAVATION, REBAR PLACEMENT, CONCRETE PLACEMENT, TRUCKING, FORM WORK AND ASSOCIATED FORM WORK, SAFETY CARPENTRY, SAFETY PROTECTION AND EQUIPMENT MAINTENANCE, UNDERPINNING WORK AND ROCK CHOPPING.	CELLAR, 1ST-62ND & ROOF
12	10/10/2017	ISSUED	Saturday, October 14	Saturday, October 21	INITIAL	Public Safety	EXCAVATION, DRILLING, INSTALL OF SOE, REBAR & CONCRETE PLACEMENT, TRUCKING, FORMWORK & ASSOCIATED WORK, SAFETY CARPENTRY, SAFETY PROECTION & EQUIP. MAINTENANCE, UNDERPINNING WORK, ROCK CHOPPING AND USE OF CRANE (CN# 0733/17): LIFTING EQUIPMENT AND BUILDING MATERIALS.	CELLAR, 1ST-62ND & ROOF
13	10/19/2017	ISSUED	Saturday, October 28	Saturday, November 4	INITIAL	Public Safety	REBAR & CONCRETE PLACEMENT, TRUCKING, FORMWORK & ASSOCIATED WORK, SAFETY CARPENTRY, SAFETY PROTECTION & EQUIPMENT MAINTENANCE AND USE OF CRANE (CN# 0733/17). LIFTING EQUIPMENT AND BUILDING MATERIALS.	CEL,ROF 001 THRU 062
14	11/06/2017	ISSUED	Saturday, November 11	Saturday, November 11	INITIAL	Public Safety	REBAR & CONCRETE PLACEMENT, TRUCKING, FORMWORK & ASSOCIATED WORK, SAFETY CARPENTRY, SAFETY PROTECTION & EQUIPMENT MAINTENANCE AND USE OF CRANE (CN# 0733/17). LIFTING EQUIPMENT AND BUILDING MATERIALS.	CEL,ROF 001 THRU 063
15	11/14/2017	ISSUED	Saturday, November 18	Saturday, November 18	RENEWAL	Public Safety	REBAR & CONCRETE PLACEMENT, TRUCKING, FORMWORK & ASSOCIATED WORK, SAFETY CARPENTRY, SAFETY PROTECTION & EQUIPMENT MAINTENANCE AND USE OF CRANE (CN# 0733/17). LIFTING EQUIPMENT AND BUILDING MATERIALS.	CEL,ROF 001 THRU 064
16	11/20/2017	ISSUED	Saturday, November 25	Saturday, December 2	INITIAL	Public Safety	REBAR & CONCRETE PLACEMENT, TRUCKING, FORMWORK & ASSOCIATED WORK, SAFETY CARPENTRY, SAFETY PROTECTION & EQUIPMENT MAINTENANCE AND USE OF CRANE (CN# 0733/17). LIFTING EQUIPMENT AND BUILDING MATERIALS.	CELLAR, 1ST - 64TH & ROOF
17	01/09/2018	ISSUED	Saturday, January 13	Saturday, January 13	INITIAL	Public Safety	INSTALL SLAB REBAR, FORM TRENCHES IN THE SLAB FOR PLUMBING, ELECTRICIAN WORKING ON CONDUITS IN SLAB, STRIPPING WALL FORMS IF NOT ALREADY COMPLETE AND REMOVE MATERIAL / GENERAL CLEAN-UP.	CELLAR, 1ST - 64TH & ROOF
18	01/16/2018	ISSUED	Saturday, January 20	Saturday, January 20	INITIAL	Public Safety	CLEAN-UP, DEMOBILIZATION, GROUTING OF TEMPORARY TIES, PLATFORM & EQUIPMENT REMOVAL, INSTALL RAKERS. NOTE: SUBJECT TO PSWO #1466699 & #1466727 PER DBC.	CELLAR, 1ST - 64TH & ROOF
19	01/23/2018	ISSUED	Saturday, January 27	Saturday, January 27	INITIAL	Public Safety	CLEAN-UP, DEMOBILIZATION, PLATFORM & EQUIPMENT REMOVAL, INSTALL RAKERS, ADJUST FENCE AND REPAIR SIDEWALK. NOTE: SUBJECT TO PSWO #1466699 & #1466727 PER DBC.	CELLAR, 1ST - 64TH & ROOF