AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Stahl York Avenue Co., LLC

Plaintiff

v.

The City of New York and the New York City Landmarks Preservation Commission

Defendant

Civil Action No. 14 CV 7665

JUDGE RAMOS

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* The City of New York
The New York City Landmarks Preservation Commission
c/o Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007
(212) 356-1000

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Alexandra A.E. Shapiro
Shapiro, Arato & Isserles LLP
500 Fifth Avenue, 40th Floor
New York, NY 10110
(212) 257-4880

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT

Date: 09/22/2014

Signature of Clerk or Deputy Clerk

JS 44C/SDNY
REV. 4/2014

JUDGE RAMOS 14 CV 7665

CIVIL COVER SHEET

SEP 22 2014

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS
Stahl York Avenue Co., LLC

DEFENDANTS
The City of New York and the New York City Landmarks Preservation Commission

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER
Shapiro, Arato & Isserles LLP
500 Fifth Avenue, 40th Floor
New York, NY 10110
(212) 257-4880

ATTORNEYS (IF KNOWN)
The Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007
(212) 356-1000

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Violation of substantive due process under 42 U.S.C. 1983

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☑ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

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TORTS

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- [ ] 120 MARINE
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- [ ] 140 NEGOTIABLE INSTRUMENT
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- [ ] 151 MEDICARE ACT
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- [ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- [ ] 160 STOCKHOLDERS SUITS
- [ ] 190 OTHER CONTRACT
- [ ] 195 CONTRACT PRODUCT LIABILITY
- [ ] 196 FRANCHISE

REAL PROPERTY
- [ ] 210 LAND CONDEMNATION
- [ ] 220 FORECLOSURE
- [ ] 230 RENT LEASE & EJECTMENT
- [ ] 240 TORTS TO LAND
- [ ] 245 TORT PRODUCT LIABILITY
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- [ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND $_____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

☐ a. all parties represented

☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	~~[X] 1~~	~~[X] 1~~	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ] 3	[ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ] 5	[ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2	[ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4	[ ] 4	FOREIGN NATION	[ ] 6	[ ] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Stahl York Avenue Co., LLC
c/o Stahl Organization
277 Park Avenue
New York, NY 10172
New York County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

The City of New York
c/o The Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007
New York County

The New York City Landmarks Preservation Commission
1 Centre Street, 9th Floor
New York, NY 10007
New York County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN

(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 9/22/2014 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT
[ ] NO
[X] YES (DATE ADMITTED Mo. 06 Yr. 2000)
Attorney Bar Code # AS 4816

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge MAG. JUDGE PECK is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE RAMOS

14 CV 7665

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Plaintiff,

Stahl York Avenue Co., LLC

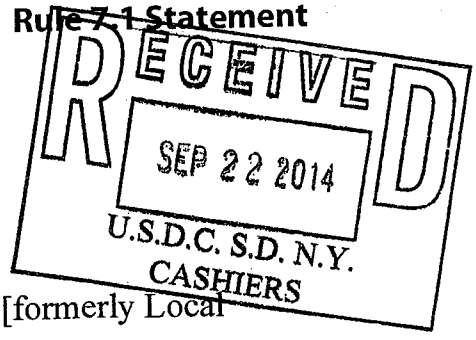
-v-

The City of New York and the New York City Landmarks Preservation Commission

Defendant.

Case No. _____

Rule 7.1 Statement



Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for

Stahl York Avenue Co., LLC (a private non-governmental party)

certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

None

Date: 9/22/14

Signature of Attorney

Attorney Bar Code: AB4816

JUDGE RAMOS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV 7665

STAHL YORK AVENUE CO., LLC,

Plaintiff,

v.

THE CITY OF NEW YORK and THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION,

Defendants.

Civil Action No.

COMPLAINT

Plaintiff-petitioner Stahl York Avenue Co., LLC ("Stahl"), by its attorneys Shapiro, Arato & Isserles LLP, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. For almost 30 years, Stahl, a real estate development corporation, reasonably believed that it was free to redevelop two century-old, architecturally insignificant tenement buildings that it purchased in 1977 (the "Buildings"). Stahl's expectation that it could, at its election, demolish the Buildings and replace them with more modern structures was reinforced in 1990. At that time, the City of New York expressly decided *not* to landmark the Buildings and to preserve Stahl's right to redevelop them, and its decision was affirmed in court.

2. Stahl therefore began to take steps to replace the archaic six-story walk-up Buildings with a modern, mixed-income condominium tower. As is, the apartments in the Buildings are simply unfit for modern living: they are tiny, cramped, and out-of-date; and because of their archaic design, many of them cannot accommodate basic needs such as queen-sized beds or normal bathroom fixtures. But as soon as Stahl revealed its redevelopment plans in 2006, the New York City Landmarks Preservation Commission ("LPC") abruptly changed

course in the face of improper political pressure and, based on anti-developer political animus, landmarked the Buildings, 16 years after the City had decided not to do so. Absent the designation, the properties, if redeveloped pursuant to Stahl's plan, are worth up to $200 million, and would provide the City with much-needed housing, jobs, tax revenues, and economic development. But the landmark designation has gutted the value of the properties, leaving Stahl with two antiquated Buildings and a negative economic return. At a time of an unprecedented housing shortage in New York City, the LPC's actions have blocked Stahl from pursuing exactly the kind of residential housing development this City needs.

3. Stahl sought relief through a statutory "hardship" procedure that requires the LPC to authorize alteration or reconstruction of a landmarked property when the owner cannot earn a reasonable return. Yet, the LPC, motivated by animus and undeterred in its insistence on preventing any development of the Buildings, denied Stahl's hardship application, based on a demonstrably flawed and indefensible analysis. The LPC manipulated its economic "analysis" and cherry-picked facts to reach its predetermined conclusion: that Stahl should be barred from developing the Buildings. The LPC's decisions, taken together, deprived Stahl of its substantive due process rights.

4. The Buildings are part of a complex of low-rise tenement housing units that Stahl owns, and which the LPC attempted to designate as a landmark in 1990. At the time, the Board of Estimate ("BOE"), which had final authority for the City on landmark designations, determined that the two Buildings should *not* be landmarked, expressly recognizing the need for additional housing units in the area and the need to preserve Stahl's development rights. In connection with that decision, Stahl acquiesced in the BOE's decision to designate as landmarks the other buildings in the same complex as the Buildings. Community groups challenged the

BOE's determination not to landmark the Buildings, but the New York Supreme Court upheld it, and the groups did not appeal.

5. Taking the City at its word, Stahl operated the Buildings for 16 years reasonably expecting that it could redevelop the properties in the future. But once Stahl began to bring its development plans to fruition, politically influential local residents who did not want their views obscured and did not want more people to live in their neighborhood, and allied interest groups who were hostile to development brought substantial political pressure to bear on the LPC to block Stahl's plans. The LPC succumbed to this pressure, even though it lacks authority to consider the types of issues the influential residents were concerned about. It therefore designated the Buildings as a landmark, thus stripping away the valuable development rights that the BOE had deliberately left in place.

6. At that point, Stahl's only avenue for judicial relief was an administrative petition under Article 78 of the New York Civil Practice Law and Rules, which it pursued. The state courts, however, believed that deference to the LPC's "expertise" was nonetheless required, and upheld the designation.

7. Because of the crushing economic impact of the designation and the need to obtain a final ruling before seeking a judicial remedy for the deprivation of its constitutional rights, Stahl sought redress by filing a hardship application pursuant to the New York City Landmarks Law. That law says that an owner of a landmarked property who is unable to earn a reasonable return on the property—defined as 6% of its assessed value—must be granted affirmative relief from the economic burden of the designation.

8. Stahl's intent, if its application were granted, was to promptly replace the outdated Buildings with a modern mixed-income condominium tower, which would have

provided much-needed additional housing for City residents and substantial economic development for the neighborhood. Stahl pledged to relocate tenants remaining in the Buildings to other apartments in the larger complex of buildings that were landmarked in 1990, to spend millions renovating those other buildings too, and to dedicate a number of new units for affordable housing.

9. Stahl presented overwhelming evidence in the hardship application process that it could not earn anything remotely approximating the statutory 6% reasonable rate of return, and demonstrated that, at the very most, it could earn a mere 1.19% return after performing substantial and costly renovations. This demonstrated the severe economic deprivation that the hardship application process was designed to avoid.

10. Nonetheless, the LPC again succumbed to political pressure to block any redevelopment, and engaged in a pre-judged, unreasonable, animus-driven, and result-oriented economic analysis tailored to deprive Stahl of its express rights under the Landmarks Law to demolish a designated building that cannot provide a reasonable rate of return. The administrative record is replete with statements by Commissioners and testimony from politically active residents and members of allied interest groups indicating that the LPC did not engage in an objective or fair review of Stahl's claim. As one commissioner put it, the LPC viewed its "job here" as "protect[ing] historic buildings and not to sort of be taken in . . . by a property owner whose goal is to tear a building down."

11. The LPC attempted to explain away the demonstrable hardship, by using erroneous interpretations of the Landmarks Law and a transparently flawed and jerry-rigged economic analysis to conclude that Stahl was somehow capable of earning a reasonable rate of return on these cramped and archaic tenement-style apartments—even after spending millions of

dollars on required renovations. But it could only reach this conclusion by repeatedly disregarding the statute, the record, and its own directly applicable precedent, in order to manufacture an incoherent economic hardship analysis that unfairly omitted a substantial part of the renovation costs Stahl would incur. The resulting analysis had nothing to do with the economic reality Stahl faces.

12. Stahl brings this action under 42 U.S.C. § 1983 to redress the violation of Stahl's substantive due process rights under the United States Constitution caused by the improper landmark designation of the Buildings and the irrational and animus-driven denial of its hardship application.

PARTIES

13. Plaintiff-Petitioner Stahl is a limited liability corporation organized and existing under the laws of the State of New York and engaged in the business of real estate development, including the provision of apartment housing to New York City residents at affordable rates. Stahl currently owns the Buildings.

14. Defendant-Respondent the City of New York is a municipal corporation organized and existing under the laws of the State of New York.

15. Defendant-Respondent LPC is a municipal preservation agency in the New York City government organized pursuant to Chapter 74 of the Charter of the City of New York. The LPC has powers and duties with respect to the establishment and regulation of landmarks set forth in the Landmarks Law, N.Y.C. Admin. Code. § 25-301, *et seq.*

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over the claim alleged herein pursuant to 28 U.S.C. § 1331, as Stahl's claim raises a question of federal law.[1]

17. This Court has personal jurisdiction over the City of New York and the LPC, and venue in the Southern District of New York is proper pursuant to 28 U.S.C. § 1391(b) because both defendants reside in this District and a substantial part of the events giving rise to the claim occurred in this District.

FACTS

A. The Buildings

18. The Buildings are two architecturally insignificant six-story walk-up tenement-style apartment buildings located at 429 East 64th Street and 430 65th Street in Manhattan.

19. The Buildings sit on the city block ("block 1459") bordered by East 64th Street, East 65th Street, First Avenue, and York Avenue. The rest of that block is occupied by 13 other buildings ("Other Buildings") that Stahl also owns. Collectively, all the buildings on block 1459 are referred to as the First Avenue Estate ("FAE").

20. Stahl acquired the FAE in 1977 for its future development potential.

21. The Buildings contain a total of 190 poorly designed, warren-like apartments. The Buildings were designed in the early 1900s as tenement housing, and the apartments are therefore of substandard quality by modern standards. They lack all modern amenities, appliances, and fixtures, and are extremely small, with an average of approximately 370 leasable square feet per apartment. The layouts of the units are also in many ways unfit for modern tenants. For example, many apartments contain bedrooms that are too small to even hold a

[1] Stahl has also brought a separate action alleging an unconstitutional taking without just compensation and a violation of New York administrative law in the New York Supreme Court, because it is required under controlling precedents to bring those claims in state court.

queen-sized bed. Others have abnormally-shaped bathrooms that cannot accommodate normal fixtures.

22. The Buildings themselves are similarly outdated. Though they comply with all applicable legal requirements, in comparison with modern structures, they have obsolete electrical, mechanical, and ventilation systems, and neither is handicap accessible. These problems have only been exacerbated by the age and decay of the Buildings.

23. Unsurprisingly, the inferior condition and design of the apartments severely hamstrings their marketability. Because of their size and the lack of elevators, they appeal only to a limited demographic. These deficiencies also limit the rent Stahl can charge.

24. Moreover, a large number of the apartments are currently vacant,[2] and due to their age, cannot legally be rented in their existing condition. At a minimum, these apartments need renovations to electrical systems and plumbing fixtures, appliance repair and replacement, and lead paint abatement just to make them habitable.

25. As compared to the rest of the FAE complex, the apartments in the Buildings are the least attractive. They are smaller, have inferior layouts, and are less safe because they can only be entered by an interior courtyard invisible from the street. Moreover, the Buildings are the easternmost buildings of the FAE, and thus are the farthest from the amenities of First Avenue and from subway lines, which are all on Lexington Avenue or further west.

26. In sum, the Buildings are sub-par apartment buildings, with a very limited appeal to a limited demographic, and capable of generating only meager rental income.

B. The BOE Decides Not To Designate The Buildings As Landmarks

27. The FAE was constructed by the City and Suburban Home Company ("CSHC"), a now-defunct philanthropic corporation, which existed from 1896 to 1961 and was dedicated to

[2] At the time of this Complaint, 126 apartments are vacant.

solving "the housing problems of the nation's working poor." CSHC financed and developed numerous "model tenement projects" throughout the country, and was particularly known for its "light-court" tenement style buildings, in which courtyards, apartments, and common areas were designed to maximize light and air. The FAE is an example of this style.

28. The Other Buildings of the FAE were completed in 1906 and are the oldest surviving example of CSHC's model tenement projects. They were designed by a renowned architect, James Ware, and were built on a single plot of land purchased by CSHC in 1896.

29. At this time, CSHC did not own the land on which the Buildings sit, and it did not design or construct the Other Buildings with an intention of extending the FAE to cover the entire block. The CSHC purchased the land on which the Buildings sit from a different seller in 1913—18 years after it purchased the plot of land for the Other Buildings and seven years after it completed the Other Buildings. The Buildings were not completed until 1915. Moreover, the Buildings were designed not by Ware, but by a different and undistinguished architect employed by CSHC, Philip Ohm.

30. Ohm also designed a complex of "light-court" tenement buildings called the York Avenue Estates ("YAE"), bounded by York Avenue, the Franklin Delano Roosevelt Drive, East 78th Street, and East 79th Street. Unlike the FAE, the YAE was designed from the beginning as a full-block complex.

31. On April 24, 1990, the LPC voted to designate both the FAE and the YAE as landmarks, including within the designation, not just the Ware-designed Other Buildings, but also the Ohm-designed Buildings. In its formal designation report (the "1990 Report"), the LPC paid little heed to the Buildings in particular, focusing almost exclusively on the Other Buildings. It raised only two plausible rationales for including the Buildings within the designation. First, it

observed that "the similarities in size, scale, use of materials, and decorative detailing between the various buildings on the block creates a strong sense of visual homogeneity." Second, it concluded that the designation would cover "one of the only two full city block developments of light-court model tenements in the country."

32. At the time of the designation, the BOE had statutory authority to review, overturn, or modify all landmark designations by the LPC. After considering the factual record, the BOE modified the designation, deciding that the Buildings should not be landmarked. In doing so, the BOE explicitly recognized the need to ensure adequate real estate development and to preserve Stahl's rights to develop the Buildings, observing that approving the designation in its entirety "would have precluded new as-of-right construction" on a "very large site[] . . . in this high tax-producing area" and that "it was important to allow for such development in the future."

33. Stahl never challenged the designation of the Other Buildings in court largely because its ability to develop the Buildings was left intact, as was the option to transfer unused development rights from the Other Buildings to the un-landmarked Buildings. Similarly, the City elected not to appeal the BOE's decision not to landmark the Buildings. However, various community groups challenged the modification in an Article 78 proceeding. On July 17, 1991, the New York Supreme Court dismissed the petition, concluding that "the compromise by the BOE was itself inherently reasonable," balancing the need to preserve Stahl's development rights while still protecting the bulk of the buildings of the FAE, which were "significant not for their architectural merits, but the historical significance of housing created for the working poor." These community groups did not appeal the Supreme Court's decision.

C. Stahl Begins To Take Steps To Develop The Buildings

34. The BOE's decision, the Supreme Court's affirmance of that decision, and the City's acquiescence in the decision, all reinforced Stahl's reasonable expectation that it retained its right to develop the Buildings.

35. In 2004, the estimated potential value of the properties if redeveloped vastly exceeded the value of the existing Buildings, and Stahl began to take steps that would enable it to carry out a redevelopment plan involving demolition of the Buildings and construction of a modern condominium tower. Stahl devoted numerous hours of internal staff time to the project, and retained an architectural firm to design a redevelopment plan and a law firm for related legal advice.

36. To implement any redevelopment plan, Stahl would eventually need the Buildings to be vacant. However, its ability to vacate many apartments was subject to restrictions imposed by the rent control and rent stabilization laws. In addition, in many cases it would not be feasible to re-lease vacant apartments, as they required substantial and costly renovations just to bring them to a habitable level. Accordingly, in order to maximize the possibility of redeveloping the Buildings at the appropriate time and avoid needlessly incurring the expense of repairs to Buildings it planned to replace, Stahl kept apartments unleased as they became vacant, beginning at least as early as 2000.

37. In preparation for development, Stahl also did not undertake unnecessary capital improvements in the vacant apartments or the Buildings themselves. However, Stahl ensured that the Buildings were maintained in accordance with the law.

D. The LPC Designates The Buildings

38. Immediately after Stahl advised the Community Board representing the Upper East Side of its further plans to redevelop the Buildings, the LPC notified Stahl that it had calendared a public hearing to revisit the issue of landmarking the Buildings, even though the 16-year-old decision not to designate them as landmarks was long-settled and had been affirmed by the courts.

39. Upon information and belief, the LPC's decision to reconsider the landmark status of the Buildings was substantially motivated by ex parte communications and political pressure from local residents and groups.

40. At that time, unencumbered by the landmark designation, the properties could have been sold for nearly $100 million, even when discounting for the limited market for redevelopment projects of this size, and the risks inherent in real estate development generally. If Stahl were to redevelop the properties itself—as it planned to—they were worth almost twice that amount.

41. The public hearing on the landmarking of the Buildings was held on November 14, 2006. Stahl appeared and presented a comprehensive and exhaustive memorandum in support of its position, explaining the historical, legal, and architectural support for preserving the BOE's decision.

42. In determining whether to designate a property as a landmark, the LPC may only consider the "special character" or the "special historical or aesthetic interest or value" of the property. N.Y.C. Admin. Code § 25-302(n). It is not permitted to consider zoning matters, such as "the height and bulk of buildings," "the area of yards, courts and other open spaces," and the "density of population." N.Y.C. Admin. Code § 25-304.

43. But the transcripts of the hearing make clear that the proceedings were improperly focused on the ordinary zoning concerns of politically influential local residents who sought to block any and all development to preserve their special interests. The transcripts are replete with testimony by residents who objected to the aesthetics of the proposed redevelopment, speculated that there would be decreased access to air and light in their own apartments, and complained about the prospect of having more people live in the neighborhood. These residents demanded that the LPC landmark the Buildings for reasons such as ensuring that "members of the surrounding community . . . are able to prosper in the resplendent gift of shadow-free, sun-filled, horde-less living;" preserving access to street parking and the absence of pedestrian and car traffic; and preventing residents' rent from increasing.

44. The LPC even acknowledged that it was relying on factors that were outside the scope of its authority. One Commissioner observed that "I don't know whether this is even one of our criteria, but it does concern me that if these buildings are lost they will be replaced by something that eliminates the light and air to the buildings that remain that are still designated."

45. Unsurprisingly, then, the LPC improperly capitulated to local political interests, and voted to overturn the BOE's "reasonable" compromise and modify the designation of the Other Buildings of the FAE to include the Buildings.

46. The LPC's decision was based predominantly on the same facts as its 1990 designation of the Other Buildings. Its formal designation report ("2006 Report") largely parroted the agency's reasoning from 1990, which the BOE and the Supreme Court found inadequate to justify the landmarking of the Buildings. Indeed, the 2006 Report incorporated verbatim the LPC's 1990 Report, and provided only a few pages of new discussion.

47. The sole new reason the LPC mentioned for designating the Buildings was that their inclusion would "enhance[] our understanding of the work of [CSHC] since the complex encompassed the earliest and latest examples of the light-court model tenements that characterized [CSHC's] urban development projects." The 2006 Report did not explain why this observation—which obviously could have been made in 1990—was entirely absent from the 1990 Report. It also did not clarify why it was necessary to landmark additional examples of the light-court tenement style, which was already adequately illustrated by the Other Buildings and the full-block YAE that was designed by the same architect as the Buildings.

48. The City Council voted to approve the LPC's decision on February 1, 2007, on essentially the same grounds. The Council raised no new facts, and, like the LPC, focused predominantly on zoning considerations rather than the "special" characteristics (or lack thereof) of the Buildings.

49. On May 31, 2007, Stahl filed an Article 78 petition challenging the landmark designation of the Buildings.[3] On September 24, 2008, the New York Supreme Court denied Stahl's petition.

50. On June 24, 2010, the New York Supreme Court, Appellate Division affirmed the dismissal.

51. On November 18, 2010, the New York Court of Appeals denied Stahl's motion for leave to appeal, exhausting Stahl's Article 78 challenge to the landmark designation.

[3] Stahl did not raise a constitutional claim at this time, because it would have been premature to do so until after Stahl applied for, and obtained a ruling on, a certificate of appropriateness, which Stahl pursued after the Article 78 proceeding concluded. *See Dougherty v. Town of North Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 88-89 (2d Cir. 2002) (substantive due process claim can only be brought once landowner has received a "final decision" from the regulatory agency).

E. Stahl Seeks Redress Through The Hardship Application Process

52. Because of the LPC's about-face in designating the Buildings as landmarks 16 years after the BOE's decision not to landmark them, Stahl was faced with an onerous predicament. For years, Stahl had taken steps to prepare the Buildings for redevelopment, most notably by keeping apartments vacant as they came due, and by foregoing new capital improvements to the Buildings. But the landmark designation barred Stahl from engaging in any redevelopment of the Buildings without LPC approval. *See* N.Y.C. Admin. Code § 25-305(a)(1). In each year since the designation, Stahl had been losing money on the Buildings. And in order to rent the vacant units, it would first have to spend millions on renovations. Yet, as explained below, there was no realistic prospect of recouping the moneys necessary for such renovations, much less seeing a reasonable rate of return.

53. Because the designation had deprived Stahl of essentially all economically viable use of the properties, Stahl sought redress through the Landmarks Law. On October 7, 2010, it requested a certificate of appropriateness authorizing demolition of the Buildings on ground of insufficient return, pursuant to N.Y.C. Administrative Code § 25-309, an avenue for relief from the economic impact of a designation provided to landowners.

54. A landowner affected by a designation may request a certificate of appropriateness authorizing demolition, alterations, or reconstruction of the property on the ground that the "improvement parcel . . . is not capable of earning a reasonable return." N.Y.C. Admin. Code §§ 25-302(c), 25-309. If the landowner establishes that the properties cannot generate a reasonable return, the LPC is required to grant the landowner affirmative relief. § 25-309.

55. Reasonable return is defined as an annual net return—*i.e.*, the amount by which income exceeds operating expenses, excluding mortgage interest and amortization but including depreciation—of 6% of a property's assessed value in a given test year. § 25-302(v)(1)-(3). Because Stahl's application was filed in October 2010, the relevant test year under the Landmarks Law was the prior full calendar year, or 2009. § 25-302(v)(3)(b).

56. The denominator of the reasonable return equation is the assessed value of the improvement parcel. § 25-302(v)(2). Assessed value, as defined by the New York City Department of Finance ("DOF"), is calculated as a percentage of the market value of the property. That percentage depends on the tax class of the property in question. For multi-unit residential properties like the Buildings, assessed value is defined as just 45% of market value. Accordingly, the statutory reasonable return of 6% of assessed value in actuality reflects a mere 2.7% return on the market value of a property.

57. At all times, Stahl's intent if the hardship application were granted was to demolish the Buildings and to construct modern mixed-income condominium towers.

58. Stahl pledged that it would dedicate a large number of units in these new buildings to affordable housing.

59. Stahl also promised the LPC that it would use proceeds from this redevelopment to perform extensive renovations on the Other Buildings of the FAE. Tenants remaining in the Buildings would also be relocated to comparable or better renovated apartments within the FAE, at no increase in rent.

F. Stahl Endures A Time-Consuming And Demonstrably Biased Application Process

60. The LPC held three public hearings regarding Stahl's hardship application, on January 24, 2012, June 11, 2013, and October 29, 2013. The transcripts of these hearings show

that the proceedings were dominated by interest groups hostile to the prospect of any development, who accused Stahl of wrongdoing for not simply acquiescing to the 2006 designation. Indeed, several speakers criticized Stahl for the *BOE's* decision not to landmark the Buildings in 1990. For example, various speakers testified:

- "This is simply the latest phase in a failed strategy to overturn the Landmark Commission's 2006 designation by defacing the buildings, purposely withholding apartments from the rental market and *now even asking leave to demolish them.*"
- "[T]his application . . . is[] a desperate last ditch attempt[t] by the owners to avoid doing what they were told to do by this commission over six years ago."
- Stahl's application should be rejected because there was "documented evidence" of Stahl's "opposition to preservation," "including getting the original landmark designation overturned by the [BOE]" and "filing lawsuits that [Stahl] lost at every level of the court system, including at the Court of Appeals."
- "In this case, the applicant has waged an expensive, decades long war against landmark designation."

61. The LPC also repeatedly made comments suggesting that they had prejudged Stahl's application in the face of this political pressure, and simply would not permit redevelopment or even entertain the possibility that an actual hardship existed. At one hearing, a Commissioner announced that the LPC's "job here is to protect historic buildings and not to sort of be taken in by certain kinds of arguments by a landlord whose job – by a property owner whose goal is to tear a building down." Another Commissioner described the LPC as "advocates" for preservation. And yet another did not believe there could be a "true hardship" simply because the Buildings were located in the Upper East Side.

62. Moreover, the Commissioners openly relied on, as fact, the opinions of friends and acquaintances who lacked any knowledge of the facts or of Stahl's presentations. One Commissioner expressed her belief that the poor condition of the vacant apartments—which she conceded was documented in photographs—could be "ameliorate[d]" because current tenants in

occupied apartments have filled them "with art, ingenious built-ins, furnishings, personality and pride of place." Another relied on the opinions of a friend in the fashion industry as evidence that the Buildings would be marketable to prospective tenants.

63. In connection with its hardship application, Stahl had retained two experts, a real estate valuation company and a construction cost consulting firm to evaluate several renovation scenarios involving varying levels of renovations to vacant apartments (*e.g.*, renovations simply to bring the apartments up to code, renovations to make the apartments competitive on the rental market) in order to assess whether there was anything Stahl could do to earn a reasonable return on the Buildings. Stahl also submitted substantial supporting evidence and new renovation scenarios in response to dozens of questions from the LPC. This evidence and the experts' findings established conclusively that Stahl could not earn the statutorily-prescribed reasonable return of 6% of assessed value under any circumstances.

64. But to no one's surprise, the LPC disregarded that evidence and once again caved to political pressure from the local interest groups, voting on May 20, 2014 to deny Stahl's hardship application. The LPC issued a written decision on May 29, 2014.

G. The LPC Arbitrarily and Capriciously Denies Stahl's Hardship Application

65. The LPC's analysis of Stahl's application was rife with egregious errors of law and fact. It reached its demonstrably false and unreasonable conclusion that Stahl is capable of earning more than a 6% rate of return only by repeatedly misapplying the standards of the Landmarks Law, disregarding its own directly applicable precedent, and refusing to consider the full costs that Stahl would incur to renovate the Buildings. Upon information and belief, the LPC's incoherent and internally inconsistent analysis was motivated by its animus and bias to prevent Stahl from engaging in any redevelopment of its property.

66. It first erroneously concluded that the relevant "improvement parcel" for purposes of the reasonable rate of return calculation was the entire FAE, and not the Buildings. The Landmarks Law defines "improvement parcel," in relevant part, as "[t]he unit of real property which (1) includes a physical betterment constituting an improvement and the land embracing the site thereof, and (2) is treated as a *single entity for the purpose of levying real estate taxes* . . . ." § 25-302(j) (emphasis added). It was undisputed that the Buildings comprise a single tax lot (Lot 22), while the Other Buildings comprise three distinct tax lots (Lots 1, 10, and 30). Moreover, it was undisputed that the DOF assesses the value of Lot 22 for property tax purposes separate from any of the other buildings of the FAE. The LPC, however, disregarded these facts and the Landmarks Law itself, and based its conclusion not on the statutory definition of "improvement parcel," but on the "stylistic[]" and "physical[]" relationship between the Buildings and the Other Buildings, and its unsupported "belie[f]" that Stahl operated the Other Buildings to support its hardship application. But these considerations were not relevant under the statutory standard, and in any event were not supported by the record.

67. The LPC apparently recognized that its conclusion could not be reconciled with the statutory language because it proceeded to calculate Stahl's rate of return, in excruciating detail, on the assumption that the Buildings were the relevant improvement parcel. However, that calculation itself was fatally flawed.

68. Deciding Stahl's hardship application required determining what the assessed value of the properties would be after the renovations envisioned by each of the various scenarios. Because the Landmarks Law defines reasonable return as 6% of the property's assessed value, § 25-302(v)(1)-(2), determining assessed value was necessary to determine the denominator of the reasonable return calculation. Moreover, it was also necessary to determine

real estate taxes and depreciation—included in the numerator as operating expenses—as both factors are calculated as percentages of assessed value.

69. The LPC refused to use the "cost approach"—in which the pre-renovation assessed value of the Buildings would be increased by a fraction of the projected costs of physical alterations—and instead used the "income approach"—which valued the Buildings based only on the projected income they could generate after renovations, and did not factor into the value how much it would cost to make those renovations. By using the income approach, the LPC was able to manufacture an artificially low assessed value to generate an unrealistically high rate of return and produce the conclusion that the LPC had apparently reached before the process began: that Stahl should not be permitted to demolish the Buildings.

70. The LPC's use of the income approach was based on a false assertion of fact—that the DOF always uses the income approach to value rental properties—that was inconsistent with the DOF's actual practices, including with respect to these very Buildings in the test year. The LPC's rejection of the cost approach was also at odds with its own prior precedent, in which, under essentially the same circumstances, it used the cost approach to determine the assessed value of renovated properties in connection with a hardship application. And, as a result, the LPC's outcome-motivated analysis rendered its approach to determining assessed value internally inconsistent and fundamentally incoherent, as it used one figure for assessed value in calculating the denominator of the reasonable return equation and real estate taxes and another for calculating depreciation in the numerator. It is plainly irrational to use a methodology where assessed value means different things in different parts of the same calculation.

71. Moreover, the LPC further erred by refusing to consider the renovation costs related to the 44 apartments in the Buildings that became vacant after the 2006 designation, on

the ground that because Stahl kept those apartments unrented while its Article 78 challenge to the designation was pending, those costs were a "self-imposed hardship." This, too, irrationally and unfairly ignored the full costs Stahl would incur from renovating the apartments in the Buildings. Stahl initially began leaving apartments vacant no later than 2000 in reliance on the BOE's recognition that Stahl was free to redevelop the Buildings, and continued to do so while its Article 78 challenge to the designation was pending. Its appeal was only exhausted on November 18, 2010, more than a month after the hardship application was filed. In order to legally re-lease these apartments as they came vacant, Stahl would have been required to renovate them. But the whole point of its legal challenge was to vindicate Stahl's right to demolish the Buildings and redevelop the properties. Thus, in order to avoid the LPC's punitive self-imposed hardship conclusion, Stahl would have had to spend millions on renovations, just to turn around and demolish the apartments if the legal challenge was successful, or earn a paltry return at best if the challenge was unsuccessful.

72. Finally, the LPC, which did consider some renovation costs in its calculation of assessed value for depreciation, arbitrarily reduced the soft costs of renovations by nearly 30% by refusing to consider interest payments on construction loans that Stahl would require to pay for renovations. Its sole basis for doing so was an erroneous interpretation of the Landmarks Law, which carves out "mortgage interest and amortization" from the calculation of the operating expenses of an improvement parcel. § 25-302(v)(3)(a). The LPC irrationally attempted to *de facto* amend the Landmarks Law by extending this narrow carve-out to cover interest on construction loans that Stahl would incur as a direct cost of renovations.

73. Presumably knowing its assumptions would not stand up to scrutiny, however, the LPC attempted to safeguard its decision by including, "for purposes of comparison only," a

calculation of reasonable return which purportedly (1) considered the Buildings as the relevant improvement parcel, (2) applied the cost approach, and (3) considered the renovation costs of all 97 vacant apartments. The LPC claimed that even under this approach, Stahl could earn a return of over 6%. However, this "comparison" did not actually do what the LPC said it did, and perpetuated the same errors the LPC made in its actual calculation. Had the LPC not made these errors, it would necessarily have concluded that Stahl could not earn a reasonable return and was entitled to relief on the grounds of hardship.

74. The aforementioned flaws in the LPC's analysis are merely examples of the LPC's arbitrary analysis, and for these and other reasons, the LPC's denial of Stahl's hardship application was entirely irrational and inconsistent with the law, the record, and the LPC's own precedent. Upon information and belief, the LPC's decision was substantially motivated by its pre-existing animus and bias against Stahl, and its pre-ordained goal of depriving Stahl of its rights as a landowner to use and develop its property.

FIRST CAUSE OF ACTION
(Violation of Substantive Due Process)

75. Stahl incorporates by reference the allegations as set forth in ¶¶ 1-74 above as if fully set forth herein.

76. In reliance on the BOE's decision not to landmark the Buildings, Stahl had implemented a redevelopment plan, which involved leaving apartments un-rented as they came vacant, foregoing certain investments in the Buildings, devoting hundreds of hours of internal staff time to planning the redevelopment, and retaining architectural and law firms for related advice. The designation of the Buildings as landmarks deprived Stahl of its property right to reasonably use and develop the Buildings.

77. Stahl demonstrated conclusively during the proceedings on its hardship application that it was incapable of earning a reasonable rate of return as defined by the Landmarks Law. Accordingly, Stahl had a legitimate entitlement to a finding that it had suffered an economic hardship, and thus was entitled to affirmative relief from that hardship.

78. Upon information and belief, the LPC's designation of the Buildings as a landmark and its denial of Stahl's hardship application were motivated by impermissible political animus and bias against Stahl to deprive it of any economically viable use of its property. In designating the Buildings, the LPC succumbed to political pressure from influential residents and allied interest groups who demanded that the LPC landmark the Buildings because they did not want their views obscured, and, for personal reasons, did not want the population of the neighborhood to increase. These interests effectively captured the agency and caused it to abuse its authority in order to prohibit any redevelopment of the Buildings. Further, these same improper political motivations led the LPC to pre-judge Stahl's hardship application, manipulate the results of its economic "analysis" to reach a predetermined conclusion, and arbitrarily reject the application without legally sound or factual justification.

79. The LPC's denial of Stahl's hardship application also was outrageously arbitrary and entirely irrational. The LPC's fundamentally flawed and irrational economic analysis was based on clear errors of law, conclusions that lacked any support in the record, and a methodology that was incoherent and internally inconsistent, and thus lacked any rational basis.

80. The LPC and the City, acting under the color of State law, have deprived Stahl of its property rights in violation of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

81. As a direct and proximate result of the LPC's and the City's deprivations of Stahl's substantive due process rights, Stahl has suffered significant injury, including monetary damages and a loss in value of the Buildings.

82. The denial of Stahl's request for a certificate of appropriateness was a final decision of the LPC.

JURY DEMAND

83. Stahl demands a trial by jury on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff-Petitioner requests that this Court enter an Order:

(a) Awarding compensatory damages in an amount to be proved at trial;

(b) Annulling and setting aside the 2006 landmark designation of the Buildings and the LPC's denial of Stahl's hardship application;

(c) Awarding attorneys' fees and costs incurred in prosecuting this action; and

(d) Granting any other and further relief the Court deems just and proper.

Dated: New York, New York
September 22, 2014

Respectfully submitted,

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