Landmarks Preservation
Commission

Robert B. Tierney
Chair

Mark A. Silberman
General Counsel
msilberman@lpc.nyc.gov

1 Centre Street
9th Floor North
New York, NY 10007

212 669 7919 (dd)
212 669 7797 (fax)

November 22, 2013

Paul Selver, Esq.
Kramer Levin Naftalis & Frankel
1177 Avenue of the Americas
New York, NY 100036-2714

Re: 429 East 64th Street and 430 East 65th Street Hardship

Dear Paul:

I write in response to your submission of November 12, 2013, in connection with your client's hardship application referenced above. I have a number of follow-up questions to that submission. In addition, as staff moves to try and finalize this application and move towards a final vote, we have additional questions on some of the prior submissions.

1. With respect to the statements in your November 12 submission that Lot 1 actually contains 8 buildings with 331 apartments, not 4 buildings with 142 apartments as attested to by your client on tax filings, I note that some of the documents in Exhibit D show that Lot 1 has 8 buildings, but also show that Lot 1 has 237 apartments, not 331 as you state in your submission. Can you please explain the discrepancy?

2. Also with respect to the number of apartments on each lot and the accuracy of your client's various submissions to the LPC, I note that Cushman & Wakefield appear to be using the inaccurate data arising from your client's tax submissions. I am referring specifically to page 29 of their May 1, 2010 Comparative Economic Feasibility Study, wherein they assign 388 apartments to lot 10 when listing operating expenses. (This analysis is adopted by subsequent C&W analyses.) Please confirm the accuracy of that data and, if necessary, submit correct information for the record. And, as a general matter, I request that your client review all the information submitted that refers or relates to the Other Buildings and confirm the accuracy of your submissions.

3. Please provide the backup information for the statement in Gregg Wolpert's November 12, 2013 letter that "[o]n the basis of sample measurements in the other FAE buildings, we have estimated that the apartments in the other FAE buildings are approximately 23% larger than those in the Subject Buildings." In this same vein, please explain the methodology used by C&W in calculating that the Subject Properties have 70,406 net rentable square feet.

4. You have stated in your submissions of June 11 and November 12, that there is no disagreement about how the test in KISKA is applied. I disagree.

A. You state that the test in KISKA used the "cost approach" whereby the denominator equals the assessed value plus "45 percent of the hard costs expended to repair and upgrade the property." Selver November 12 letter at 7-8. However, I have reviewed the KISKA decision and determined that the cost approach is the test the Commission adopted when considering development scenarios that involved selling units after development. ("The Commission finds that for calculating the potential value of the buildings as condominiums or individual townhouses, the costs of renovation should be treated as a one-time expense to be recouped upon sale of the property. Accordingly, such costs would be added to the original sales price of each building before calculating the rate of return." KISKA, page 22) See also, id. at Table H. I note that an allocation for soft costs was included in this analysis, although I do not understand the rationale for doing so. However, the Commission used a different test when analyzing development scenarios, like the ones used by your client in the instant hardship application, involving development of rental property. For these scenarios, the Commission included the development costs only in calculating the depreciation allowance and real estate taxes. See id at Tables E and G.

B. With respect to the Commission's use of the "cost approach" in calculating real estate taxes in KISKA, I note that in that application the Commission determined that the properties were "uninhabitable" in their current condition. See KISKA, p. 22. In that context, where there needed to be a total rehabilitation of the property, use of the cost approach might make sense, and where the development scenarios contemplated sale of the properties as well as rentals. That is not the case with City & Suburban. Here the properties are operating as rentals and will continue to operate as rentals. Although there are substantial vacancies at the Subject Properties, the Department of Finance already calculates real estate taxes by assuming full occupancy. Therefore, in this case, the most accurate way to calculate real property taxes would be the income approach that is presently used. I note that this was the approach initially used by C&W in the earlier submissions, wherein, based on a comparison with other buildings, C&W projected real estate taxes at 25% of effective gross income. See C&W February 5, 2009, at 22; C&W May 1, 2010, at 17.

5. The 2006-2009 RPEIs for the Subject Properties includes as ancillary income various amounts for "government rent subsidies" and for the sale of utility services. Please explain what these are and why C&W does not include this type of ancillary income in its various pro forma calculations. I note that C&W has an allocation of $12,600 for "miscellaneous revenue," but this is described as miscellaneous income from interest, forfeited security deposits, late fees miscellaneous fees for lost keys and lock replacement. (C&W, 10/11/12, p. 15). It does not include government rent subsidies and/or sale of utility services.

6. Also with respect to income, the RPEIs from 2006-2009 includes an amount for "laundry" as "other income." This amount varies, from approximately $9000 to more than $12,000. Clearly your client has a history of allocating some percentage of its total income from laundry in the City & Suburban Complex to this building on the reasonable assumption that residents of the Subject Building are using the laundry facilities in the complex. Why does C&W not include laundry as another form of income in its pro forma calculations?

I appreciate your prompt responses to these questions.

Sincerely Yours,

Mark A. Silberman

Cc: Commissioners

KRAMER LEVIN NAFTALIS & FRANKEL LLP

PAUL D. SELVER
PARTNER
PHONE 212-715-9199
FAX 212-715-8231
PSELVER@KRAMERLEVIN.COM

December 10, 2013

Mark A. Silberman, Esq.
Counsel
Landmarks Preservation Commission
1 Centre Street
New York, New York 10007

Re: City and Suburban Homes Co., First Ave. Estate
429 East 64th St. / 430 East 65th St., Manhattan
Block 1459, Lot 22

Dear Mark:

This letter and the accompanying letters of Gregg Wolpert of the Stahl Organization and John Feeney of Cushman & Wakefield respond to the questions set forth in your letter of November 22, 2013 concerning the application of the Stahl Organization (the "Applicant") for permission to demolish the buildings located on the above premises (the "Subject Buildings") on the ground of economic hardship.

Question 1:

The Wolpert letter explains the error regarding the number of apartments located on the tax lot 1 portion of the First Avenue Estate ("FAE") that is contained in the Applicant's November 12th submission. Exhibit A to that submission sets forth the actual number of apartments located on each tax lot within the FAE.

Question 2:

The Wolpert letter and the Feeney letter explain that the error regarding the number of apartments located on the tax lot 10 portion of the FAE that is contained in Cushman & Wakefield's May 2010 report did not affect the analysis of operating expenses for the buildings on lot 10 because that analysis was based on a number of different sources and was calculated on a per square foot basis, using the actual residential square footage located on lot 10. For these reasons, it was an error that had no effect on Cushman's conclusions and was therefore harmless. We would also note that HR&A Advisors, Inc. ("HR&A"), in its reports in opposition to this hardship application, incorporated Cushman's estimate of operating expenses into its economic analysis without any modification.

Question 3:

The Wolpert letter explains that the Stahl Organization had previously determined that the apartments in the Subject Buildings have an average size of 371 rentable square feet by measuring a representative sample of apartments in these buildings. Stahl recently undertook a comprehensive measurement of all the apartments in the Subject Buildings, which showed that the average rentable area of these apartments is actually 364 square feet. This small size difference does not have a consequential impact on any of financial analyses or arguments presented by the Applicant.

In order to estimate the average rentable square footage of apartments in the other buildings of the FAE, the Stahl Organization measured the rentable square footage of an apartment in each of eight representative "lines" within these other buildings. These lines account for a total of 240 apartments, or approximately 30 percent of the walk-up apartments in these buildings. The average size of these 240 apartments is approximately 447 square feet, which is about 23 percent larger than the 364 square foot average size of apartments in the Subject Buildings. We would note that City records contain complete information concerning the gross square footage of each of the tax lots that comprise the FAE. This information indicates that the apartments in the other FAE buildings have an average size per gross square foot of 532.5 square feet, which is approximately 19 percent larger than the 446 gross square foot average of apartments in the Subject buildings.

Regardless of whether the precise difference in size between the Subject Buildings and the other apartments in the FAE is 19 percent or 23 percent the bottom line is that, by any measure, the apartments in the other FAE buildings are significantly larger than the apartments in the Subject Buildings. This size difference contributes to the superior layouts and greater marketability of the apartments in the other FAE buildings compared to the apartments in the Subject Buildings.

Question 4:

You have disputed our use of the "cost approach" in estimating the assessed value of the subject property for the 2009 test year following a restoration of the Subject Buildings to stabilized occupancy and, in using this approach, our reliance on the Commission's determination in the KISKA matter.

The cost approach is a widely accepted method of determining a property's value, which has consistently been employed by the New York City Department of Finance ("DOF") when a property has undergone new construction or an existing building receives significant physical improvements. Since most property in New York City is assessed at 45 percent of its full market value, following a major physical improvement to a building, DOF assessors routinely increase its assessed value by an amount equal to 45 percent of the hard costs expended on such improvements, as reflected on Department of Buildings filings or other records. DOF's use of the cost approach to assess properties that have received major physical improvements underlies tax abatement programs such as J-51, which covers improvements to residential buildings, and the Industrial and Commercial Abatement Program (ICAP), which covers improvements to commercial and industrial properties. Under each of these programs, the applicant is required to provide DOF with detailed information concerning the cost of such improvements and it thereafter receives an abatement of a portion of the additional property taxes that result from the increase in assessed value that corresponds to these costs.

Each of the scenarios for restoring the Subject Buildings to stabilized occupancy that the Applicant has analyzed involves significant physical improvements to the buildings' vacant apartments or to both the apartments and the buildings themselves. In the 2009 test year, the so-called Minimum Habitability scenario, which involves only those improvements needed to render the vacant apartments code-compliant and habitable, would have required hard costs of about $4 million. The so-called Market Rehab scheme, which involves more extensive improvements to the vacant apartments together with various base-building improvements in order to render the vacant apartments reasonably competitive with other walk-up apartments in the surrounding area, would have entailed hard costs of about $16.7 million. Therefore, in its financial analysis of each of these scenarios, Cushman & Wakefield appropriately determined that the relevant assessed value against which a rate of return would be calculated equaled the sum of the subject property's actual 2009 assessed value and 45 percent of the hard costs associated with that scenario.

In its original 2009 and 2010 reports, Cushman used a different method to calculate the rate-of-return denominator – a method that was more consistent with an analysis that would be made by an investor in real estate . The key differences were that, in the 2009 and 2010 reports, (i) Cushman estimated that real estate taxes on the stabilized property would equal 25 percent of its effective gross income and (ii) it used as a rate-of-return denominator the sum of (A) the property's current assessed value, (B) the total hard costs associated with each scenario, and (C) "lease-up" costs, or the costs and lost revenue associated with bringing the Subject Buildings to stabilized occupancy. The Applicant thereafter requested that Cushman revise its analyses to use a rate-of-return denominator more consistent with the Landmark's Law's "return on assessed value" hardship test and, accordingly, in all of its subsequent analyses Cushman used as a denominator only the total of the actual assessed value plus 45 percent of hard improvement costs. We would also note that HR&A, which was the only witness in this hardship proceeding that attempted to systematically refute the Applicant's economic analysis, employed the same cost approach that Cushman used in its recent reports in order to establish the applicable rate-of-return denominator. In summary, during the entire course of this proceeding, both the Applicant and the opposition have consistently used a rate-of-return denominator that took into account at least a portion of the costs involved in restoring the Subject Buildings to stabilized occupancy.

Contrary to your assertion, the Commission's determination in the KISKA matter actually supports the use of the cost approach in the instant application. The KISKA hardship application involved three vacant and dilapidated townhouses on Central Park West which were designated as landmarks shortly after they were purchased by the applicant. In support of its hardship application, the applicant in KISKA analyzed the economic feasibility of several different scenarios for repairing and renovating the buildings. Several of these scenarios involved operating the buildings as rental apartment buildings; others involved renovating and selling the buildings as single-family homes or creating and selling condominium apartments within the buildings. In its determination granting the hardship application (pg. 22), the Commission commented that, "[f]or the purposes of this application, the Commission assumes that the renovation costs will increase the assessed value of the building by a comparable amount." Thus, the Commission determined (at pgs. 29-30) that, for both the rental and sales scenarios involving multiple apartments, real estate taxes on each property would be based on an assessed value equal to the sum of the property's actual assessed value and 45 percent of the applicable renovation costs – that is, the same approach to the determination of assessed value and taxes that the Applicant used in the instant application.[1]

With respect to the rate-of-return denominator, the Commission in KISKA determined that, in light of the applicant's recent purchase of the properties, the denominator would equal the price the applicant paid for each property before it had been landmarked, rather than the much lower assessed value.[2] The Commission went on to determine that, for the sales

---

[1] The cost approach used by the Commission in KISKA was in one significant respect both different from and fairer than the approach used by the Applicant in this matter. This is because the Commission's calculation of assessed value in KISKA was based on both hard and soft renovation costs. Stahl did not include soft costs in determining assessed value because it understands that, when DOF uses the cost approach to determine assessed value, its current practice is to take into account only hard costs. Therefore, in projecting assessed values in this application, the Applicant likewise took into account only hard improvement costs, despite the fact that this method had the effect of reducing the applicable rate-of-return denominator and artificially increasing the nominal rate of return.

[2] With regard to the instant application, if one were to similarly use as a rate-of-return denominator the market value of the subject property, including all of its development rights, if it

scenarios but not the rental scenarios, the full cost of building repairs and renovations would be added to the purchase price in order to arrive at the rate-of-return denominator. The Commission did not explain its reasoning behind this disparate treatment of the rental and sales scenarios. In any event, what is most relevant to the instant application is that, in KISKA, there was no scenario under which the Commission employed a rate-of-return denominator that was based on assessed value. Therefore, the KISKA determination does not support your suggestion that the Applicant's use of the cost approach in order to establish an appropriate assessed value-based denominator in the instant case was improper. On the contrary, as discussed above, the Commission's use of the cost approach to determine real estate taxes for all of the KISKA renovation scenarios demonstrates that, in this matter, the Applicant properly employed that approach in order to determine the appropriate assessed value upon which a rate of return would be calculated.

As you have noted, in KISKA, the Commission found that, at the time of its determination, the buildings involved in that proceeding were uninhabitable. It went on to state that, "since renovation would be required to enable the buildings to generate a return," renovation costs should be factored into the calculation of both real estate taxes and a depreciation allowance. You argue in your letter that the status of the Subject Buildings is different and may not warrant the use of a cost approach for any purpose in this matter. We strongly disagree.

In the instant case, the Applicant has shown that at the end of the 2009 test year the Subject Buildings' 190 apartments were partially occupied, with 97 of these units – more than half – being vacant. The Applicant has provided evidence that, in light of these numerous vacancies, in 2009 the Subject Buildings actually operated at a loss and, consequently, did not earn any return on the property's assessed value. This fact has not been disputed by the Commission, HR&A or any other party. The Applicant has also shown that the buildings' vacant apartments, many of which have been empty for years, cannot be re-occupied in their present condition; that at least several million dollars in hard costs would have to be expended in order to make these vacant apartments code compliant and legally habitable; and that millions of dollars of additional work would be required to make the Subject Buildings and their vacant apartments reasonably competitive with other walk-up apartments on the Upper East Side. Most of the Commissioners and senior Commission staff have visited the Subject Buildings and seen first-hand the condition of many of their vacant apartments. We do not believe that any member of the Commission would seriously contend that these vacant apartments are currently in a

---

were unencumbered by a landmark designation, there can be little doubt that the Subject Buildings, under any improvement scenario, could not generate sufficient income to produce a reasonable return.

condition that would be competitive with other walk-up apartments in the area – or even a condition that would be tolerable to a prospective tenant.[3] In summary, the condition of the Subject Buildings is quite similar to the condition of the buildings in KISKA in that both require extensive physical improvements in order to restore them to stabilized occupancy.

The Applicant's use of the cost approach to estimate the subject property's assessed value following a restoration of the Subject Buildings' to stabilized occupancy was proper and consistent with both KISKA and long-standing DOF practice. We have previously pointed out that the rate of return calculation in the Landmarks Law bears no relationship to the economic realities of real estate investment and ownership and places an extremely heavy – and unfair – burden on the owner of a designated property to establish that it is entitled to hardship relief. This is because it uses the property's assessed value as the starting point for determining valuation, effectively reducing the valuation of the property by no less than 55% for the purpose of determining rate of return. It then compounds this loss of value by permitting the use of only 45% of the hard costs – and <u>none</u> of the soft costs – of improvements to the property in determining any potential increase in assessed valuation. In the end, the law's formula takes into account only a fraction of an owner's actual investment in the property – depriving it of the value of that investment by artificially inflating the rate of return that results from application of its hardship provision. To suggest, as you did in your November 22 letter, that it is appropriate for the Commission simply to ignore the investment necessary to make a property competitive in calculating its valuation is to go too far.

No one can argue with the proposition that the Landmarks Law was adopted to protect historic resources of a "special character or interest . . . ." However, it is required to do so in a way that ensures that a landmark designation does not deprive a property owner of any economically viable use of its property. The hardship provisions of the Landmark Law cannot properly perform this function if, as in this case, an applicant is required to incur significant costs to restore a building to full income-productive use but the Commission refuses to take any of those costs into account in calculating the valuation of the property, as encumbered by the

[3] In order to provide further documentation on this issue, annexed hereto are photographs of each of the 97 apartments in the Subject Buildings that were vacant at the end of the 2009 test year. Each photograph identifies the apartment and one of four condition levels into which it has been placed by the Stahl Organization and Gleeds New York. As we have previously explained, the designated condition level reflects the amount of work required to render the apartment legally habitable, with a Level 1 apartment requiring the least amount of work, <u>i.e.</u>, lead paint abatement, paint and plaster repairs and electrical work, and a Level 4 apartment requiring a complete gut renovation due to previous fire, water damage, tenant neglect or vandalism.

landmark designation, for the purpose of determining whether it is capable of earning a reasonable return.

Questions 5 and 6:

The Wolpert letter and the Feeney letter explain the discrepancies that you noted between income reported on RPIEs that were filed for the subject property and income estimates set forth in Cushman & Wakefield's economic feasibility studies.

Very truly yours,

Paul D. Selver

The **Stahl**
Organization

277 Park Avenue
New York, NY 10172-0124

Tel: 212-826-7060
Fax: 212-223-4609

December 9, 2013

Mark A. Silberman
General Counsel
Landmarks Preservation Commission
1 Centre Street, 9th Floor North
New York, N.Y. 10007

Re: 429 East 64th Street and 430 East 65th Street Hardship
Follow-up Questions from LPC dated November 22, 2013

Dear Mr. Silberman:

The following are Stahl's responses to the questions you posed in your November 22, 2013 letter to Paul Selver on the above referenced matter:

__Question 1:__

It is true that Exhibit D to my November 12, 2013 letter to Commissioner Tierney shows the incorrect number of apartments located on Lot 1, albeit it contains the correct gross square foot measurements. The correct number of units for each tax lot on the block (Block 1459) are shown, building by building, in Exhibit A to this letter. To the best of our knowledge the origin of this error was confusion on the part of our third party accountants as to which First Avenue Estate (FAE) buildings to include in each of the applicable RPIE filings, because it is not intuitive that certain "side-street" buildings are located on Lot 1, which fronts on First Avenue. Therefore, our accountants mistakenly assigned some of the side street buildings on Lot 1 to one of the tax lots that front on a side street (Lot 10).

__Question 2:__

It is true that Cushman & Wakefield, on pg. 29 of its May 2010 report, lists the incorrect number of apartments located on Lot 10. However, throughout its analysis, Cushman expresses and applies operating expenses on a per square foot basis and the building areas shown in that report for both Lot 30 and Lot 10 are accurate. Therefore, this error has no bearing on Cushman's analysis. The column on pg. 29 showing operating expenses per apartment, which is affected by this error, is provided for information only. Moreover, when the correct number of units located on Lot 10 (290) is used, the average expense per unit is comparable to Lot 30. Furthermore, as Cushman explains in its accompanying letter, its estimate of operating expenses for the Subject Buildings was based on a review of expenses in a number of other buildings and on other sources. For all these reasons, the error regarding the number of units on Lot 10 was irrelevant to Cushman's professional valuation and valuation methodology and does not affect its conclusions.

Question 3:

Stahl had previously determined that the average rentable area of the apartments in the Subject Buildings was 371 square feet on the basis of measurements of a representative sample of the apartments in these buildings. Stahl recently measured each of the vacant apartments in the Subject Buildings and found that, as shown on the attached schedule, the average rentable area of these apartments is actually slightly less – about 364 square feet.

With regard to the size of the apartments in the other buildings in the FAE, we have not measured every single apartment on the block (and never represented that we have) and have therefore worked with a representative sample of apartments. Stahl measured an apartment in each of 8 different apartment lines in these buildings. Since these 8 different lines often appear in several of the buildings (and usually twice in the same building), the sample represents a total of 240 apartments, which is approximately 30% of the walk-up apartments in the balance of the FAE. The attached schedule shows that these apartments have an average rentable area of about 447 square feet, which is approximately 23% larger than the rentable area of the apartments in the Subject Buildings. We have previously shown that on a gross square foot basis, the apartments in the other FAE buildings are about 19% larger than the apartments in the Subject Buildings. As I explained in my November 12, 2013 letter to Commissioner Tierney, it is likely that the rental area differential exceeds the gross area differential because of the fact that that 8 different entranceway vestibules / lobbies service the 190 units in the Subject Buildings, 1 per 23.75 units. In comparison, each of the 9 FAE buildings located on Lot 10 and Lot 30, which contain between 57 and 59 apartments per building, have only a single entranceway to serve all the apartments in that building. Therefore, it is hardly a surprise that the differential in net rentable area between the Subject Buildings and the other FAE buildings is greater than the gross size differential.

Question 4:

Kramer Levin, Stahl's legal counsel, has provided a detailed response to this question. However, we would note that it has been Stahl's experience and the experience of its tax certiorari attorneys that the Department of Finance (DOF) routinely increases real estate tax assessments on the basis of physical improvements that have been made to the affect property. While DOF primarily relies on building economics, according to our tax certiorari counsel, where there are physical improvements made, DOF generally adds 45% of the additional value created by the physical improvements to the assessment, with the added value frequently based on the estimated improvement costs filed with the Department of Buildings. With regard to this hardship application, it would be senseless and grossly unfair for LPC to take the position that Stahl would be required to spend millions of dollars in order to restore the Subject Buildings to stabilized occupancy but could not add any of these costs to the effective basis (denominator) for the purpose of determining whether it is capable of earning a reasonable return on these properties.

Questions 5 and 6:

Cushman & Wakefield has responded to these questions on the basis of its extensive experience and expertise in real estate valuation and analysis matters. Stahl's view is that it would not be reasonable or proper to add any of the miscellaneous revenues at issue, which are shown on RPIE forms for the Subject Buildings, to the pro-forma income that is considered under the hardship analysis. For reasons that are not clear to us, certain miscellaneous revenues from the operation of the FAE were apparently allocated among its constituent tax lots by our accountants for RPIE purposes. Regardless of the accounting rationale behind this action, Cushman should not be bound by it in its analysis of various hypothetical scenarios for the prudent management and operation of the Subject Buildings, as separate and independent properties, following their restoration to stabilized occupancy.

It should be noted that much of the revenue at issue is completely unrelated to the operation of the Subject Buildings. For example, utility income is received only from retail tenants, all of whom lease space on Lot 1, as all of the stores in the FAE are located along First Avenue. The FAE's laundry facility is also physically located in a building on Lot 1, (401 East 64th Street). While we have made an accommodation for tenants in other buildings to utilize this service, it is not a lease mandated right. Therefore it would be incorrect to attempt to "capitalize" an income stream that has no contractual basis. Further, in the case of a new "pro-forma" substantial renovation of the Subject Buildings, since we have not included any costs associated with installing a new laundry room in the basement, there should not be any laundry room income accruing either. Finally, the "government rent subsidies" income listed on Stahl's RPIEs pertain to New York City's "SCRIE" program, which freezes rents of senior citizens with annual income below a certain level (currently $29,000), and then makes the property owner "whole" by providing a credit against real estate taxes for the foregone rent. It is a program that has absolutely no impact on a property's bottom line. The Cushman analyses properly assume that ownership collects the legal (or preferential) rent being charged (less vacancy and collection loss). Therefore, there is no reason to incorporate SCRIE income into its analyses.

Very truly yours,

Gregg S. Wolpert

cc: Robert Tierney, Commissioner

Net Rentable Square Foot Comparison

429 East 64th Street

Rentable Square Feet per Floor	5,872.00
Average Rentable Square Feet per Unit	367.00

430 East 65th Street

Rentable Square Feet per Floor	5,778.84
Average Rentable Square Feet per Unit	361.18

429 East 64th Street & 430 East 65th Street	
Rentable Square Feet per Floor	11,650.84
Average Rentable Square Feet per Unit	364.09

First Avenue Estate 240 Sample Units	
Total Rentable Square Feet	3,609.56
Average Rentable Square Feet per Unit	451.19

Average Rentable Square Feet per Unit (429 E 64 St & 430 E 65 St)	**364.09**
Average Rentable Square Feet per Unit (FAE Sample)	**451.19**
Percent Difference	**23.92%**

The E Line in 401 East 64^{th} Street is identical to the E line in 402 East 65^{th} Street representing 12 total units.

The D Line in 401 East 64^{th} Street is identical to the F line in 402 East 65^{th} Street representing 12 total units.

The A Line in 401 East 64^{th} Street is identical to the A line in 1192 First Avenue, The A Line in 402 East 65^{th} Street and the A line in 1194 First Avenue representing 24 total units.

The J Line in 410 East 65^{th} Street is identical to the E line in 410 East 65^{th} Street, The A, E, F and J in 412 East 65^{th} Street, The A, E, F and J line in 414 East 65^{th} Street, and the A, E and F line in 416 East 65^{th} Street representing 78 total units.

The B Line in 410 East 65^{th} Street is identical to the B and G in 412 East 65^{th} Street, The B and G line in 414 East 65^{th} Street, and the B and G line in 416 East 65^{th} Street representing 42 total units.

The F line in 417 East 64^{th} Street is identical to the F line in 419 East 64^{th} Street, the F line in 421 East 64^{th} Street, and the F line in 423 East 64^{th} Street representing 24 total units.

The C line in 417 East 64^{th} Street is identical to the C line in 419 East 64^{th} Street, the C line in 421 East 64^{th} Street, and the C line in 423 East 64^{th} Street representing 24 total units.

The D line in 417 East 64^{th} Street is identical to the D line in 419 East 64^{th} Street, the D line in 421 East 64^{th} Street, and the D line in 423 East 64^{th} Street representing 24 total units.

**It is important to note that each line represents one apartment on all 6 floors of the building.*

This representative sample of units in the First Avenue Estate represents a total of 240 units or approximately 30% of the complex, excluding 415 East 64^{th} Street.

John T. Feeney, Jr.
Executive Director
Valuation & Advisory

CUSHMAN & WAKEFIELD®

Cushman & Wakefield, Inc.
51 West 52nd Street
New York, NY 10019-6178
(212) 841-7868 (Phone)
(212) 479-1674 (Fax)

December 9, 2013

Paul D. Selver, Esq.
Partner
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036-2714

RE: Response to Landmarks Preservation Commission Questions
Dated November 22, 2013
429 East 64th Street / 430 East 65th Street
New York, NY (Subject Property)
Hardship Application

Dear Mr. Selver:

In response to your request and our conversations with our mutual client, the following are Cushman & Wakefield's (C&W) responses to several of the Landmarks Preservation Commission's (LPC) questions dated November 22, 2013 relating to the hardship application for the above captioned property.

RESPONSE TO QUESTION 2

The error in the unit count for Lot 10 contained in C&W's Economic Feasibility Analysis had no impact on our estimates of operating expenses for the Subject Property. I would note that the correct unit count of 290 was subsequently provided in our response to an earlier list of LPC questions. (See Kramer Levin correspondence of February 20, 2013, Response to LPC question no. 43(f), pg. 36.)

C&W's analysis of operating expenses was undertaken based on the specific features of the subject buildings and based on the expectations of a typical real estate investor. Support for its estimate was provided (i) by an analysis of the expenses incurred for other buildings on Block 1459, (ii) by a review of operating expenses for at least 10 similar buildings, and (iii) by an examination of industry norms as reported in several real estate industry publications, including published reference material such as "Conventional Apartments," published by the Institute of Real Estate Management. Operating expenses were evaluated as a percentage of Effective Gross Income; as a cost per square foot of Gross Building Area; and as a cost per apartment unit. C&W projected operating expenses for the Subject Property using the cost per square foot for similar buildings, which is the preferred method for projecting expenses.

The presentation of the expense comparable for Lot 10 is correct in the amount expended per square foot. As such, no adjustment is necessary.

Response to Question 5

C&W's analysis of the subject buildings is based on the asset on a stand-alone basis, and based on typically recurring income streams expected by investors in similar assets. C&W concluded that no ancillary income from the "sale of utility services" should be included in that analysis. The Subject Property has no tenants who are liable for pass throughs of utility costs in the manner to which LPC alludes.

Similarly, C&W makes no estimate for government subsidies in the revenue estimate. Investors in assets such as the Subject Property expect returns based on rental rates that are both competitive with similar product in the market and legal under the rent regulation laws. The C&W model for the subject buildings uses the rent regulated lease rates as well as market rate income, as applicable to the two pools of units. While one or more tenants in the subject buildings may presently qualify for a subsidy such as New York City's SCRIE program, it would not have been appropriate to make any such assumptions in modeling for a hypothetical scenario involving stabilized occupancy of these buildings.

Response to Question 6

Similar to the response for Question 5, the C&W analysis depicts income and expenses for the subject buildings on a stand-alone basis, and as if owned by a typical real estate investor. It does not take into account income generated by other properties under affiliated ownership, and it would be inappropriate to do so. Laundry facilities are not presently located in these buildings, and C&W was not advised that they would be installed under any of the improvement scenarios that were analyzed. Therefore, C&W did not include laundry revenues in its economic analyses of the subject buildings.

Sincerely,

John T. Feeney
Executive Director
Valuation & Advisory

NYC
Landmarks Preservation
Commission

Robert B. Tierney
Chair

Mark A. Silberman
General Counsel
msilberman@lpc.nyc.gov

1 Centre Street
9th Floor North
New York, NY 10007

212 669 7919 (dd)
212 669 7797 (fax)

January 9, 2014

Paul Selver, Esq.
Kramer Levin Naftalis & Frankel
1177 Avenue of the Americas
New York, NY 100036-2714

Re: 429 East 64th Street and 430 East 65th Street Hardship

Dear Paul:

I write in response to your submission of December 10, 2013, in connection with the hardship application referenced above.

In response to Question 3, Mr. Wolpert states that "Stahl recently measured each of the vacant apartments in the Subject Buildings . . . ." It is my understanding that there is no industry-wide standard for measuring an apartment to determine "rentable area." Therefore, I would appreciate an explanation of the methodology used in measuring the apartments. For example, is this based on internal wall to wall measurements? Does it include all area within the leasehold (e.g., closets, entryways, hallways etc.)? If not, what does it exclude and why? Finally, please confirm that this same methodology was applied to the Subject and Other Buildings.

In addition, in response to Question 3, Mr. Wolpert states that Stahl "measured an apartment in each of 8 different apartment lines" in the Other Building, and claims that the measurements for these eight apartments "represents a total of 240 apartments, which is approximately 30% of the walk-up apartments in the balance of the FAE." I would appreciate a detailed explanation, with back-up material, of which lines were measured in which buildings, how Stahl determined which lines to measure, what type of apartment each line represented (two, three or four room?) and which buildings this includes and doesn't include.

With respect to the response to Question 4, Mr. Wolpert states that DOF "routinely increases real estate tax assessments on the basis of physical improvements that have been made to the affect (sic) property. While DOF primarily relies on building economics, according to our tax certiorari counsel, where there are physical improvements made, DOF generally adds 45% of the additional value created by the physical improvements to the assessment, with the added value frequently based on the estimated improvement costs filed with the Department of Buildings." Is it the testimony of Mr. Wolpert and Stahl's tax certiorari counsel that this is DOF's general approach to income-producing rental property such as the Subject Buildings?

Finally, with respect to the response to Question 6, I note that Stahl has stated that the Subject Property shares various services with the other buildings, such as the services of the rental office and certain personnel. Given this economic reality, why is it "incorrect" to try and account for income that comes from another shared amenity: the fact that Stahl allows tenants of the Subject Buildings (as well as the tenants of the Other Buildings that don't have laundry facilities) to utilize laundry facilities common to the entire FAE complex. The fact that it is not a lease-mandated right seems irrelevant. The point is whether a reasonably prudent owner would try and make additional income by providing this service (or other means for additional income, such as basement storage, cellular transmission, etc.)

I appreciate your prompt responses to these questions.

Sincerely Yours,

Mark A. Silberman

Cc: Commissioners