SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

STAHL YORK AVENUE CO., LLC,

Plaintiff-Petitioner,

vs.

THE CITY OF NEW YORK; THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION; Meenakshi Srinivasan, in her capacity as Chair of the New York City Landmarks Preservation Commission,

Defendants-Respondents.

Index No. 100999-2014

Hon. Michael D. Stallman

Motion Sequence No. 1

AFFIDAVIT OF JEREMY STERN IN SUPPORT OF STAHL'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS VERIFIED PETITION AND COMPLAINT

STATE OF NEW YORK)
) ss.:
NEW YORK COUNTY)

JEREMY STERN, being duly sworn, says

1. I am a Facility Director with Plaintiff-Petitioner Stahl York Avenue Co., LLC ("Stahl"). I respectfully submit this Affidavit in support of Stahl's Reply Memorandum of Law in Support of Its Verified Petition and Complaint.

2. Attached as Exhibits 1 and 2 hereto are charts I prepared from information taken from Appendices B, B.1, B.2, C, C.1, and C.2 to the New York City Landmarks Preservation Commission's ("LPC") May 20, 2014 denial of Stahl's hardship application. Exhibit 1 demonstrates how reasonable return would have been calculated if the LPC had used the cost approach for calculating assessed value and considered the renovation of all 97 vacant apartments, while retaining all other assumptions that the LPC made in its calculations (including assumptions that Stahl disputed before the LPC, but which need not be resolved in Stahl's favor

for purposes of the relief requested in the Petition). Exhibit 2 performs the same analysis, but includes construction loan interest in calculating renovation costs.

3. These exhibits demonstrate that if the LPC had applied the cost approach and considered the potential return following renovation of all 97 vacant apartments in its calculation of assessed value, real estate taxes, and depreciation, it necessarily would have concluded that Stahl could not earn a reasonable return of 6% of assessed value.

EXHIBIT 1

4. In evaluating whether the Subject Buildings were capable of earning a reasonable return, the LPC considered four scenarios reflecting varying levels of renovations: the Apartments Only scenario assuming a rent of $40 per square foot (R-2344); the Apartments Only scenario assuming a rent of $35 per square foot (R-2345); the Minimum Habitability scenario (R-2346); and the "hybrid" scenario with 53 apartments renovated pursuant to the Apartments Only level, and 44 apartments renovated pursuant to the Minimum Habitability level (R-2347). The columns in Exhibit 1 correspond to these scenarios.

5. Exhibit 1 shows that under each of these four scenarios, if the LPC had used the cost approach and considered all 97 apartments, it necessarily would have concluded that Stahl could not earn a reasonable return under the Landmarks Law.

6. To assess Stahl's ability to earn a reasonable return, the LPC compared Stahl's net operating income to the statutorily set reasonable rate of return of 6% of assessed value. Net operating income was calculated by calculating the difference between the property's gross income and the property's operating expenses, real estate taxes, and depreciation.

7. For each scenario, the LPC calculated the gross income generated by the Subject Buildings based on the rental income from renovated apartments, the rental income from

occupied apartments, laundry income, miscellaneous revenue, and a deduction for a 5% vacancy rate. (R-2344-47). The same total gross income amounts for each scenario that the LPC used in its calculations are reflected in the "Effective Gross Income" row in Exhibit 1.

8. For each scenario, the LPC calculated operating expenses, excluding real estate taxes from that calculation. (R-2344-47). The operating expense amounts that the LPC used in its calculations are reflected in the "Operating Expenses" row in Exhibit 1.

9. For each scenario, the LPC calculated assessed value under the cost approach assuming the renovation of 97 apartments. (R-2351). This figure was based on renovation costs but excluded construction loan interest. (*Id.*). The "Assessed Value" row in Exhibit 1 reflects these assessed value figures used by the LPC.

10. The LPC also calculated real estate tax expenses for each scenario under the cost approach, by multiplying the assessed value figure by the applicable 13.241% tax rate. (R-2351). However, it did not actually include these real estate tax amounts in any of its reasonable return calculations. Even when the LPC claimed to be applying the cost approach in its "alternative" scenario, it actually used real estate tax expense numbers that corresponded to the numbers calculated under the income approach. (*Compare* R-2344-47 (LPC's reasonable return calculation for each renovation scenario), *with* R-2349 (calculating projected real estate tax expenses under the income approach)). This understated real estate taxes, which should have been calculated as a percentage of assessed value as determined under the cost approach. The "Real Estate Taxes" row in Exhibit 1 reflects the real estate tax expense amounts that the LPC should have used if it had actually applied the cost approach.

11. The LPC's calculation of depreciation understated the true depreciation value because the LPC calculated depreciation considering the renovation of 53 vacant apartments (R-

2348), rather than considering the figure for all 97 vacant apartments. Using the LPC's other assumptions, I calculated the depreciation to reflect renovations to 97 vacant apartments—as opposed to 53 apartments.

12. The LPC determined per apartment renovation costs under each scenario, including hard costs, a contingency rate of 15% of hard costs, and a soft cost factor of 22%. (R-2348). As discussed in the Petition, hard costs refer to tangible construction costs, such as materials, labor, and other construction costs, while soft costs are non-tangible construction costs, such as architectural and engineering fees, insurance, and financing costs. *See* Pet. ¶ 96 n.5. The "Hard Costs," "Contingency Amount," and "Soft Cost Amount" rows in the "Depreciation Analysis" table in Exhibit 1 are all calculated using the same per-unit costs used by the LPC. To calculate the totals in the "Hard Costs," "Contingency Amount," and "Soft Cost Amount" rows in the "Depreciation Analysis" table in Exhibit 1, I multiplied the per-unit costs used by the LPC to reflect consideration of 97 apartments rather than 53.

13. In addition, I modified the LPC's calculation of renovation costs related to the replacement of windows (R-2348), because the LPC only considered costs for the number of windows that would need to be replaced for 53 vacant apartments, rather than the 97 actually vacant apartments. In addressing the Apartments Only scenarios, the LPC calculated renovation costs for the replacement of 180 windows. (R-2348). Using the LPC's methodology,[1] I calculated a quantity of 330 windows to be renovated, considering the full 97 vacant apartments.

[1] The LPC calculated a per-window cost of $2,000, a contingency rate of 15% of window renovation costs, and a soft cost factor of 22% of total window renovation costs. (*Id.*). The "Window Hard Costs," "Window Contingency Amount," and "Window Soft Cost Amount" rows in the "Depreciation Analysis" table of Exhibit 1 are all calculated using these per-unit costs.

In the two columns reflecting the Apartments Only scenarios, I calculated the window renovation costs to reflect 330 windows, as opposed to 180 windows.

14. For the Minimum Habitability scenario, the LPC did not include any window costs. (R-2348). Accordingly, the column reflecting the Minimum Habitability scenario in Exhibit 1 does not include any window renovation costs.

15. The "hybrid" scenario reflected 53 apartments renovated to the Apartments Only level and 44 apartments renovated to the Minimum Habitability level. Accordingly, for the column reflecting the hybrid scenario, I included renovation costs for 180 windows—which reflects the 53 the apartments renovated to the Apartments Only level under that scenario.

16. To calculate the reasonable return under each scenario, I multiplied the assessed value by 6%, consistent with the definition of reasonable return under the Landmarks Law. These amounts are reflected in the "Reasonable Return" row in Exhibit 1.

17. The "Net Operating Income" row in Exhibit 1 is calculated by subtracting the "Operating Expenses," "Real Estate Taxes," and "Depreciation" amounts from the "Effective Gross Income" amount for each scenario.

18. I then calculated the difference between "Net Operating Income" and "Reasonable Return" in the "Difference in Return" row in Exhibit 1.

19. For all four scenarios, the "Net Operating Income" of the property is less than the "Reasonable Return" amount as defined under the Landmarks Law.

EXHIBIT 2

20. Exhibit 2 uses the same analysis as Exhibit 1, but also considers the effect of including construction loan interest on the calculation of reasonable return. It shows that the

return would be even lower if construction loan interest is considered, and that the rate of return would be below a reasonable return of 6% of assessed value.

21. Including construction loan interest increases the amount of soft costs, thereby increasing the total renovation costs for each scenario. Accordingly, the amounts in the "Assessed Value," "Real Estate Taxes," and "Depreciation" rows are all higher, reflecting the increased renovation costs.

22. For all four scenarios in Exhibit 2, the "Net Operating Income" of the property is less than the "Reasonable Return" amount as defined under the Landmarks Law.

Dated: New York, New York
January 29, 2015

Jeremy Stern

Jeremy Stern

LORRAINE CAMPISI
Notary Public, State of New York
No. 01CA6029615
Qualified in Queens County
Commission Expires 08/23/2017

Lorraine Campisi

Exhibit 1

	Case 1 - Apartments Only		Case 2 - Apartments Only		Case 3 - Minimum Habitability		Case 4 - Combination of 2 & 3	
Effective Gross Income		$2,311,397.00		$2,142,088.00		$1,906,460.00		$2,035,205.00
Operating Expenses	$11.46 PSF	$972,106.00	$11.46 PSF	$972,106.00	$11.46 PSF	$972,106.00	$11.46 PSF	$972,106.00
Real Estate Taxes		$816,118.00		$816,118.00		$627,572.00		$730,540.00
Depreciation		$176,006.22		$176,006.22		$112,719.42		$147,285.05
Total Expenses		$1,964,230.22		$1,964,230.22		$1,712,397.42		$1,849,931.05
Net Operating Income		**$347,166.78**		**$177,857.78**		**$194,062.58**		**$185,273.95**
Assessed Value		$6,163,564.89		$6,163,564.89		$4,739,612.03		$5,494,741.61
Reasonable Return (6.00%)		**$369,813.89**		**$369,813.89**		**$284,376.72**		**$329,684.50**
Difference		**($22,647.11)**		**($191,956.11)**		**($90,314.14)**		**($144,410.55)**

DEPRECIATION ANALYSIS								
Hard Costs	$52,471.00	$5,089,687.00	$52,471.00	$5,089,687.00	$41,427.00	$4,018,419.00	hybrid	$4,603,751.00
Contingency Amount	15.00%	$763,453.05	15.00%	$763,453.05	N/A	$0.00	15.00%	$417,144.45
Soft Cost Amount	22.00%	$1,287,690.81	22.00%	$1,287,690.81	22.00%	$884,052.18	22.00%	$1,104,597.00
Number of Windows		330		330		0		180
Window Hard Costs	$2,000.00	$660,000.00	$2,000.00	$660,000.00	N/A	$0.00	$2,000.00	$360,000.00
Window Contingency Amount	15.00%	$99,000.00	15.00%	$99,000.00	N/A	$0.00	15.00%	$54,000.00
Window Soft Cost Amount	22.00%	$166,980.00	22.00%	$166,980.00	N/A	$0.00	22.00%	$91,080.00
Value of subject exclusive of land		$733,500.00		$733,500.00		$733,500.00		$733,500.00
Total		$8,800,310.86		$8,800,310.86		$5,635,971.18		$7,364,252.45
Depreciation	**2.00%**	**$176,006.22**		**$176,006.22**		**$112,719.42**		**$147,285.05**

Exhibit 2

	Case 1 - Apartments Only		Case 2 - Apartments Only		Case 3 - Minimum Habitability		Case 4 - Combination of 2 & 3	
Effective Gross Income		$2,311,397.00		$2,142,088.00		$1,906,460.45		$2,035,205.40
Operating Expenses	$11.46 PSF	$972,106.00	$11.46 PSF	$972,106.00	$11.46 PSF	$972,106.00	$11.46 PSF	$972,106.00
Real Estate Taxes		$856,658.28		$856,658.28		$652,209.94		$763,872.75
Depreciation		$189,614.00		$189,614.00		$120,989.33		$158,470.06
Total Expenses		$2,018,378.28		$2,018,378.28		$1,745,305.27		$1,894,448.81
Net Operating Income		**$293,018.72**		**$123,709.72**		**$161,155.18**		**$140,756.59**
Assessed Value		$6,469,740.03		$6,469,740.03		$4,925,684.92		$5,744,505.35
Reasonable Return (6.00%)		**$388,184.40**		**$388,184.40**		**$295,541.10**		**$344,670.32**
Difference		**($95,165.68)**		**($264,474.68)**		**($134,385.92)**		**($203,913.73)**

DEPRECIATION ANALYSIS								
Vacant Unit Hard Costs	$52,471.00	$5,089,687.00	$52,471.00	$5,089,687.00	$41,427.00	$4,018,419.00	hybrid	$4,603,751.00
Contingency Amount	15.00%	$763,453.05	15.00%	$763,453.05	N/A	$0.00	15.00%	$417,144.45
Soft Cost Amount	32.29%	$1,889,978.92	32.29%	$1,889,978.92	32.29%	$1,297,547.50	32.29%	$1,621,247.14
Number of Windows		330		330		0		180
Window Hard Costs	$2,000.00	$660,000.00	$2,000.00	$660,000.00	N/A	$0.00	$2,000.00	$360,000.00
Contingency Amount	15.00%	$99,000.00	15.00%	$99,000.00	N/A	$0.00	15.00%	$54,000.00
Soft Cost Amount	32.29%	$245,081.10	32.29%	$245,081.10	N/A	$0.00	32.29%	$133,680.60
Value of subject exclusive of land		$733,500.00		$733,500.00		$733,500.00		$733,500.00
Total		$9,480,700.07		$9,480,700.07		$6,049,466.50		$7,923,503.19
Depreciation	**2.00%**	**$189,614.00**		**$189,614.00**		**$120,989.33**		**$158,470.06**