IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION

IN RE	**:**	**MISC. NO. 0010877-2011**
COUNTY INVESTIGATING	**:**	
GRAND JURY XXV	**:**	**C-6**

REPORT OF THE GRAND JURY

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FINDINGS AND ORDER

AND NOW, this day of January, 2011, after having examined the Report and Records of the County Investigating Grand Jury XXV, this Court finds that the Report is within the authority of the Investigating Grand Jury and is otherwise in accordance with the provisions of the Investigating Grand Jury Act, 42 Pa.C.S. § 4541 *et seq.* In view of these findings, the Court hereby accepts the Report and refers it to the Clerk of Court to be filed as a public record on February 3, 2014.

BY THE COURT:

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LILLIAN HARRIS RANSOM
Supervising Judge
Court of Common Pleas

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I. INTRODUCTION

Two Philadelphia firefighters died, and two were seriously injured, in a building that two Brooklyn real estate investors slowly turned into a firetrap. But this grand jury report is really about a failure of government—the failure of Philadelphia administrative agencies to accomplish the basic functions for which they exist. Unfortunately, we have reluctantly concluded that there is currently no appropriate criminal penalty for the tale of misdeeds we found. While the building owners violated virtually every regulation that got in their way, they were never held accountable for doing so, and we do not believe that the available evidence can establish that their flagrant code violations and tax delinquencies caused the fire that eventually destroyed their property and the firemen's lives. Nevertheless, there are lessons to be learned. Had city departments done their job, these deaths might never have occurred.

Lichtensteins

The story begins with a real estate transaction. The former Thomas W. Buck Hosiery factory took up almost a full city block on East York Street, just off Kensington Avenue and a Market-Frankford El station. The location, convenient to transportation and near the up-and-coming Fishtown neighborhood, seemed poised for development. The previous owner hoped to rehab the old factory building into artists' studios and shops. He lived on the property and dedicated himself to trying to maintain it. But the project was just too big; he didn't have the money to fully protect the structure against the ravages of time, let alone to repurpose it. By 2008, he decided he had to sell.

The buyers were a father/son team of real estate moguls from New York. The Lichtensteins—Michael, the son, and Nahman, the father—own dozens of other properties both in Philadelphia and in Brooklyn. The business has a website, and Nahman has a blog with numerous postings attesting to their experience and expertise. Michael is a graduate of Cardozo law school. The family also owns and operates a major media enterprise. So they seemed like a good bet to secure the funding necessary to make something new of the Thomas W. Buck building.

Instead they were unscrupulous from the start. They agreed to pay three-quarters of a million dollars for the property. But they delivered only half the money at closing, with a promise to pay the rest within 45 days. The 45 days stretched into years during which they doled out small portions of what they owed. They offered to trade one of their other Philadelphia properties in satisfaction of their remaining debt. But when the seller saw the deplorable condition in which those properties had been maintained, he realized the offer was illusory. Eventually, worn out by the Lichtensteins' delay tactics, the seller settled for a fraction on the dollar.

This treatment of the seller was typical of what happened to others who tried to do business with the new owners of 1817 York Street. Michael Lichtenstein, who took the lead for the family regarding this property, made various efforts to hire "caretakers" to live in the building, but each time it became clear that he had no intention either of paying them or of putting up any money for upkeep. He went through a series of insurance policies that were cancelled as insurers realized they had been given misinformation. He tried to secure a bank loan based on a variety of misrepresentations, but when the bank demanded a meeting to clear up the discrepancies, he didn't show up. He spent months negotiating to sell the property to another developer, repeatedly demanding new concessions as each prior demand was met, but when the buyer finally thought they had a deal, he claimed a family emergency and never came back.

Similarly, the condition of the Lichtensteins' other properties was a sign of what was in store for the Thomas W. Buck building. All the labors of the previous owner to preserve the property soon came to nothing. He warned the Lichtensteins after he moved out that vandals were breaking in, and that squatters were camping out. Drug addicts took refuge inside, and scavengers began removing copper pipes and wiring. The roof was collapsing; windows were smashed; live electrical wires dangled loose.

Michael Lichtenstein had to have been personally aware of these problems, because he visited the property when he was trying to get people to give him money or services. Indeed, on more than one occasion, he was warned that the building was in danger of fire or collapse. Yet he did nothing to remedy the dangers.

The condition of the property was not just unsafe; it was illegal. City codes clearly address such situations. Owners of large buildings are required, for example, to maintain a working

sprinkler system, or to clean and seal the premises to ensure that no one can enter. There is no evidence that the Lichtensteins did anything to bring the building up to code.

And they were equally dismissive of legal obligations to pay taxes or fees. Indeed, at the time of the fire, the Lichtensteins had not paid not one dime in real estate taxes, or in water and sewer rents, since they bought the York Street property in 2008. By the time of the fire in 2012, the delinquent taxes totaled near $60,000, and water and sewer fees $13,000. In fact the Lichtensteins are *still* the legal owners of 1817-41 York Street, which is now only a vacant lot, and owe the City over $100,000 for the demolition of the burned-out shell.

L&I

If only someone had bothered to enforce the city codes.

Of course there is an agency that is supposed to do that: the Department of Licenses & Inspections. The Department is supposed to identify code violations and issue appropriate violation notices, including large, deteriorating buildings in dense residential areas; to enforce those violation notices through court action; and to consider permit and zoning applications. But the Department managed to botch every one of these functions.

<u>Inspections</u>

It's not as if L&I didn't know about the concerns for the condition of the York Street property. Over the years, in fact, four different L&I inspectors actually went out to the property. They even issued various violation notices. But as the evidence shows, these were merely superficial steps that did no more than keep the bureaucratic wheels spinning.

Astonishingly, almost every time a new inspector visited the property, L&I issued a new case number—thus treating the property as if it had no previous violation history. The first inspector went to the scene in early 2009, just months after the Lichtenstein purchase. He found

fire and property code violations and issued violation notices. He came back in October, saw that none of the violations had been fixed, and issued new violation notices. This first case then just sat, with no further action, for almost three years.

In 2011, a second inspector went to the scene in response to new complaints. He knew, from the L&I computer system, about the first case; yet he opened a new case number, which effectively disregarded all previous uncorrected violations. He explained in his grand jury testimony that he did not need to concern himself with the prior case, because it was not "my complaint." He never actually went into the property; he just looked around the outside. Nevertheless, he chose to issue a "clean and seal" violation notice. He explained that it was standard practice to automatically issue such a notice for any vacant building, whether or not there was actually any debris to clean or openings to seal. Indeed, he reported—contrary to the overwhelming weight of the evidence over a period of years—that there *was* no debris or broken windows, doors, or fencing. The second inspector visited twice more, saw nothing new, and passed the case along. Nothing else ever happened with it.

A third inspector came to the scene in early 2012. This inspector did not open a new case number; he explained that he was there to recheck the original case—from *2009*—in order to enforce the violation notices through court action. No one ever explained why it took three years to get to that point.

A fourth and last inspector visited at the end of March 2012, after yet more citizen complaints, opening another new case number. This inspector, at least, performed a thorough check, and accordingly realized that the building was not merely out of compliance, but actually unsafe. He issued appropriate violation notices. But at that point, it was too late. The fire was only a week away—the blink of an eye, by L&I time.

Obviously, the Department lacked, and apparently still lacks, even the most basic controls to ensure that inspections are properly performed, that information is appropriately consolidated, and that violations are promptly prosecuted. They created paper, but no results.

Court enforcement

Violation notices by themselves are not self-enforcing. They serve merely as a warning to a delinquent owner that something might happen to him if he does not bring his property into compliance. The "something" that might happen is a court order. The Court of Common Pleas has power to fine owners, to hold them in contempt, or even to foreclose on the property and order a sheriff's sale. Of course, none of these things can happen if the violation charges are never brought before a court.

We heard varying testimony from L&I officials about the process by which violation notices are supposed to go to court. Allegedly, court proceedings would begin after two violation notices, or three notices, or even four or five notices. But none of that was really believable, at least as far as this property demonstrates. *Not one* of the myriad violation notices issued here, under any of the three independent case numbers, ever actually reached a judge.

According to testimony by L&I employees, the first case number—dating back to 2009—did proceed to court. But that is not really true. All that really happened, as far as the evidence showed, was that the property was reinspected—*three years later*—in "preparation" for court proceedings. Yet that re-inspection in fact did nothing to advance the case; it still was never actually scheduled for court, and no judge ever heard the case or took any action on it.

The second case number, from 2011, not surprisingly didn't even get that far. We were told that the violations recorded under this second case number were sent to court in early 2012.

But that assertion meant nothing; once again, the matter was never actually scheduled for any court listing.

As for the third case number, from March 2012, who knows what would have happened. By the day after the fire, that last set of violation notices, and all the prior ones, became moot.

We suppose it is possible that the Department did a better job policing violations at some other building. But the Buck factory was a large property, the focus of neighborhood complaints for years, with problems presenting a genuine danger. If that wasn't enough to motivate any real action, how can we conclude that anything else would have been? The secret was spilled by both the current and past L&I commissioners. Both admitted that the Department does not really *want* to take large properties with serious violations before a judge. It turns out that, if the building owner is unavailable or unable to pay for repairs, the court has the power to order the city to bear the cost.

Permits

In theory, the Department of Licenses and Inspections does have leverage over building owners even apart from court enforcement proceedings. The Department controls the issuance of required licenses and permits, such as vacant property licenses, demolition permits, and zoning variances. These licenses and permits are often vital for building owners, not only for legal reasons but for financial ones. Yet here too the Department missed every opportunity to accomplish anything.

The Philadelphia Code requires that owners of vacant properties secure a vacant building license. To do so, the owners must seal the building from possible intrusion, and must purchase a bond to cover costs if it becomes apparent that any emergency repairs are needed. For a property the size of the Thomas W. Buck building, the required bond would have been $100,000. Yet

L&I, which was regularly sending inspectors out to York Street who obviously knew the property was not officially occupied, never took any steps to procure the bond the Lichtensteins were required to provide. Had the bond been in place, the Department would not have had to worry about getting stuck holding the bill for any court-ordered repairs at York Street. It could have gone before a judge knowing there was a six-figure fund available to fix up the deficiencies.

Nor was that the only legal tool available to the Department to pressure the Lichtensteins into compliance. As a former manufacturing site, the York Street property was zoned solely for commercial use. No one, however, was going to resurrect Thomas W. Buck as a factory; its real estate value lay entirely in its potential for residential development. The Lichtensteins, therefore, desperately needed the property to be rezoned from commercial to residential use. And in order to maintain such a zoning variance, they needed to show they were taking steps toward rehabbing the building. To begin that process would require a demolition permit. Without such a variance and permit, the market value of the parcel would plummet.

This was the perfect chance for L&I to squeeze some compliance out of the owners. All it had to do was hold up the zoning and demolition requests until repairs were made to the property. Instead, the Department simply granted the Lichtensteins' requests, both initially and for renewals. It was as if the multiple fire and building code violations didn't exist.

Not only the code violations were ignored during the zoning process; so were the tax delinquencies. The Lichtensteins, after all, had never paid *any* of the money they owed the city for taxes on the property. For that matter, they weren't paying up on their other properties either. At the time of the fire, in fact, they owed almost *four hundred thousand dollars* in back taxes. While L&I wasn't the department responsible for collecting that money, surely it could have withheld

the zoning variance, which gave the Lichtensteins a financial boon, until they made good on their debt. Apparently, however, no one ever even checked.

Revenue

The agency that *was* responsible for collecting the taxes and fees owed by the Lichtensteins was the Philadelphia Department of Revenue. They were about as effective as L&I.

The Lichtensteins bought the York Street property in September 2008 and predictably paid no more taxes or water/sewer fees than they were paying on their other properties. In July 2010, the Revenue Department (through the Law Department) filed a court action to collect the unpaid real estate taxes. But the action was dismissed because it wasn't properly sent to the owners—the city used the wrong address. During this same period, other city officials were using correct addresses. Even neighbors managed to locate them, with information readily available on the internet.

The 2010 dismissal, however, was apparently enough to get the Revenue Department to throw up its hands. Nothing further was done about the unpaid York Street property taxes for almost two years. Finally, in March 2012, the city initiated foreclosure proceedings, based on the delinquent taxes, which by this point amounted to $57,000. Once again, though, it was all too late. Three weeks later, the property on which the property taxes were owed burned down.

Meanwhile, the Department was separately failing to collect the unpaid water and sewer fees. Four times actions were filed, and four times they were dismissed. The reason was always the same: the Department kept sending notice to the Lichtensteins at the York Street address. But that was a vacant property, not the record address of the corporation that actually owned the former factory. The Department had to know this because the Lichtensteins used the same corporate entity to hold their other Philadelphia properties, and the Department was contacting them at that

address. The result: no water and sewer fees were ever collected on York Street. In fact, the Lichtensteins still owe thousands, and the Water Revenue Bureau is still sending the bills to an empty lot.

We know this is not an isolated case. Last year's *Philadelphia Inquirer* series about property taxes showed that there are thousands of real estate speculators who don't pay what they owe the city. Not surprisingly, they don't keep their buildings up to code either; not surprisingly, these properties become blighted and dangerous. York Street was just par for the course.

Fire

Sometimes, though, danger moves from risk into reality. On April 9, 2012, a massive fire broke out at the Thomas W. Buck Hosiery Factory, and two men—Philadelphia Fire Lieutenant Robert Neary and Firefighter Daniel Sweeney—died trying to contain it. They died because they were brave: instead of retreating from a dangerous collapse zone, they entered into it. But it takes nothing away from their bravery to say that perhaps someone should have stopped them.

To be fair, the events of that day presented unusually challenging circumstances. This was not just a fire; it was, as one battalion chief said, a war zone. The fire began sometime after midnight at the end of Easter Sunday. Many firefighters were off for the holiday weekend. The weather conditions were perfect for combustion: dry 35-mile-an-hour winds blew the fire through the vandalized structure like bellows and a furnace. By the time the blaze was first reported, at 3:12 a.m., flames were already coming through the roof.

Fire companies arrived within minutes, but there was never any chance to save the building. The fight was to save the neighborhood. Softball-sized embers were blowing through the sky, lighting satellite fires blocks away. The main fire threatened to spread across the street toward the El and the rowhouses that surrounded the site. Five alarms were rung; 40 companies

responded. Firemen were fighting on four fronts, or sectors, around the four sides of the building. Others were dispatched throughout the neighborhood to extinguish the separate fires that had started.

Ladder Company 10 was assigned to a sector that included a furniture store that was adjacent to the factory wall. Part of the store was within a collapse zone in the shadow of the factory's towering exterior walls. It was the job of incident safety officers to keep firefighters out of that zone in the heat of battle.

Shortly after 5:00 a.m., only about two hours after the first reports, the Department's determined efforts brought the fire under control. By then, the property's exterior brick walls had all collapsed—all except for one section of the wall, which loomed over the furniture store. But fifteen minutes later, Ladder 10 spotted fire flaring up in the store. If the store became engulfed, the fire could easily spread to other properties and again threaten the whole neighborhood. The ladder company went inside to beat it back.

That was when the rest of the wall fell. The firefighters were buried under tons of bricks. Two of them, Firefighters Patrick Nally and Francis Cheney were seriously injured in the collapse; Lt. Neary and Firefighter Sweeney died before rescuers could dig them out.

Undoubtedly, the company knew it was taking some risk. But firefighters are not supposed to die, and when they do we need to know what went wrong. Procedures existed for collapse zones, to prevent exactly what occurred here. But for some reason neither the incident safety officers nor any other officer on the scene enforced the zone at the crucial moment, even though nearly every other section of the walls had recently collapsed. The grand jury heard testimony about the lack of training in recent years for Fire Department officers, and in particular for incident safety officers. We suspect that training deficiencies may have been a factor in this

tragedy. We can only imagine all the stresses facing those on the ground. But it is exactly at such moments that training—habit, muscle memory—is most important.

Charges

As an investigating grand jury empaneled under state statute, one of our functions is to determine whether to issue a presentment recommending criminal charges. To that end we heard from 76 witnesses, reviewed 468 exhibits, and considered thousands of pages of documents. With great frustration, we have concluded that criminal charges are not available, at least on the present state of the evidence and the law. From what we know, the bureaucrats at L&I were guilty of indifference, not crime. The Lichtensteins were a closer call.

On the one hand, we believe there is a reasonable chance the owners could have prevented the death and destruction that occurred here. If they had secured the property, as they were legally required to do, or if they had developed the property, as they assured lenders they would, or if they had resold the property, as willing buyers asked them to, the fire might never have happened.

On the other hand, we believe, reluctantly, that current evidence would be unlikely to persuade a petit jury beyond a reasonable doubt of the elements necessary for the crimes of murder or manslaughter. Local and federal fire investigators determined that the fire must have been of human origin; but they were unable to detect any accelerants, or to locate the ignition point, or to rule out accident. Anyone could have inadvertently caused the fire after breaking in, or even from outside the building. Moreover, as we have noted, there were steps the Fire Department might have taken to avoid death or injury to those fighting the blaze.

And there is one final factor impeding homicide charges against the Lichtensteins: the actions of the agency that was supposed to hold them to account. It's not just that L&I failed com-

pletely to bring the owners to court and enforce the code; it's worse than that. After generating notices that went nowhere, L&I inspectors testified that the property was properly sealed from intrusion with intact fencing and entrances. This contradicts all other evidence, and shows us that at least some inspections were spurious. Nevertheless, they hand the Lichtensteins their best available defense.

We looked at other possible criminal charges not directly related to the fire. There were a number of false statements in various insurance applications submitted for the property, which in theory could give rise to an insurance fraud indictment. Every time we tried to pin them down, though, it turned out that the Lichtensteins had been careful not to submit the forms themselves. The misrepresentations were always made by some third party, such as a "broker"; but somehow none of these third parties could ever remember where they got the incorrect information, or who authorized them to submit it.

Similarly, we considered possible perjury charges arising out of statements Michael Lichtenstein made to the insurance company in the course of attempting to collect on his policy after the fire. Here again, however, the proof always depended on documents that were curiously obscure—and that were never signed by Michael himself. The one thing that did become clear is that the Lichtensteins seem well practiced, or well counseled, in hiding behind others to escape responsibility for their actions.

We note that, while Pennsylvania criminal law may be unavailing at this point, it is not the only legal tool that might be brought to bear. York Street provides only a peek at a complex, multi-state web of financial irregularities. We hope that federal investigations, or civil lawsuits by private parties, will go beyond what we were able to achieve with the limited focus and resources of this grand jury.

And of course criminal and civil law are not the entire measure of morality. There is a saying that, when a man's life is judged at the end, the first question asked of him is this: "Were you honest in your business dealings?" This document provides an accounting.

Recommendations

Although we do not recommend criminal charges, it is also within our statutory purview to present our findings, as we do in this report, and to suggest policy and legal changes that address the abuses we describe. Those recommendations are discussed in full in the main body of the report; we list some of them here.

Code violation criminal penalties

At present, code violations by city property owners, no matter how numerous or egregious, give rise only to civil financial penalties. We propose a new state statute that would create criminal liability for property owners whose code violations cause death or serious injury. This kind of law might not have been enough to allow charges against the Lichtensteins, but it would certainly help deter owners from ignoring code violations in the future. We suggest that the new statute be called the Robert Neary and Daniel Sweeney Law.

External evaluation of L&I

We saw systemic failures at every level of L&I. We believe it is time for a thorough review of the entire department by a truly independent agency. We know that the mayor has named a panel following the recent collapse on Market Street. But that panel will apparently focus on demolition issues. Broader review is necessary, by a group of outside professionals and experts.

Tax clearance certifications

Under existing law, a contractor cannot secure a building permit without first showing that he is current on his city taxes. For some reason, the same requirement does not apply to

building owners. Licenses and permits should be withheld until owners establish that they have paid all outstanding amounts to the city—on *all* their city properties.

Fire safety officer training

Apparently for budgetary reasons, it has been years since the Fire Department conducted any training for incident safety officers. But the price of not doing so is too high. Specific officers should be trained to be incident safety experts, and all officers should receive incident safety training.

Fire personnel tracking

The Department has no modern system for tracking the location of firefighters on the scene; it relies on pins on a board. In multi-alarm fires, that primitive process can be deadly, as this case shows. GPS devices and computerized situation screens would give commanders instantaneous information about the disposition of their forces. The technology would improve efficiency while saving lives.

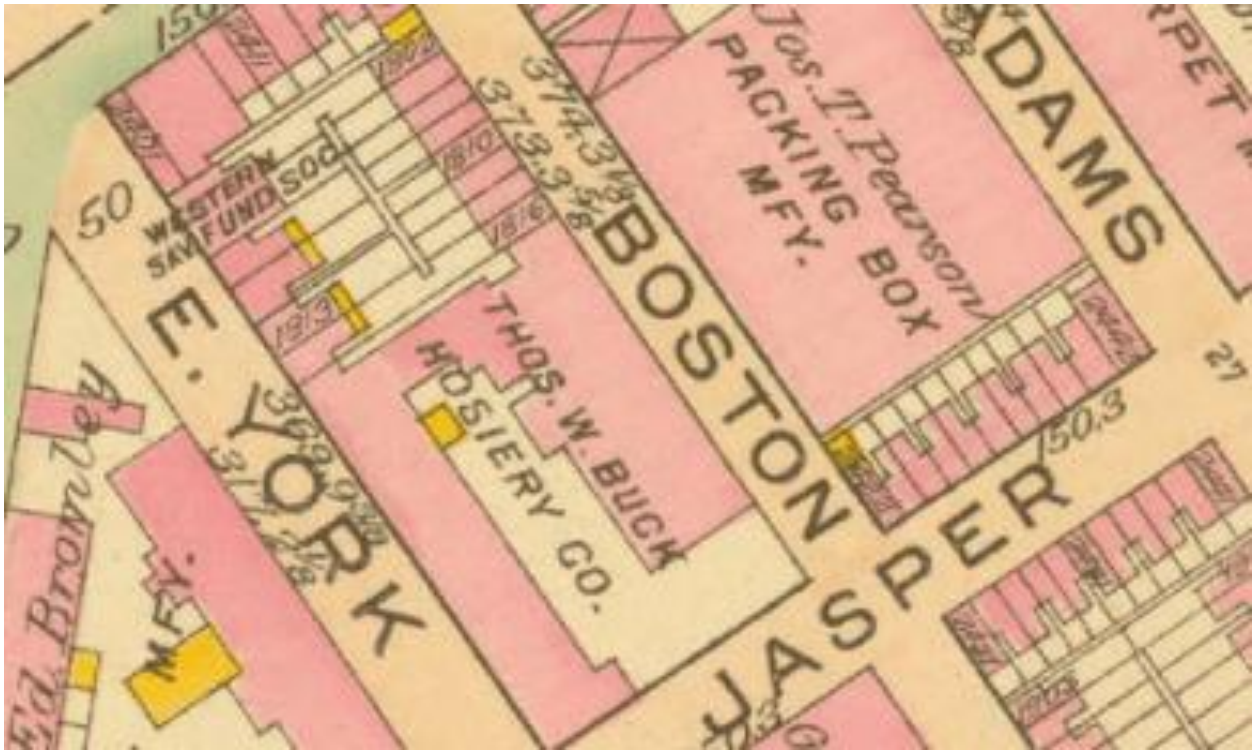
Vital building information

Recognizing that large vacant buildings present a special fire hazard, the Fire Department must enforce rules requiring annual documentation of relevant information, such as the location of utility shutoffs. The information should be placed in computer databases available department-wide. As in other cities, large warning symbols should be painted in advance on known hazardous buildings to provide additional warning in case fire breaks out.

II. Evidence: What the Grand Jury Heard

The Lichtensteins bought the property in 2008.

Michael Lichtenstein (also known as Yechiel) and his father, Nahman (also known as Shimon or Simon), used a straw corporate purchaser, YML Realty, to buy the Kensington warehouse at 1817-41 York Street in September 2008. YML Realty Incorporated was one of many real-estate-owning limited liability entities that father and son set up to protect their assets. This was the company through which they owned and managed many of their other Philadelphia properties.



G.W. Bromley 1910 Philadelphia Atlas

The warehouse complex once housed the Thomas W. Buck Hosiery factory. The red-brick complex took up almost an entire city block. The property was bounded by York Street on the southwest, Boston Street on the northeast, and Jasper Street on the southeast. Kensington Avenue and the Market-Frankford Elevated train were to the northwest, separated from the

warehouse by a furniture store and a vacant bank building. The 80,000-square-foot warehouse complex consisted of several different sections, built between 1872 and 1893. The largest structure was five stories (plus a basement) and the smallest a single story, all built around a courtyard that opened onto Jasper Street.

East-to-west view of 1817-41 York Street

The Lichtensteins bought the warehouse from Daniel Rhodes, an artist who was living in a small area in the five-story section facing York Street. Rhodes had owned the warehouse for two and a half years before he sold it to the Lichtensteins. During that time, Rhodes kept trespassers out, and worked to keep the building up. He hired a handyman. Friends helped him reglaze or put wire mesh in windows. He boarded up broken windows, put up dusk-to-dawn security lighting and installed radios on timers to deter people from breaking in, and blocked off the courtyard from Jasper Street by installing a sheet metal barrier. Rhodes repaired one of two elevators and covered the roof. He hoped to rent space for studios and shops. His efforts to pre-

serve the warehouse and his appreciation for its historic features were apparent from his testimony.

Despite his love for the building, Rhodes was unable to afford his project. When he learned that the real estate taxes on the property were going to increase, he decided to sell. He received several bids. The Lichtensteins were not the highest bidders, but they did not require him to move out immediately, which was an important consideration for him. On September 8, 2008, Rhodes and the Lichtensteins closed on the sale of 1817-41 York Street. The agreed price was $730,000, but the Lichtensteins paid only $350,000 at closing. Rhodes allowed them 45 days to pay the remaining $380,000, and secured the no-interest loan with a mortgage on the property. Rhodes said that he accepted the deal because the Lichtensteins "seemed like decent people."

For over three years, the Lichtensteins failed to pay off their 45-day interest-free loan.

Rhodes described to the Grand Jury the next "three miserable years dealing with [the Lichtensteins], trying to get paid." On October 31, 2008, a week beyond the 45 days agreed upon, the Lichtensteins paid Rhodes $240,000, leaving a balance due of $140,000. For the next couple of years, the Lichtensteins paid in dribs and drabs. Meanwhile Rhodes was unable to rehab his home or another commercial property that he bought in nearby Fishtown, for which he needed the proceeds of the York Street sale.

As the holder of a substantial note and as the previous owner, Rhodes continued to have a financial and personal interest in the property. The Lichtensteins offered to pay him to clear debris out of the building, and for several months after the sale, Rhodes did that. He left lights and radios on timers—as he did when he lived in the property—in an attempt to keep vandals from breaking in. But he said that the Lichtensteins did not like that and turned them off. Predictably, people began to enter the property and use it for their own purposes. Eventually, Rhodes decided it was too dangerous to be in the building, and he stopped going regularly. He testified that about

six months to a year after selling the property he saw that homeless people had set up an "encampment" in the building. Rhodes saw bedrolls and leftover sandwiches and heard people upstairs.

Rhodes became increasingly troubled that he had not been paid. He called Michael Lichtenstein "hundreds of times"—every day for a while—asking when he would get paid and reporting to Michael that people were breaking in, that windows were broken, and that thieves were stealing the piping and wiring, leaving exposed, live wires. Rhodes told Michael more than once that "big buildings in Philly burn down."

In November 2009, the Lichtensteins tried to persuade Rhodes to accept one of the houses they owned in Philadelphia in lieu of payment. Rhodes, desperate, was willing to consider anything that would help him recoup some of his money. But when Michael took Rhodes to see some of the houses, Rhodes was shocked by the condition of the properties, and how the Lichtensteins treated their tenants. One tenant, a woman with three children, thought Michael had come to fix the plumbing. Her toilet had not worked for a week and the leak had stained her ceiling. Another tenant also had plumbing issues and had been trying to get the Lichtensteins to fix them. After seeing a couple of the houses, Rhodes decided he just wanted his money, not one of the Lichtensteins' run-down properties.

Although the Lichtensteins had no basis not to pay Rhodes, they refused to do so.

Finally, on April 1, 2010, two years after settlement, Rhodes hired an attorney to demand payment on the mortgage. The Lichtensteins still owed him more than $70,000 and had not paid anything for over a year. They paid Rhodes no interest for the use of his money for two years. In response to Rhodes's demand, Michael Lichtenstein emailed him that the building was "not worth $500,000 and probably not $400,000." Michael ignored Rhodes's request for payment and his repeated requests for evidence that the property was adequately insured. When Rhodes asked

Michael in July 2010 for evidence that the building was insured as required by the mortgage, Michael forwarded Rhodes's email to his business associate Toby Moskovits with a message: "what the fuck does this pain in the ass want now?"

Moskovits began working with Michael in 2009. She is an investment adviser and consultant, with expertise in finance and a Masters in Business Administration degree. She runs her own firm, Heritage Equity Partners, and has become increasingly involved in real-estate development in recent years, by purchasing properties and securing additional financing, primarily from private investors, for several large projects in Brooklyn, New York. Moskovits has been instrumental in a number of Michael's real estate deals, as a partner and/or a consultant, and as his trusted adviser. Several of Michael's projects have ended up in foreclosure, including a failed condominium project at 726-728 Market Street in Center City, called "Thomas Lofts." Michael sought Moskovits' assistance in connection with the Market Street foreclosure, and she helped him with other foreclosure actions in New York by bringing in other investors (and investing herself) to buy him out. According to Moskovits, she and Michael communicate on a daily basis.

On September 3, 2010, Rhodes began foreclosure proceedings. Still the Lichtensteins made no effort to pay off their long overdue mortgage. To the contrary, Michael resisted doing so. He emailed his attorney Darrel Zaslow and Moskovits, "Make it clear [to Rhodes] that it will be a long fight if he doesn't settle." He wanted to bring counterclaims, accusing Rhodes of stealing from him, unsubstantiated accusations that surfaced only after Rhodes filed suit.

Attorney Zaslow advised Michael and Moskovits in no uncertain terms that because the Lichtensteins were so far in arrears in their taxes and water and sewer rents—they had yet to pay a dime to the City of Philadelphia, owed over $35,000, and there was a lien on the York Street property for the 2009 taxes—that they were in violation of the terms of the mortgage. "This is

going to be a very short trip through the court from here as a result, with a negative result." He urged Michael to settle with Rhodes, advising, "I have procured about as much delay in the case as I can."

It was difficult for Rhodes even to figure out how or whom to sue because, after the September 2008 settlement, the Lichtensteins transferred the deed to the property without informing Rhodes. Through a series of transactions, the Lichtensteins transferred ownership of the York Street property from YML Realty, the straw purchaser, to another limited partnership, York Street Property Development, LP. The general partner of York Street Property Development, LP was not a person, but a limited liability corporation, York Street Development LLC, that the Lichtensteins created two months after the sale, with Nahman as president and "sole member."

Eventually, the Lichtensteins succeeded in exhausting, rather than paying, Rhodes. After five more contentious months, Rhodes eventually agreed to settle for only $45,000. Attorney Zaslow advised Michael and Moskovits to settle, "as you in reality owe him much more than that, and have no defense to the failure to pay taxes."

Rhodes' concerns about insurance were well founded.

Rhodes was right to demand proof of insurance. During the period that they owed money to Rhodes, the Lichtensteins had several insurance policies on the York Street property that were cancelled when the insurers discovered that the building was not in the condition represented during the application process. The most glaring example of this was their first policy on the property, which was a "lessor's risk only" policy for an occupied property. The application submitted by their broker Myer Ziegelheim contained false representations that the building was occupied by a group of active businesses. When this misrepresentation was discovered by the insurer, the policy was cancelled and the Lichtensteins had to apply for more costly vacant property coverage. That application also contained misrepresentations concerning the condition of the

building, and in May 2011, the Seneca insurance company cancelled the policy, effective June 23, 2011, due to "unsatisfactory risk quality, unsecured windows, and broken sidewalk."

While the application for the lessor's risk only policy and the subsequent 2009 application for the first vacant property policy appear to have been signed by Michael or Nahman Lichtenstein, Ziegelheim's testimony seemed designed to permit deniability by the Lichtensteins. Ziegelheim professed uncertainty with respect to this and every significant fact due to his claimed business practices of keeping absolutely no records, and asking clients few, if any, questions (because "they might go to a different broker who wouldn't ask questions"). He claimed ignorance as to how and by whom the applications were signed and allowed for the possibility that someone other than one of the Lichtensteins signed the applications, thereby hampering potential criminal prosecution of the Lichtensteins for insurance fraud. Ziegelheim purposely did not verify any representations made on the insurance applications, and, conveniently, had no recollection (or record) as to where he got any of the misinformation he submitted on the Lichtenstein's behalf. Instead, he deflected all responsibility to a secretary.

The Lichtensteins got the property rezoned, but then failed to maintain it or secure it from vandals.

The Lichtensteins demonstrated no serious intent to develop the York Street property. They put no money into protecting it structurally. They allowed scrappers to steal valuable copper piping and dismantle the wiring and the elevator. They made little or no effort to keep squatters from entering the building. They obtained a demolition permit, but let it languish. They had no building plans, no building permits, no construction or demolition contractors, no construction financing, and no prospective tenants. And they failed to pay the City of Philadelphia a dime in taxes or water and sewer rents.

The only thing in which the Lichtensteins did invest was getting zoning permission in 2009 to convert the warehouse to apartments, with some commercial spaces in one of the building's wings. They paid Landmark Architectural Design of Philadelphia $15,000 to prepare basic drawings—artist's renderings of what a renovated warehouse might look like—that could be used to get the necessary permits and hired Attorney Zaslow to represent them at community meetings and before the Zoning Board of Adjustment.

This small investment to obtain a zoning change, because it allowed development, increased the value of the property, value that could be recouped whether the Lichtensteins proceeded to develop the site or not. But the Lichtensteins never took any steps necessary to begin developing the property. For example, they never had the architects prepare schematic drawings (or even measure the building), never hired a contractor, and never began necessary environmental studies. Moreover, their lax attitude toward protecting their property from rain, vandals, and fire is inconsistent with any intent to improve the building. Several witnesses testified that Michael was well aware that the roof was leaking, ruining the valuable old wood floors and leaving puddles throughout the building. He did not adequately seal the building or hire security to keep trespassers out. And he allowed the building to be stripped of valuable copper piping and electrical wiring that had been functional.

One witness who toured the York Street building with Michael was an artist whom Michael commissioned, in November 2009, to paint a portrait to hang in the Market Street building. Michael agreed to pay $1,200 for the painting, but, following the same pattern he exhibited in dealing with Daniel Rhodes, Michael did not pay in full. Instead, he and Toby Moskovits tried to persuade the young artist to accept studio space in the York Street property. The artist testified that there was "serious structural damage" on the second floor, which he said was one of the only

places safe enough to walk. There were puddles and visible water damage even though it had not rained in over a week. From piles of clothes and cans of open and unopened food, it was apparent that squatters were living in the building. Michael and Moskovits wanted the artist to create several studios and find other artists to rent them for $500 a month. And when the artist pointed out the evidence of the squatters, Michael said that he would expect the young man to evict them and keep them out as part of the deal.

The artist concluded that their proposal was both "insane" and "illegal." It was insane, because no artist would pay $500 for a studio in a run-down, unsafe building where artwork would get wet. And the young artist knew that it would be illegal to rent out space in an unsound building. He correctly surmised they were trying to get "something free out of it." After he rejected the proposed arrangement, he never saw Michael again. Michael did, however, accuse him of stealing the never-paid-for portrait from the lobby of Thomas Lofts, a theft he credibly denied.

In the fall of 2010, Michael again tried to arrange for free security—or at least the pretense of security—in return for allowing someone to inhabit his dangerous property. He had rejected an offer from a friend of Rhodes who was actually in the construction business to secure and patrol the place for pay. He rejected a similar proposal by Richard Knellinger, owner of the furniture store next door, even after Knellinger told Michael that people were going in and out of the warehouse freely through a door on Boston Street. Knellinger warned Michael that another building in the immediate area had recently burned down.

Instead, Michael called Jeremiah "Jay" Fishburn, an off-and-on employee of Knellinger. He persuaded Fishburn to sign a lease. Fishburn described the terms of his agreement with Michael:

> He [Michael] was like, "do you think you can keep people out of here?" I was like, "yeah, I can keep them out of here." Because I wanted a little

> man cave for me and my homies to hang out with a nice pool table and a bar in there. Kind of get away from the girls and stuff. Maybe a little gym with some weights and stuff in there. He was like, "okay. I will let you use the area that is the York Street side." The first floor, which still had all the windows.

It was clear from his testimony that Fishburn did not understand the terms of the "lease" he signed on November 11, 2010, particularly the part that obligated him to pay for all utilities for the entire complex. He obviously was in no position to pay those bills, and was not someone whom property owners would hire if they were serious about fixing up and securing their property. Daniel Rhodes warned Michael against it, writing in an email: "Good luck with Jay." And we heard testimony that Fishburn and his friends were stripping metal from the property.

Michael's arrangement with Fishburn for a "man cave" did not reflect a serious intent to protect the building. He confirmed this to his insurance underwriters in 2013, explaining that his true purpose in engaging Fishburn was not security; it was to keep Daniel Rhodes out of the building while he was fighting Rhodes' efforts to collect what the Lichtensteins owed him; the arrangement with Fishburn lasted only long "enough to get rid of Dan Rhodes."

Michael learned from a realtor that in September 2010, just about the time that he was rejecting Knellinger's offer to help keep vandals out of the building, that police had apprehended trespassers who had removed copper pipes from the building. In November 2010, Rhodes emailed Michael and Moskovits that there was a "constant parade of crackheads, etc., going in and out of the building on a daily basis" and "people constantly breaking into York St. property!" A week later, Rhodes warned "crackheads cut off the electric service." They "removed every bit of wiring," he said. "There are hot electric lines hanging in the yard." None of these pleas or warnings prompted the Lichtensteins to take action to protect the building.

The Lichtensteins failed to pay taxes on their property from the beginning.

The Lichtensteins owned the York Street property for three and a half years before the fire. During that time, they did not pay one cent of their property taxes or water and sewer rents. At the time of the fire, they owed nearly $60,000 in taxes, and $13,000 in water and sewer rents to the Water Department. Earlier, when L&I issued the zoning permit on July 23, 2009 that increased the value of the property, the Lichtensteins owed $4,485 in taxes plus interest and a penalty. By April 27, 2011, when L&I issued a demolition permit, the overdue taxes exceeded $35,000 including interest and penalties. By October 2011, when neighbors started bombarding L&I with complaints about the property (and when L&I extended the April 27th permit), the real estate tax bill for 1817 York Street was $40,500.84. Yet the City took no real action at all.

The only time the Lichtensteins displayed any inclination to pay their real estate taxes was when they were trying to drag out Rhodes's lawsuit to foreclose on the property. Attorney Zaslow advised Michael and Moskovits that the significant tax and utility-bill arrears would result in "a very short trip to the court … with a negative result" given that they had "no defense to the failure to pay taxes." Moskovits instructed Miriam Gross, the Lichtenstein's office assistant, to work out a payment plan with the City to remove the tax lien. She advised Gross, "Clearly as little upfront and over as long a period as possible is best." Emails between Michael and Moskovits suggest that they were not really planning to pay the taxes; the supposed payment plan was simply a stalling tactic to avoid paying Rhodes. Gross cautioned Moskovits and Michael about the downside of their plan: "Once a payment plan is set up and not honored, the next time I call to set up a plan again they want a larger down payment and greater monthly payments and a shorter period." After the Lichtensteins settled with Rhodes in March 2011, they lost any interest in paying taxes, and delinquencies continued to mount unchecked, to $59,498.14 (plus

$12,915.82 owed to the Water Department) at the time of the fire.

We learned from a newspaper series published in *The Philadelphia Inquirer* that neither negligence nor a lack of money explains a certain type of tax delinquency in the city. Some unscrupulous speculators avoid paying taxes as a deliberate strategy to use the municipality's money to gamble on real estate investments, particularly in neighborhoods with potential for gentrification. This is how a March 11, 2013 article entitled "Playing with the City's Tax Money" described the scheme:

> Philadelphia's decades-long neglect of property-tax collections has been a disaster for public schools, the city budget, and typical taxpaying homeowners.
>
> But the system does have its advantages for low-rent landlords, out-of-town speculators, and anyone else interested in playing property Powerball, a game where the objective is to pile up real estate in hope of hitting a gentrification jackpot, while keeping out-of-pocket expenses – like taxes – as low as possible.
>
> Some are big winners, such as the investor who picked up three adjacent Northern Liberties lots in 1994 for a combined $16,000, skipped paying taxes on the lots for more than a decade, and made good on the debt only after flipping the parcels for $750,000 in 2010.
>
> Such speculative windfalls are rare, but it's not for lack of trying. Of the roughly 100,000 tax-delinquent properties in Philadelphia, at least 57,500 are owned by investors, not occupants. These are parcels deeded to suburbanites and Floridians, developers and Brooklyn-based holding companies, small-time local speculators and real estate tycoons with dozens of properties to their name.

The *Inquirer*'s research noted the strong correlation between tax delinquency and code violations, blight, and demolitions of buildings because of imminently dangerous conditions. The York Street property is evidence of that troubling correlation. The mounting tax delinquencies at York Street (and the delinquencies and code violations at the Lichtensteins' other Philadelphia properties) should have raised a red flag at L&I, had L&I only checked.

The Lichtensteins did not sell the property to a responsible developer when they had the chance.

In November 2010, a Maryland developer contacted Michael Lichtenstein to express interest in buying the York Street property. The developer was looking for a historic property in an economically distressed but improving neighborhood. The Thomas W. Buck building fit the bill. The developer had a local partner, Greg Hill, a reputable and experienced developer, who looked at the property in January 2011. Michael Lichtenstein met him at the building and Jay Fishburn let them in. Hill, who had looked at the property three or four years earlier when Rhodes was selling it, said that it was "pretty much a disaster," worse than it had been years earlier, and that "roof leaks were more prevalent."

In early February 2011, Hill offered to purchase the property for $1 million. Michael rejected the offer—months after telling Rhodes that the site wasn't worth $400,000. Michael told Hill he would sell two of the four structures on the site for $1.2 million, and that they could be partners. Hill quickly rejected that idea. Hill testified that negotiations with Michael and Toby Moskovits dragged on for several months, even after a price of $1.2 million for the entire property was agreed upon. Hill spent tens of thousands of dollars in legal fees writing and rewriting contracts that Michael would agree to verbally and then insist on changing once they were submitted in writing. Hill described the negotiations as "absolutely the most unprofessional" and "pathetic" he had "ever been subjected to." He said Michael fought over even the most standard real estate contract provisions.

One point of contention was—again—insurance. Hill discovered that the Lichtensteins' insurance policy was inadequate to protect buyers serious about developing the property. They had insured the property only for the value of the building as it was, and not for the costs that

would be incurred during renovation. Hill resolved the insurance issue by agreeing to purchase his own policy to protect his interest in the property.

The real impasse related to what would happen if the Lichtensteins did not deliver clean title at closing, which would not take place for almost a year after an agreement was signed. Michael, at the last minute, balked at provisions that would have required him not to rack up additional tax liens and delinquencies on the property, or to pay them off at closing. He also refused to cure any L&I violations on the property, acknowledging in a letter to Hill that "There are probably a boatload of violations." Hill agreed to take the property "as is," with the known liens, but did not want to take on additional debts that the Lichtensteins might incur before closing. Hill explained that the usual way to deal with encumbrances on the title is that the seller must either deliver clean title at closing, or the buyer can deduct the costs of clearing the title from the purchase price. But the Lichtensteins would not agree to this. Michael insisted that Hill's only recourse in that situation would be to cancel the deal. This was obviously unacceptable to Hill, who by the time of closing would have lined up tenants and incurred huge expenses. The Lichtensteins wanted Hill to sign what would have been, in effect, a one-way contract. Hill would have to buy the property if the Lichtensteins decided to deliver clean title, but the Lichtensteins could change the terms of the deal—or get out of it—merely by encumbering the property with more liens and debt.

Hill and his partner very much wanted to buy and renovate the Thomas W. Buck building. So despite the aggravation, Hill agreed in the early summer of 2011 to meet one more time with Michael and Moskovits because Moskovits assured Hill she "could get this deal done." By this point, time was of the essence to Hill and his partners, who had a prospective tenant lined up. Hill described an excruciating meeting during which they "spent hours going through rehash-

ing the same ridiculous clauses." When the parties finally agreed on language, Hill faxed the marked-up contract to his lawyer, whom he had on call. The lawyer promised to have the final contract typed and back to Hill in 45 minutes. Michael then announced that he was going out for coffee. When he returned an hour later, Michael claimed that he had a family emergency and had to leave. Hill said that was the last he saw of Michael.

We subsequently learned that Greg Hill and his partner successfully acquired a nearby vacant, century-old mill—the old Quaker City Dye Works—located on South Kensington's Howard Street. They are developing commercial and office space and 114 housing units, with discounted rents for teachers.

The Lichtensteins were unable to find partners or investors who would provide the financing for their project.

Although Michael told the architects in January (and again in October) 2011 that he had funding, this representation was not at all credible. The Lichtensteins were unwilling to put their own money into the building, and were wholly unsuccessful in obtaining outside financing. Their history of failing to repay loans made it hard for them to borrow money from banks. This is where Toby Moskovits, the finance expert, came in.

She initially tried to help the Lichtensteins stave off foreclosure of the Market Street project, after they defaulted on an $11.5 million loan. They failed to make loan payments for several years, did not pay a contractor (resulting in multiple mechanic's liens on the property), did not pay real estate taxes for years (resulting in tax liens), did not pay assessments (another lien), and failed to meet construction deadlines. As a result, after litigation, the Market Street project went into receivership. In Moskovits' telling, however, none of this was Michael's fault. Instead, he was the "misunderstood" victim of a bank that "lied" and former attorneys who gave "very bad legal advice."

While the failed Market Street development and Michael's and Moskovits' dealings with the bank and others in connection with that project are not within the scope of this investigation, the pattern—non-payments, missed deadlines, blaming others, and failing to pay taxes—is similar to what we saw in this case. The judge who heard Michael offer his tired excuses in the Market Street case concluded, "His self-serving testimony was not credible and it is rejected." Likewise, we could not credit Moskovits' attempts to depict Michael as a blameless victim. The trail of people left holding the bag is just too long.

Before Hill refused to go along with Michael's scheme to partner with him on the York Street property, Michael and Moskovits had tried to find other financing. In early September 2009, they met with Christopher Meister, a vice president at Hyperion Bank on West Girard Avenue in Philadelphia, seeking a $2.4 million line of credit, well beyond the small bank's $1.1 million limit. This was a cold call, which to Meister raised a "red flag" and "came off as kind of desperate." Moskovits and Michael showed Meister the York Street property. He was appalled by the condition of the "monstrosity of a dilapidated building," which he could see was "unsafe." The interior was "pretty much gutted." Prostitutes were hanging around the property, and there was evidence of squatters. Michael said he had "a guy" living in the building and watching it; Meister thought this arrangement sounded "nuts." Any renovation was going to cost millions. In addition, substantial environmental work would have to be done before any bank would even consider becoming involved. The building had old coal-fired boilers, had been used as a factory, and there was no telling the extent of remediation that would be necessary.

In response to Meister's request for an "executive summary … including short-term industrial leasing strategy and pro-forma," Michael and Moskovits created a document full of exaggerations and half-truths. They wrote that the total square footage was 100,000, when in fact it

was approximately 80,000. This difference was significant because they calculated the property's value based on price per square foot. They also wrote, "Plans approved; construction started." But no construction or demolition had begun, as both of them well knew. Although Moskovits attempted to distance herself from this document by contending that she only "edited" information supplied by Michael, we could not credit this. After all, she held herself out as an expert in financing deals and in dealing with banks; her purportedly limited involvement and supposed unquestioning acceptance of whatever figures Michael furnished were simply inconsistent with her professed expertise and experience.

A similar summary prepared by Michael and Moskovits for potential lenders in late 2009, which she also merely "edited," presented an equally fictitious account of the York Street property. By this point, the square footage of the building had grown to 110,000 square feet. Under the heading "Property Value," Michael and Moskovits asserted that the property "is currently without debt." In fact, the opposite was true. In September 2009, the Lichtensteins still owed Rhodes approximately $80,000, and owed the City over $4,500 in real estate taxes. They claimed that that they could collect "$400,000 of rent … for the building in its current condition." And they estimated the market value of the property as "$2,700,000-$3,000,000 at the very least."

Michael and Moskovits made up these confident assertions, even though Michael would soon try to stiff Rhodes by asserting, with equal assurance, that the building was "not worth $500,000, and probably not $400,000." Their estimate that they could get $400,000 in rent for the property "in current condition," ignored important facts, such as that the roof leaked, the floors were rotten, there were puddles throughout, and the building was unfit even for storage. Moskovits conceded that the document "appears not to be 100 percent accurate."

Meister was not taken in. He concluded that the limited financial information that Michael and Moskovits provided "didn't make sense." He asked them to substantiate where the remainder of the financing was coming from and for proof that Michael himself had sufficient funds—Meister expected him to "have some real skin in the game" amounting to twenty-five percent of the total funding—to complete the project. Michael and Moskovits failed to supply any of the requested information, all standard information that any lender would want. Even so, Michael regularly called Meister to ask if the loan had been approved. Finally, because "things were not adding up," Meister asked for a meeting to review finances. That was the last Meister heard from Michael or Moskovits, who failed to show up. The "deal kind of just petered out."

Unable to find investors or partners, the Lichtensteins ran out of options as their permit expired.

The zoning permit was not open-ended or unconditional. To keep it "alive," the Lichtensteins had to obtain a building or demolition permit by June, 2011. As the deadline approached, Michael Lichtenstein emailed architect Agata Reister of Landmark Architectural Design informing her of the deadline to pull a "building or demo permit on York Street." Reister applied for a permit to do interior demolition and to remove debris from the three-story wing of the property. L&I issued a demolition permit on April 27, 2011. That permit required that building or demolition begin within six months or "the permit shall become invalid."

On April 29, 2011, Reister emailed Michael Lichtenstein that the architects would like to start measuring the property. Measuring, Reister explained to us, is the first step in the drawing/building process. But the Lichtensteins never followed up. Indeed, Reister never had access to 1817 York Street. The architects were thus unable to survey or measure the interiors, and could not develop the type of construction drawings necessary for a building permit.

It was almost six months to the day before Reister received another email from Michael

Lichtenstein. On October 25, 2011, two days before his demolition permit was to expire if work was not started, Michael suddenly announced that he supposedly was "getting financing" and asked Reister to send the basic presentation sheets that the firm had submitted for zoning approval to a contractor, Anthony Valenti, "so he can price it out." Valenti testified that either Reister or her boss, Vincent Mancini, asked him to "run over" to the York Street property. They told him that the Lichtensteins were going to start work on York Street immediately and asked if he could go out that night to "price it out." All he was given to work from were the architectural renderings that Landmark had prepared for the zoning hearings.

Valenti drove by the property, but did not go in. He declined to price the job, and asked instead what the Lichtensteins were looking for in terms of price per square foot. They wanted the job done for $45 per square foot, whereas the typical job would cost $75 per square foot. Valenti testified that what the Lichtensteins were hoping to pay was totally unrealistic.

After that one day of activity before the demolition permit expired, Michael had Vincent Mancini ask L&I for a six-month extension, the maximum possible. On November 8, 2011, Reister informed Michael that the demolition permit had been extended for six months, and would expire on April 27, 2012, with no further extensions possible, if work did not begin by that date. Michael responded: "We are starting work very soon." Yet, months later, the owners had done nothing to start the job.

The Lichtensteins had to find a new insurer, after coverage was cancelled due to "unsatisfactory risk quality."

In May 2011, the Lichtenstein's insurer, Seneca, cancelled their policy, effective June 23, 2011, due to a failed inspection. The company noted "Unsatisfactory risk quality, unsecured windows, and broken sidewalk," and asked for a premium increase to properly insure the building. Seneca also wanted the Lichtensteins to make necessary repairs. Miriam Gross contacted a

new broker, Goldie Klein, hours before the Seneca policy was about to expire, and asked her to find "the same coverage for a lower price." Gross was adamant that the Lichtensteins did not want to increase their coverage, as Seneca was proposing. Instead, they were seeking a lower premium.

Klein was able to obtain a $1 million "vacant property" policy from Lloyd's of London, through the Jimcor insurance agency. The Lichtensteins did not disclose the reason for the cancellation to Klein; Klein did not disclose the fact of cancellation to Jimcor. The new policy from Lloyd's required the Lichtensteins to keep the building secured from intruders. The application that Klein submitted to Jimcor on the Lichtensteins' behalf contained significant misrepresentations, e.g., that there was new plumbing, roofing, and wiring in 1999, and that the building was constructed in 1929. Klein could not remember the source of that information. She explained that the application was prepared in a rush, and that she may have failed to delete information while overwriting a computerized form. Klein never met the Lichtensteins and primarily dealt with Miriam Gross by phone. Klein stated she signed the application for Michael after getting authority to do so from Gross.

Jimcor provided coverage from Lloyd's without inspecting the property or verifying any of the representations made by or on behalf of the Lichtensteins. A few months after the policy went into effect, ISI Insurance Services, on behalf of Jimcor, assigned an investigator to do a "drive-by." According to the investigator, a "drive-by" means he pauses long enough to take a photograph, and often "I don't even get out of my car." In this case, that was all that he did: he stopped on York Street, snapped a photo, and left, without even driving around the block. He was paid $25 for his efforts. And the photograph he took was of the wrong building.

But apparently that was good enough for the insurance company. Although, under the policy, the Lichtensteins were required to secure the building, the inspector never checked this. Nor was the insurer aware that the Lichtensteins had accumulated multiple code violations, including clean and seal violations. The insurer's lax procedures demonstrated little interest in determining exactly what kind of risk they were insuring, until Michael made a claim after the fire. At that point, Jimcor requested that Michael appear for an "Examination Under Oath." Michael initially refused, but a policy holder's refusal to be examined can be a basis to deny a claim, and he eventually agreed to the examination, which took place on July 17, 2013. Michael testified that maintenance and security at the warehouse were his responsibilities, and he insisted that the building was secured. To date, the Lichtensteins' fire insurance claim has not been paid.

L&I inspection and enforcement procedures were almost as lax as those of the insurance companies.

L&I first cited the Lichtensteins for fire and property maintenance code violations at the York Street property on January 27, 2009, more than three years before the deadly fire. Inspector Melvin Carrasquillo, of L&I's Commercial Industrial Fire Unit, and a Fire Department lieutenant inspected the property together. The matter was assigned a case number, 190616, and Carrasquillo issued fire code violations for not having working sprinkler and standpipe systems (a standpipe is where the Fire Department would hook up a hose), not having proper water connection signage posted, and not having proper caps on the water connection. Because the existence of the water connection indicated that there was a sprinkler and standpipe system inside, the citation required the Lichtensteins either to certify that the sprinkler system was functional or to obtain a variance from the Fire Department. To obtain a sprinkler variance, a property owner must clear the building interior of debris and combustible material, and completely and securely seal the property, top to bottom.

Inspector Carrasquillo also issued violations for failing to have a vacant building license and for failing to maintain the property in clean, safe, and secure condition. To obtain a vacant building license, a building owner must post a bond to cover potential costs if the City has to correct code violations or abate unsafe or imminently dangerous conditions. The amount of the bond depends on the size of the building. For their 80,000-square-foot property, the Lichtensteins should have posted a $100,000 bond. They never did.

The violation notice for case 190616 was mailed by regular mail to the Brooklyn residence of Nahman Lichtenstein and to YML Realty at a post-office box in Brooklyn. After January 27, 2009, L&I re-sent the violation notice to these two addresses at least six times. Carrasquillo vaguely recalled speaking to someone from New York after issuing the initial violation notice and explaining what needed to be done to rectify the violations. He did not document this conversation in L&I's database. And when Inspector Carrasquillo reinspected the property, he found that the Lichtensteins had done nothing, and he sent a second violation notice for case 190616 dated October 9, 2009.

Carrasquillo eventually sent case 190616 to L&I's Code Violation Resolution Unit for court action "around 2010." He told us that prior to 2010, it was L&I's policy not to take owners of vacant commercial properties to court for violations. In February 2012, *three years* after the original code violations, a pre-court inspector from the Code Violation Resolution Unit finally went out to do a pre-court inspection on case 190616 to determine if the owners had complied. The 2009 code violations had not been corrected, yet the case never went to court.

In November 2009, architect Reister met with Michael Lichtenstein and Avi Rothenberg, who managed some of the Lichtensteins' projects and properties, to discuss the violations found by Inspector Carrasquillo. She obtained and emailed to Michael an application form for vacant

property license. Michael did not fix any of the violations, did not apply for the vacant property license or post a bond, and did not apply for a sprinkler variance. L&I simply let these violations languish.

L&I took no action for years, until neighbors joined together to bombard the City with complaints.

The Lichtensteins' neighbors in Kensington had been complaining to L&I for years and were frustrated by the agency's inaction and failure to protect their neighborhood from the dangers presented by the Lichtensteins' property. Christopher Sawyer, a neighborhood activist and blogger, testified that the condition of 1817-41 York Street was a "favorite topic" at meetings of the East Kensington Neighbors Association. The neighborhood association had backed the Lichtensteins' development proposal in July 2009 and was disappointed that the owners had done nothing to renovate the property. Worse still, the owners did not secure the property to prevent scrappers, drug addicts, homeless squatters, and prostitutes from entering. In October 2011, neighborhood activists banded together to try to press L&I to make the Lichtensteins maintain their building up to code and to secure it so that it was not a fire hazard. The group was especially concerned that, with colder weather approaching, the easily entered warehouse would become a haven for vagrants seeking shelter.

Sawyer described the condition of the property he observed just before Halloween 2011. He counted more than 80 broken windows that were visible from the street. He testified that "you could get in and out" through two basement windows on the York Street side that were accessible from the street. At least three exterior doors were compromised and one was completely open. The roof was starting to collapse, and the largest section of the property was "missing part of its roof." Sawyer testified that his interest in the property was sparked after a 2011 earthquake, when he noticed brick dust on the sidewalk surrounding the building. He saw plants growing out

of the walls on the York Street side. On the Boston Street side, he saw basketball-size holes in the wall.

Sawyer thought the property was a good test case for a new state law that was supposed to give municipalities an effective tool for enforcing their property maintenance codes. Sawyer hoped that the state law, "Act 90," coupled with a provision of the city code known as the Doors and Windows Law, would give L&I the authority to impose and enforce significant fines—up to $300 a day for every broken window or damaged opening into a building—against the absentee owners. Act 90 gives municipalities the power to attach liens to other personal assets of owners of properties with serious code violations or properties deemed public nuisances. The act provides for municipal agencies and boards to deny building and zoning permits to individuals who own any property that is subject to a tax or water lien or that has serious code violations that have not been corrected in six months.

Sawyer typed up a list of all of the dangerous conditions he observed in his inspection of the Lichtensteins' property and submitted a complaint to L&I. He then encouraged others to email complaints to L&I through the City's 3-1-1 hotline system. Sawyer testified that roughly 30 people told him that they had emailed complaints to 3-1-1. They complained that: bricks were falling from the walls on York Street and Boston Street; there was brick dust on the pavement; some 80-plus windows were missing or damaged; structural failure seemed certain; a large hole was visible in the fire tower on the Boston Street side, with shifting bricks above the hole; doors were missing on the Jasper Street fire tower; a fire escape attached to the Jasper Street tower appeared to be separating from the building; the roof structure on York Street was missing; an unsecured elevator shaft was a "death trap"; an abandoned automobile was being stripped in the

courtyard; vagrants were entering the complex through a gap in a sliding gate; and junkies were building fires in the building in the winter.

As a result of these complaints, L&I sent Inspector Ted Pendergrass, an 18-year veteran of L&I, to 1817-41 York Street on November 2, 2011. Pendergrass opened a new case, numbered 305350. Following an inspection, Pendergrass issued a "first" violation for case 305350 that directed the owners to clean, lock, and seal the property and to obtain a vacant building license as required by Philadelphia's property maintenance code. The violation notice (as well as at least two repeat notices) was mailed to the Lichtensteins' attorney, Darrell Zaslow as the agent for York Street Property Development, LP. Zaslow received the November 2011 notice at his office in Langhorne, Pennsylvania. He testified that he promptly forwarded all notices that he received to the Lichtensteins. On December 13, 2011, Pendergrass re-inspected the property and found the conditions unchanged. He issued a "Notice of Violation and Order, Final Warning" three days later and mailed it to Zaslow. Zaslow forwarded the notice to the Lichtensteins on December 28, 2011.

The violation notices that Zaslow sent to the Lichtensteins finally got their attention. On January 4, 2012, their office assistant, Miriam Gross, emailed Michael Lichtenstein and Toby Moskovits. The subject of the email was: "2nd notification: York violation notice case #305350 dated 12-16-11." In the email, Gross asked: "How do you want me to handle this??? Should I ignore it for now??" The next day, Michael Lichtenstein followed up with an email to Moskovits. He wrote: "see attached – we must take care of it – afraid they want to revoke the permit or something crazy like that." Attached was the "Final Warning" that Zaslow had forwarded to the Lichtensteins.

Michael Lichtenstein also sent the violation notice to architect Reister. He asked her,

"What do they want?" Reister reminded Michael that he had received violation notices for the York Street property in 2009, and that this was a new notice for some of the same violations that she had previously reviewed with him and Rothenberg. Reister explained all of the violations to Michael again in January 2012. Michael, with Moskovits, went to Reister's office to discuss the violations. He insisted that he was going to begin construction within weeks, and that he therefore should not have to comply with vacant building license and sprinkler variance requirements.

On January 13, 2012, L&I's Pendergrass inspected the property for a third time and found that the October 2011 violations were all still present. Pendergrass sent a third notice for case 305350 to Zaslow and referred the case "to court," meaning to L&I's Code Violation Resolution Unit, for court action.

Michael Lichtenstein had Miriam Gross contact L&I to inquire about the violations. She spoke to Inspector Michael Ross of the Code Violation Resolution Unit, whose job it was to inspect properties in preparation for court proceedings. Even though Gross called Ross in response to the violations that Pendergrass had issued in 2011 on case 305350, which had just been referred "to court," Ross instead discussed with her the violations from January 2009 on case 190616, which had been referred "to court" by Inspector Carrasquillo in 2010. Ross advised Gross that the owners would have to apply for a vacant building license and secure a bond. He explained that, under the law, even a vacant building must have a functioning sprinkler, standpipe, and alarm system unless the owners obtain a variance by proving the building is cleared of debris, locked, and completely secure from trespassers. In a January 26, 2012 email Gross reported to Michael and Moskovits what she learned from Ross. She told them that a court date was going to be scheduled and asked: "What the next step????????" Michael emailed Moskovits later that evening, "Toby u MUST take care of it."

Bringing the building into compliance by sealing up the open access points, and applying for the necessary vacant building license and sprinkler variances should have been the next steps. But the Lichtensteins refused to do this. According to his 2013 "examination under oath" by the underwriters after the fire, Michael instead "had discussions with Inspector Ross" and demanded to know "why they are harassing us." (According to Inspector Ross, he spoke only with Miriam Gross and never with Michael.) When Gross sent Michael the necessary paperwork for the required license and variance, he scoffed at her efforts at compliance, writing in a February 2, 2012 email, "I don't know what you are doing." Ignoring the instructions from Inspector Ross, Michael told Gross that he had a demolition permit and claimed that he was about to start work. Despite having no plans to build anything, he tried to get Avi Rothenberg to start demolishing things just to keep the permit active. But Rothenberg, who had managed the Market Street project, was well aware of Lichtensteins' history of not paying workers; he himself had been "stiffed." He had no interest in working on York Street.

On February 9, 2012, Michael emailed Reister, the architect, attaching a list of the violations and fines on the York Street property. He wrote: "see attached – this is a disaster – what's going on with these stupid violations?" Reister followed up by again telling Michael that he had to correct the violations. She sent him another application for a sprinkler variance and told him he would have to submit it to the Fire Department. She advised Michael that the site "will still need to be cleaned up and windows will have to be boarded up."

Reister agreed to contact L&I to try to "get out of" the vacant building license based on Michael's claim that he was about to start construction (even though he had no detailed architectural plans and no contractor lined up). Reister emailed Inspector Ross, advising him that Michael "does not want to get a vacant building license" because it would be "a great financial

burden." She maintained that "the property will be developed and occupied within a reasonable time," an odd assertion since she knew that there were no detailed construction drawings for the building—she had not even been able to measure the building. In any event, she soon learned, and advised Michael, "regarding the vacant building license, there is no way around it. You will have to get it. The supervisor said there are no exceptions."

Unable to get the Lichtensteins "out of" the vacant license requirement, Reister, on February 20, 2012, sent Michael the license application and informed him that he would have to post a bond for $100,000. She also informed him that a reporter had inquired about the project and whether it was going forward. She told Michael that the reporter was aware that the owners had not paid taxes on the property since they bought it. Reister suggested that Michael look into the tax delinquency so he would not have problems obtaining future permits for the project. On February 23, 2012, Reister wrote to urge Michael to file the necessary paperwork to clear up the violations, and to obtain a variance and vacant building license. She warned him: "It would be in your best interest to have everything filed prior to the court date." When Michael asked her when the court date was, she answered that the City had not yet set a date.

More than a month after Miriam Gross called Inspector Ross to inquire about the York Street property's fire and maintenance code violations, Ross went to the property to inspect it, supposedly in preparation for sending the case to court. On February 14, 2012, he issued violation notices for the inoperable sprinkler system, for damaged or missing caps on Fire Department connections and the absence of signage identifying the connections, and for still not having a vacant building license. These were the same violations issued on case 190616 by Inspector Carrasquillo in 2009.

Ross took photographs that showed that the first-floor windows in the courtyard were open, and not sealed as Michael contended. This was something Michael himself would have seen when he met Rothenberg at the property days earlier. A photograph taken by a blogger just 36 hours before the fire confirms that the courtyard windows were still missing or broken, permitting easy access to the building interiors. Yet Ross did not cite the Lichtensteins for this code violation.

First-floor courtyard windows, April 7, 2012

Ross mailed the February 14 violation notice to 324 Avenue I, Brooklyn, New York, Nahman Lichtenstein's house.

On March 29, 2012, an L&I supervisor checked out the property. Inspector Daniel Quinn testified that he went to look at 1817-41 York Street in response to a complaint he received from someone who obtained his business card at a community meeting. The meeting was part of PhillyRising, a City initiative that targets neighborhoods suffering from crime and blight and tries to coordinate action to improve the quality of life in those areas. The York Street property had been a topic of discussion at the meeting and, according to Quinn, the caller reported "things

were happening in there, fires were being set; people were getting in the building; they were taking scrap out of the building."

Inspector Quinn was with the Contractual Services Unit, which is responsible for properties that are unsafe or imminently dangerous. He checked L&I records and discovered the numerous prior violations on the property. Quinn's inspection was assigned a new case number, 321527. As Quinn was walking around the building, he was approached by neighbors. One, a senior citizen, told him she was scared to death at night because there were regular fires in the building. Three neighbors showed Quinn how trespassers were able to get in through a gap in the gate on Jasper Street. Quinn testified that the cyclone fencing material was separated from the post of the fence. Quinn cited the building as unsafe, in violation of Section 307 of the City's property management code. The L&I Commissioner at the time, Frances Burns, explained that a Section 307 violation is considered a serious code violation. Under the property maintenance code, "[a] vacant building that is not secured against entry shall be deemed unsafe." "Unsafe," under the code, means a building is "a fire hazard, or … otherwise dangerous to human life or the public welfare."

On April 3, 2012, Quinn sent another violation notice, this time by certified mail. (Commissioner Burns explained that 307 notices are sent by certified mail). The delivery was signed for by Zaslow's office. The notice said: "Every vacant building must be secured against entry or it is deemed unsafe. The Department has inspected the subject vacant premises and designated it as unsafe in accordance with Section 307 of the Philadelphia Property Maintenance Code." This was the fifth violation that the Lichtensteins received in five months, and the seventh overall (not counting the many duplicate notices that L&I mailed out every few months).

Other city agencies were ineffectual in going after the Lichtensteins for unpaid real estate taxes and water/sewer rents.

While L&I ineffectually dealt with the York Street property and the Lichtensteins for multiple code violations, the Revenue and Law Departments were equally slow in dealing with years of unpaid real estate taxes and water rents amassed against the property. No effective systemic overlap or communication existed between, and even within, the various departments. For example, L&I had no idea that the Lichtensteins never paid real estate taxes or water/sewer rents on the York Street property, yet continued to grant them valuable permits. And while one unit within the Law Department was failing to properly serve the Lichtensteins, another had a valid address, and L&I had three valid addresses.

From day one, the Lichtensteins never paid any real estate taxes or water/sewer rents on the York Street property. On July 23, 2010, the Law Department's Real Estate Tax Unit filed a claim on behalf of the Revenue Department against the Lichtensteins for unpaid 2009 taxes in the amount of $5102.48 including interest and penalties. On September 10, 2010, the claim was dismissed without prejudice for lack of service. Because the complaint was served at the vacant property, no one was there to accept and receive notice of it. Neither the Revenue nor the Law Department made any effort to determine the Lichtensteins' correct address, even though L&I had addresses for them. In fact, neither department followed up at all. The Lichtensteins continued to ignore their real estate taxes and the amount that they owed grew tenfold, with no action by the City to collect for over a year and a half.

Not until February 17, 2012, did the Real Estate Tax Unit file to foreclose on the 2009 real estate tax lien. We heard from an attorney in the Law Department that "it is not unusual" for the city to wait three years to proceed on a tax delinquency. (The *Inquirer's* research revealed that the average investor-owned delinquent property in Philadelphia is *8.6 years* behind in taxes.)

By then, the Lichtensteins owed the City $56,860.91 in back taxes, penalties, and interest for York Street alone. The Law Department filed a petition requiring the Lichtensteins to show cause why the property should not be sold at Sheriff's sale. The City was required to send notice of the action to the owners by first-class mail, certified mail, and posting the petition on the property. None of this was done prior to the fire. But the threat of foreclosure finally prompted the Lichtensteins: after the fire, they entered into a payment agreement for their back taxes, staying a sheriff's sale.

In addition to the unpaid real estate taxes, the Lichtensteins had accumulated over $4,235.00 in fines and/or unpaid water/sewer rents, including interest and penalties, on the York Street property. The Law Department's Water Revenue Tax Unit filed four actions seeking payment. All four, however, were dismissed without prejudice for failure to serve process—the Law Department had attempted service all four times at 1817-41 E. York Street even though the property was vacant. The last dismissal was on March 12, 2012, less than a month before the fire. It is unclear why such futile and wasteful efforts at service were made at a vacant building, especially where other city departments, indeed other units within the Law Department, had valid addresses for the Lichtensteins, as evidenced by other actions filed for unpaid fines and/or water/sewer rents on other Lichtenstein properties. In addition, L&I had multiple valid addresses and, as blogger Sawyer testified, proper addresses were obtainable from public databases.

It speaks volumes when a city blogger was able to ascertain all of the outstanding code violations and tax delinquencies against the Lichtensteins using public records. Yet no city agency ever took the initiative to link all of the Lichtensteins properties together—whether for the purpose of collecting taxes, enforcing code violations or most significantly, promoting public

safety. Nor did the existence of so many violations and delinquencies disqualify the Lichtensteins from receiving whatever permits they requested.

While the City delayed in taking action against the Lichtensteins, the warehouse burned down, just as the neighbors feared.

Daniel Comly, owner of the auction house across Boston Street from the warehouse, testified that, in the weeks leading up to the fire, it was "open season for people in the neighborhood to get into that building." He said that the fence was knocked down. While he did not see people inside the building in the period leading up to the fire, more and more of the boarded-up windows were being knocked out, so he knew they were entering. Once people could come and go freely through the gate, he and his coworkers could tell "that it was the beginning of the end for that property." It "was just a matter of time."

A close neighbor, Tim Toman, confirmed that the site was open for anyone to enter. People entered through a door on Boston Street and a door on Jasper Street. They also got in through the gate that was sometimes just open. A week before the fire, he had seen children playing inside the property. He described an opening that had appeared two weeks before the fire as being big enough to "drive a truck through." He said that someone had cut the whole side of the fence.

One of the people who took advantage of the weeks-long "open season" in the warehouse was a self-described "scrapper." A month or two before the fire, he and a fellow scrapper "stumbled across" the huge vacant warehouse. What caught their attention was that the Jasper Street gate to the courtyard was knocked over and the property was entirely open. He entered, looked around for metal to take, and stole some wire from the top floor, which he reached by entering doorways and stairs that were open from the courtyard. He testified:

> From the whole courtyard area, there were like no windows. You could just walk in the place. The place was wide open from the courtyard.

The scrapper testified that he returned to the warehouse in the next few weeks. The second time he went, the gate had been propped up but not repaired, so it was still easy to enter. On one of his return visits he ran into other scrappers who were hammering cast iron drain stacks and throwing them out through the windows. He saw hypodermic needles, soda cans made into pipes, and baggies—all evidence that drug abusers were frequenting the building. He also noticed that the roof was caving in.

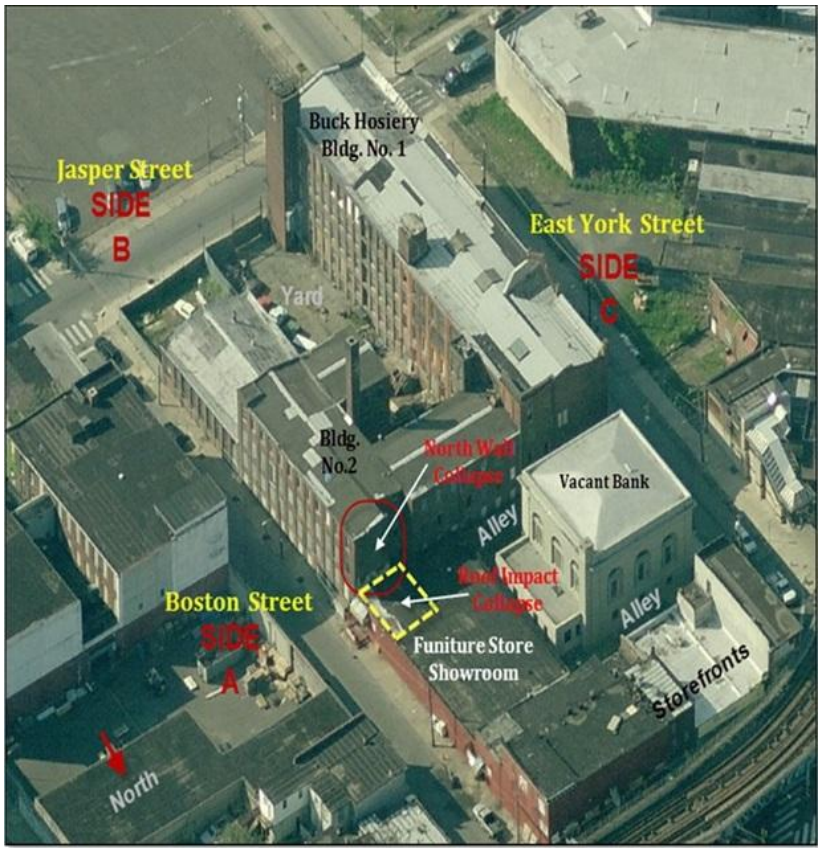
We also heard testimony from another witness, a prostitute, who had been in the building often and was in it hours before the fire. She had no trouble getting in through the Jasper Street gate, by slipping between the poles into the courtyard area. From there, the building was open to entry. The witness explained that she often went there, "to drink, smoke wet, marijuana, and get high on crack." She regularly saw prostitutes, drug addicts, and others enter the building. She never went above the basement, because the building "was in bad condition" and "you would fall." She did hear other people upstairs scrapping and getting high. She observed beds, food, cat food, and "lots of needles." She said she thought some people lived in the building. On Easter Sunday, she heard people inside. She left the building while it was still light out, because she was afraid to remain there after dark. She thought she smelled smoke.

In the early morning of April 9, 2012, an unknown person or persons ignited a huge fire that engulfed the York Street warehouse and threatened an entire neighborhood.

According to a report prepared by United States Alcohol, Tobacco, and Firearms (ATF) Special Agent Gerard Piotrowicz, SEPTA supervisor William Croxton reported the fire on 9-1-1 at 3:12 a.m. on April 9, 2012. Croxton was driving by the York-Dauphin SEPTA station when he noticed smoke blowing across Front Street. As he waited for the Fire Department to arrive, he saw flames coming from the first-floor windows midway down York Street. He also saw fire coming from the roof.

The first company to arrive was Engine Company 2, headed by Lieutenant James McKenna. He told ATF investigators that when he got to the intersection of Jasper and York Streets at 3:17 a.m., he saw a "glow" and smoke coming from the middle basement windows of the building facing York Street. One of the company's firefighters saw another glow from the courtyard that fronted on Jasper Street. McKenna told investigators that as the engine traveled along York Street he saw fire on multiple floors. Security footage from a nearby restaurant showed a glow in the York Street basement at 3:00 a.m. that quickly spread to upper floors, and the length of York Street. By 3:15 a.m. fire was visible through nearly all of the windows on the York Street side. By 3:30 a.m., a large section of wall facing York Street had collapsed. The heat was so intense that the engine company had to attach to a hydrant at some distance down York Street.

The fire grew very rapidly and soon fully engulfed the entire property. A second alarm was pulled at 3:24 a.m.; a third at 3:28 a.m.; a fourth at 3:41 a.m.; and a fifth alarm at 4:01 a.m. With each alarm, additional companies were dispatched and higher-level commanders arrived to take charge. A five-alarm fire involves more than 40 companies and well over 100 firefighters. As the fire progressed, a command post was established near Kensington Avenue and Boston Street. A staging area for arriving companies was established on Front Street near where it intersects with York Street and Kensington Avenue. The fire ground was divided into four sectors: Alpha (Boston Street), Beta (Jasper Street), Charlie (York Street), and Delta (Kensington Avenue). A battalion chief (or acting chief) was assigned to supervise each sector; they reported to the operations chief, who reported to the incident commander. The incident commander is responsible for overall management of the fire-fighting operation; the operations chief is responsible for implementing the incident commander's strategy.



The fire scene was divided into four sectors (NIOSH photo).

Ladder 10 was dispatched on the second alarm. The members of that team were Firefighters Daniel Sweeney, Francis Cheney, and Patrick Nally, and their lieutenant Robert Neary, a 38-year veteran of the Fire Department. The driver of the ladder truck was Firefighter Joseph Steinmetz. Earlier that night, the team, whom Cheney called "family," had responded to a call of a collapsed house and had eaten Easter dinner together. Patrick Nally was not normally a member of Ladder 10, but had been assigned to fill in that night.

Cheney testified that when they were still several blocks away from the fire, they could see a "humongous column of smoke." As they got closer, "softball-size embers" were hitting the truck. He said that residents of neighborhoods they passed through were yelling for help because their houses were on fire. Cheney explained that they could not stop, but they told people that

they would report the fires.

Because Ladder 10 was one of the early responders, they were able to pull their truck close to the fire, alongside the furniture showroom on Boston Street, adjacent to the warehouse and directly in front of the command post. The ladder truck was equipped with a long, extendable ladder, as well as a "ladder pipe" that allowed firefighters to direct a stream of water from a large hose nozzle controlled from the ground. For a water supply, they needed to hook up to an engine company, which in this case, was an engine from West Philadelphia. Ladder 10 was assigned to the Alpha (Boston Street) sector.

Cheney testified that the company's initial orders were to lead off with its heaviest water lines. The strategy for fighting the fire was, from the start, what firefighters refer to as "surround and drown." The fire was so large and growing so quickly that there was no chance of saving the vacant warehouse. Those in charge of strategy decided right away to fight the fire defensively, that is, only from the exterior, concentrating not on saving the building, but solely on preventing the fire from spreading to other properties.

After setting up their ladder pipe to spray water on the fire, Ladder 10 members helped Engine 44 place its "deluge gun," which has a large-diameter hose, on the furniture store showroom roof. They then helped Pipeline 61 stretch a 5-inch hose line down Boston Street. Like the other companies, Pipeline 61 set up an unmanned stationary gun to shoot water at the fire.

Sometime after the third alarm was pulled at 3:28 a.m., Battalion Chief James Renninger, an acting deputy chief that night, arrived at the scene of the fire. (Because a number of ranking officers had taken Easter Sunday off, some officers at the scene were acting above their rank.) Renninger announced his presence, walked the fire ground, and assumed command from Battal-

ion Chief William Dell, who had been the highest-ranking officer up to that point; Dell then took charge of Alpha (Boston Street) sector. Chief Renninger described the fire:

> It was a fully involved four-story warehouse, approximately one city block on fire with 35 mile per hour winds coming from the southwest to the northeast, which created an incredible ember storm which was threatening the houses and all the properties to the east. The fire was jumping across Boston Street to the north. Homes were on fire. Boston Street looked like a war zone.

He summed up what he first saw as "a challenging situation."

The warehouse engulfed in flames; corner of Jasper and York (Fire Department photo).

Chief Renninger testified that when he arrived, the adjacent furniture store was still locked, and no one had entered it. He said that he never gave an order for anyone to go into the store, but that someone else did. Firefighter Charles McCarthy, a member of Rescue One, a highly trained, special-operations company that responds to all major fires, explained how the

order occurred. He said that when Rescue One arrived at Front and York Streets, they received orders from Battalion Chief Gedraitis, who was directing the firefighting on the York Street (Charlie sector) side of the property. Chief Gedraitis first ordered Rescue One to try to break into a bank building that adjoined the warehouse on York Street to see if the fire had spread to it. Unable to enter the bank from the front (on York Street), Rescue One went through an alley to the back and gained entry by cutting the hinges of a steel door.

After determining that the fire had not spread to the bank, Rescue One returned to the alley. From there, they could see that part of the warehouse wall adjacent to the one-story furniture showroom had collapsed onto the southeastern corner of the showroom roof. Two members of Rescue One went up on the roof of the furniture store where another company was operating a deluge gun and saw that fire was entering the corner of the furniture showroom where the warehouse wall had just collapsed onto the roof.

Firefighters prevented the fire from spreading to the neighborhood, but members of one company were buried when a wall from the burning warehouse fell on them.

Captain Thomas Kane, an acting battalion chief on the night of the fire, was on the furniture store roof directing companies that were setting up deluge guns to drown the fire. He was in charge of the Delta (Kensington Avenue) side of the fire ground. From the roof, Kane could see the hole caused by the partial collapse of the warehouse wall. He ordered Rescue One to enter the furniture store and to hit the fire with water from the inside.

McCarthy testified that when he and others from Rescue One entered the furniture showroom from Boston Street, they could see fire coming across the ceiling from the collapsed southeast corner. He explained that it was difficult to get access to fight the fire because there were partitions between the showroom area of the store and the back area where the fire was. Lieutenant Shawn Glynn, commander of Rescue One, recognized that the area beyond the partitions was

within the collapse zone of the remaining warehouse wall, and ordered his men not to go beyond that point. Lt. Glynn reported to Battalion Chief Dell, the Sector A (Boston Street) commander, that his men could not get close enough to the fire to extinguish it, but could control it from a safe distance.

Because the partition walls did not go to the ceiling, McCarthy, who was handling a hose that the Rescue One had brought into the store, was able to douse the fire by spraying the ceiling and letting the water bounce to the other side, nearest the warehouse, of the partitions. McCarthy stayed back from the collapsed ceiling in the southeast corner where rafters were dangling. He positioned the hose line safely away from the end of the furniture store adjacent to the still-standing portion of the warehouse's western wall. Throughout this effort, members of Rescue One maintained radio communication with Sector A Chief Dell. Rescue One remained in the furniture store for about 10 or 15 minutes, knocking down the spreading fire.

Lt. Glynn testified that Deputy Fire Commissioner John Devlin, who arrived at 4:06 a.m. and assumed command of the scene from Renninger, reassigned Rescue One to help elsewhere on the fire; McCarthy and another firefighter stayed in the furniture showroom, keeping an eye on the smoldering fire and shooting it down whenever it flared up and started to move across the ceiling. Lt. Glynn reminded McCarthy not to go into the collapse zone and not to allow anyone else in that area. The lieutenant explained to us that a collapse zone is an area threatened by a building collapse, and generally extends to one and a half times the height of the building (in this case the looming three-story warehouse wall) that may potentially collapse. Firefighter McCarthy positioned the hose line outside the collapse zone.

Chief Kane testified that once Engine 44 members got their fire hose in service on the roof of the furniture store, they were able hit the fire coming from the hole in the roof. Dousing

the fire from the roof appeared to extinguish it, but also drove a large amount of smoke into the furniture store. Kane said that there was so much smoke that he went down into the furniture store to see what was going on. There he found McCarthy, who was no longer spraying because the fire appeared to be out. Kane told McCarthy that there was no reason for him to stay in the furniture store and that he should rejoin his company. Chief Renninger, who had noticed a hose line going into the furniture store, also entered the store and told McCarthy and anyone else from Rescue One to leave. McCarthy left the hose line running into the furniture store.

Chief Kane testified that he asked Ladder 10, which was set up right outside on Boston Street, to check inside the furniture store every 10 minutes or so to make sure that the fire did not come back. McCarthy testified that he told members of Ladder 10 to stay back from the warehouse, where a section of the partially collapsed wall remained standing. (Cheney recalled that McCarthy only warned them about dangling rafters, and not about the wall.) Members of Ladder 10 took turns checking on the store, but for a while it appeared not to need attention. Cheney testified that before Ladder 10 started checking inside the furniture store, they saw almost the entire Boston Street wall of the warehouse (everything except the section that would later trap Ladder 10 in the furniture store) collapse into the street.

Deputy Commissioner Devlin explained that the strategy for combating the fire in the warehouse was always to fight it defensively from the exterior. When a building is vacant, and there is no hope of saving it, fire department policy calls for minimizing risk to firefighters by keeping them at a safe distance from the building. That night the "surround and drown" strategy was in operation, with stationary deluge guns and ladder pipes aiming streams of water at the burning building. Once Rescue One extinguished the visible fire in the furniture store, no one

was fighting the fire from inside a building. The biggest concern was to confine the inferno to the warehouse.

A major effort was also underway to prevent the fire from jumping across Boston Street where there was a large auction house and many homes. The effort was made more difficult by strong winds that were blowing flaming embers onto those properties. Deputy Commissioner Devlin testified that his main challenges in containing the flames were that the buildings across Boston Street were catching fire, and that flying embers were endangering houses and buildings blocks away. There were more than 20 reports of incidents—what the Fire Department calls "extensions"—where the fire spread to other structures as far as four blocks from the warehouse. The heat was so intense that vinyl siding on houses blocks away melted.

Deputy Commissioner Devlin, the incident commander, together with Battalion Chief Renninger, now acting as operations chief, addressed the problem of remote fires by having companies unrelated to the warehouse fire respond. Devlin explained that, as the incident commander he was stationed at the command post at Boston Street and Kensington Avenue, and so he could not respond as well as commanders who were actually in the neighborhoods where the extension fires were located. Devlin stated that, although the warehouse fire was a five-alarm fire, the combined resources devoted to fighting the warehouse fire and its extensions equaled a seven-alarm fire.

Some firefighters suggested in their testimony that the incident commanders limited the number of alarms pulled on the warehouse fire to avoid calling up additional fire companies and incurring overtime costs. We did not find evidence that this was the case. Devlin testified that, although he had companies in reserve on the fire ground, if firefighters had not been able to control the auction house fire in fifteen minutes, he would have pulled another alarm. The risk of

letting the fire get out of control on the inhabited north side of Boston Street was too great. With the concentration of resources on the extensions, firefighters succeeded in controlling the fires on the north side of Boston Street.

Deputy Commissioner Devlin testified that a roof fire in the Comly Auction building directly across Boston Street from the warehouse presented a major challenge. Because it was unsafe for firefighters to enter the Comly building to fight the fire, Devlin redirected some of the hoses that had been aimed at the warehouse to hit the auction house roof instead. To do this, he had to send some firefighters down Boston Street to place a gun—an unmanned "master stream" device—closer to the auction building. Devlin explained that this was the type of situation where firefighters, to effectively combat the fire, would have to enter for a short time an area where there was a danger of collapse. Most of the warehouse wall along Boston Street had collapsed, leaving only a freestanding section of the warehouse wall looming over Boston Street and the furniture store. As the walls of the warehouse collapsed, the radiant heat from the fire increased. Boston Street itself was "impassable."

Deputy Commissioner Devlin testified that, once the fire on the auction house roof was extinguished, he believed that the fire was contained. He asked Chief Renninger to poll the four sector chiefs to see if they were comfortable declaring the fire under control. When all four sector chiefs reported that they could contain the fire with the resources they had, Devlin declared the fire not extinguished, but "under control" at 5:21 a.m. When a fire is considered under control, firefighters do not stop fighting it, but the incident commander begins to de-escalate, releasing companies that are not needed.

About fifteen minutes after the fire was placed under control, a Fire Marshall pointed out to Deputy Commissioner Devlin that a substantial amount of smoke was coming from the Ken-

sington Avenue section of the furniture store. This was a two- and three-story structure that was attached and connected inside to the one-story showroom where Rescue One and Ladder 10 had been involved earlier. Members of Ladder 10 noticed that smoke was also seeping across the door on Boston Street (which led to the one-story section).

Deputy Commissioner Devlin ordered the Fire Marshall to ask firefighters equipped with "SCBAs" ("Self-Contained Breathing Apparatus") and thermal cameras to search for "hot spots" in the two- and three-story sections of the furniture store fronting on Kensington Avenue. He also directed Rescue One to open up (or vent) the bottom floor of those sections to let smoke escape. Devlin wanted to make sure that there were no embers that might ignite smoldering on the roof or the second or third floors. Rescue One determined that there was no fire, just trapped smoke in the Kensington Avenue section of the store.

Ladder 10, meanwhile, re-entered the one-story showroom section of the furniture store to check on the area they had been watching, because they saw the increased smoke and thought that the fire may have flared up again. According to their testimony, neither Devlin nor Renninger knew that members of Ladder 10 had gone back into the store. Firefighter Cheney testified that when they entered the store, the smoke was heavier than it had been, and they heard crackling in the back (southeast) corner. They followed the crackling sound, forcing open a door through the back partition into a makeshift gym area. From there, they could see that the adjacent office in the far back corner—the southeast corner where part of the warehouse wall had earlier collapsed into the roof of the furniture store—was again on fire.

Cheney explained why the ladder company ended up putting itself in a dangerous position under the section of warehouse wall that remained standing. As Devlin and Renninger both noted, Ladder 10 had been stationed for hours on Boston Street, looking right at the ominous

wall. So they knew it was there. They also had to know that nearly every other wall of the warehouse had already collapsed. But Cheney testified that they had to put the fire out because it would have been "catastrophic" if it had been allowed to spread to the store's three-story section fronting on Kensington Avenue, which bordered businesses and the elevated train.

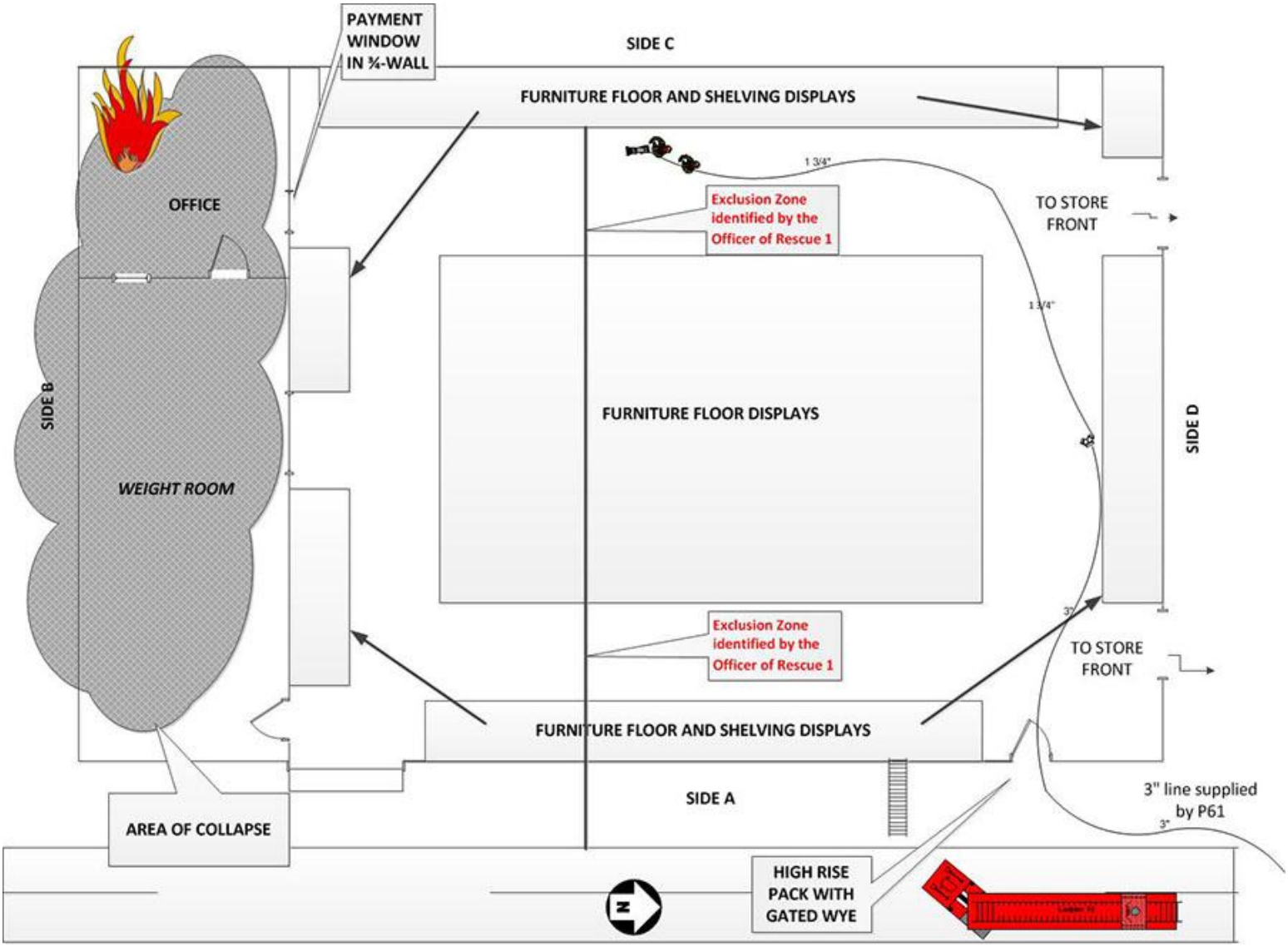


Diagram of interior of furniture showroom; Boston Street is at bottom (NIOSH)

Unfortunately, Ladder 10 determined that the fire could no longer be fought from the safe position—inside the furniture showroom but outside the collapse zone—that Firefighter McCarthy had established earlier, because the hose, positioned out of collapse danger by

McCarthy, would not reach the fire in the far southeast corner. Lt. Neary had his men re-route the hose behind the partitions toward a back room (the weight room), that they reached via an aisle that ran parallel and closest to Boston Street, where the remaining warehouse wall still stood. Cheney started to hit the fire with the hose. Patrick Nally, Daniel Sweeney, and Lieutenant Neary were preparing to tear down drywall to expose the fire so that Cheney could get more water on it. Neary, however, told the others to step back (toward Boston Street) because he did not want them under the store's rafters that were precarious after the initial collapse.

Sadly, in trying to remove his men from one collapse risk, Neary moved them toward Boston Street, where a different danger loomed. Cheney said he and the others were talking—he thought about a picture on the wall—when it "was like a bomb went off." Cheney, who is 6'3" and 245 pounds, said he was lifted off his feet and blown forward. The impact blew his helmet off and knocked him over. He said the bricks were flowing past him "like water." He found himself pinned in the corner of the office that had been on fire. Once things settled, he was able to work his way out from the bricks toward a light in the main display area of the furniture store.

On his way out, Cheney saw Patrick Nally sticking out of a brick pile—horizontally. At first he thought Nally was Dan Sweeney, because he had on a Ladder 10 helmet, and Nally was from Ladder 16. But then Cheney realized that Nally was wearing the helmet that had blown off Cheney's own head in the collapse. Nally had picked it up and put it on for protection from falling bricks. Once Cheney realized it was Nally, he knew where the others were. There was a huge pile of bricks where they had been standing just moments before.

Firefighter Daniel Sweeney and Lieutenant Robert Neary were killed by the impact of the collapse.

When Cheney emerged from the collapsed area, he was met by Battalion Chief Carlton Grymes, one of three designated incident safety officers that night. Grymes knew to look for

Ladder 10 after the wall collapsed because he had seen its members in the furniture store roughly fifteen minutes earlier, when they were rerouting the hose to get at the fire. Grymes testified that he spoke briefly to Lt. Neary at that time. He said that Neary explained that they were moving the hose to reach the fire. According to Grymes, Neary acknowledged that he knew he had to be careful and to stay away from a certain area. (It is unclear if he meant the area that had already collapsed or the area that was under the freestanding section of wall that had not yet come down). After the wall fell, Grymes radioed that men were trapped. Firefighters immediately flocked to the furniture showroom to help.

A rescue operation was set up to dig through the massive brick piles. Rescuers made Cheney leave the scene, but he was able to show them where Daniel Sweeney and Robert Neary would be found. At 7:06 a.m., Neary was extricated from the rubble; Sweeney was removed at 7:25 a.m. Both were rushed to a trauma center, but it was too late. The medical examiner testified that both victims died of "mechanical asphyxia." Blunt force trauma—in this case, from falling bricks and debris—had compressed their chests and collapsed their lungs, which caused them to be unable to breathe. The medical examiner believed that Firefighter Sweeney might have been conscious for as long as 5 or 10 minutes. The doctor also saw evidence that Lieutenant Neary was alive, although not necessarily conscious (because he suffered head trauma), even longer than Sweeney.

An investigation of the cause of the fire determined that it was caused by human agency.

Fire investigators from ATF and the Fire Marshall's Office spent over a week sifting through debris. The warehouse was completely destroyed, leaving little evidence for investigators. The investigators confirmed, based on burn patterns on the remaining wooden beams and joists, that the fire originated inside the warehouse. They ruled out "natural" causes for the fire

(e.g., lightning). Electric and gas services had been shut off and so could not have caused the fire. Based on these factors, the investigators concluded that the fire had to be the result of human intervention, either deliberate or accidental. Fire investigators were unable to determine an ignition source, or whether an accelerant was used.

The National Institute for Occupational Safety and Health (NIOSH), part of the Centers for Disease Control, also investigated. As part of its "Firefighter Fatality Investigation and Prevention Program," NIOSH investigates incidents where firefighters die in the line of duty. Their mission is to develop recommendations that might prevent future deaths and injuries. On December 18, 2013, NIOSH released a comprehensive report based on its investigation of the fire and the fire-fighting operations at York Street. We have reviewed that report, and its key findings and recommendations.

III. How City Departments Dealt with York Street

The story of York Street is one of a failure of city government. Poor institutional practices and, in some instances, individual incompetence or indifference, allowed the Lichtensteins to ignore their legal obligations, and to let the once-proud warehouse become a firetrap. The Department of Licenses and Inspections repeatedly issued code violations against the York Street property, yet did not follow up, and did not require the Lichtensteins to obtain a vacant property license or sprinkler variance. Simultaneously, the Revenue and Law Departments did little to collect unpaid real estate taxes and water rents amassed against York Street. Despite the code violations and tax deliquencies, L&I still issued zoning and demolition permits to the Lichtensteins. None of these Departments ever investigated and connected the dots to determine what was glaringly obvious—that the Lichtenstein had no intention of complying with the law

The York Street tragedy stands as a symbol of the City's long practice of neglect. We saw how the City's longstanding reluctance to take action against tax-delinquent owners of large, decaying buildings fosters a damaging culture of nonpayment and noncompliance. Owners have come to realize that there will be no repercussions, and that they will not be held responsible, if they ignore "final warnings" from L&I, and tax and water bills from the Revenue Department. The failure of city departments to enforce code provisions and tax laws fosters an attitude, exemplified by the Lichtensteins, that owners can ignore code violations and tax obligations at will. The *Inquirer* called this a "toxic scofflaw culture." It's more than that; it's a public safety issue. L&I had ample tools at its disposal. It could, and should, have enforced the vacant building license requirement. It could, and should, have required the Lichtensteins to get a sprinkler variance. It could, and should, have forced them to correct the myriad code violations. And it could, and should, have denied them permits. None of that happened.

The Department of Licenses and Inspections

Philadelphia's Department of Licenses and Inspections (L&I) is responsible, under the Home Rule Charter, for administering and enforcing "all statutes, ordinances, and regulations for the protection of persons and property from hazards, in the use [and] condition ... of buildings and structures." L&I's charge to protect public safety includes the responsibility for inspecting large, vacant commercial structures, issuing code violations, and enforcing compliance. With respect to the York Street property, L&I failed in its mission. It did not adequately inspect, it did not enforce, and it did not protect public safety.

We would have expected that this tragedy, and the heroism of the firefighters who perished and who were injured, would have inspired significant changes in the way L&I handles large vacant commercial structures with persistent code violations and tax deliquencies. We wanted to know whether L&I made substantial improvements in its procedures as a result of the breakdowns that occurred in this matter. The answer is a very clear "no."

L&I's organizational structure.

Former L&I Commissioner Frances Burns, who served from August 2008 through May 2012, explained that L&I is divided into three divisions: Administration, Development, and Operations. The Administration Division is responsible for budget, technology, and support services. The Development Division handles licenses and permit issuances and construction inspections. Additionally, three autonomous boards, including the Zoning Board of Adjustment, fall under the Development Division and receive administrative support from the Department. The Operations Division is responsible for, among other things, all code enforcement issues, the cleaning and sealing of vacant structures, and inspections of unsafe properties like the York Street property. L&I has 320 employees, about 200 of whom are inspectors, and a budget of ap-

proximately $21 million. L&I's structure remains essentially unchanged under L&I Commissioner Carlton Williams, who replaced Commissioner Burns on June 4, 2012.

Unfortunately, certain ineffective practices and procedures have remained as well.

L&I did not and, despite the York Street fire, does not, prioritize large vacant structures.

In 2011, L&I launched a new initiative, the Vacant Property Strategy, with the Managing Director's Office and the Finance Director's Office, directed at 25,000 City- and privately owned vacant properties. This strategy, however, primarily focuses on vacant residential properties. Former Commissioner Burns explained that, as part of the strategy, L&I dedicated a research team to find owner addresses. A special court was set up to litigate these cases. Burns acknowledged that the program did not deal with large vacant commercial properties.

Despite the potential for large-scale catastrophes from neglected large vacant commercial properties, L&I saw no need to prioritize or take proactive measures with regards to these properties. To the contrary, the Department has long avoided taking owners of these properties to court. Commissioner Burns explained that the concern is that, where the owner cannot be located or will not comply, the court could instead order the City to take the remedial action itself and foot the bill. But avoiding court is penny wise and pound foolish; a conflagration that endangers and kills is far more costly than cleaning and sealing. Further, in this case, the owners could be found and there is no reason to believe that a court would have ordered the City, rather than the Lichtensteins, to remedy the violations.

Burns further explained that, under her watch, vacant commercial properties would only be inspected every few years "because usually they are maintained." No specialized unit deals with vacant commercial and industrial properties. No special coding system identifies or categorizes these properties in L&I's database because "it would take some mechanics and some work

to do on the technology…" Thus the Department had no way to identify or prioritize these properties, and no apparent interest in doing so.

They should have. The steady deterioration of large vacant properties like York Street is inevitable, where, as here, owners refuse to remedy code violations. The sheer size of these properties and their proximity to residential and commercial properties means that their decline endangers a significant number of citizens and businesses. And in this case, it obviously was not true, as Burns maintained, that such structures are "usually … maintained."

Commissioner Williams told us that "there is a bit of reluctance" in L&I to deny permits to tax delinquents. The way he explained it was, "If you don't grant that permit to repair, you are leaving an unsafe condition." But the situation here was not whether or not to issue a permit to correct an unsafe condition. The Lichtensteins had no interest in repairing unsafe conditions, and no permit was necessary to correct the multiple violations at their property. Further, tax delinquency correlates to blight; it is a red flag that L&I should heed. We simply do not understand, or find acceptable, L&I's "reluctance."

Commissioner Williams told us that L&I now holds monthly meetings about these properties with the Law Department, and said that the Law Department now makes an L&I violation a lien on a property to take to a sheriff's sale. However, when asked if any properties had gone to sheriff's sale with this new policy, he said, "we are still working on that process. It has not yet." As we saw, the threat of a foreclosure or sheriff's sale was about the only thing that caused the Lichtensteins to pay attention to their obligations, so it is a useful tool. We hope that the new policy does not become yet another unused tool. We are not optimistic. That is because, while Commissioner Williams claimed, "we try to use the court system," he also told us the same thing as his predecessor, with respect to taking owners of large, vacant properties to court:

> Well the problem is, it becomes a resource issue. If we declare something imminently dangerous, actions - the court expects you to take action. And if it is something that is structurally stable but still a problem or nuisance to the community and if you put them in that court, if the property owner doesn't take action, then the City has the burden of that responsibility.

In other words, it remains L&I's practice to avoid taking owners of large vacant properties to court. This institutional reluctance to take owners of large, vacant commercial properties like York Street to court is at odds with L&I's mission of protecting public safety.

We learned that some changes have been implemented. For example, Commissioner Williams explained that, to reduce the backlog of court cases, L&I now issues Code Violation Notices ("CVNs") for minor violations, such as overgrown weeds and trash. The property owner can pay the fine, and the violation need not be sent to court. Commissioner Williams said that it still takes "nine months to a year" to get cases to court; he hopes to reduce that to six to nine months, still far too long, especially for cases such as this, where a large vacant structure has a long history of violations. Further, as we saw, "backlog" has nothing to do with L&I's continued reluctance to take legal action against properties like York Street.

We also learned that L&I has taken steps to replace its aging database system. But data in a computer system is only as good as the data entered into the computer system. We saw inspections that did not document actual conditions and an institutional unwillingness to hold building owners to account. We saw that citizen complaints were marked "resolved" when they were not. These failures were not software related.

Commissioner Williams informed us that L&I has hired 20 more inspectors, and that all inspectors will be cross-trained so one inspector can work a case and issue all types of violations against a property. Frankly, we were surprised to know that this has not always been the case, and we commend this change. Additionally, we were told that L&I will annually inspect all va-

cant properties. But unless the nature of those inspections changes, we do not see much impact. After all, York Street was inspected more frequently that that, to no effect.

Four different L&I inspectors issued code violation notices, but L&I failed to take legal action.

L&I inspectors issued repeated code violations against York Street in a mechanical, rote manner. Furthermore, despite the code violations that languished for three years (as well as mounting tax delinquencies and an abysmal record of compliance at their other Philadelphia properties), L&I still granted and extended permits to the Lichtensteins for the York Street property. For years, L&I allowed the Lichtensteins to thumb their noses at the City's building code, fire code, and tax laws, without repercussion.

L&I first cited the Lichtensteins for fire and property maintenance code violations on January 27, 2009. Inspector Carrasquillo opened case number 190616. The violation notice warned the Lichtensteins that if they "failed to comply with this order, the City may take actions to comply with the city code by using its own forces or by contract. You will be billed for all costs incurred including court and administrative fees." When L&I did not hear anything they sent repeated notices—we saw at least seven. But other than automatically re-mailing notices, the city took no action; the warning was meaningless.

Inspector Carrasquillo reinspected the property in October of 2009 and found that the multiple fire code violations had not been corrected. He forwarded the matter "to court," but nothing happened. L&I ignored these violations, and so did the Lichtensteins. The code violations remained unabated.

More than two years later, in November 2011, because frustrated neighbors submitted numerous complaints about the property through the city's 3-1-1 system—and not in response to the still-outstanding 2009 violations—L&I sent Inspector Pendergrass to the property. Pender-

grass issued an initial notice of violation, under a new case number (305350), which effectively restarted the clock. He directed the owners to clean, lock, and seal the property, to keep the property free of debris, and to obtain a vacant building license. The violation notice—a "first" violation, under the new case number, despite the fact that the owners already had two outstanding violations and the prior case had been sent "to court"—was mailed to attorney Darrell Zaslow, who was listed on property records as the agent for the Lichtensteins. At least three additional copies of this notice were sent to Zaslow's office. Pendergrass inspected the property two more times and confirmed that the owners had not brought their building into compliance, and the violations remained outstanding. He "sent them to court for prosecution." At that point, the Lichtensteins had received five violation notices sent to multiple, valid addresses (plus at least ten follow-up notices), and several "final" warnings under two separate case numbers, both of which had been sent "to court" for legal action. But no action was taken, by L&I or the Lichtensteins.

Finally, in January 2012, Miriam Gross called Inspector Michael Ross to inquire about the code violations. In his testimony, Inspector Ross explained that he was responsible for re-inspecting properties for code violation cases before they go to court and, if necessary, will attend and testify at trial. He told us that he is the only court inspector for commercial and industrial properties. On February 14, 2012, more than *three years* after Inspector Carrasquillo first cited the Lichtensteins for code violations, Inspector Ross went to York Street to re-inspect the property, ostensibly in preparation for sending the case to court, although there was no court date. He issued Fire Code violations under Case Number 190616 (corresponding to Carrasquillo's case number) and designated the violation notice as "Precourt Inspection #1." Ross testified that the violation—following the sixth inspection of the property—was mailed to YML Realty Incorporated, P.O. Box 300495, Brooklyn, NY and to 324 Avenue I, Brooklyn, NY.

On March 29, 2012, Inspector Daniel Quinn went to look at 1817-41 E. York Street in response to a community member's complaint. Inspector Quinn's violations were given yet another case number, 321527. Quinn sent, by certified mail, a seventh notice of violations (but a "first" violation, under the new case number), informing the Lichtensteins that their property was unsafe. The violation notice was mailed to Attorney Zaslow's office. The notice said: "Every vacant building must be secured against entry or it is deemed unsafe. The Department has inspected the subject vacant premises and designated it as unsafe in accordance with Section 307 of the Philadelphia Property Maintenance Code."

Three years after issuing the initial fire and maintenance code violations, L&I still had not initiated legal proceedings against the owners.

We were troubled by the fact that the L&I issued serial violation notices, threatening legal action but never taking it. L&I's policy was to endlessly inspect, re-inspect, and issue violation notices, but never to send the violations to court. Former Commissioner Burns testified that, beginning in 2010, she instituted a new policy: three failed inspections, then to court. In practice, however, there was little or no difference for the York Street property. In fact, the Lichtensteins received *seven* separate violation notices, and still, L&I never actually took them to court. It just issued empty threats.

Inspector Carrasquillo testified that he sent Case 190616 "to court" in 2010 after repeated inspections found persistent, uncorrected fire and maintenance code violations. He explained that prior to 2010, L&I did not send vacant commercial properties to court. Carrasquillo did not go to court for the violations. The violations he found were sent to L&I's Code Violation Resolution Unit for pre-court inspection, but were never scheduled for any court action. Two years later, Inspector Pendergrass sent the York Street property "to court" a second time (Case 305350), after three inspections noted unmitigated code violations, no vacant building license, and no sprinkler

variance. Court Inspector Ross, prodded into action only due to Gross's phone call, inspected the property again on February 14, 2012, and confirmed that the 2009 violations observed by Inspector Carrasquillo (Case 190616) remained unabated. He did not address Pendergrass's violations. When then-Commissioner Burns checked the computer system on the morning of April 9, 2012, after she learned about the fire, the property *still* had not gone to court.

"To court" was a meaningless misnomer. With only one inspector in the Code Violation Resolution Unit assigned to handle all vacant commercial buildings "sent to court," the York Street property was stuck on Inspector Ross's desk for three years. Had Miriam Gross not called him, there is no reason to believe that he would have taken *any* action on the property. And when Ross did act, the steps he took were ineffective at best. Other L&I employees testified that the court inspector's job is to confirm prior to a court date that violations still exist. But on York Street, Ross visited the property shortly after talking to Gross, even though the case was not listed for court. And even though Gross was calling after receiving violation notices sent following Pendergrass's inspections in November and December 2011 (Case 305350), and even though Pendergrass sent the property to court—for the second time—on January 13, 2012, Ross seemed unaware of those more recent violations when he "inspected" the property on February 14, 2012 and cited it for the outstanding 2009 violations (case number 190616).

In explaining why he ignored the violations issued by Pendergrass, Ross testified: "all I do is cases that's going to court, so it's not necessary for me to see if there are other cases open …the judge only wants to hear cases coming to it, not other cases." But Pendergrass had sent his case to court, and it involved many of the same violations as the 2009 case. Moreover, none of the cases, even the 2009 one, was really "going to court," since no court date was scheduled. It is unclear why Ross inspected the property when it had no court date. That inspection, months be-

fore the case would ever be listed, would be meaningless as evidence in court when it got there. Further, when Inspector Quinn inspected the property in late March 2012, he did not even find Ross's February 14, 2012 inspection on the computer system.

We heard conflicting testimony about the point in the process at which the court inspector is supposed to inspect the property. One witness told us that the court inspector conducts an inspection right before the court listing (usually five days before). Former Commissioner Burns, on the other hand, told us that the court inspector inspected properties after they were sent "to court" following three failed inspections by a regular inspector. According to Burns, only after that fourth failed inspection did cases get sent to L&I's "clerical staff" to schedule a court date. Burns testified that May court dates were being scheduled for inspections conducted by the court inspector in February.

If Burns's testimony was accurate, the process makes no sense. An unsafe condition observed in February, and not again, would provide weak evidence in a May court proceeding. If, on the other hand, both Burns and the other L&I witness testified accurately, and the one court inspector is expected to conduct two inspections—on top of the three completed before the case ever went to court—that would be a huge waste of resources and a boon to scofflaws. L&I should not give lawbreaking property owners five chances before proceeding to court.

It is hard to tell from Ross's actions in this case what his process was. But he did not follow even what Burns described as the proper course. Burns testified:

> Our [regular, non-court] inspector does three [inspections], processes to court like he should have, then we do pre-court inspection to prepare for court to make sure the violation is actually still open and that makes our case stronger when we prosecute.
>
> So our court inspector then sees that there are these 2009 cases, violations written were never complied. There is the recent action over the course of

> November, December, and January. Then he compiles the case into one, which he should do, and does an inspection on February 14, 2012.

But Ross did not "compile the cases into one." By his own testimony, he chose to ignore Pendergrass's November 2011, December 2011, and January 2012 violations, even though Pendergrass had sent them "to court."

Commissioner Burns tried to portray L&I's actions in this case as an example of a new, improved process she had implemented at L&I. But in February 2012, Ross was not efficiently preparing Pendergrass's recent violations for court. He was belatedly looking at Carrasquillo's violations three years after they were first issued. And he only did that because Miriam Gross brought the building and its violations to his attention.

All Ross had to do was to forward the violations through L&I. Commissioner Burns told us that L&I has "a very small unit that is basically a clerical unit to process cases through to court. They will compile all the violations we have written, produce the paperwork for our lawyers and attorneys and get the court date." This never happened

Not all of the L&I inspectors were as observant as they should have been.

In October and November 2011, blogger Christopher Sawyer and other neighborhood activists reported to L&I numerous safety issues they observed at the York Street property. These included: fallen bricks, signs of structural failure, a collapsing fire tower, a partially missing roof, an abandoned auto in the courtyard, an unsecured elevator shaft, missing doors on Jasper Street, an unsecured fire escape, and vagrants entering through a gap in a fence and setting fires. The neighbors asked the City to have the building sealed. Yet Inspector Pendergrass testified that when he surveyed the property on November 2, 2011, he saw no openings and considered the building sealed.

Inspector Pendergrass acknowledged that he made this determination based solely on a visual check of the perimeter; he did not test the many doors to see if they were, in fact, locked. He said that he did not see any broken windows, even though photographs show multiple open and broken windows, and Sawyer had counted at least 80 just a few days earlier. The neighbors reported an unsecured fire escape. Pendergrass, however, testified that he did not see the fire tower that the neighbors complained about, although it is arguably the most prominent feature on the Jasper Street side of the building. Pendergrass did not notice that part of the roof was missing, and he said that he did not see any bricks or brick dust on the pavement.

Notably, many deficiencies cited by the neighbors and in the 3-1-1 service request that prompted Inspector Pendergrass's inspection were readily observable in photographs published on multiple internet sites. Sawyer found them with a few clicks of a mouse. And after the fire, NIOSH, in its report, was able to document the same sort of structural irregularities that Sawyer

Structural defects along Boston Street, adjacent to showroom (NIOSH)

observed. With respect to the building along Boston Street that eventually collapsed on the firefighters, NIOSH investigators easily saw "out-of-plane wall orientation with extensive deterioration or absence of mortar joints between brick courses, suggesting a relatively unstable or

weakened perimeter wall." If these defects were visible in photos, they should have been obvious on the ground, with a modicum of diligence.

Even though Pendergrass claimed that the building was secure and that he saw no trash or debris, he issued what he called a "clean and seal" or "vacant violation." Pendergrass asserted: "So anytime we have a vacant property in the city of Philadelphia, we must issue this violation." He described the violation as a "touch all" that would instruct property owners that their properties must be cleaned and sealed even if the inspector did not see debris or openings. Pendergrass pointed out that the complaint was that drug dealers and others were getting into the property, so the violation would cover openings he might not have seen.

But issuing clean-and-seal violations whether one is observed or not—if that is indeed L&I's practice—makes the violation worthless as evidence for court. It also gives inspectors little incentive to look for and document actual openings in a building, or other structural problems. Indeed, if he automatically writes clean-and-seal violations for all vacant buildings, Pendergrass could have written his violation notices without leaving his desk. All he had to do was check the computer to see if there was a vacant building license on the property—which there never was.

Pendergrass, who was assigned to L&I's Commercial Industrial Fire Unit, testified that he saw on L&I's computer that Inspector Carrasquillo had issued Fire Code violations in 2009, but he did not look during his inspection to see if those Fire Code violations still existed. He explained,

> What I normally do…if there is a case already written before I go to write my case, I check the files to make sure if there is anything open on it. So there was already those violations, this would have just been doubled up. I am not allowed to go back and re-inspect another inspector's case because it is not my case.

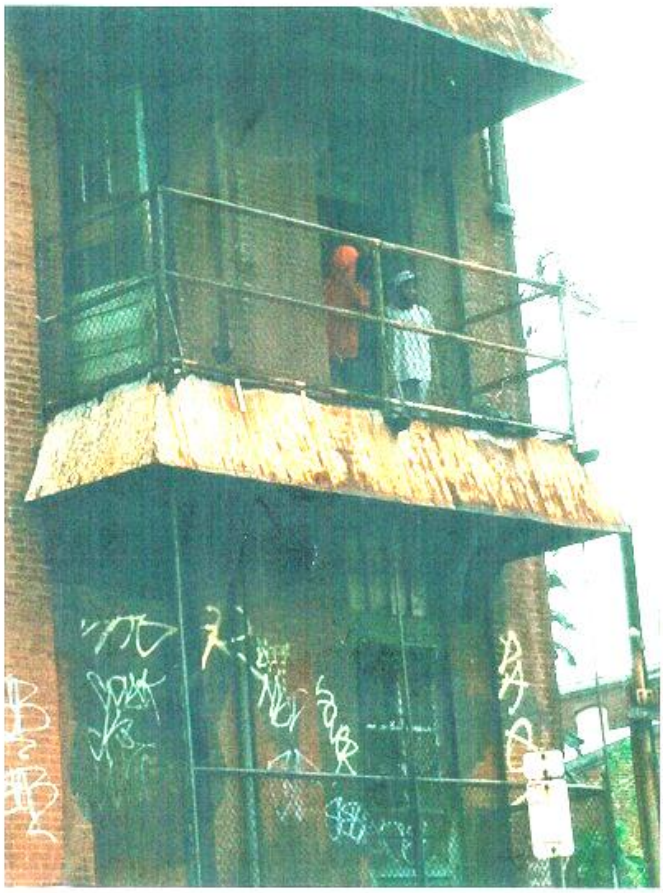
Pendergrass further explained that when he receives a 3-1-1 complaint, he just investigates the complaints he received and he does not perform a full inspection. Despite being assigned to the same geographic area as Carrasquillo, he "does not inherit all the cases." He testified: "Basically with my complaint – it wasn't on my complaint so I wasn't looking for that." As for fire safety violations in vacant buildings, "if they have a standpipe or those particular caps are missing, I don't really look for those."

Instead, Pendergrass opened a new case number, which started over the sequence of violations; his initial violation notice thus was numbered "1" even though it was now the third violation against this property, which had already been sent "to court." Pendergrass did his three inspections, and sent the new case "to court," pursuant to Commissioner Burns's new process. In none of these three inspections did Pendergrass note any of the building's myriad unsafe conditions. The violation notices reflect that these inspections entailed nothing more than noting that the owners lacked a vacant license and repeating the standard vacant property language that owners must keep their property clean and sealed.

Not only did these superficial inspections fail to document actual conditions, other than the missing vacant property license, on which a court could act, but under L&I practices, they also effectively prevented further inspection when new complaints came in. When a citizen complaint on January 27, 2012 reported that the property was open, that homeless people were entering it, and that it was a fire hazard, L&I, remarkably, treated the new complaint as "resolved" because the building had been inspected, reinspected, and sent to court. The same thing happened to a February 1, 2012 complaint that the building was open with missing doors and broken windows. L&I determined that this serious complaint was "resolved" not because any violations had in fact been remedied—they had not—but because the building had previously been sent to

pre-court for processing. Yet, when this processing takes three years or more, the effect is that L&I stops considering complaints while the case sits in Inspector Ross's department, and while a building continues to deteriorate. "Resolved" did not mean that any resolution had been reached. It was meaningless nomenclature that served only to rebuff citizen complaints and protect the non-compliant owners.

The inspection that Ross conducted, supposedly in preparation for trial, was also deficient. One of the Fire Code violations from 2009 was that the standpipe system was not functional and that caps on the standpipe were damaged or missing. Another violation noted in 2009 was that the standpipe was not marked with a sign, as required by the Fire Code. Yet Ross, who was supposed to document for court that the violations noted in 2009 still existed in February 2012, testified that he did not even find the standpipe. So he did not photograph or document its condition for the court hearing on whether there was a standpipe violation. Instead, he took photographs seemingly intended to indicate that the property was secured—for example, he snapped multiple pictures of a single padlocked gate. He did this even though failure to secure the property was not one of the 2009 violations that he said he was preparing for court. Further, contrary to these photographs, everyone in the neighborhood at the time knew that squatters, scrappers, drug users, and prostitutes found the property easy to enter. In fact, one neighbor furnished us with a photograph that he took on September 8, 2011 showing trespassers on the fire escape on the tower facing Jasper Street.



Trespassers on fire escape, September 8, 2011

The only thorough inspection—where the inspector actually tried to figure out how intruders were entering the building—was conducted by Daniel Quinn, the construction inspection supervisor who went to the property on March 29, 2012. He initially sent another inspector, who did not see any structural problems. But, unlike previous inspectors, Inspector Quinn credited the neighbors' complaints (he testified, "why would this person from the community tell me there [are] problems with this structure, if there wasn't?"), so went to check the property himself. He got out of his car, walked around, spoke with neighbors, and actually investigated their specific complaints. He tried the gate and saw that trespassers could enter. He issued a violation that declared the building unsafe. He sent the notice, by certified mail, to Darrell Zaslow's office on April 3, 2012, five days before the fire.

While code violations and unpaid real estate taxes and water bills were amassing against the property, L&I continued issuing zoning and demolition permits.

The Lichtensteins put no real money or effort into safeguarding or preserving the property, nor did they evidence any intention of paying any municipal taxes or fees. But the Lichtensteins demonstrably cared very much about one thing—their permits, especially the zoning permit that allowed the conversion of the warehouse complex into residential units. The zoning permit made their property considerably more valuable. If L&I had been serious about enforcing the property maintenance and fire code violations, there was no better opportunity to exert pressure on the Lichtensteins than when their permits were under consideration. This could also have been an opportunity for the unpaid taxes to be collected.

The Lichtensteins first sought a change in zoning in the spring of 2009. When the Zoning Board approved the request for a variance on May 11, 2009, the Lichtensteins were already in arrears on their taxes for the only year they had owned the property. They had done nothing to correct the fire code violations that Inspector Carrasquillo found on January 27, 2009. And they didn't even apply for a vacant building license, even though the law and Inspector Carrasquillo's violation notice required them to do so. The same remained true when L&I issued the zoning permit on July 23, 2009. Yet apparently no one checked, or was required to check, that the Lichtensteins were in compliance with the law.

Owners of vacant commercial buildings are required to obtain a vacant building license. They must complete an application in which they provide and certify under penalty of law certain information including proper contact information (post office boxes not accepted). And they must post a bond to cover potential costs if the City has to correct code violations or abate unsafe and imminently dangerous conditions on the licensed property. The amount of the bond is determined by the square footage of the vacant building. For a license for their 80,000-square-foot

warehouse complex, the Lichtensteins should have posted a $100,000 bond. The bond is designed to cover the City's potential cost of correcting code violations or abating unsafe or imminently dangerous conditions, where the owner fails to do so. Vacant building licenses are thus an important tool in making sure that vacant buildings do not endanger the community.

Another tool is the sprinkler variance requirement. Any vacant building that does not have a working sprinkler system must be cleared of all interior debris, which could fuel a fire, and be completely sealed to prevent anyone from entering. The owner also must post signs warning that the sprinkler system is inoperable. Even though the Lichtensteins' building had already been found by L&I to be in violation of multiple Fire Code provisions, and their building was unsecured and filled with debris, L&I went ahead and issued permits, forfeiting the opportunity to effect compliance.

L&I, inexplicably, failed to use these tools. The first thing that L&I should have looked for before granting *any* permits to the Lichtensteins for the York Street property was whether they had obtained the required vacant property license and posted the required bond. The next step should have been to determine whether they had obtained a sprinkler variance. In fact, both the zoning and demolition permits that L&I granted and extended include the following limitation on their face: "All provisions of the code and other City ordinances must be complied with, whether specified herein or not." L&I had at least three opportunities to require the Lichtensteins to obtain a sprinkler variance and a vacant building license and to post bond: (1) On July 23, 2009, when L&I first granted the Lichtensteins a zoning permit for the project; (2) on April 27, 2011, when L&I granted a demolition permit to begin demolition work (which would become invalid if work did not begin in six months); and 3) on November 8, 2011, when L&I reinstated the same demolition permit, which had become invalid on October 27, 2011 for failure to start

work. The Lichtensteins' noncompliance should have been an absolute bar to L&I approval of permits for their project.

Yet L&I granted the demolition permit and extension while the January 2009 fire code violations remained unmitigated and while the Lichtensteins continued to rack up thousands of dollars in unpaid real estate and water/sewer rents. The November 2011 reinstatement of the lapsed demolition permit was granted just days after L&I received multiple complaints about serious hazards at the property through the City's 3-1-1 hotline, and almost simultaneous with Inspector Pendergrass's citation for more code violations against the property.

Commissioner Burns testified that failure to correct code violations could result in revocation of certain licenses and permits. However, we saw no evidence that the Lichtensteins' ignoring the city's codes and tax laws ever interfered with their ability to get permit after permit, whenever they sought them. Had L&I simply refused to issue, extend, or reinstate these permits until the Lichtensteins obtained a vacant building license, the City could have fixed the code violations itself, knowing that the $100,000 bond would cover the costs. And if L&I had insisted that the Lichtensteins get a sprinkler variance, as the law requires, the building should have been cleaned and secured on April 9, 2012.

Other City departments were also ineffectual.

This is not a case where an owner got a little behind in payments, or needed to work out a payment plan to catch up. This is a case where the Lichtensteins flat out ignored their tax bills and got away with it. They only considered compliance when, due to Rhodes's foreclosure action, they feared they might lose the property. But even that feeble effort ("as little upfront and over as long a period as possible," according to Moskovits) was abandoned after Rhodes agreed to settle. There is no evidence that the Lichtensteins contacted the city at that point to actually work out an agreement. Instead, they opted for non-compliance.

The City had tools. It should have moved more quickly against the Lichtensteins, who demonstrated no intent to pay their taxes at all. If their delinquencies at York Street were not sufficient evidence of that, their history of nonpayment on their many other Philadelphia properties should have been. We learned from the *Inquirer* series that one in five properties in the city is tax delinquent. Sadly, we cannot say that this surprises us, given the City's glacial pace in this case.

The Lichtensteins were not hiding. The City had good addresses for them. Yet once again, one department did not know what the other was doing. L&I had no idea that the Lichtensteins were delinquent in their taxes. The Revenue and Law Departments had no idea that the Lichtensteins had multiple code violations. Yet blighted properties like York Street go hand in hand with unpaid taxes and water and sewer rents. Even Commissioner Burns acknowledged that if owners are not paying taxes on a property, they probably are not maintaining that property.

According to Commissioner Burns, part of the Vacant Property Strategy is to coordinate with Revenue to identify property owners of ten or more vacant properties. A feed from Revenue's database is supposed to flag problem properties for L&I records. Based upon this information, L&I supposedly will no longer issue licenses if back taxes are owed. This strategy, however, focuses primarily upon residential properties. We saw no evidence that it has been used, or been effective, with properties like York Street. Moreover, this strategy was not applied against the Lichtensteins, who owned about 30 residential properties, almost all behind on taxes, and who nonetheless were able to obtain permits for York Street.

The Lichtensteins, who still own the York Street site, owe the City over $125,000 on the property.

Public records show that, after the fire, the Lichtensteins finally entered into a tax payment agreement and paid some of the outstanding real estate taxes for York Street. Their tax liability was reduced, yet over $20,000 in back taxes remain outstanding. Over $5000 is still owed

to the Water Revenue Bureau, which continues to bill them at 1817 E. York Street, a vacant lot. The Lichtensteins also owe fines and fees to L&I, including over $100,000 for the demolition of the burned ruins of their York Street warehouse and clean up of the site. This bill has not been paid.

The Fire Department

The Grand Jury will not second-guess decisions made by the Philadelphia firefighters who died when the warehouse wall fell on them. According to Firefighter Francis Cheney, they were fighting the fire in a manner they believed necessary in order to extinguish it before it spread through the furniture store and once again threatened the neighborhood. We believe that Lieutenant Neary and his men were aware that they were placing themselves at some risk, but that is what firefighters do: they place themselves at risk if they believe they must in order to protect the public.

We cannot say that their decision, in retrospect, was unreasonable. Had they merely reported that the fire in the furniture store had flared up and waited for instructions, rather than taking immediate action, it is possible that the delay would have let the fire grow out of control. Had that happened, and had the flames spread through the store toward other businesses and the El on Frankford Avenue, we might be reviewing the decision of the Fire Department to allow the fire to spread through the neighborhood. Instead, as a grateful community member put it, "our whole neighborhood could have burnt down, but for the heroism of the Fire Department."

However, this does not mean that procedures can't be improved to help ensure that the best decisions are made on the fire ground, and that the proper balance is struck between risking firefighters' lives and protecting the public. The grand jury noticed several areas in which the Philadelphia Fire Department could enhance its safety procedures.

The Grand Jury heard testimony from fire experts.

To gain understanding of fire-fighting practices and operations, and learn about best practices in the field, we consulted with a number of experts, both in and outside of the Philadelphia Fire Department, current and retired. We studied the "Abandoned Building Project Toolbox," compiled by the International Association of Arson Investigators (IAAI), available at www.interfire.org/features/AbandonedBuildingProjectToolBox.asp, which contains many constructive ideas. We also reviewed NIOSH's detailed report and recommendations, released on December 18, 2013, available at www.cdc.gov/niosh/fire/pdfs/face201213.pdf. We examined photographs of the York Street fire and heard first-hand accounts of many of those involved in that operation.

We learned that large, vacant structures present unique hazards to firefighters, and are a significant source of firefighter injuries nationwide. Because these buildings are unoccupied, fires may go undetected for a significant period of time before erupting into massive conflagrations. Vacant buildings often lack working sprinklers, standpipes, fire doors, or fire walls. There are often electrical problems. Older buildings, such as York Street, are of heavy-timber construction, which increases the "fire load"; once the thick wood floors and ceilings become fully involved in a fire, they are very difficult to extinguish. Holes in floors and roofs, and open shafts, endanger anyone who enters, and speed the spread of fire. There may be hazardous materials inside as well as combustible debris. The sheer size of many abandoned industrial or commercial properties is challenging: for firefighters, there is a tremendous amount of combustible square footage; for commanders, there is a scene too large to view in its entirety.

We learned about a terrible fire tragedy in Worcester, Massachusetts in 1999, where six firefighters were trapped while searching for homeless people who were encamped in an abandoned building. The firefighters died when the roof collapsed. We learned about a fire in a large,

abandoned laundry facility in Chicago in 2009, in which two firefighters perished when a roof collapsed. Both of those cities moved quickly to implement NIOSH recommendations. In addition, the City of Chicago made owners of derelict buildings with significant code violations criminally liable for deaths or serious injuries that occur in their neglected buildings.

The Fire Department has cut back on needed training.

One theme that clearly emerged from our investigation and consultation with experts was the importance of training. From the training records we reviewed, we saw that the level of training in the Philadelphia Fire Department is uneven, and has been significantly curtailed in the last six or seven years. Due to budgetary constraints and personnel cuts, firefighters cannot be taken out of service to attend courses at the Fire Academy. And because the incidence of fire has gone down—undeniably good news—today's firefighters have less actual fire-fighting experience than their predecessors. Yet the job is no less complex, and no less dangerous. Firefighters must be prepared to deal not just with fires, but with medical emergencies, hazardous materials, rescues, and terrorism.

To be clear, we are in no way suggesting that Philadelphia firefighters are unprepared. Every cadet undergoes twenty weeks of rigorous training at the Fire Academy. New firefighters are tested twice a year. That is a solid foundation. In addition, every firefighter is a certified emergency medical technician, and must maintain that certification, which requires hours of continuing education.

We were particularly disheartened to learn that the Fire Department has not offered specialized incident safety officer training classes since February 2007. An incident safety officer, according the Standard Operating Procedures of the Fire Department, is responsible for, among other things, monitoring "visible smoke and fire conditions and advis[ing] the Incident Commander of the potential for flashover, backdraft, collapse or fire extension." As the NIOSH re-

port emphasized, the role of an incident safety officer is technical and demanding, and requires specialized knowledge: "A fire department Incident Safety Officer should have training beyond company level officers." An incident safety officer must understand building characteristics and construction, building collapse, fire behavior, fire-fighting techniques, the effects of weather, among other factors, in order to able to identify and evaluate hazardous and potentially hazardous situations. An incident safety officer must know how to establish and enforce collapse zones, and effectively communicate up and down the chain of command. This takes skill and experience, especially where a safety officer is faced with a situation that requires countermanding a directive by another officer, even one who outranks him or her.

The number of current fire personnel who have received incident safety officer training is small, and diminishing. Right now, the only qualification to be an incident safety officer is officer rank.

The collapse zone was not adequately monitored and enforced to ensure that firefighters inside the furniture showroom did not enter a danger zone.

We learned from the expert testimony in this case that there are three primary types of building collapse. A "curtain collapse" occurs when a wall tumbles straight down, with debris or rubble piling up at the base of the wall. In an "in-and-out" collapse, rubble falls down both sides of a wall. A 90-degree collapse occurs when the entire wall falls like a tree, strewing rubble a distance greater than the height of the wall. Thus, to protect firefighters, a collapse zone, as a general rule, extends to a distance 1-1/2 times the length of any wall prone to collapse.

The experts stressed the importance of physically marking collapse zones. The NIOSH report emphasized that collapse zones must be consistently established and monitored. As one expert explained, "firefighters want to creep up. They want to get as close to the fire hopefully to see the avenue that they can extinguish the fire, and we have to constantly tell them to come

back." When banner tape cannot be used due to high heat, fire departments can use rescue ropes, or obtain barricades from the police department. What is important is a visible, physical demarcation of collapse zones.

We heard conflicting testimony regarding whether a collapse zone was physically marked off with caution tape. While one witness said that he saw tape marking off the hazardous area where collapse was possible, Chief Renninger, who was standing at the corner of Boston Street and Kensington Avenue while acting as incident commander, testified that he did not see any marked-off zone in Alpha sector. He explained that, in practice, the Fire Department has gotten away from always using banner tape to mark off collapse zones. Chief Devlin doubted that caution tape would have withstood the extreme heat of the fire in this case, which melted vinyl siding blocks away. All witnesses agreed that there was no tape or anything similar marking off a collapse zone inside of the furniture store.

In this case, the collapse zone should have included about half of the showroom. Renninger had earlier recognized that showroom was partly within a collapse zone. He noticed that the front of Ladder 10's apparatus, which was parked alongside the furniture store, coincided with the collapse zone and he therefore warned others not to go past that point. He emphasized that this was why he ordered members of Rescue One out of the showroom when he noticed their hose line and found the firefighters inside. It does not appear that the incident safety officers were aware that Renninger had determined that the front of Ladder 10's equipment marked a collapse zone that they were supposed to enforce.

Ladder 10's truck positioned near the still-standing warehouse wall (Fire Department photo)

The firefighters inside the store may have lost track of where the still-standing warehouse wall was in relation to the store's interior. Within the showroom, firefighter McCarthy, from Rescue One, initially positioned the hose out of danger, but it is unclear whether the firefighters from Ladder 10 were aware that, by repositioning the hose to fight the fire in the office area, they were entering a collapse zone. They may have become confused about where the danger of collapse was greatest. According to the testimony of Firefighter Cheney, the lieutenant ordered his men to step back from the office area inside the store and to move toward the Boston Street wall. His instructions indicate that he was aware of the danger posed by the already collapsed ceiling and dangling rafters inside the furniture store, but that he might have lost track of the collapse zone created by the warehouse wall that he could no longer see.

We heard conflicting testimony concerning whose responsibility it is to mark off the collapse zone at a fire ground. Captain Robert Taylor, dispatched from the Fire Academy to serve as an incident safety officer, testified that anyone could mark off the collapse zone—a company officer, a firefighter, a sector chief, or an incident safety officer. According to the Fire Department Standard Operating Procedure 4.12: "The incident safety officer will establish a collapse/safety zone and determine the safest paths for personnel to operate." As the officer in charge of the entire firefighting operation, the incident commander also has to be responsible for ensuring that the incident safety officers have established a collapse zone and that the zone is modified as conditions change.

In this case, the incident safety officers themselves did not establish collapse zones. It does not appear that any of them knew that Renninger meant the position of Ladder 10's vehicle to mark the collapse zone, or that the hose line, as positioned by Rescue One inside the furniture showroom, marked the interior collapse zone. Where, as here, banner tape cannot be used due to intense heat, collapse-zone boundaries must be made immediately obvious, by using ropes or physical barricades.

Incident safety officers are inadequately trained.

Since February of 2007, the Department has not offered any specialized classes or training relating to the duties of an incident safety officer. We were told that this is because of the overtime costs involved and because, given decreases in personnel, firefighters cannot be taken out of service to attend classes. Battalion chiefs and captains who might be called on to act as incident safety officers can inform themselves about the responsibilities by reading the relevant operating procedures, if they choose to do so.

At a fire scene, an incident safety officer performs critical functions, requiring technical knowledge about building characteristics and construction, fire behavior, fire-fighting techniques, and the effects of weather, among other factors. An incident safety officer can overrule a commander to stop any operation deemed hazardous, and must communicate both with command and task-level personnel about anything the incident safety officer has identified as unsafe. And the incident safety officer must know how to establish, monitor, and enforce collapse zones. This is specialized work. Optional self-study is simply inadequate.

We estimate that, of the current force, only about 100 members have taken the pre-2007 incident safety officer training. (The incident commander in this case, Deputy Commissioner Devlin, was not among that number.) Even were this seven-year-old training sufficient—and we believe it is not—the small number of personnel who have that outdated training is dwindling as many of these seasoned officers approach retirement.

Captain Taylor did receive incident safety officer training prior to 2007. He is one of three Fire Academy officers specially designated to act as an incident safety officer. But he could not cover the entire fire ground. The other incident safety officers, Chief Grymes and Captain Rodney Wright, never received any formal training before being called on to act as incident safety officers at the mammoth York Street fire. This left them to perform functions for which they were not trained.

Safety officers were not effectively deployed.

Battalion chiefs (or captains acting as battalion chiefs) are assigned as incident safety officers upon arrival at the fire ground. The number of incident safety officers depends on the number of alarms and the nature of the fire. One incident safety officer is assigned for any two-alarm fire. If the fire is three alarms or greater, an additional safety officer from the Fire Acad-

emy is dispatched. (Two captains and a chief assigned to the Fire Academy rotate the duty of responding to three-alarm fires.) In this case, the first incident safety officer on the scene was Battalion Chief Grymes. Captain Taylor was dispatched from the Fire Academy on the fourth alarm. (He explained that he normally would be contacted at the third alarm, but because of the number of companies being dispatched he was contacted later than usual.)

Normally just those two incident safety officers would be assigned to a five-alarm fire, even with a fire ground as large as York Street. A third, acting battalion chief Wright, was assigned for this fire because the first company to arrive on the scene mistakenly reported that the building had six stories, thus mobilizing additional resources, including a third incident safety officer. Neither Wright nor Grymes had ever served as an incident safety officer before this mammoth fire, and neither had ever received incident safety officer training. We find it unacceptable that, especially in such a large fire as the five-alarm York Street scene, there was only one incident safety officer who had received the relevant training, albeit years before, and that the burden to assure incident safety largely fell to first-time incident safety officers.

Testimony from the incident commanders and the incident safety officers indicates that the safety officers did not divide up responsibility for different tasks or sectors of the fire ground. Whether through inexperience, or lack of communication and coordination, the incident safety officers did not perform their job aggressively. Two of them were unaware that anyone was in the furniture store or on its roof, despite the presence of a hose going into the store and ladders leading to the roof. One incident safety officer did notice the hose and went into the furniture store to check. He saw members of Ladder 10 preparing to reposition the hose. But he did not recognize the danger in which Ladder 10 was putting itself. He did not order Ladder 10 out of the dangerous area, and he did not report to the incident commander or the sector chief that there

were men fighting an interior fire. (The company itself also failed to report that it was inside the store and that the fire had flared up.)

Another safety issue that appears to have been ignored not only by the incident safety officers, but by many of the firefighters was the need to wear a breathing apparatus inside the smoky furniture store and elsewhere on the fire ground. Fire Department policy requires that firefighters don SCBAs for interior firefighting. SCBA's are equipped with PASS (Personal Alert Safety System) devices, which emit an audible alert if a firefighter becomes immobile. Here, such an alert would have enable rescuers to find the trapped firefighters more quickly. Given the serious and immediate nature of the firefighters' injuries, we cannot know whether a PASS device would have made a difference. But in a rescue situation, where time is of the essence, the failure to use a SCBA clearly hampers effective response.

This large and complex fire ground required more than two or three incident safety officers. Firefighting operations were directed not only at the warehouse structure itself, but also at adjoining buildings. Each of the four sectors was a block long, and there was no vantage point from which a safety officer could evaluate more than a single sector. There were over 100 firefighters, who arrived at different intervals and who were engaged in different aspects of the operation, under the direction of sector chiefs, and ultimately incident command. It took hours to get the fire under control and eventually extinguished, and weather conditions were challenging. With no clear geographic assignments and a large fire ground to cover, safety officers could not familiarize themselves with particular history, circumstances, and changing conditions of the fire in each sector, or directions that had been given by sector commanders. The Fire Department does not have a set policy or practice for how to deploy incident safety officers on large fires

where the fire ground is divided into sectors. Consequently, the three incident safety officers here appear to have walked the fire ground without clear direction or coordination.

The incident commanders should have been made aware that firefighters were inside the furniture store.

The final incident commander, Deputy Commissioner Devlin, and his operations chief, Battalion Chief Renninger, both testified that they did not know that Ladder 10 had entered the furniture store to check on—and then stayed to fight—the fire that had erupted in the store's office area. Renninger testified that he had ordered everyone out of the furniture store earlier in the night and had no idea that Ladder 10 had re-entered the building.

Both Renninger and Devlin testified that they did not know what Ladder 10 was doing, and would not have directed them to move the hose to fight the office fire from the weight-room area of the store. Of course, they did not know how big the fire inside the store was, or how imminently it was threatening to engulf the entire store. Had Ladder 10 communicated what they saw and what they were doing, or had an incident safety officer done so, the commanders might have determined that the danger warranted the risk. But that decision should have been made by the incident commander and the operations chief based on information from both the company and the incident safety officer who observed the company's actions.

The communication issue was not a hardware problem, though technology could help incident commanders keep better track of the whereabouts of fire personnel. Existing radios should have been adequate to keep the incident commander abreast of the actions of companies on the fire ground. The Department's practice of transferring command as a fire grows, when higher-ranking officers arrive at the scene, makes effective and continuous communication and sharing of information especially important. In a large and escalating fire such as this one, where

there were four different incident commanders, what one commander knows early on in a fire might not get communicated to his successors.

The NIOSH investigators stressed the importance of fire-ground communication:

> Command must ensure that every division/group supervisor is clear on the strategy and the incident action plan. Additionally, this information must be communicated to the Incident Safety Officer. Once the Incident Commander had developed a strategy and the incident action plan (tactics), which for this incident were very good, this information must be communicated via the radio to all members assigned to the incident. Everyone must know the strategy that is being implemented and understand their role.

In this case, it was not clear that Renninger or Devlin knew that Ladder 10 had been directed by Kane early on to check on the furniture showroom every 10 to 15 minutes. Renninger said that after Rescue One suppressed the fire inside the furniture showroom, he directed them to leave the showroom. According to Devlin, Renninger reported to him, when he took over command, that there had been a small fire in the store, but that it had been extinguished. After that, both Renninger and Devlin believed there was no interior firefighting going on.

Deputy Commissioner Devlin testified that he believed Ladder 10's activity inside the furniture showroom was the result of a misunderstanding. He insisted that they were not ignoring or disobeying orders. He suggested that they may have misinterpreted Chief Kane's earlier order to "keep an eye on" or "check on" the showroom. We agree that this is most likely what happened. We believe it was reasonable for the incident commander and the operations chief to assume that all firefighters and incident safety officers understood that they were to stay outside of the furniture store. The fact that flames did flare up inside the store after Renninger had ordered everyone out (and after the fire was otherwise been declared "under control") shows that Chief Kane's order to Ladder 10 to check on the store from time to time also was sensible. And it was not unreasonable that Ladder 10 would believe that part of their charge to keep an eye on the fire

area in the store's office included the task of dousing it if it flared up again and threatened to spread and endanger the neighborhood. But, as the NIOSH report explained, incident commanders need to know *whenever* companies or firefighters depart from command strategy and enter structures during a defensive fight where the understanding is that everyone remains on the exterior. Safety officers, especially, need to communicate to the incident commander *anything* they observe that differs from the announced strategy for fighting the fire.

Devlin testified that the Department uses pins on a board for tracking firefighters during a fire, a methodology that one expert called "prehistoric," for keeping track of 100-plus fire personnel on a large fire ground. Commissioner Ayres and Deputy Commissioner Devlin both discussed plans to replace this system with more modern technology, such as an electronic situation board on a computer tablet, and use of chips in firefighting gear or radios to monitor personnel in real time. While such technology may someday provide a more effective *means* of communicating locations and managing personnel, and we encourage the Department's efforts to find appropriate technology, the emphasis always must be on the *need* to communicate to incident commanders all of the information they need to keep firefighters safe.

The Fire Department's "vital building information" on the warehouse was outdated.

One of the duties of individual fire companies is to inspect buildings in their neighborhoods to develop or update "Vital Building Information" ("VBI") records. According to Deputy Commissioner Devlin, fire companies are supposed to inspect and update information on all buildings in their territories other than private one- or two-family dwellings. The VBI is supposed to include floor plans showing where sprinkler connections are located, as well as shutoffs for water and gas. Any information necessary to help firefighters combat a fire and stay safe is to

be included, including information about observed structural defects. The Commissioner testified that this is supposed to be done annually, but there is no monitoring to ensure that this occurs.

The VBI for the York Street property had not been updated *since 1998*. Such a lapse is unacceptable. The building had been steadily deteriorating, especially since the Lichtensteins bought it, posing increasing hazards to firefighters and the community. Water service had been cut off, the standpipe was defective, and the limited sprinklers were non-functional. There were more and more broken windows and a failing roof. There were no fire doors. The elevators had fallen into disrepair; the open shafts together with many broken windows and open roof quickly turned a smoldering basement fire into a full conflagration. Debris within further fueled the fire, which rapidly moved, unimpeded, up and across the structure.

Photographs taken before the fire showed that mortar between bricks of the warehouse exterior walls had deteriorated, undermining the structural integrity of those huge walls. An up-to-date VBI assessment should have revealed these problems, and allowed for pre-incident planning. Potential collapse zones, for example could have been identified in advance. Command and safety personnel at the scene could have been alerted to the particular dangers posed by the weakened warehouse walls and the absolute necessity of enforcing collapse zones.

Witnesses testified that some fire companies no longer have time to do regular VBI inspections because of cutbacks and the necessity of answering a high volume of EMS calls. We understand that responding to these calls is very time consuming. But these important VBI documents should not be neglected. Failure to update them denies firefighters crucial information they may need to protect themselves and the public. Large, vacant buildings can present a host of problems not visible to responding fire companies. Structural weaknesses may not be apparent. Contents of the building will be unknown. Out-of-date VBIs will not reflect current con-

ditions and current dangers lurking in these deteriorating buildings. VBI assessment must be given greater priority and battalion chiefs should monitor compliance.

It is important not only for firefighter and community safety that every fire company have up-to-date information about all large, vacant structures. Annual VBI inspections are also an effective way to identify code violations, especially fire code violations such as those that persisted at the York Street warehouse for over three years. Witnesses from L&I testified that they do not normally conduct proactive inspections because they lack adequate staff. If the Fire Department does not do its VBI inspections, the responsibility for noticing and reporting dangerous buildings will fall on neighbors, as it did in this case. This is not a workable system. Neighbors have no authority to enter properties, no expertise in fire safety issues, and, of course, no enforcement powers. And in this case, their complaints, when sent to L&I, largely fell on deaf ears. Indeed, when they contacted L&I, they were told that the matter had been "resolved."

Even when they are done, the VBIs are not as helpful or accessible as they should be because the Fire Department does not effectively use computer software that it has. Deputy Commissioner Devlin testified that the VBIs are done on computers now, but that the computer really acts as little more than a typewriter since the VBIs are then printed out, put in a binder kept at the nearest stationhouse, and put on a responding fire truck. But not every company responding to a fire, or even the first-responding company, will be from the nearest fire station. Indeed, in a large fire, most personnel, including command personnel, will be arriving from other areas of the city, and so will not be carrying the relevant VBI. It would be far better to have these documents available in digital format, accessible to responding fire companies and incident commanders on a tablet or laptop computer. As a battalion chief explained to us, it would be very helpful to him, as a commander, to have this information available when traveling to the fire scene, to formulate

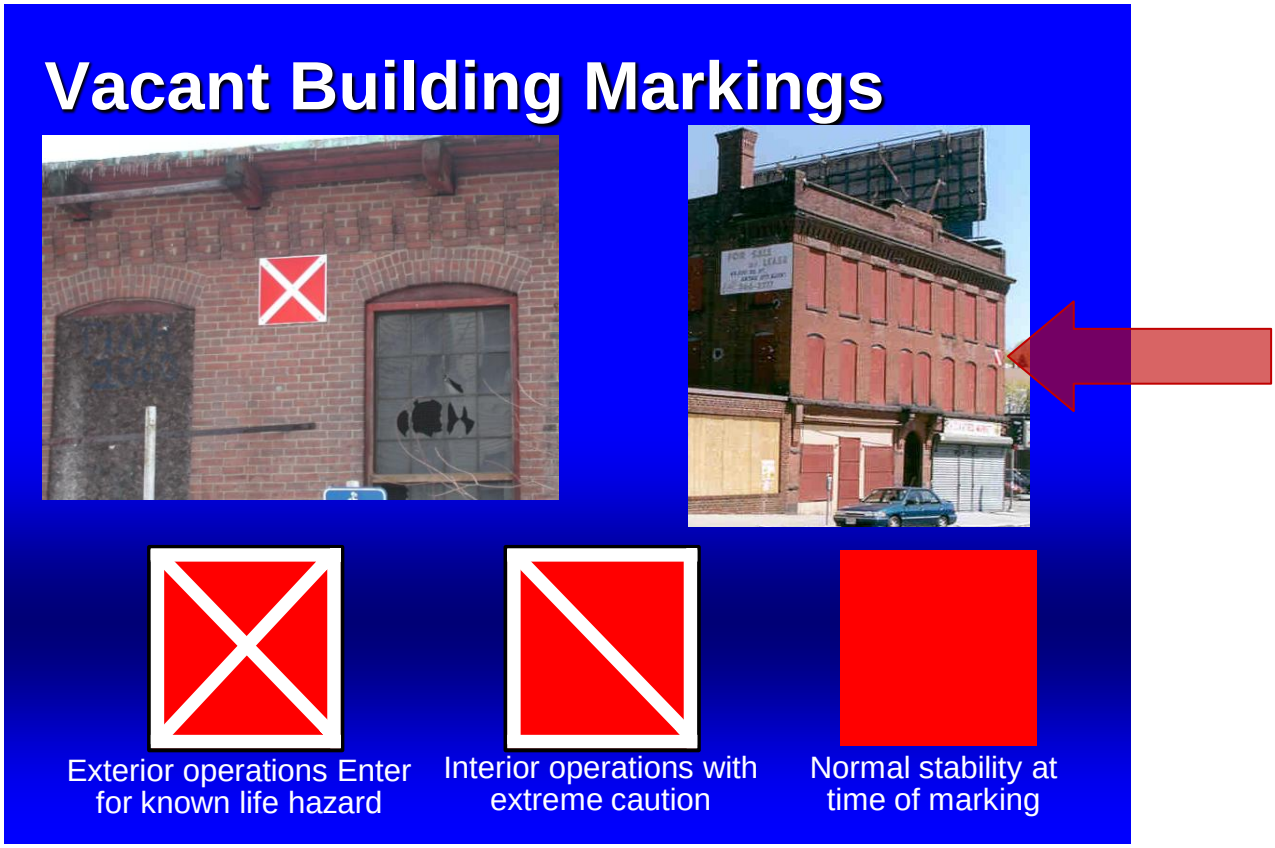
strategy based on building size and construction, location of hydrants, presence of hazardous materials, and other information contained in a VBI.

We understand that some information about imminently dangerous buildings—approximately 360 buildings have been identified as imminently dangerous by L&I at the request of the Fire Marshall—is now transmitted to fire companies through the new Computer Aided Dispatch (CAD) system, and will be available on mobile devices. That a building is "imminently dangerous" will certainly be useful information to responding fire companies. But it is not detailed about specific hazards. A VBI, on the other hand, if accessible on a tablet or other mobile data device throughout a fire incident, will provide more complete information. Computerization has other advantages. It will allow VBIs to be easily updated, and to include photographs, diagrams, or maps, to increase their usefulness. It will also give battalion chiefs improved means for monitoring company compliance with VBI requirements.

The Commissioner testified that the Department is working to adopt updated technology, including the use of mobile devices to provide better information at fire scenes. While technology is promising it is not a panacea, nor is it an excuse to delay updating VBIs pending a full rollout of computer capabilities. Fires in abandoned and vacant buildings cause more firefighter injuries—over 6000 annually—than in any other property classification. An effective VBI program can alert firefighters to hazards discovered during an inspection. Emphasis must be placed on completing annual inspections, for the department's own sake.

Philadelphia should adopt a system, widely used in other cities, of marking vacant commercial and industrial buildings.

Building markings provide responding fire personnel with an immediate warning of how to approach a vacant structure. Many municipalities have adopted the building marking system outlined in the "Abandoned Building Project Tool Box" developed by the International Association of Arson Investigators (IAAI) and the U.S. Fire Administration (USFA) after six firefighters died in Worcester, Massachusetts in 1999. After an inspection of the vacant property, one of three signs is posted: a solid-colored square indicates that the building is stable; a diagonal line is added to indicate that interior operations should proceed with caution; and a second diagonal line, forming an "X," tells firefighters to conduct exterior operations only, except to save a life.



Example of building marking system

These highly visible signs are affixed to or painted on, or near, every door or other building opening that a firefighter might enter. They not only alert firefighters to hazards, but they also serve as a visible indicator that a vacant building inspection has been done.

On occasion, this simple system has been used on an *ad hoc* basis by city (fire and L&I) inspectors, acting on their own initiative. But such efforts were never commonplace and never formalized. We think that should change, and that building markings should be a routine part of every vacant building inspection. We were pleased to learn that a bill similar to model legislation proposed by IAAI has recently been introduced in City Council to require, among other things, use of placards to mark the condition of vacant and abandoned buildings.

L&I must do a better job of following up code violations reported by the Fire Department.

For the most part, the Fire Department does not have the authority to enforce Fire Code violations. It instead reports violations to L&I. Too often that is the last of the matter. L&I does not tell the Fire Department whether it has inspected the subject properties, verified the violations, cited the owners, or sent the matter to court. The Fire Department is not told whether the violations it has observed are corrected. This should change. The Fire Department should be informed if, and how, and when violations it has identified are resolved by L&I. And if the Fire Department concludes that a resolution or remediation was inadequate, or not accomplished, there should be a higher-level channel to address those complaints. Both departments, after all, are charged with protecting the safety of the public. If this common mission is not being followed at the ground level, higher-ups must provide the leadership to ensure responsiveness.

Obviously L&I's broad inspection responsibilities encompass more than the Fire Code, and we are not proposing any shift in overall code enforcement responsibilities. But Fire personnel have expertise in identifying Fire Code issues, and L&I should be using them more as a re-

source. Large vacant commercial and industrial properties pose special dangers to firefighters, beyond whatever building code violations might be detected. Boilerplate fire code citations, such as issued by some L&I inspectors in this case, do little to identify or effect remediation of specific fire hazards. A better approach would be for L&I and Fire inspectors to go out together to complete comprehensive inspections of large vacant commercial and industrial properties.

Informally, over the years some dedicated Fire and L&I personnel, acting on their own initiative, have developed individual, cooperative relationships to address code violations together in the interest of public. We are aware, for example, that, in the past, individuals from the Fire Marshall's office and L&I marked imminently dangerous buildings to warn firefighters of dangerous conditions. They worked from a list, supplied by the Fire Marshall, of buildings with a history of Fire Department involvement, and inspected those properties together, acting promptly to address imminently dangerous structures. This is how things should work. But such "win-win" cooperation appears to be the exception. It depends on individual resourcefulness and communication, without regard to "turf." Unless such cooperation is formalized and demanded (and exhibited) by supervisors and department heads, it will never become the norm.

The relevant city departments—at a minimum, L&I, Fire, and Law—must develop a combined task force or similar working group charged with the responsibility of addressing code violations in large, vacant structures. That entity should meet frequently and regularly to not only monitor violations, but to effect compliance with city codes and tax laws. Due to their size these properties pose larger-scale dangers, and the failure of the city to act, coupled with the failure of city agencies to communicate and share information has allowed problems to fester unchecked. A group charged with the responsibility for tackling this challenge must include high-level personnel with authority to expedite resolutions, effect compliance, and protect public safety. Right

now, given lax inspections, poor follow through by city agencies, and ineffectual enforcement of city codes, it is cheaper for irresponsible owners to ignore the law, rather than remediate violations. This must change. These large vacant structures are too dangerous to our neighborhoods, and those who protect them.

IV. Recommendations

1) Legislative proposals

The Crimes Code should be amended to allow for criminal prosecution of property owners who refuse to correct dangerous conditions.

Currently, the Crimes Code has no provision that covers the Lichtensteins' neglect of their building and the deaths and severe injuries to the firefighters. The second-degree misdemeanor for municipal housing code avoidance does address uncorrected code violations. Such a charge could not have brought against the Lichtensteins, however, because the statute requires the offender to be "convicted" of a fourth or subsequent violation of the same subsection of a municipal housing code for the same property. The City couldn't even get the Lichtensteins into court once, let alone find them liable for the uncorrected code violations. The second-degree misdemeanor of public nuisance also is inapplicable; the statute is extremely vague and does not specifically pertain to properties and neglectful owners.

We learned that, in Chicago, the law was amended in response to a tragedy strikingly similar to what we saw at the York Street fire. There, two firefighters were killed when a roof collapsed; 17 other firefighters were hurt. The building owner had previously been cited by the city for 14 separate building code violations. As a result of the new legislation, owners of vacant buildings can now be held criminally liable, and jailed for up to six months if building violations cause somebody to get hurt or killed.

We recommend similar measures be adopted here, allowing for criminal liability when a property owner fails to remedy serious fire or building code violations, or where the property has been deemed "unsafe" or "imminently dangerous and hazardous," and anyone suffers a severe injury or death as a result. We recommend that the new law be named in honor of Lt. Robert Neary and Firefighter Daniel Sweeney.

The City's new ordinance requiring that contractors not be tax delinquent should be extended to include owners.

As of January 1, 2014, pursuant to a new city ordinance, contractors must submit tax clearance forms and proof of a valid certificate of insurance before obtaining permits. We believe this requirement should be extended to the building's owner. Licenses and permits should be withheld until the owner pays those taxes.

2) Licenses & Inspections, Law, and Revenue Departments

An outside agency should perform a complete review of L&I.

We saw numerous L&I failures. Inspectors did not cite the Lichtensteins for violations that were obvious to neighbors. There was no enforcement of the violation notices that they did issue. Uncorrected violations were not aggregated, but instead handled piece-

meal in separate cases. L&I failed to require a vacant property license or a sprinkler variance before issuing permits. Because of the York Street fire and other recent tragedies, we recommend that an outside agency perform an evaluation of L& I from top to bottom. This should be a professional, expert review of L&I structure, duties, procedures, and practices, with recommendations for improvements, based on best practices in other jurisdictions.

Licenses and permit applications should request additional information.

Licenses and permits are a privilege, not a right. Any property owner seeking a license or permit for a property, should, under certification and penalty of law for false statements, provide addresses of any other properties owned in Philadelphia, list outstanding code violations, and certify that taxes are current. L&I should verify whether the owner has outstanding code violations or tax delinquencies, and, where these are significant withhold the license or permit until the owner has complied. Additionally, all L&I license and permit applications should require the owner to provide an address, not a post office box, to which all notices of violations and claims should be sent and/or served.

If a license or permit is necessary to correct a code violation, such should be granted. However, the license or permit should be valid for only 30 days in which to abate the violation. L&I should track these time-sensitive licenses or permits and inspect the property upon the expiration of the license or permit.

The L&I inspection process should be improved, and violations consolidated for court.

The Grand Jury learned that inspectors are now cross-trained, so one inspector can issue any type of code violations against a property. This practice should continue. In addition, where an inspector determines that code violations have been previously found by another inspector he or she should be responsible for determining the disposition of those previous violations. Should they still be outstanding, they should be combined and referred to the Law Department simultaneously. The practice of automatically assigning a new case number when a new inspector goes to a property should be discontinued.

Additionally, the inspector should record any contact with the owner or agent of the owner. This demonstrates that the owner has notice of the violation and is helpful for court.

Citizens' complaints should be logged and followed up promptly.

L&I ignored numerous complaints from community members about the vulnerability of the building. Instead of contacting neighbors and investigating their specific complaints, inspectors conducted cursory inspections and issued unhelpful generic notices. Worse, the cases were then marked "resolved," although they were far from resolved, and subsequent citizen complaints were disregarded. L&I should ensure that all complaints, received through 3-1-1 or otherwise, about a property are logged into their system, and should never mark a case resolved before code violations are corrected. Instead, when new complaints come in, inspectors should return to the property and update their inspection.

Cooperation between city departments should be improved and formalized.

L&I and the Fire Department should work together to identify and catalog vacant and abandoned buildings. Such cooperation, however, is inconsistent at best. Yet at the core the mission of both departments is the same—public safety—and each department brings particular expertise relevant to that mission. A coordinated team should inspect all (or at least the most troublesome) large, vacant or abandoned commercial or industrial structures. L&I inspectors, ideally, have broad knowledge of construction across a variety of city codes. Fire personnel have narrower but deeper expertise. In particular, they are acutely aware of dangers posed should these structures catch fire. Further, they are stationed in or close to the neighborhoods where such buildings are located. They thus are in a position to recognize developing problems and to assess whether these are being adequately addressed.

We understand that legislation has just been introduced into City Council to establish a Vacant Property Task Force. While we have not had an opportunity to review this specific proposal, we do recommend that the City develop a combined task force or working group charged with the responsibility of addressing building violations in large, vacant structures. This group should include, at a minimum, personnel from L&I, the Fire Department, and the City Solicitor's office, who meet frequently to evaluate large vacant structures, and, where possible, get them out of the hands of irresponsible absentee owners, and into the hands of reputable developers. All of those properties must be closely monitored for code and tax compliance. This group should be given full authority to expedite resolutions.

City agencies should have access to each other's data.

City departments should have easy access to each other's data in order to improve code and revenue enforcement, and to identify dangerous structures. Failure of owners to comply with codes and pay taxes strongly correlates to the condition of their buildings; tax delinquencies and persistent code violations are thus early-warning signals that a building poses risks to the community.

In this case, while L&I was sending notices of code violations to the Lichtensteins, the Law Department dismissed a tax-lien case for failure of service; the Water Revenue Unit continues use the address of the vacant York Street lot. This is absurd. The Revenue Department, L&I, and Law Department (and other units within the Law Department) had a variety of valid addresses for the Lichtensteins, including Attorney Zaslow's office, Michael Lichtenstein's office, and Nahman Lichtenstein's home.

The Revenue Department and the Law Department's Real Estate Tax Unit should prioritize multi-property owner's delinquent tax cases.

Although the Lichtensteins owed the city over $380,000 in unpaid real estate taxes, no aggressive or comprehensive tax collection action was ever undertaken. Only after the fire, when the tax delinquencies were publicized, did the Revenue Department investigate and inventory all the delinquent real estate taxes owed by the Lichtensteins on their multiple properties.

We learned that the Revenue Department now provides a list of properties with large tax delinquencies to the Law Department's Real Estate Tax Unit. We recommend that the Revenue Department should also provide a list of properties to the Law Department where the same owner is delinquent on multiple properties.

The Law Department must prioritize these cases by expeditiously initiating the foreclosure process and certifying properties for sheriff sale, and aggregate all of the cases into file a single law suit against the owner. There is no reason why this cannot be done.

3) Fire Department

The Fire Department should reinstitute incident safety officer training.

There are no qualifications, beyond rank, to be an incident safety officer (ISO). There should be. The task involves technical skills. An ISO must understand building characteristics and construction, building collapse, fire behavior, fire-fighting techniques, the effects of weather, among other factors in order to be able to identify and evaluate hazardous and potentially hazardous situations. An ISO must know how to establish and enforce collapse zones, and effectively communicate up and down the chain of command.

We urge the Department to reinstate training classes for captains and above, who may be called up to act as ISOs. Technology, or web-based training, might be used to supplement Fire Academy classes, as long as there is follow up, rather than mere self-study. We also recommend that those trained as ISOs take regular refresher courses.

In addition, the Department should consider pre-designating a sufficient number of permanent ISOs, as is done in other jurisdictions, to ensure that at least one ISO at every major fire scene has expertise in safety issues.

The Fire Department should reestablish officer development training.

Officer development training (including ISO training) should be reestablished at each promotion level; *i.e.*, for those moving from firefighter to lieutenant, from lieutenant to captain, from captain to battalion chief, from battalion chief to deputy chief. Supervisors are responsible for the safety of those they command; with each level of promotion an officer becomes responsible for an increased number of firefighters. With this should come increased training.

The Department recently received significant federal grants to be used, in part, to hire new firefighters; we urge the department to take advantage of this opportunity to remedy the training gap. We also encourage the Department to take greater advantage of the curricula offered through the National Fire Academy, especially upper-level executive fire officer programming.

The Fire Department should implement improved means of tracking personnel locations in real time.

Commanders and ISOs must know if fire personnel are in a location where they are not supposed to be, and that location information must be effectively communicated up the chain of command. The current pins-on-a-board system should be replaced with modern computer-based situation boards that can more quickly and accurately show where everyone is, especially if coupled with GPS or similar tracking technology on firefighter's radios, gear, or PASS devices.

The Fire Department should monitor and enforce completion of vacant building inspections.

Local fire companies are responsible for compiling vital building information (VBI) in their areas, to document building conditions and dangers, as well as the location of hydrants, standpipes, sprinklers, and utility shutoffs.

VBIs are supposed to be updated annually, to update pre-incident planning and ensure that companies remain familiar with buildings in their area and the attendant risks. The level of attention to this function, however, varies by company. Battalion chiefs must monitor and enforce company compliance.

The Fire Department should make VBIs available electronically.

The VBI process is currently paper-based. They are printed out, put in a binder, and ferried to the scene by the local company. But not everyone responding to a fire will be from the nearest company; indeed, in a large fire, most personnel, including commanders and safety officers, will be from other areas of the city, and so will not see a VBI until on the scene, if at all. But a command officer responding to a fire should be able to formulate a strategy while en route to the scene. A safety officer should be able to pull up information on site about the building and its dangers that may no longer be visible when the building is engulfed in flames.

Computerization will also allow VBIs to be easily updated, and to include photographs, diagrams, or maps, to increase their usefulness. This would also provide battalion chiefs with a means for monitoring company compliance with VBI requirements.

The Fire Department should adopt an identification system for vacant/abandoned structures as part of the VBI process.

Such systems are in place in many jurisdictions, to designate low-, moderate- and high-risk structures and provide personnel responding to a fire with immediate visual information about the level of hazard and associated risks. Some use placards mounted near every entrance or on each building façade; others use paint. The Fire Department of New York, for example, paints a large red square high up on a building. A plain square indicates that the building was stable when investigated. A white border and diagonal line are added where conditions are hazardous and interior operations should be attempted only with extreme caution. A second diagonal—completing a white "X" in the middle of the red square—alerts firefighters that the building has been deemed too hazardous for interior operations, unless needed to save a life.

We recommend that a similar system, as proposed in a bill recently introduced in City Council, be established here.