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December 19, 2016

Hon. Margery Perlmutter  
Chair  
New York City Board of Standards and Appeals  
250 Broadway, 29th Floor  
New York, New York 10007

Re: 74-07-BZ  
Trustees of Congregation Shearith Israel  
8-10 West 70th Street,  
New York, New York, 10023  
Block 1122 Lots 36 & 37  
Transmittal Letter for E-mailed Filing with Supplemental Statement

Dear Chair Perlmutter,

We respectfully request that the Board accept this statement to supplement our submission of December 7, 2016, based upon new information as submitted by Mr. Hiller and Mr. Rosenberg concerning the 2016 Congregation Petition to the New York Supreme Court,<sup>1</sup> and to correct one exhibit.

We had submitted Opp.Ex. 11, "August 12, 2008, Congregation Financial Analysis In Support of Variance" estimating condominiums sale proceeds to be \$30 million. We intended to provide an earlier financial analysis from 2008, now filed by Mr. Hiller, "Freeman Frazier Report, July 8, 2008," showing the condominium proceeds as \$34,210,000. Hiller Ex. 22 at 2. As shown in the 2016 Congregation's Petition and Appraisal, the Congregation now projects sales proceeds to be \$63,909,824. Appraisal at 7. Our contention that the current estimate of net proceeds from condominium sales is nearly twice the 2008 estimate remains valid.

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<sup>1</sup> Mr. Hiller submitted the following documents as filed on March 11, 2016 with the New York Supreme Court (and previously filed with the New York Attorney General):

Hiller Ex. 08 (and Rosenberg Ex. D) 2016 Congregation Petition (the "Petition.")  
Hiller Ex. 05 (and Rosenberg Ex. E), 2015-16 Congregation Appraisal Report (the "Appraisal.")  
Hiller Ex. 21 – Risk Reward Statement as reviewed by the Trustees and attached to the Petition (the "Risk-Reward Analysis.")

Hiller Ex. 23, Construction Budget as reviewed by the Trustees and attached to Petition.

An additional exhibit to the Petition is filed herewith as Opp.Ex. 42, Congregation Shearith Israel Financial Statements, April 30, 2014 and 2013, dated April 2, 2015 (the "Financial Statements.") We also attach a new exhibit, Opp.Ex. 43, containing excerpts from documents cited herein.

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Second, Mr. Hiller and Mr. Rosenberg have brought to our attention the March 11, 2016 Petition and related documents filed by the Congregation with the New York Attorney General and the New York Supreme Court. The purpose of the Congregation's Petition was to obtain approval to enter into certain financing transactions. The other purpose was to allow the Congregation to transfer Lot 37 (the Building Site) to a separate LLC.

We will discuss certain points raised by the Petition and will not restate points already made by Mr. Hiller and Mr. Rosenberg.

### Transfer to Separate LLC

The Petition sought approval by the Supreme Court for transfer of the building site, Lot 37, to a separate LLC, apparently for the purposes of financing, and explains many actions of the Congregation.

- The purpose of transfer of the site to an LLC is to allow financing and to allow the lender to foreclose on the New Building without affecting the Congregation's Sanctuary and Parsonage.
- This may help explain the elimination of the expansion of the small synagogue into the first floor of the New Building as shown in the BSA 2008 approved plans.
- This also may help explain the access easement through property owned by the Congregation (the Sanctuary) for the benefit of the Lot 37 where the New Building is intended to be constructed. Without such an easement over the Sanctuary property, financing by a careful lender on Lot 37 would not be possible.
- The risks to public policy of this type of financing with a mortgage on the separate property is that the lender then has the ability to foreclose and take possession of the property and to sell to another developer a building that may or may not respect the terms and intent of the 2008 Variances, i.e., satisfying programmatic needs of the Congregation.
- The BSA variances place no restrictions applicable to subsequent owners as to the use of a completed building.

The Banquet Hall/Ballroom/Wedding Palace is not a Programmatic Need, but is Intended as a Source of Income.

The Petition and appended documents reveal the intention of the Congregation to earn income from the banquet hall as a primary motive for the banquet hall. This intention was never disclosed to the BSA in 2008. These new documents describe this sub-cellar facility as a "ballroom." The new documents provide color as to the following: "we will likely be carrying an \$8,000,000 permanent mortgage, which means that the *revenue associated with the school lease, ballroom, etc.* will be consumed in paying down the mortgage." Risk Reward Analysis.

REWARD  
Income: In the development partner scenario we will likely be carrying an \$8,000,000 permanent mortgage, which means that the revenue associated with the school lease, ballroom, etc will be consumed in paying down the mortgage. In the equity partner scenario we envision a break even, which means that the net operating proceeds

Figure 1 Risk Reward Analysis, Hiller Ex. 21

- Our initial Statement stated that the Congregation’s soil engineer recommended against construction of a sub-sub-cellar banquet hall because of soil conditions, but the Congregation has ignored the recommendation.
- The new documents suggest there will be significantly increased costs because of the banquet hall due to “subsurface conditions.” Risk Reward Analysis.

**RISKS**  
 Construction Risk: In both scenarios, CSI absorbs all direct costs in the construction of the CSI condominium, including cost increases associated with below grade subsurface conditions and force majeure events. The development partner absorbs additional risks associated with the management of the development process, while the equity partner would not absorb this risk.

*Figure 2 Risk Reward Analysis, Hiller Ex. 21*

- New stairwells, allegedly required by the Building Code, decreased the area of the banquet hall as initially approved in 2008, so the Congregation added expensive sidewalk vaults.
- Construction of the vaults is an unanalyzed significant impact on the community. A single-exit subway station is located on the same side of the street, a mere 80 feet away. The impact to the neighborhood from vault construction has never been considered.
- Because of the expense of the banquet hall, it is clear that the Congregation intends to rent the facility.
- As stated in our initial statement, an income-generating luxury banquet hall/wedding palace/ballroom does not belong in this residential area.
- We believe that income projections for the banquet hall exists, and ask that Mr. Solomon (prominent attorney, President of the Congregation, and the person who signed the Petition and retained the Appraiser) be asked to attend the next hearing and be questioned under oath as to projections of ballroom income, rather than hear third-party assertions by the Congregation’s counsel.

**Proceeds From Condominiums are not Required to Finance the Congregation’s Programmatic Needs – Even If Allowable Under Variance Law.**

The BSA acknowledge in its 2008 decision that it was not legal for BSA to approve variances for the condominiums to allow the Congregation to finance its Community Houses. Yet we recognize that some believe this is a legitimate purpose as a basis of a variance. This is an emotional proposition with implications of political correctness. Were the Board to uniformly allow variances for such reasons, zoning havoc would result.

However, whatever one’s view is of the legality, we would like to put to rest the proposition that the Congregation needs such financing in order to satisfy its programmatic needs.

First, it is incontrovertible that the programmatic needs of the Congregation may be met within an as-of-right building. We ask that the Board make this absolutely clear by questioning the Congregation, and thereby eliminating this ambiguity which only benefits the Congregation. The Board’s past refusal to clarify the Congregation’s false talking point calls

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into question the impartiality of the Board. We ask the Board once-and-for-all to clarify this important fact.

Regardless, the Petition establishes the capability of the Congregation to finance this construction of a programmatic needs-satisfying building by assessment of its members and by a fund-raising campaign, without resort to income from the sale of Condominiums.

- In the Risk Reward Analysis, the Congregation acknowledges its ability to construct a suitable building with a “substantial fundraising campaign.” Risk Reward Analysis.

in redeveloping the property. The only way to exit this scenario would be to negotiate a very expensive buy-out of all condominium units. In the equity partner scenario CSI can explore selling off condominium units, raising funds to keep apartments for parsonage use, or undertaking a substantial fundraising campaign to pay back the construction loan and provide CSI with a rental building as a long term annuity.

*Figure 3 Risk Reward Analysis, Hiller Ex. 21*

- The Petition states that “CSI could fund-raise from among its members to repay the Loan, and in fact has already gathered pledges of \$3.25 million from its trustees.”

superstructure. CSI could fund-raise from among its members to repay the Loan, and in fact has already gathered pledges of \$3.25 million from its trustees. If all else failed, the Property could be sold to repay the Loan, with considerable proceeds to be expected above the amount of the

*Figure 4 Petition at ¶6.*

- The petition states that four Trustees have guaranteed current loans to the amount of \$1.1 million (Petition at ¶4.)

WFI Investments, LLC, which loan is guaranteed by four of CSI’s Trustees. Other than the guarantees, no familial or business relationship exists between any member of CSI and anyone

*Figure 5 Petition at ¶4.*

- The Financial Statements show that the Congregation has not attempted to establish a building fund to support its new building, showing clearly that the Congregation members wish to have a free-ride.
- The membership of the Trustees is dominated by hedge fund operators, top bank executives, and leading attorneys in multi-national law firms (Petition at ¶2.)

### The Inflated Construction Costs Are Self-Imposed Hardships

Many of the costs of construction are the result of self-imposed actions by the Congregation, such as locating a banquet hall in a sub-basement when the soil engineer recommended not to do so, impairing ground floor space to accommodate ventilation of the fire-trap banquet hall, building an extravagant banquet hall for rental when assembly space exists or could be less extravagant, adding expensive sidewalk vaults to enlarge the already large banquet hall space, reducing floor plates at every level from the ground floor up so as to accommodate needs of the condominiums, increasing building height for mechanicals serving the condominiums, and expressing the entitlement to a free community hall.

The inflated “costs” of construction are self-imposed by the Congregation resulting from:

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- The years of indecision, misleading representation to City agencies, and extravagant claims to City agencies resulting in allegedly over \$3,000,000 of soft costs, which have nothing to do with satisfying programmatic needs.
- The decision to include an extravagant ballroom far exceeding the needs of the Congregation, inflating costs due to 27-foot excavations against the advice of its soil engineers and requiring expensive vaults under the sidewalk.
- The decision to incorporate luxury condominiums starting on upper floors, exaggerating the costs to be allocated by the condominiums due to the unusable space for elevators, stairs etc.
- The decision to incorporate luxury condominiums starting on upper floors substantially reducing the floor plates available to the Congregation on floor 1-4 for its programmatic needs.
- The decision to attempt to build a structure higher than the 75 foot as-of-right limitation resulting in expensive rooftop generators and other additions, most of which apparently are there to support the condominiums.

**Financial Statements Provide Actual Acquisition Cost**

The Building Site, Lot 37, is carried on the Congregation Financial Statement at \$70,369 (Financial Statements at 4.) This is based upon the acquisition of the property by the Congregation in 1954 and 1969.

ASSETS	
Cash	\$ 175,311
Investments in marketable securities, at fair value	2,069,433
Due from broker	38,519
Co-operative apartment	73,315
Land - 10 West 70th Street	70,369

Figure 6 Congregation Financial Statements Opp.Ex. 42 at 4.

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The 2008 “economic” analysis show the “acquisition cost” of \$12,347,000 (Hiller Ex, 22 at 2.)<sup>2</sup>

	REVISED AS OF RIGHT CF/RESIDENTIAL DEVELOPMENT	REVISED PROPOSED DEVELOPMENT
<b>BUILDING AREA (SQ.FT.)</b>		
BUILT RESIDENTIAL AREA	7,594	22,352
SELLABLE AREA	5,316	15,243
<b>CAPITAL INVESTMENT SUMMARY</b>		
ACQUISITION COST	\$12,347,000	\$12,347,000
HOLDING & PREP. COSTS	\$0	\$0
BASE CONSTRUCTION COSTS	\$3,722,000	\$7,398,000
SOFT CONSTRUCTION COSTS	\$3,977,000	\$6,322,000
	\$20,046,000	\$26,067,000
<b>PROJECT VALUE</b>		
SALE OF UNITS	\$12,702,000	\$36,394,000
(less) SALES COMMISSIONS	6% (\$762,000)	(\$2,184,000)
EST. NET PROJECT VALUE	\$11,940,000	\$34,210,000

Figure 7 2008 Freeman Frazier Report from Hiller Ex. 22

The 2015-16 Appraisal values Lot 37 at \$36 million is exaggerated to justify the loan, valuing the land as if variances were in place (Appraisal at 68.) The foregoing is summarized as follows:

Book Value of Lot 37	\$70,369
Acquisition Cost as per 2008 Financial Analysis	\$12,347,000
Property Value as Per 2015-6 Appraisal	\$36,000,000

If the Board in 2008 allowed variances for the condominiums to provide income to the Congregation to construct the Community House which did not need variances, that would have not been legal and the Board so admitted such in its decision. Notwithstanding, the Congregation continues to argue that which is not permitted by law. In 2008, the Congregation submitted an “Economic Analysis” by a non-economist. The Board then considered the Economic Analysis, at the same time professing that the Board could not consider the analysis.

This “economic” analysis used an “acquisition cost” of \$12,347,000, yet the Congregation’s own books show the actual book value at \$70,369. Thus, the so-called “economic” analysis undervalued the profit being made by the Congregation by \$12.26 million. The “economic”

<sup>2</sup> The City Council is proposing legislation to require the Board to add a staff expert in financial analysis of real estate development and economics. Such an expert would hopefully assert the obvious – if a project cannot earn a reasonable return based upon the hypothetical “value” of the site, then prima facie the site is over-valued. Testimony at the City Council recent hearing heavily criticized the Board for not accepting the obvious in other cases.

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analysis did not even mention the disparity between the value on the books and the so-called “acquisition cost.”<sup>3</sup>

Truly, the Board should not have let itself be involved in these shenanigans when the programmatic needs are satisfiable within an as-of-right envelope. The Board has been rightly criticized at recent City Council hearings for using a present market value in these computations – but, it is outrageous to use this approach when, by law, the generation of income to construct the New Building should not have been a consideration in the first place.

Thus, members of the public so inclined to “assist” this not-exactly-needy congregation by allowing condominiums to fund a community house should understand that in the feasibility analysis, the Congregation earns over \$12,000,000 in cash just from having the property value included as a cost. So, normal empathy should be tempered. A building with a modest assembly area, no vaults, and no condominiums could be constructed at a cost easily financed by this Congregation.

Members of the Congregation should understand that variance law does not allow variances to subsidize their community space. It would be useful were the Congregation Trustees to let their members understand this fact, so as to alter the oppressed tenor of comments by some Congregation members.

### Other Information Gleaned from the Financial Statements

The financial statements show that the Congregation earns at least \$222,800 a year from the Parsonage rental. Financial Statements at 3. This validates the statements made in our December 7, 2016 statement as to Parsonage rental income. The Parsonage space is available to satisfy some of the programmatic needs of the Congregation and one floor could be used as an apartment for the Caretaker.

	OPERATING FUND	BOARD DESIGNATED FUND	THE PALOMES TALMUD TORAH SCHOOL
Revenues:			
Membership dues and rent rentals	\$ 763,124	\$ -	\$ -
Bei Rabban rent income	53,300	-	-
Facility fees	35,646	-	-
Offerings	77,169	-	-
*Additional* contributions (from December fundraising letter)	39,013	-	5,550
Donations	497,481	-	-
Bequests	53,047	-	-
Cantatories	27,305	-	-
Income from investments	3,032	9,504	-
Investment income from permanently restricted funds	36,051	11,405	-
Unrealized/realized gains	10,173	34,737	-
Unrealized/realized gains/(loss) from permanently restricted funds	(26,738)	41,686	-
Annual fundraising event	208,496	-	-
Tuition fees and other	-	-	26,156
Toddler program income	63,273	-	-
Parsonage rent income	222,800	-	-

Figure 8 Congregation Financial Statements, Opp.Ex. 42 at 3.

<sup>3</sup> In the 2008 “economic” analysis, the hard cost of construction with condominiums was \$7,398,000, less than the value ascribed to the land. The hard cost for an as-of-right residential building in that analysis was only \$3,722,000, well within reach of the Congregation to fund with its own resources.

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The Financial Statements (at 3) show that the Congregation only earned \$26,616 from its Hebrew School in 2014. Assuming that the Congregation tuition fees are similar to those charged by Temple Emmanuel, this suggests that only 20 students or so are enrolled in the Congregation's program. This suggests that the Congregation grossly misrepresents its description of its educational programs.

### Conclusion

We hope that the foregoing based upon the newly obtained information in the 2016 Petition will be helpful in evaluating the claims of the Congregation.

The following documents are being filed electronically by e-mail with 3 hard copies to be filed by hand.

	This Supplemental Statement and Transmittal Letter dated December 19, 2016	74-07-Bz 2016-12-19 Sugarman Supplemental Opposition and Transmittal.pdf
Opp.Ex.42	Opp.Ex. 42, Congregation Shearith Israel Financial Statements, April 30, 2014 and 2013, dated April 2, 2015.	Opp.Ex. 042 74-07-Bz CSI Financial Statement 2013-14.pdf
Opp.Ex.43	April 22, 2015 Group Exhibit, Excerpted Pages from March 11, 2016 Congregation Petition to Court and Exhibits and Hiller Exhibits.	Opp.Ex. 043 74-07-Bz Excerpts.pdf

This transmittal letter with exhibits is being e-mailed to the Congregation's counsel and other opposing counsel.

Sincerely,



Alan D. Sugarman

cc via email:

David Rosenberg, Esq.  
Michael Hiller, Esq.  
Zachary Bernstein, Esq.