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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF GLICK,

Appellant,

-against-

No. 107

HARVEY,

Respondent.

20 Eagle Street
Albany, New York 12207
June 02, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY

Appearances:

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1 CHIEF JUDGE LIPPMAN: Counselor, would you
2 like any rebuttal time?

3 MS. HALLIGAN: I would. Three minutes,
4 please, Your Honor.

5 CHIEF JUDGE LIPPMAN: Three minutes. Go
6 ahead, counselor. You're on.

7 MS. HALLIGAN: Chief Judge Lippman and may
8 it please the court, Caitlin Halligan for
9 petitioners.

10 There's no question that New York City has
11 manifested its intent to the public to dedicate the
12 parcels that it - - -

13 CHIEF JUDGE LIPPMAN: Counsel, what - - -
14 what about the attempts over the years to change the
15 status of - - - of these - - - whatever you want to
16 call them - - - parks or properties, and - - - and
17 that failed in that effort? How does that impact on
18 your argument about these being designated parklands?

19 MS. HALLIGAN: Both the City and NYU make
20 much of what they call determinations by the City not
21 to follow through on efforts to remap these parcels.
22 That is completely beside the point here, for the
23 following reasons.

24 CHIEF JUDGE LIPPMAN: Is it beside the
25 point if everyone understands that those attempts are

1 being made and that they're not officially parks?
2 How does - - - how does that all play in?

3 MS. HALLIGAN: Well, first of all, Your
4 Honor, the question here is, what is the intent that
5 is manifest to the public? That's the standard that
6 this court has set forth going back to the 1800s.
7 It's what you suggested, Judge Pigott, just last term
8 when you said the question with the Public Trust
9 Doctrine is, what are the ordinary expectations of
10 reasonable - - -

11 JUDGE STEIN: Well, isn't that some - - -

12 MS. HALLIGAN: - - - citizens.

13 JUDGE STEIN: - - - some indication of
14 intent manifested to the public when the public asks
15 for official dedication of something as parkland, and
16 - - - and the City says no?

17 MS. HALLIGAN: First of all, the - - - the
18 effort - - -

19 JUDGE STEIN: Why doesn't that manifest
20 intent to the public?

21 MS. HALLIGAN: Because it is - - - it is
22 completely a question of subjective intent. Its
23 behind-closed-doors determination - - -

24 JUDGE STEIN: No, it's not, subjective.
25 It's manifested by the denial of the request,

1 publicly, to change the designation.

2 MS. HALLIGAN: Here, the City initiated an
3 - - - an effort to remap these parcels. NYU
4 objected. The City decided it did not need to
5 proceed with the effort to formally remap these
6 parcels, which is a question of express dedication.
7 And that doctrine, this court has long held, is
8 distinct from - - -

9 JUDGE STEIN: But you want to - - -

10 MS. HALLIGAN: - - - implied dedication.

11 JUDGE STEIN: - - - you want to ignore
12 everything that the City did expressly not to change
13 the designation and say that because they allowed the
14 use for however long a period of time, and - - - and
15 put - - - put up signs to say, look, the public, you
16 can come in here; we're - - - we're allowing you to
17 come in here; this is a park; you can - - - you can
18 use this. But - - - so any time they do that, that -
19 - - that automatically makes it implicit dedication?

20 MS. HALLIGAN: We're not suggesting that,
21 at all, Your Honor. The indications that the City
22 gave the public that these parcels should be used as
23 parks, could not be more unequivocal. The trial
24 court looked carefully at that and pointed, just by
25 way of example, to - - -

1 JUDGE RIVERA: Well, why aren't the permits
2 and the leases dispositive on the intent question?

3 MS. HALLIGAN: Those are really
4 bureaucratic documents that are about the agency that
5 claims to have jurisdiction over these spots. That
6 is not a question of what's manifest to the public -
7 - -

8 JUDGE RIVERA: What - - -

9 MS. HALLIGAN: - - - and in addition, Your
10 Honor - - -

11 JUDGE RIVERA: Well - - - well, the - - -
12 the point is that the transfer of the ability to
13 maintain the parks from one entity to another
14 internally, turns on these permits and leases. So
15 why isn't that an internal representation that there
16 is no intent for dedication to parkland?

17 MS. HALLIGAN: What should govern here - -
18 -

19 JUDGE RIVERA: What other understanding
20 would there be?

21 MS. HALLIGAN: What should govern here is
22 the objective manifestation that's delivered to the
23 public. That's completely consistent with - - -

24 JUDGE ABDUS-SALAAM: What does that exactly
25 - - - counsel, what ex - - - what exactly is the

1 objective manifestation to the public; that it
2 continues to be used as a park?

3 MS. HALLIGAN: Well, there are - - - there
4 are many here. So let's look at Mercer, for example.
5 With regard to the question of agency jurisdiction, I
6 would ask you to take a look at a couple pages in the
7 record. Page 2008, there is a sign that is posted on
8 Mercer playground, which says this property has been
9 formally transferred from the Department of
10 Transportation to the Department of Parks. So if
11 agency jurisdiction mattered that's - - -

12 JUDGE RIVERA: Well - - - well, it could
13 have said this - - -

14 MS. HALLIGAN: - - - a clear
15 representation.

16 JUDGE RIVERA: - - - this piece of property
17 is formally dedicated as a park. Does it say that?

18 MS. HALLIGAN: It could have said - - - it
19 could have said this property is on loan. It did not
20 say that. City officials stood up from the - - -

21 JUDGE RIVERA: Why would it need to say
22 that, if you've got these permits and leases that
23 apply to all these parcels except for the Dog Run?

24 MS. HALLIGAN: Again, the permits and
25 leases and the question of agency jurisdiction,

1 really is about what the City inside, internally, as
2 a bureaucracy, thinks about the way it wants to
3 administer these properties. Going all the way back
4 to the 1800s, if you look for example - - -

5 JUDGE RIVERA: So if you have that as your
6 - - - let's go with what you're arguing, this kind of
7 internal protocol, and you have as Judge Stein has
8 already mentioned, the public refusal to remap, why
9 isn't that enough to get past the hump of some
10 signage, some dedication, some ceremony?

11 MS. HALLIGAN: At that dedication ceremony,
12 City officials stood up and said that this property
13 had become a park, and in fact had been transferred -
14 - -

15 JUDGE RIVERA: Can any City official stand
16 up on any piece of property - - -

17 MS. HALLIGAN: No, but - - -

18 JUDGE RIVERA: - - - and say it's a park?

19 MS. HALLIGAN: - - - but the mayor did so.
20 That question might also be relevant to express
21 dedication.

22 In addition, until six months into this
23 litigation - - - I would also ask you to look at page
24 3081 of the record - - - the City's own Web site made
25 the exact same statement. Likewise, the program at

1 the dedication said this is a park, it has been
2 transferred from the Department of Transportation.

3 In addition, there is an extraordinary
4 amount of public funding - - - at Mercer, for
5 example, it was the Parks Department architect that
6 designed that park. The record is replete with those
7 kinds of indicia, and that's what the ordinary
8 citizen walking down the street perceives these
9 parcels to be, and that's - - -

10 JUDGE READ: So - - - so what does the City
11 have to do - - - and if you're right, if we agree
12 with you - - -

13 MS. HALLIGAN: Yes.

14 JUDGE READ: - - - what does the City have
15 to do in the future? There are a lot of the parcels,
16 I think, scattered through New York City - - -

17 MS. HALLIGAN: I'm really - - -

18 JUDGE READ: - - - to make sure that - - -

19 MS. HALLIGAN: - - - glad you raised that.
20 Because the City suggests that this is some kind of a
21 gotcha claim that we have here. That couldn't be
22 further from the truth. For a couple - - -

23 JUDGE READ: What do they do - - - what do
24 they do in the future so - - - so that they can let
25 the public use a parcel that's otherwise unused, let

1 the Parks Department administer it or manage it, but
2 not be met with the argument that - - - that they
3 have therefore impliedly dedicated it as parkland?

4 MS. HALLIGAN: They can do two things, Your
5 Honor. First of all, they could, for example, say
6 this area on loan, this area temporary; any word like
7 that which would convey to an ordinary citizen
8 exactly what the status of that land is.

9 Secondly, and perhaps more importantly - -
10 -

11 JUDGE STEIN: Have they ever done that, by
12 the way? Have they ever done that?

13 MS. HALLIGAN: There are many spots in the
14 city which the City now claims - - - they say there
15 are 2,000 - - - might somehow be vulnerable to this
16 kind of claim. If you - - -

17 JUDGE STEIN: But up until now, the City -
18 - - nobody's ever suggested that that's what they
19 need to do?

20 MS. HALLIGAN: The City is well aware of
21 the law, and certainly is charged with its knowledge,
22 just as a private landowner is. This court has been
23 - - -

24 CHIEF JUDGE LIPPMAN: Counsel, so what's
25 the test? Is it that you have a sign? Is it that

1 you have dedication? What is it? What is - - - is
2 it the length of years that you use it for a
3 particular purpose?

4 MS. HALLIGAN: There - - - there - - -

5 CHIEF JUDGE LIPPMAN: What's the - - -
6 what's the rule? What's the test?

7 MS. HALLIGAN: Three - - - three points,
8 Your Honor. First of all, what the case law says and
9 what's satisfied here, is what's the intent manifest
10 to the public. So the City should be clear about the
11 status. Secondly - - -

12 CHIEF JUDGE LIPPMAN: So - - - so if you
13 have a sign, that's the intent manifested to the
14 public?

15 MS. HALLIGAN: I think if you have a sign
16 that says this is a park and has been formally
17 transferred, that manifests intent. And conversely,
18 you could easily write a sign that would be clear
19 that the City was not offering it out as a park
20 permanently. Second - - -

21 CHIEF JUDGE LIPPMAN: But what if - - - but
22 let's take the situation on a more global - - -

23 MS. HALLIGAN: Yes.

24 CHIEF JUDGE LIPPMAN: - - - aspect. You
25 have a sign and yet, forget the particular process,

1 but there's some process where they try and really
2 make it into a park, and that's denied. How do you
3 balance the two? The I - - - we understand what
4 you're saying. You might have certain facial, you
5 know, indicia that it's a park, and yet you have some
6 process where no, we're not going to make it a park.
7 How do you balance those two competing - - -

8 MS. HALLIGAN: I think that this is a
9 singular circumstance, because there is no dispute
10 anywhere in the record that these parcels, while
11 initially mapped as streets in the 1950s, they were
12 mapped because the City was very interested in
13 building an expressway through lower Manhattan. That
14 plan was abandoned by the mid-60s. From that point
15 forward, there has never been any evidence - - - as
16 the trial court found, and neither the respondents
17 nor the City could contest - - - that the Department
18 of Transportation will ever have any intention to
19 reclaim these parcels and use them as streets.

20 JUDGE PIGOTT: But if you look at - - -

21 MS. HALLIGAN: So - - -

22 JUDGE PIGOTT: - - - the - - - if you look
23 at the record at 2477, the revocable license
24 agreement with respect to LaGuardia Corner Gardens -
25 - -

1 MS. HALLIGAN: Yes.

2 JUDGE PIGOTT: - - - and it - - - and it
3 calls itself a revocable license agreement dated
4 2009, does that have any meaning at all, in your
5 view?

6 MS. HALLIGAN: I believe that that is
7 exactly the kind of subjective intent that the public
8 is not aware of. There are also statements that cut
9 the other way. For example - - -

10 JUDGE PIGOTT: Does that - - - does that
11 mean that even though they did this, it's meaningless
12 and - - - and to pick up on, I think, one of the
13 other arguments of your opponents are that that
14 subjects the City to almost adverse possession?

15 MS. HALLIGAN: Absolutely not. The reason
16 that these kinds of behind-closed-doors documents or
17 questions of what did the City really mean instead of
18 what did the public see, here's why that's not an
19 administrable or predictable inquiry. If you look,
20 for example, at page 3257 of the record, Your Honor -
21 - -

22 JUDGE PIGOTT: But just to stick with mine
23 for a minute, the licensee here is the - - - is
24 LaGuardia Corner Gardens. I don't know who they are,
25 but I assume they're not the City. So it wasn't like

1 behind closed doors. I mean, they gave this license
2 to some organization - - -

3 MS. HALLIGAN: They didn't give it to the
4 public at large. This also covers only one parcel,
5 of course.

6 JUDGE PIGOTT: Right.

7 MS. HALLIGAN: But they didn't give it to
8 the public at large.

9 The same question - - - the same argument
10 applies to the argument that - - - that respondents
11 in - - - the City and NYU make, for example, about
12 the permit that was initially issued in 1995, with
13 regard to Mercer Playground. There was a permit - -
14 -

15 JUDGE RIVERA: If they had put it on a Web
16 page, if they - - - if they put the permits up on a
17 Web page?

18 MS. HALLIGAN: It would be a closer case,
19 especially if they didn't put something up on the Web
20 page - - -

21 JUDGE RIVERA: Who decides to put up the
22 sign on the park?

23 MS. HALLIGAN: I assume - - -

24 JUDGE RIVERA: Who makes that decision?

25 MS. HALLIGAN: - - - I assume that the

1 Department of Parks - - -

2 JUDGE RIVERA: Okay, but the Department of
3 Parks - - -

4 MS. HALLIGAN: - - - in conjunction - - -

5 JUDGE RIVERA: - - - has a lease. So they
6 put up a sign that's contrary to the actual permit
7 and/or lease. What - - -

8 MS. HALLIGAN: Your Honor, these - - -
9 these questions along with the ones that Judge Pigott
10 is raising, is exactly why this - - - formulating the
11 inquiry in this way, I think is inadvisable. Because
12 it requires you to have a debate about what an agency
13 official actually thought or meant, or what a piece
14 of paper from forty years ago said.

15 The more appropriate - - -

16 CHIEF JUDGE LIPPMAN: But counsel, is your
17 argument really if it looks like a park it is a park?

18 MS. HALLIGAN: My argument is that - - -

19 CHIEF JUDGE LIPPMAN: Isn't that what
20 you're really saying? If there's some facial
21 indication that it's a park - - -

22 MS. HALLIGAN: No, we're not making - - -

23 CHIEF JUDGE LIPPMAN: - - - then - - - then
24 that carries the day?

25 MS. HALLIGAN: - - - we're not making an

1 argument that's nearly that broad.

2 CHIEF JUDGE LIPPMAN: What is the - - -
3 what is the argument?

4 MS. HALLIGAN: What we're making - - - the
5 argument that we're making is, that if the City
6 clearly manifests through its acts and declarations -
7 - - for example: maintenance, improvements, public
8 declarations, public dedication ceremonies where they
9 claim - - -

10 JUDGE RIVERA: And for how long do they
11 have to do those things?

12 MS. HALLIGAN: Your cases have indicated
13 that there's not a bright line, so it's different
14 from other doctrines. But certainly the decades that
15 we have here are enough. Especially when, again, if
16 you look at the context, this is not a question about
17 whether a piece of land that has been used as a
18 street will now become a park.

19 JUDGE STEIN: Well, don't they - - -

20 MS. HALLIGAN: It has never been used.

21 JUDGE STEIN: - - - doesn't the City define
22 street in a very broad sense, including pedestrian
23 walkways, and things of that nature? So isn't it
24 quite possible that they - - - they could want to do
25 that in the future? And - - - and I guess the

1 question is, why should we be speculating, really, on
2 that, either way?

3 MS. HALLIGAN: Well, the - - - the argument
4 that they are making with regard to streets, as I
5 understand it, is that because the state statutes lay
6 out a procedure for discontinuing streets, you can't
7 have implied dedication as a park. That's wrong - -
8 - just flat-out wrong, for the following reason.

9 The implied dedication doctrine and the
10 Public Trust Doctrine obviously are common law. If
11 the legislature meant to extinguish those very
12 longstanding principles, when it adopted all of those
13 statutes that lay out what procedures the City goes
14 through in order to demap a street, then no question
15 the legislature would have had to say so clearly, and
16 it did not.

17 I see my time has run. Thank - - -

18 JUDGE FAHEY: Just one question.

19 CHIEF JUDGE LIPPMAN: Yeah, go ahead, Judge
20 Fahey.

21 MS. HALLIGAN: Yes?

22 JUDGE FAHEY: Taking a step back, in
23 looking at the whole record, it seems that you have
24 two theories of implied dedication. One is the case
25 law theory that says that it - - - it has to be

1 deliberate, unequivocal and decisive; and then
2 there's kind of another theory that's an estoppel
3 theory.

4 So it doesn't seem to be deliberate,
5 unequivocal, or decisive here, though we could argue
6 about that one way or the other. But the estoppel
7 theory is more interesting. And I'm wondering
8 whether estoppel can apply against a government
9 agency here?

10 MS. HALLIGAN: What is unequivocal here are
11 the manifestations - - -

12 JUDGE FAHEY: Okay. But - - -

13 MS. HALLIGAN: - - - to the public.

14 JUDGE FAHEY: - - - leave that aside.

15 MS. HALLIGAN: What's unequivocal - - - I'm
16 trying to get to your estoppel question.

17 JUDGE FAHEY: Yeah.

18 MS. HALLIGAN: Sorry, Your Honor.

19 JUDGE FAHEY: Go ahead.

20 MS. HALLIGAN: What's - - - what's
21 equivocal here are these subjective indications of
22 intent. The court has made clear in a number of
23 cases going back more than a century that implied
24 dedication has its roots in the doctrine of estoppel.
25 What that means is that the proper touchstone is what

1 did the public perceive?

2 If you look at cases like Hunter and
3 Cohoes, the court says if the honest expectations of
4 the public are that it has access to a parcel of land
5 for a specific public purpose, because it's been
6 allowed to use that parcel for a long period of time,
7 then it would be dishonest and a fraud to attempt to
8 reclaim that property.

9 So this is not a claim that sounds in
10 estoppel. This court has never suggested that the
11 general rule that - - - that presumes no estoppel
12 against a government agency somehow absolves the
13 government itself from implied dedication. They have
14 long been viewed as mutually - - -

15 JUDGE FAHEY: Yeah, there's not a lot of
16 case law on it, but I was curious what you thought.
17 So - - -

18 MS. HALLIGAN: Well - - -

19 JUDGE FAHEY: - - - so you're saying, no,
20 it's not an estoppel theory?

21 MS. HALLIGAN: No, certainly not. And
22 that's a very specific doctrine that says you can't -
23 - - or at least there's a presumption against not
24 holding a government agency to an inadvertent
25 mistake. And implied dedications have run against

1 the government since back in the - - - in the 1800s.

2 CHIEF JUDGE LIPPMAN: Okay, counsel.

3 MS. HALLIGAN: Thank you.

4 CHIEF JUDGE LIPPMAN: You'll have you
5 rebuttal time.

6 Let's hear from your adversary.

7 Counsel, if it looks like a park, and it's
8 held out to be a park, why shouldn't we consider it a
9 park in terms of implied designation?

10 MR. PASTOR: The answer to that - - - good
11 afternoon, Your Honors. The answer to that question
12 really goes down to - - - it's all about context and
13 implied dedication.

14 So as a starting point, if you have
15 something that looks - - -

16 CHIEF JUDGE LIPPMAN: I - - - I agree, it's
17 the context around it. In this particular case, do
18 you challenge the fact that it looks like, feels like
19 a park, at least some of these properties?

20 MR. PASTOR: We do challenge that premise
21 strongly with respect to - - - to many of the
22 parcels, so I think I might as well jump in with
23 respect - - -

24 CHIEF JUDGE LIPPMAN: Go - - -

25 MR. PASTOR: - - - to the parcel that looks

1 - - - looks most and smells most like a park. And
2 that was the North Mercer Strip. And the reason I
3 refer to context with respect to that - - -

4 JUDGE FAHEY: Is that the North LaGuardia
5 Strip? Is that - - -

6 MR. PASTOR: It's actually the North - - -
7 the North Mercer Strip, which is on the eastern side
8 - - -

9 JUDGE RIVERA: Is that the playground?

10 MR. PASTOR: - - - of the north block.

11 JUDGE RIVERA: I'm sorry, is that the
12 playground?

13 MR. PASTOR: It has a playground on it.
14 That's right, Your Honor, which is for - - - which is
15 paved over for skateboarding.

16 So the - - - the context of that playground
17 is as follows. There was an explicit effort to have
18 all of these strips dedicated as parkland. And I
19 think it's important to be clear about how specific
20 that effort was with respect to the legal issue
21 that's now before the court.

22 CHIEF JUDGE LIPPMAN: How public was that
23 effort?

24 MR. PASTOR: Highly public. It involved
25 the community board number 2, it involved local

1 elected officials, it involved the Parks Department,
2 and it involved NYU, as well.

3 CHIEF JUDGE LIPPMAN: So you dispute what
4 your adversary says in terms of the public being - -
5 - considering this parkland? You think it was public
6 that this is not parkland?

7 MR. PASTOR: I can't speak for the entire
8 public - - -

9 CHIEF JUDGE LIPPMAN: Well, obvio - - -
10 obviously.

11 MR. PASTOR: - - - Your Honor, but yes.
12 This was a public process. It was p - - -

13 JUDGE STEIN: When did that occur? How
14 long after it had been used in this fashion? I mean
15 - - - I guess they argue that it was too late. Even
16 if - - - even if it was signi - - - you know,
17 signified something.

18 MR. PASTOR: They don't really argue that,
19 Your Honor. And the timing, actually, is - - - is
20 very important to this. The - - - the request came
21 in in March or April of 1995. And a month later - -
22 - and I think the timing is very important here - - -
23 that's when the permit was issued from the Department
24 of Transportation to the Parks Department which is
25 2497 of the record. And in that permit it actually

1 references the community board's request. So the
2 Department of Transportation is referencing the
3 request.

4 And then in the permit, it says, but - - -
5 but we want you to know that this is temporary - - -
6 this occupation you're about to undertake - - - you,
7 Parks Department - - - and that it's understood that
8 you - - - we're going to have to vacate. So - - -

9 JUDGE RIVERA: What - - - what about the
10 arguments about the permits and the leases? You have
11 strong - - - well, very strong arguments on your
12 side. And they say, but those are internal
13 documents; they're not really public; no one knows
14 about it. And what matters is what the public
15 understands. And what the public understands is
16 everything else you did, the other manifestations.

17 So are the permits not public at all? Is
18 there some way that that information about the
19 temporary nature and the temporary authorization of
20 the Department of Parks to maintain something that is
21 really not available to anyone who just wanted to
22 know?

23 MR. PASTOR: What we - - - we have to start
24 by disagreeing with the premise that - - - that the
25 perception is key, right? The key is still on the

1 City, like what did the City intend.

2 And I will take the Court back, if I could,
3 briefly, to when these strips came into the City's
4 possession. They were purchased - - -

5 CHIEF JUDGE LIPPMAN: So does it matter - -
6 - if the public universally thought it was a park, is
7 that relevant to the test that we have to look at
8 here?

9 MR. PASTOR: It - - -

10 CHIEF JUDGE LIPPMAN: Or - - - or let me
11 put it another way. What do we do here? Do we take
12 a vote as to who in the public thinks it's a park and
13 who in the public doesn't? What's the test.

14 MR. PASTOR: I think the - - -

15 CHIEF JUDGE LIPPMAN: How do we - - - how
16 do we do it? Or is that not important, what they
17 think?

18 MR. PASTOR: It - - - what's - - - what's
19 important is that they meet their burden of reaching
20 what is a very high standard set out for an implied
21 dedication. Implied dedication is meant to be rare.
22 Normally, parcels are dedicated by express written
23 documentation. There's this exception that this
24 court has established.

25 But the - - - the standard of that is that

1 their theory of the standard, which we don't agree
2 with. It is not a perception test. It's about - - -

3 CHIEF JUDGE LIPPMAN: What's the - - -
4 let's - - - just tell us briefly, what's the
5 standard?

6 MR. PASTOR: The standard is, has the City
7 of New York, through its acts and declarations,
8 demonstrated an unmistakable intention to permanently
9 - - - and I want to stress the word permanently - - -
10 if I may, Your Honor, because that's where I think
11 the permit with respect to the Mercer playground
12 really comes into play. It says that it's temporary.
13 It says that DOT reserves its right - - -

14 JUDGE RIVERA: But the point is, you're
15 demonstrating it to the public. So I'm going to go
16 back now, please, to the permits.

17 MR. PASTOR: Absolutely, Your Honor. So -
18 - -

19 JUDGE RIVERA: Is there a way that that is
20 publicly available or public information that
21 demonstrates the intent? I understand your argument
22 about the internal authority.

23 MR. PASTOR: Yeah. So the - - - the permit
24 - - - I'm not aware of the - - - the permit being
25 broadcast.

1 JUDGE RIVERA: Yeah.

2 MR. PASTOR: But it certainly was a public
3 document that could be retrieved.

4 I just want to turn quickly to public - - -

5 JUDGE READ: Meaning what? It could be
6 requested under FOIL, but it's not up on a Web site?

7 MR. PASTOR: I do not believe the record
8 reflects that the permit was on a Web site. But I -
9 - - I think that it - - - it's still important to
10 read that permit within the context of the very
11 public refusals.

12 And again, those requests that were - - -

13 CHIEF JUDGE LIPPMAN: Yeah, let's get to
14 that.

15 MR. PASTOR: Yes.

16 CHIEF JUDGE LIPPMAN: How public was this
17 turning down of - - - of, you know, the efforts to
18 change it into a park?

19 MR. PASTOR: They were - - - they were
20 public across the board, Your Honor. I mean - - -

21 CHIEF JUDGE LIPPMAN: Public like what?
22 Describe how public.

23 MR. PASTOR: - - - they - - - they were
24 letters to - - - to the community board and the
25 Washington Square - - - I'm going to get the name

1 wrong - - - Village Association. In addition, if you
2 look at the LaGuardia Community Gardens, which had
3 been subject to permits - - - to leases or licenses
4 the whole time, saying it was revocable, we have
5 cites in our - - - in our briefs about people by
6 e-mail requesting that the LaGuardia - - - LaGuardia
7 Community Gardens be dedicated and e-mails going back
8 to them saying that would require ULURP, which is a
9 point I hope you - - -

10 JUDGE STEIN: So certainly the part - - -

11 JUDGE RIVERA: And what - - -

12 JUDGE STEIN: - - - the parties using the
13 gardens knew that it was temporary?

14 MR. PASTOR: I completely agree. I - - -
15 I'm just stressing the point that every - - -

16 JUDGE RIVERA: And what - - - what years
17 was this communication with the public?

18 MR. PASTOR: So the - - - with respect to
19 the Mercer Playground, it was in '95 and '96. With
20 respect to the LaGuardia Community Gardens, I believe
21 it was in the 2000s. They're also - - -

22 JUDGE RIVERA: Okay, so - - - so let's stay
23 with Mercer, then. If - - - if you - - - if you make
24 that communication in '95 and '96, is it possible
25 that subsequent to that, the City changes its mind

1 and manifests through - - - through its - - - through
2 manifestations indeed satisfies a standard that we
3 might set with respect to implied dedication?

4 MR. PASTOR: There - - - there is no
5 authority, Your Honor, for the principle that - - -
6 that use alone and/or the perception of some is
7 sufficient to - - - to establish an unmistakable
8 intention.

9 And I would just like to refer - - -

10 JUDGE FAHEY: So you're saying that you're
11 the only one who can create implied dedication?

12 MR. PASTOR: That - - -

13 JUDGE FAHEY: That the City itself is the
14 only party in this instance - - - the owner of the
15 land is the only one that can created this implied
16 dedication by your actions?

17 MR. PASTOR: Correct. And the - - - and
18 the - - -

19 JUDGE FAHEY: All right. And so - - - just
20 - - -

21 MR. PASTOR: Sorry.

22 JUDGE FAHEY: - - - I don't mean to be
23 rude. I just want to follow up with two questions,
24 because it's tough getting in here, you know, so I
25 want to make sure I get in here on these - - - on

1 these points with these guys.

2 I want to know from you how long - - - if
3 the City does leave the door open, how long does it
4 take before it's implied, if you have any sense of
5 that? And secondly, how long - - - forget about
6 whether or not it's determined to be implied
7 dedication. How long before it becomes a question of
8 fact that isn't eligible for summary judgment? Do
9 you understand what I'm saying?

10 MR. PASTOR: I think so. I think to the -
11 - - how long, I think the best response I could give
12 you, Judge Fahey, would be to refer the Court to the
13 Croton-on-Hudson case.

14 JUDGE FAHEY: Yeah, that's - - - that's the
15 1972 Second Department case. I'm familiar with it.
16 It's close. I agree with you, it - - - it's similar.
17 I'm wondering, when does it become a question for
18 summary judgment?

19 MR. PASTOR: It - - - it won't become a
20 question for summary judgment ever, on these facts,
21 Your Honor. Because what we have here is - - -

22 JUDGE FAHEY: So fifty years, they could be
23 using Mercer Street Playground, and it doesn't become
24 a question for summary judgment?

25 MR. PASTOR: That is particularly true when

1 we're dealing with streets. And I don't know - - -
2 if I could just take a minute on that point, Your
3 Honor.

4 JUDGE FAHEY: Go ahead.

5 MR. PASTOR: We have it this - - - here,
6 street strips. These were dedicated as streets by
7 the Board of Estimate. As soon as that has occurred,
8 they are endowed, as well, with the public trust.
9 Our position is strongly in favor of the public trust
10 for parks and streets, once the Board of Estimate
11 acted that way. So in this case, Your Honor, there
12 would - - - yes, it would be never. But I think in
13 any event, if you have a record like this one where
14 it is a purposed as street - - - purposed for street,
15 mapped as street, in DOT's jurisdiction, but we're
16 letting them use it - - -

17 JUDGE FAHEY: You have two kinds of cases.
18 You have - - - ours - - - this case is a street to a
19 park. But then you have the other kind of cases where
20 its required for park, not used, and then used, and
21 then over time you get the implication argument.
22 Your ca - - - argument is that in this scenario,
23 street to park by implication, it can never occur, no
24 matter how long it is?

25 MR. PASTOR: Correct. The state

1 legislature has delegated that sole power to the city
2 council.

3 JUDGE FAHEY: All right.

4 JUDGE STEIN: Can - - - can you give one
5 examples of - - - of how the City might impliedly
6 dedicate one of these parcels?

7 MR. PASTOR: I think implied dedication
8 comes up when the - - - the intent is there but
9 there's no - - - there's no perfection of the
10 dedication.

11 JUDGE STEIN: So they say - - - so the City
12 has to expressly say, yes, we - - - we're going to
13 make this a permanent parkland, but then they never
14 go through the steps to do that? Is that - - -

15 MR. PASTOR: Right. For - - -

16 JUDGE STEIN: - - - what you're saying?

17 MR. PASTOR: - - - you start with - - - you
18 might start with a property that's in - - - not in
19 one agency's jurisdiction, so it's a general-purposes
20 property, and then opened as a park, and - - - and
21 then it - - - maybe there would be some more formal -
22 - -

23 CHIEF JUDGE LIPPMAN: Counselor, but let's
24 take the - - - the best case scenario that your - - -
25 their best case, would you think it's Mercer?

1 MR. PASTOR: I don't think that's their
2 best case in light of their permit. It's the most
3 like a park.

4 CHIEF JUDGE LIPPMAN: Let's say Mercer, for
5 the sake of argument. Public dedication, right, by
6 the parks commissioner?

7 MR. PASTOR: An opening, yes. I'm sorry.

8 CHIEF JUDGE LIPPMAN: The DPR literature,
9 signage. Why in that - - - let's assume that's a
10 pretty good case, why does that not demonstrate an
11 implied - - -

12 MR. PASTOR: For - - - for the following
13 reasons. Number one, it's a street strip, so even if
14 - - - even if the mayor and officials had an opening
15 there, they can't make that street into a park under
16 the law of this state. In addition, the opening came
17 only after there was a permit that was set in place,
18 for that knowledge, and after it was made clear to
19 the public that - - - that there was no intent to run
20 it through the city council.

21 CHIEF JUDGE LIPPMAN: So the bottom line
22 is, it's just not enough in your view, to make out
23 this implied dedication?

24 MR. PASTOR: Correct, it's not enough for
25 any of the four parcels, Your Honor.

1 JUDGE ABDUS-SALAAM: One more - - - just
2 one more question.

3 CHIEF JUDGE LIPPMAN: Last question, Judge
4 Abdus-Salaam.

5 JUDGE ABDUS-SALAAM: Counsel, if we decide
6 in your favor, and there are probably hundreds if not
7 thousands of these types of - - - of parcels around
8 New York City, does the public have to try to find
9 out before it gets all invested in this being a park,
10 whether it's - - - there would be implied dedication
11 or whether it's a street or it's something else, and
12 how would they do that?

13 MR. PASTOR: Well, if - - - for example, in
14 the case of the community gardens, Your Honor, all of
15 the chairs of the community gardens will be signing
16 licenses and leases. So - - - and you would think
17 that a chair of a community garden would speak on
18 behalf.

19 With respect to a Greenstreets program,
20 there are memorandums of understanding that would be
21 available to the public, and it's clear that it's a
22 dual DOT/Parks program.

23 So but I think, actually, if I may make the
24 brief point, the bigger concern for us is if you were
25 to rule against us, what that would mean for our open

1 space programs in opening up these - - - these places
2 temporarily. So - - -

3 CHIEF JUDGE LIPPMAN: Okay. Thanks,
4 counsel. Let's - - - rebuttal - - - oh, I'm sorry.
5 Counsel, you're - - - come on up.

6 MR. WAXMAN: I'm very happy to have Ms.
7 Halligan go first.

8 CHIEF JUDGE LIPPMAN: No. Go ahead.
9 You're on.

10 MR. WAXMAN: Chief Judge Lippman, and may
11 it please the court, I have two points I want to make
12 and I'd also like to respond to a question about how
13 public these permits and licenses were.

14 The overarching points are the following.
15 Number one, even if these city - - - these street
16 strips were in private hands, there would be no
17 implied dedication because under no possible view of
18 the facts could it be said that the owners' - - - and
19 I'm quoting your language in many cases - - -
20 deliberate, unequivocal and - - -

21 CHIEF JUDGE LIPPMAN: What - - -

22 MR. WAXMAN: - - - decisive - - -

23 CHIEF JUDGE LIPPMAN: - - - what about the
24 example that we just - - - we just gave your
25 colleague: dedicated by the parks commissioner, it's

1 in the literature, the signage. Why - - - there's no
2 circumstance? If there wasn't a history of trying to
3 change this - - -

4 MR. WAXMAN: That I understand - - -

5 CHIEF JUDGE LIPPMAN: - - - that was turned
6 down, would that be enough?

7 MR. WAXMAN: Well, you know, the question
8 of implied dedication depends on the - - - all the
9 facts and circumstances. So if you tell me that we
10 know nothing whatsoever other than the fact - - -

11 CHIEF JUDGE LIPPMAN: There's been no
12 attempt to change it. The sign says "park", the
13 police - - - the parks commissioner does a whole
14 public thing. It's all in their literature. Yeah,
15 let's assume no context - - -

16 MR. WAXMAN: So, Chief Judge Lippman, let
17 me - - -

18 CHIEF JUDGE LIPPMAN: - - - enough implied
19 - - -

20 MR. WAXMAN: - - - let me - - -

21 CHIEF JUDGE LIPPMAN: - - - is that - - -
22 could that be implied?

23 MR. WAXMAN: - - - it could not, for two
24 reasons.

25 CHIEF JUDGE LIPPMAN: Why?

1 MR. WAXMAN: Number one, this court has
2 never held that implied dedication can be applied
3 against the wishes of the municipality ever. The
4 Appellate Division, there are a variety - - -

5 CHIEF JUDGE LIPPMAN: What about - - - what
6 if their - - - their wishes were secret? Nobody knew
7 what their wishes were, the municipality?

8 MR. WAXMAN: The - - - there is - - -

9 CHIEF JUDGE LIPPMAN: It's - - -

10 MR. WAXMAN: - - - let me - - - let me give
11 you - - -

12 CHIEF JUDGE LIPPMAN: Go ahead.

13 MR. WAXMAN: - - - the strong form of the
14 answer and then the - - -

15 CHIEF JUDGE LIPPMAN: Okay, go ahead.

16 MR. WAXMAN: - - - weak - - - the more
17 qualified form of the answer.

18 CHIEF JUDGE LIPPMAN: Okay, go ahead.

19 MR. WAXMAN: The strong form of the answer
20 is that there is no case from this court, from the
21 Appellate Divisions or any other case anywhere that
22 anybody has cited in this case finding implied
23 dedication of public land unless it was both acquired
24 for park purposes and continually maintained as such.
25 That is how the public trust doctrine works.

1 CHIEF JUDGE LIPPMAN: So if it's not - - -

2 MR. WAXMAN: And here - - -

3 CHIEF JUDGE LIPPMAN: - -if it's not
4 acquired - - - we'll determine what that means - - -
5 but it's maintained with absolutely no questions as a
6 park, not good enough?

7 MR. WAXMAN: Not good enough. Particularly
8 where it was acquired, as this property was, in 1968,
9 after this Low MEx project was dead, it was acquired
10 at the City's request from NYU, which deeded these
11 strips to the City to hold in trust for street
12 purposes. And the City mapped them on its official,
13 very public, city map. It has used them for street
14 purposes, which includes - - -

15 CHIEF JUDGE LIPPMAN: How important is it -
16 - -

17 MR. WAXMAN: - - - sidewalks.

18 CHIEF JUDGE LIPPMAN: - - - how important
19 is it that when it was tried to be changed, that you
20 objected? Is that important?

21 MR. WAXMAN: It's - - - it's just the
22 operation of - - - of New York State law. An
23 adjacent landowner to a piece of property that is
24 going to be conver - - - a street that is going to be
25 converted to a nonstreet purpose, has a right to

1 notice and a right to compensation. And our - - -
2 the access to these super-blocks, both from Mercer
3 Street and LaGuardia Place, are through these
4 "sidewalk" - - - these "sidewalks", which are def - -
5 - which are included within the state's definition of
6 the term "street".

7 So the fact that we - - - although we
8 supported and we contributed financially to the
9 creation and development of the Mercer Playground, we
10 built the dog run, we contributed to Adrian's Garden,
11 the fact - - - and we were supportive of these
12 temporary, very public permits, licenses, and MOUs,
13 says nothing - - - there's nothing nefarious about
14 it. We own these - - -

15 JUDGE RIVERA: But that's a little bit of a
16 challenging fact pattern. I mean, if this is not
17 implied dedication, what is? They're arguing - - - I
18 haven't heard anyone say otherwise - - - that these
19 permits and these leases are internal. No one sees
20 them; no one knows about them other than the argument
21 that they have to sign the lease. I get - - - the
22 permit - - - I get that that's a very strong
23 argument. And - - - and as I recall the briefing in
24 this, the parcels are going to be dedicated parkland,
25 in some way or another, after this. So there is

1 something very challenging in this fact pattern, no?

2 MR. WAXMAN: I - - - I don't think so,
3 Judge Rivera. In the actual fact pattern. Let's - -
4 - every - - - let's talk about what the public did
5 and didn't know. Leaving aside the fact that the
6 public know - - - has to be charged with knowing that
7 the city council or the Board of Estimate, accepted
8 these parcels in trust for street purposes, they were
9 mapped as street purposes. With respect to the
10 licenses and permits that have been sought in this
11 case, with respect to the commu - - - the LaGuardia
12 Community Gardens, Inc., which is a private
13 organization, there are yearly temporary licenses or
14 leases. They were called different - - - they - - -
15 the - - - the LaGuardia Community Gardens, on its - -
16 -

17 CHIEF JUDGE LIPPMAN: How do you - - - how
18 do you define public knowledge? Is it the person
19 that's walking by the park and what they think it is,
20 or what looks like a park; or is it the person who
21 says, oh, I know that the city council did this or
22 that or the other?

23 MR. WAXMAN: It - - - the public perception
24 doesn't drive the dedication question. The
25 dedication - - -

1 CHIEF JUDGE LIPPMAN: So it - - - really,
2 does it matter what the public thinks or doesn't
3 think?

4 MR. WAXMAN: What the pu - - - what this
5 court's - - - what this court's cases have said is
6 that public use and public acceptance is relevant to
7 the second prong of dedication, which is, was there
8 public acceptance.

9 CHIEF JUDGE LIPPMAN: But - - - but in and
10 of itself, not enough - - -

11 MR. WAXMAN: In and of itself - - -

12 CHIEF JUDGE LIPPMAN: - - - of a driver?

13 MR. WAXMAN: - - - it is - - - it is
14 relevant to the - - - to the paramount question,
15 which is what - - - was there an owner's intent to
16 forego use in perpetuity, only inferentially to the
17 extent that it supports the other evidence. And the
18 other - - -

19 JUDGE STEIN: Are you saying - - -

20 MR. WAXMAN: - - - very - - -

21 JUDGE STEIN: - - - that the - - - that the
22 public perception is important in those cases in
23 which a private land owner is alleged to have
24 dedicated property to the public?

25 MR. WAXMAN: Yes.

1 JUDGE STEIN: Is that what you're saying?
2 And that's why it's not relevant here, because it's -
3 - -

4 MR. WAXMAN: That's - - -

5 JUDGE STEIN: - - - always been public?

6 MR. WAXMAN: Yes, that's right. And this
7 court's 1870 - - - 1860 decision in Holdane was the
8 case where there wasn't evidence that the - - - that
9 the municipality had undertaken responsibility for
10 this so-called street, and there wasn't sufficient
11 evidence of public use of the street for anything
12 other than to access this farmer's property.

13 But the point - - - if I can just go to the
14 specific permits we've been asking about. On
15 LaGuardia Community Gardens, they have their own fact
16 sheet which is in the record says - - - it's in the
17 record at 2054 - - - says this property is owned by
18 the Department of Transportation; although we have
19 1,000 signatures to transfer this into parkland, it
20 isn't.

21 The - - - with respect to the - - - the
22 Mercer Playground, the permit was granted a - - - the
23 permit which was requested by community board number
24 2, followed by one month, community board number 2's
25 resolution, following a public hearing, that the

1 North Mercer Strip be demapped, which the Department
2 of Parks told them it had to be to be a park, so that
3 it could be made into and protected as a permanent
4 park.

5 Nothing could have been more public than
6 that resolution that was sent - - -

7 CHIEF JUDGE LIPPMAN: Okay, counsel.

8 MR. WAXMAN: - - - and if I may just - - -

9 CHIEF JUDGE LIPPMAN: Finish - - - finish
10 your thought, counsel, yes.

11 MR. WAXMAN: - - - when the city - - - when
12 the Department of Parks and Recreation - - - this is
13 in the record - - - told them no, we're not going to
14 support that, they sought - - - community board
15 number 2 sought a temporary permit, and that permit,
16 which was signed the very next month repre - - - has,
17 and is - - - was a very public - - - and the notion
18 that the community board number 2 didn't know about
19 this is fanciful - - -

20 CHIEF JUDGE LIPPMAN: Okay, counsel.

21 MR. WAXMAN: - - - specifically says it was
22 temporary.

23 CHIEF JUDGE LIPPMAN: Thank you, counselor.

24 MR. WAXMAN: Thank you.

25 CHIEF JUDGE LIPPMAN: Now, counsel,

1 rebuttal.

2 MS. HALLIGAN: Thank you, Chief Judge
3 Lippman.

4 A few points. First of all, the version of
5 implied dedication that respondents ask you to accept
6 would dramatically curtail its application. The City
7 says it's basically applicable only when there's a
8 glitch in express dedication. That's simply not
9 supported by the case law.

10 Mr. Waxman says public perception doesn't
11 drive dedication - - -

12 JUDGE STEIN: But is - - - but isn't most
13 of that case law around private landowners that have
14 allowed the public to use the - - - the property for
15 - - -

16 MS. HALLIGAN: Some of it is, especially in
17 the 1800s. But is has also been applied well into
18 the twenty-first century. And this court and the
19 Appellate Divisions have never suggested the standard
20 is any different.

21 With regard to remapping, Chief Judge
22 Lippman, you've asked about this several times.
23 What's critical is that the City never changed its
24 conduct. There's no evidence in the record how many
25 people knew about the deci - - - the City's decision

1 not to pursue the remapping, because as the record
2 states clearly, the City officials, both DOT and DPR,
3 said it wasn't necessary, because it was effectively
4 already a park.

5 JUDGE ABDUS-SALAAM: Counsel what if - - -
6 what if the - - - the community board, elected
7 officials, and other people who were prominent on the
8 community knew about some attempt to de-map, but not
9 the average Joe and Jane who uses the park. Would
10 that - - - would you say, then, that the park - - -
11 the public has a perception that this is a park, even
12 though there are people within the public who know
13 that - - - that there have been attempts to demap and
14 they haven't been successful?

15 MS. HALLIGAN: I don't think there's
16 anything in the case law to suggest that because
17 someone on a community board knows about an effort to
18 have express dedication, that that precludes implied
19 dedication.

20 You and Judge Rivera both asked questions
21 about how much must the public investigate. This is
22 not an inquiry/notice kind of rule. It's not a rule
23 where you have to FOIL something. It's a question of
24 what the City's affirmative acts and declarations
25 indicated. It's - - -

1 JUDGE RIVERA: Well, it's about what is - -
2 - what is the owner's intent.

3 MS. HALLIGAN: It is, and - - -

4 JUDGE RIVERA: It's the owner's intent.
5 Your argument is the intent is manifest based on the
6 signage, the ceremonies, these - - - these actions
7 that they've taken.

8 MS. HALLIGAN: My argument - - -

9 JUDGE RIVERA: And they argue you have to
10 look at those actions in a particular historical
11 context as well as recognizing that they had made
12 manifest, to - - - to those who would understand - -
13 - if it's not the community board, it's the licensee
14 and so forth - - - that - - - that this was only
15 temporary, that they might, at any day, come back and
16 say we know you love it but we're going to use it for
17 something else.

18 MS. HALLIGAN: The case law is pretty
19 clear, I believe, Your Honor, that what counts is
20 what the acts and declarations manifest to the
21 public.

22 Briefly, with regard to the permit. On the
23 - - -

24 JUDGE RIVERA: But why isn't - - - why
25 isn't - - -

1 MS. HALLIGAN: Yes.

2 JUDGE RIVERA: - - - a permit or a lease
3 that's signed by the licensee, enough?

4 MS. HALLIGAN: Because it is a behind-
5 closed-doors document, and the public is not - - -

6 JUDGE RIVERA: But you're assigning it to
7 the people who are using it or who are responsible
8 for maintenance.

9 MS. HALLIGAN: With regard to - - -

10 JUDGE RIVERA: How is it behind closed
11 doors?

12 MS. HALLIGAN: Well, the public isn't - - -
13 isn't required to go out - - - and nothing in this
14 doctrine has ever suggested - - - and look for these
15 documents.

16 JUDGE STEIN: So when you refer to the
17 public, you're not - - - you're referring - - - who
18 are you referring to?

19 MS. HALLIGAN: I'm referring to the - - -

20 JUDGE STEIN: How many people constitute
21 the public? How - - - what percentage of the
22 residents of the citizens or the visitors from other
23 states and countries - - - who has to know about
24 this?

25 MS. HALLIGAN: I - - - I'm referring to the

1 public at large. And what the public at large sees,
2 with regard to the Mercer permit in particular - - -

3 JUDGE STEIN: But who is the public at
4 large?

5 MS. HALLIGAN: The local residents. If you
6 would look at 2008 and 3081, the permit is actually
7 referenced on the sign that is on Mercer Playground.
8 And that sign says there was a permit; it was
9 transferred. So if you think it's of some particular
10 relevance, that disposes of that argument.

11 One last point, if I may, with regard to
12 the implications. First of all these 2,000 green
13 spaces where there are either trees or some other
14 effort to beautify the city streets. This could not
15 be more different than, for example, a section of
16 Broadway, where the mayor puts a couple of chairs.
17 And the notion that the courts of this state can't
18 tell the difference between the two, frankly, strikes
19 me as baffling.

20 Finally, this - - -

21 CHIEF JUDGE LIPPMAN: Finish your thought,
22 counselor.

23 MS. HALLIGAN: - - - thank you.

24 CHIEF JUDGE LIPPMAN: Go ahead.

25 MS. HALLIGAN: There - - - there has been

1 much made of the purpose behind the expansion.
2 Nothing that we are asking for today would prohibit
3 this project from moving forward. All we are asking
4 is that consistent with the decades of precedent - -
5 - more than a century from this court - - -

6 JUDGE RIVERA: The - - - the parcels - - -

7 MS. HALLIGAN: - - - that they be - - -

8 JUDGE RIVERA: - - - are going to be
9 dedicated after this, are they not? After NYU
10 finishes it's - - -

11 MS. HALLIGAN: Twenty years - - - twenty
12 years later. And if NYU wants to proceed, they have
13 one of two straightforward choices: legislative
14 approval - - - last year there were fourteen such
15 alienations approved. It's not a complicated
16 process. Or if they want to do the construction
17 staging differently, built the parcels without
18 seeking alienation, they simply have to tell the City
19 what that would entail.

20 CHIEF JUDGE LIPPMAN: Okay, counsel.

21 MS. HALLIGAN: Thank you, Your Honor.

22 CHIEF JUDGE LIPPMAN: Thank you all.

23 Appreciate it.

24 (Court is adjourned)

25

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Glick v. Harvey, No. 107 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

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Date: June 9, 2015