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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - CIVIL TERM - PART 12

-----X

TIMOTHY BROWN,

Petitioner,

-against-

Index No.  
110334/2010

THE NEW YORK CITY LANDMARKS PRESERVATION  
COMMISSION, MICHAEL BLOOMBERG, Mayor of the  
City of New York, THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS, SOHO PROPERTIES INC.,  
JANE DOE and JOHN DOE,

Defendants.

-----X

MOTION

60 Centre Street  
New York, New York  
March 15, 2011

B E F O R E:

HONORABLE PAUL G. FEINMAN,  
  
JUSTICE

A P P E A R A N C E S:

JACK LESTER, ESQ.  
ATTORNEY FOR THE PLAINTIFF  
261 Madison Avenue  
New York, New York 10016  
AND: BRETT JOSHPE, ESQ.

NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL  
ATTORNEYS FOR DEFENDANT  
100 Church Street  
New York, New York 10007  
BY: VIRGINIA WATERS, ESQ.

ADAM LEITMAN BAILEY, P.C.  
ATTORNEY FOR DEFENDANT SOHO PROPERTIES INC.  
120 Broadway - 17th Floor  
New York, New York 10271

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MARK SILBERMAN  
GENERAL COUNSEL  
ATTORNEY FOR DEFENDANT NYC LANDMARKS  
One Centre Street - 9th Floor  
New York, New York 10007

DENISE M. PATERNOSTER, RPR  
Senior Court Reporter

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Proceedings

THE COURT CLERK: Timothy Brown vs. New York City Landmarks.

THE COURT: Good morning everyone.

We have three motion sequence numbers on today's calendar. Motion sequence one, which is the petition.

Motion sequence number two, which I believe was the application for -- I want to make sure I don't have these mixed up here -- the application that was originally signed by order to show cause that was brought by the petitioner regarding discovery.

And motion sequence three is the cross-motion -- actually, the order to show cause to dismiss, as well as a cross-motion to amend the petition to add the owner.

Those are the various motions that are on. I previously notified you that I will give you each 15 minutes for presentation and five minutes for rebuttal. I would ask that you adhere to the time limits. I will try to give you some heads up when you are running out of time, all right?

Petitioner goes first.

MR. LESTER: Thank you, Judge.

Your Honor, good morning. My name is Jack Lester, I represent the petitioner, Timothy Brown.

This proceeding was brought, your Honor, to challenge the determination of the Landmarks Preservation Commission which failed to accord landmark status to 45 Park

## Proceedings

1  
2 Place.

3 And it is the position of the petitioners --  
4 petitioner that this decision was arbitrary, capricious and  
5 violated administrative precedent.

6 Now, to put this in the context of the history of  
7 Tribeca. In the 1980's, four historic districts were  
8 created -- 1980's, 1990's, and in the early 2000's. But  
9 because of political considerations, the lower end of  
10 Manhattan was excluded from the historic district.

11 Twenty-eight properties were excluded from the  
12 historic district that the Landmarks Preservation Commission  
13 deemed worthy of landmark status.

14 And out of those 28 properties that were calendared  
15 by the Landmarks Preservation Commission, fully eighty  
16 percent or more were granted landmark status.

17 But 45 Park Place, which had been calendared in the  
18 1980's and remained on the calendar for over 20 years, in  
19 the year 2010, the Landmarks Preservation Commission held a  
20 hearing during a period of two weeks and failed to give it  
21 landmark status.

22 That is notwithstanding that 45 Park Place, and we  
23 have, your Honor, can we put these two --

24 THE COURT: Those pictures are in the record. I've  
25 seen the pictures, they are in the record. So I don't need  
26 to see them again.

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Proceedings

MR. LESTER: Okay.

THE COURT: But the question becomes -- my recollection of the transcript of the proceedings before the Landmarks Preservation Commission is that there were distinctions made between 45-47 and some of the other buildings that are similar.

MR. LESTER: Right.

THE COURT: They have a similar look.

And my recollection is that one of the commissioners point out that here the architect is unknown. There were other differences that they pointed to.

So then the question becomes: Well, what is the role of the Court? The role of the Court is not to reweigh the evidence, but -- as you recognize in your own papers.

MR. LESTER: Right.

THE COURT: The Court needs to defer to the expertise of the Landmarks Preservation Commission in weighing and assessing the evidence, which is what they did. The record shows that they did. Not --

MR. LESTER: Your Honor, that's why the petitioner retained an expert or architect, historian Gregory Deitrich, who went through the analysis that the Landmarks Preservation Commission provided in their determination.

And he went point by point to show that the distinctions that were drawn between 45 Park Place and 23

## Proceedings

1  
2 Park Place and 311 Broadway were merely pretexts that had  
3 really no rational relationship to the determination they  
4 made.

5 For example, the fact that there was an unknown  
6 architect, 311 Broadway also had an unknown architect and  
7 that was granted landmark status.

8 And Mr. Deitrich points out in his affidavit that  
9 there is no statutory common-law or any other requirement  
10 that the architect be known. And the fact that the  
11 architect was not known doesn't mean that the architect  
12 wasn't distinguished or that the architect didn't have a  
13 great reputation, it is just that the architect was unknown.  
14 But that was the case of 311 Broadway.

15 The other points that they used to distinguish is  
16 the fact that they said 45 Park Place was isolated, that it  
17 wasn't within a historic district.

18 Well, all the 28 buildings that were excluded from  
19 the historic district, the Tribeca Historic District, and  
20 were given landmark status were similarly isolated  
21 buildings. So you can't really distinguish 45 Park Place on  
22 that basis.

23 For example, 311 Broadway is a standalone building  
24 on a commercial thoroughfare. 23 Park Place is a standalone  
25 building just two blocks away from 45 Park Place in the same  
26 neighborhood, so you couldn't distinguish it on that ground.

## Proceedings

1  
2 Then the Landmarks Preservation Commission said  
3 that 45 Park Place wasn't as ornate as 23 Park Place. Well,  
4 if your Honor can see -- I mean, you can't really  
5 distinguish any difference -- the lay person can't  
6 distinguish it from looking at the buildings.

7 But what Mr. Deitrich points out --

8 THE COURT: Which is exactly why we defer to the  
9 experts.

10 MR. LESTER: Right.

11 THE COURT: And isn't it exactly why we defer to  
12 the Landmarks Preservation Commission, the LPC to weigh and  
13 assess and then counterbalance those competing opinions?

14 MR. LESTER: Absolutely.

15 THE COURT: Okay. So --

16 MR. LESTER: In deference --

17 THE COURT: I'm certainly not an architect by  
18 training and I'm certainly not in a position to say which  
19 building merits protection. It is not my role, is it?

20 MR. LESTER: No, but that leads to my next point.  
21 Whereas 23 Park Place may be, from an architectural expert  
22 point of view, more ornate; 45 Park Place is completely  
23 intact. It has remained intact since it was developed in  
24 the 1850's, whereas 23 Park Place has had deleterious  
25 impacts over the years which makes it less worthy of  
26 landmark status.

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Proceedings

So the point is not -- we're not asking the Court to substitute the Court's judgment for LPC's. We're not asking the Court to stand in the place of the expertise that the LPC brings to the issue.

What we are asking the Court to do is analyze the rationale that was provided by the Landmarks Preservation Commission when they voted on August 3rd. Did the Landmarks Preservation Commission provide a rationale that is in any way -- that in any way could stand up to scrutiny?

And that -- again, that's why we present Deitrich's affidavit. Not to say that his opinion especially is more valuable than LPC, but what he does --

THE COURT: Was the Deitrich affidavit before the Commission?

MR. LESTER: No.

THE COURT: So how can the Court consider that? The Court is constrained in an Article 78 proceeding to the record that's developed at the agency; is it not?

MR. LESTER: Yes. We're not offering Mr. Deitrich's affidavit for the purpose of weighing whether or not the building should be given landmark status. That's not the purpose of his affidavit.

The purpose of his affidavit is to analyze the determination that LPC made on August 3rd. Obviously, analysis of their determination could not be made during the

## Proceedings

1  
2 hearing because the determination did not occur until after.

3 So we're not offering Deitrich's affidavit as to  
4 whether or not the building should be given landmark status,  
5 but he is an expert who can analyze the decision that LPC  
6 made.

7 Because it's a body of experts that has on its  
8 commission architects, historians, planners. You need  
9 someone of that level to take a look at that decision and  
10 say, does it stand up to the light of day? Can it be in any  
11 way provided with rationality?

12 And that's what he does, he goes through the  
13 decision step by step. The unknown architect, when seen in  
14 a group, can it be considered an individual landmark?

15 And then a very interesting point, the Landmarks  
16 Commission said that 45 Park Place was not worthy of  
17 landmark status because it didn't have worthy tenants or  
18 owners through its history.

19 But what Deitrich points out is in the LPC's own  
20 designation report, which was ignored to a large extent in  
21 the decision, they go through all the prominent merchants.

22 For example, in the 1850's and 1860's, one of the  
23 leading shipping merchants of the entire country was a  
24 tenant at that location and was a hero of the civil war.

25 That tenant -- that shipping tenant sent ships  
26 through the southern blockade, one of the most historic

## Proceedings

1  
2 events of the Civil War; the fact that he was one of the few  
3 shipping merchants in the country that defied the blockade.

4 This is in the designation report. It is a  
5 well-known fact of the building, but was ignored by the  
6 chairman when he made his presentation.

7 And one of the reasons he gives for not conferring  
8 landmark status is that the merchants weren't prominent.  
9 But on 23 Park Place it was given landmark status because it  
10 was one of the sites of the Daily News. But 45 Park Place  
11 was a site for one of the major newspaper distribution  
12 companies in the early 20th century.

13 So, again, you go down every reason that the  
14 Landmarks Preservation Commission provided and it doesn't  
15 stand up to rationality.

16 And in our briefs we cite cases where the courts  
17 have given deference to LPC, but the courts have overturned  
18 decisions where the rationale provided is illogical, doesn't  
19 stand up to facts, and so forth.

20 And we've provided your Honor with the case where  
21 there was a co-op on Fifth Avenue, where part of the  
22 building was conferred with landmark status; part of it was  
23 excluded. And the Court said there was no rationale reason  
24 to distinguish between parts of the building.

25 And here petitioner submits there is no rationale  
26 reason to distinguish between 45 Park Place, 311 Broadway,

## Proceedings

1  
2 or 23 Park Place.

3 And then the major -- one of the most important  
4 historic events to befall our country, September 11th. And  
5 our petitioner who was -- who is here today, Mr. Timothy  
6 Brown, who participated in the events of that day, the first  
7 responder, risked his life to save others.

8 The events of September 11th directly impacted that  
9 building. The landing here of one of the planes that struck  
10 the Twin Towers crashed through the roof of that building, a  
11 mere two blocks away.

12 THE COURT: The respondents, I believe, attached as  
13 one of their exhibits a map that basically shows a fair  
14 number of buildings that was impacted. Some of which have  
15 been destroyed; some of which which had to be taken down,  
16 whether it is because of asbestos or other contamination,  
17 such as the Deutsch Bank building.

18 And, you know, it shows different stages of damage  
19 on that map. Some are residential buildings; some are  
20 commercial buildings. Is every single one of those  
21 buildings then to be forever memorialized?

22 MR. LESTER: No. And that's why, your Honor, this  
23 case is unprecedented. Because this is the only building --  
24 and we have researched this and we have had a number of  
25 months since we filed the petitions and since the hearings  
26 and all the public controversy that is surrounding this

## Proceedings

1  
2 case -- we have researched this issue, it is unprecedented  
3 because this is the only building that exists in the City of  
4 New York, or perhaps anywhere, that was deemed worthy of  
5 landmark status prior to September 11th, 2001, and then on  
6 September 11th of 2001, is directly impacted by the events  
7 of that day --

8 THE COURT: Let me ask about that statement because  
9 that goes back to the fact that there was some investigation  
10 that landmarking goes back to 1989.

11 MR. LESTER: Right.

12 THE COURT: Which didn't happen.

13 MR. LESTER: Correct.

14 THE COURT: So the inference to be drawn that is,  
15 well, it wasn't landmarked in '89, it is no more landmark  
16 worthy in 2001.

17 Or are you suggesting that, well, maybe it wasn't  
18 landmarked in 1989, but this incident therefore tips it over  
19 the edge and, therefore, it should be given landmark status?

20 MR. LESTER: No. And that brings me back to my  
21 original point, which perhaps I didn't make clear enough.

22 In 1989 there were four historic districts created  
23 in Tribeca. Actually, there were two or three and over time  
24 four.

25 Originally, this building was supposed to be placed  
26 within the historic district. So it would have been

## Proceedings

1  
2 conferred landmark status automatically because it is in the  
3 historic district.

4 But what happened was -- and Gregory Deitrich  
5 points this out in his affidavit -- what happened was there  
6 was political pressure from the Lower Manhattan Community  
7 Board Financial District, from the Financial District to not  
8 extend the historic district further south than Chambers  
9 Street.

10 So what the Landmarks Commission did, Chairman Todd  
11 back in the early '90's, was he said, look, we're not  
12 extending the historic district. But mind you, there are 28  
13 buildings that on their own are worthy of landmark status.  
14 And while we're not going to confer landmark status on those  
15 buildings now because they are not included in the historic  
16 district, they are worthy of landmark status and we are  
17 calendaring it.

18 And what happened, your Honor, over the 20 years  
19 since that period, out of those 28 buildings -- I believe  
20 the number is 25 -- 25 of those 28 were given landmark  
21 status.

22 And it came up periodically. For example, 23 Park  
23 Place was given landmark status in 2003.

24 Now, why the commission waited, it could be various  
25 reasons. Maybe a developer came into the picture. For  
26 whatever reason, these buildings were considered at

## 1 Proceedings

2 different times, but they were all given landmark status

3 THE COURT: Well, I have right here in front of me  
4 a copy of the most recent Appellate Division First  
5 Department case dealing with calendaring, right?

6 MR. LESTER: Right.

7 THE COURT: And Citizens Emergency Committee to  
8 Preserve Preservation vs. Tierney, February 2010. And in  
9 that they basically say it is not up to the courts -- this  
10 is the bottom line of the decision.

11 MR. LESTER: Right.

12 THE COURT: "It's is not up to the courts to  
13 interfere with the calendaring process of Landmarks. That  
14 as long as there is a, you know, a calendar process -- you  
15 know, because the language is may, you know -- we are not  
16 going to get into the status of it.

17 In that case it involved somebody trying to force  
18 them to calendar it.

19 MR. LESTER: Forced them, right. And that's not  
20 the position of the petitioner here. We're not saying that  
21 LPC is under any kind of statutory obligation to calendar  
22 the building. That's up to the timing. The chairman  
23 determines when a building should be considered.

24 THE COURT: Okay. So there is no issue then,  
25 really, in this petition about the fact that they chose to  
26 calendar it when they did?

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MR. LESTER: No, that's not -- and, your Honor, as we studied this issue, because obviously the burden that petitioners face on any Article 78 proceeding, an administrative agency is given deference by the Court and the Court cannot substitute its judgment for the agency.

So the issue is why was the agency arbitrary here? And the reason why they were arbitrary is because this was a building that was in a category of 28 buildings that were excluded from the historic district.

This building in no way is architecturally or historically different than those 28 other buildings. However, there are two other buildings that are almost precisely the same; 311 Broadway and 23 Park Place.

And that's the reason why we brought the photographs, because from a lay person's point of view, obviously you can't see the difference. So that's why we bring in Mr. Deitrich.

Are we all crazy? Are those two buildings exactly the same or is there some architectural mystery that we're missing?

And what Gregory Deitrich did was he went through the analysis. He took each of the points that LPC raised in distinguishing those buildings and said it was not supported by the factual data of the analysis. And that's where the arbitrary and capricious comes in.

## Proceedings

1  
2 THE COURT: All right. Let me ask you, how do you  
3 want to address the cross-motion to dismiss for standing?

4 MR. LESTER: It is up to your Honor. I could  
5 address it now or in my reply.

6 THE COURT: Sure.

7 MR. LESTER: Should I do the standing issue now?

8 THE COURT: Yes.

9 MR. LESTER: Again, on the standing issue, your  
10 Honor has to look at this as it's almost a case of first  
11 impression. Because the facts here are unprecedented.

12 THE COURT: The same case, I am reading from that,  
13 "an environmental or preservation matters, standing may be  
14 established by proof that agency actions will directly harm  
15 the petitioner's member in their use or enjoyment of the  
16 natural resources or the area in question."

17 So here we are not talking about an association but  
18 an individual.

19 MR. LESTER: An individual.

20 THE COURT: But the test is not much different. He  
21 has to show that he has an interest that is distinct from  
22 that of the general public, and he has to show that he has  
23 suffered an injury in fact, and must demonstrate that the  
24 injury falls within the zone of interest protected by the  
25 legal authority being invoked.

26 So the question becomes, how does he have an injury

## Proceedings

1  
2 in fact?

3 MR. LESTER: Okay, the injury in fact issue.  
4 Obviously, if this was an economic injury, it would be  
5 obvious. If he was the owner of the property or if he stood  
6 in some way to benefit financially, there would be no  
7 question, he would have standing.

8 The issue here is more difficult because his  
9 interest and his state in controversy stems from who he is  
10 and who he was on that day.

11 Timothy Brown, who is here in court today, as I  
12 stated before, is a survivor, a hero of that day. And when  
13 he went down to Ground Zero -- when he went down to the  
14 World Trade Center that day to rescue other people as a  
15 first responder, no one said to him, you don't have standing  
16 to be here, you don't have a right to be here, you don't  
17 have a stake --

18 THE COURT: Mr. Lester, that is a very appealing  
19 argument. However, an emotional state is groundless. What  
20 the law requires, all right, is an injury in fact.

21 MR. LESTER: Absolutely.

22 THE COURT: It is what the law requires --

23 MR. LESTER: Absolutely.

24 THE COURT: -- an injury in fact. And it requires  
25 something that distinguishes him from the public at large in  
26 order to make it distinguishable, and it requires that he

## Proceedings

1  
2 have some personal stake in the outcome.

3 MR. LESTER: All right.

4 THE COURT: So coming back to you, what is his  
5 personal stake in the outcome and what is his injury in  
6 fact?

7 MR. LESTER: His stake in the outcome, as we point  
8 out in our brief, in inanimate objects such as buildings,  
9 landmarks, forests, trees, rivers cannot speak for  
10 themselves. Someone, some person has to stand up and speak  
11 for them.

12 THE COURT: Well, that is the point of the article  
13 that you site in your papers --

14 MR. LESTER: Right.

15 THE COURT: -- about, you know, should trees of  
16 standing.

17 MR. LESTER: Right.

18 THE COURT: I think as the respondent points out,  
19 no court has yet adopted that argument.

20 MR. LESTER: No, there is a court that has  
21 adopted -- the reason we point out that article and also  
22 Justice Douglas' descent --

23 THE COURT: It's a descent, all right? It is not  
24 the prevailing law.

25 MR. LESTER: Judge, I'm getting to that.

26 We point out Judge Douglas' descent and these

## Proceedings

1  
2 articles because he more eloquently raises the point than we  
3 can ever hope to do.

4           However -- however, where it has been adopted --  
5 your Honor's point -- where it has been adopted is in the  
6 Appellate Division of this state in the Ziemba case.

7           Ziemba vs. City of Troy, involved a group of native  
8 Americans who challenged the demolition of a building in  
9 Troy, New York because the speculation was -- and there was  
10 no factual support at that time -- but the speculation was  
11 that there were remains of native Americans at that site  
12 and, therefore, those individuals who represented that  
13 native American tribe had standing to protect that building.

14           Same situation here. Mr. Brown was a veteran, a  
15 survivor of that day and who -- as your Honor remembers, we  
16 were all nearby on that day, if we were in the courthouse or  
17 in our offices, that BLOOM, that cloud came north.

18           So not only was Mr. Brown at the site of the World  
19 Trade Center, he moved two blocks north, tried to rescue  
20 people. The landing here of one of the planes that struck  
21 the Twin Towers went through the roof of that building. He  
22 certainly has a stake, an emotional, a historic, a personal  
23 stake in monuments of that day.

24           Now, you could make a factual argument as the  
25 respondents do, that this is not a monument to that day.  
26 But that's a question of fact, not a question of law. And

## Proceedings

1  
2 on a motion to dismiss they have to make their points so  
3 that it is irrefutable as a matter of law.

4 We assert in our petition, and I think the facts  
5 bear us out, that that building is a monument to that day  
6 because of what happened, the landing gear, because of its  
7 proximity, because of Mr. Brown's participation in the  
8 event --

9 THE COURT: But in essence, you're arguing that  
10 because he is interested in preserving monuments, because of  
11 his heroic deeds, and because of all those great services  
12 that he provided to the people of the City of New York and  
13 to the country on that day that, thereof, he has an interest  
14 in preserving whether it be monuments or, you know,  
15 artifacts of that day.

16 And I mean, that's exactly what the Court rejected  
17 in the Citizen's case saying that an interest in the cause,  
18 if you will, is not enough to constitute an injury in fact.

19 MR. LESTER: Well, that's --

20 THE COURT: They specifically say, you know,  
21 interest is not equal to injury.

22 MR. LESTER: Well, that's how you distinguish the  
23 Citizen's case, where that was a group of concerned  
24 preservationists. They had no individual who had a direct  
25 tie to any particular site, that's how you distinguish that  
26 case from the Ziemba case, where you had an individual

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1  
2 connected to a site.

3 Now, the Court the Appellate Division in Ziemba --

4 THE COURT: Mr. Brown isn't claiming that he is  
5 connected specifically to this building. I mean, it is not  
6 like he went into this building to, you know, carry out a  
7 rescue operation to take people out of this building.

8 And I believe at this time it was still being used  
9 as the Burlington Coat Factory, but anyway --

10 MR. LESTER: Again, that is a factual question,  
11 because we do assert --

12 THE COURT: But you don't elect that, though.

13 MR. LESTER: Well, we have an affidavit from Mr.  
14 Brown. But we also assert by an exhibit, one of our papers,  
15 as to where the human -- there is a map that was done.

16 THE COURT: There is no allegation in your papers  
17 that there is any human remains at this building.

18 MR. LESTER: I believe we have we attached an  
19 exhibit which has map that was done by the Federal  
20 Government FEMA showing the area where human remains could  
21 be found, and certainly this is within that.

22 THE COURT: I don't believe that it includes this  
23 building in terms of where there were any remains found.

24 MR. LESTER: I think, and again I'll check the  
25 exhibit, but I do believe that that's a factual assertion.  
26 And I believe it is supported.

## Proceedings

1  
2 THE COURT: Nearby, perhaps, but I don't think  
3 there is anything alleged to have been located at this site.

4 MR. LESTER: I believe -- again, your Honor, I'm  
5 happy to check that, but I do believe that that is a factual  
6 assertion.

7 THE COURT: All right.

8 MR. LESTER: And there is documentation to support  
9 that because of the proximity.

10 THE COURT: I do want to clarify one thing. And I  
11 think you say this in your papers, but I just want to make  
12 clear that regardless of the outcome, even if you were to  
13 succeed in every single step of this proceeding, you agree  
14 that what's not at issue in this case is whether this  
15 building can be used for a mosque or an interim religious  
16 cultural center or any other use, and I think you concede in  
17 your papers that the issue of the use of the premises is not  
18 what this case is about.

19 MR. LESTER: That is absolutely true. The  
20 petitioners are not in any way within this proceeding  
21 challenging that.

22 However, the use has come up in the following way:  
23 In that we assert that because of the political controversy  
24 and the intense publicity that surrounded this issue leading  
25 up to the vote that there were communications from the  
26 Mayor's Office, the Mayor who was an outspoken supporter of

## Proceedings

1  
2 the mosque -- which he certainly has a right to do, and,  
3 again, this is not a criticism of his position -- but what  
4 -- if the use became an issue in the Mayor's mind and  
5 somehow that was communicated to the Landmarks Commission  
6 and that influenced the vote, then it would be relevant and  
7 that's why we made the request for discovery.

8 Because we did -- as respondents point out,  
9 thousands of papers were turned over to the petitioners in  
10 the months leading up to this argument. However, the  
11 Mayor's Office claimed an exemption and said that any  
12 communication that the Mayor's Office had with LPC shall  
13 remain with them.

14 And we say, well, that issue is relevant to this  
15 proceeding.

16 THE COURT: No, that's an Article 78 on a FOIL  
17 request. That's not before me, all right?

18 MR. LESTER: Correct.

19 THE COURT: This is not a FOIL proceeding.

20 MR. LESTER: It is not a FOIL and we've attempted  
21 to have that taken out of this proceeding. But the fact  
22 that it is relevant, we did make our motion for discovery to  
23 have that narrow issue resolved as to whether or not the  
24 Mayor did communicate with LPC and did in some way influence  
25 the vote, because as we point out that material was  
26 withhold -- withheld and is relevant to a determination in

## Proceedings

1  
2 this proceeding.

3 THE COURT: All right. Anything else?

4 MR. LESTER: Thank you, Judge.

5 THE COURT: All right. Mr. Leitman Bailey.

6 MR. LEITMAN BAILEY: Thank you, your Honor. Adam  
7 Leitman Bailey for the respondents.

8 In order to grab the arms of this Court and have  
9 jurisdiction, meaning the right to be here, the person has  
10 to have standing, meaning an injury in fact, meaning a harm  
11 that's beyond what's happened to the public interest.

12 In our petitioner's case, we applaud his efforts on  
13 9/11 and we're thankful he was so courageous and ran to  
14 Ground Zero as a first responder.

15 He has nothing to do with this building. He  
16 doesn't own the property, he doesn't lease the property, he  
17 doesn't have any stake --

18 THE COURT: Clearly, the owner of the building  
19 would have standing. If, in fact, status were granted, they  
20 would have standing to challenge the Landmark's decision.

21 The question which I think is the harder question  
22 to answer is: Well, then who does have standing when the  
23 Landmarks Commission fails to act?

24 MR. LEITMAN BAILEY: Well, my adversary pointed out  
25 a case where it provides good factor standing. If you are  
26 literally two blocks away and you can see the building --