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**Date: September 22, 2006**

**To: All Clients and Friends**

**From: Cliff Bernstein**

**Re: Zoning Lot Certifications & Building Permits**

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#### **TITLE INSURANCE BULLETIN – NEW YORK**

Except in Special Zoning Districts as to which specific provisions of the City's Zoning Resolution apply, to effectuate the transfer of development rights between parcels of real property the owner of the property from which development rights are being transferred (the "Initial Transferor") and the owner of the property being developed (the "Transferee") will merge their parcels into a single zoning lot. In connection with that zoning lot merger the Initial Transferor may consent to the expansion of the newly created zoning lot to encompass additional property (an "Expanded Zoning Lot"). The consent to an Expanded Zoning Lot is typically set forth in a Zoning Lot and Development Agreement ("ZLDA") that is recorded.

Depending on the terms of the Initial Transferor's consent in the ZLDA, it is customary not to require the Initial Transferor to execute further documents for the creation of an Expanded Zoning Lot. Although the Initial Transferor is listed as a party in interest in the Parties-in-Interest Certification for the Expanded Zoning Lot, the final Certification will indicate that the Initial Transferor consented to the Expanded Zoning Lot in the ZLDA.

Information has been obtained that the City's Building Department, is or may be requiring the Initial Transferor to re-execute a Declaration of Restrictions or execute a Waiver for an Expanded Zoning Lot before it will issue a building permit for construction on the Transferee's land.

Exclusion from Coverage 1(a) of the Owner's and Loan policies excludes from coverage the effect of "(a)ny law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land". The New York City Development Rights Endorsement, insuring that all Parties in Interest have "joined in, waived or subordinated their

interest to the declaration of Zoning Lot Restrictions” and that the ZLDA is effective to transfer floor area development rights, also states that the Endorsement shall not “be deemed a waiver of Exclusions from Coverage 1(a) of the Policy”. No insurance is being afforded that a building permit will be issued.

Notwithstanding the foregoing, the Building Department’s change of position needs to be brought to the attention of our clients. Accordingly, each cover letter accompanying a Zoning Lot Certification should include the following statement: “If this Certification is being obtained for the expansion of an existing merged zoning lot, Building Department requirements should be considered as to who must execute the new zoning lot documents to obtain a building permit”.

*This bulletin is sent courtesy of CB Title Agency of New York, LLC and First American Title Insurance Company of New York*