STROOCK

By Hand

November 5, 2007

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Meenakshi Srinivasan, A.I.C.P.
Chairperson
New York City Board of Standards and Appeals
40 Rector Street
New York, NY 10022

Re: 121/125 East 85th Street
Block 1514, Lots 10 & 13
Borough of Manhattan
BSA Cal. No. 172-07-BZ

Dear Chairperson Srinivasan:

On behalf of 111 East 85th Street Owners, Inc., enclosed please find the following in regards to the above-referenced variance application:

(1) Statement in Opposition; and

(2) Financial Analysis by Metropolitan Valuation Services, Inc., dated October 24, 2007 (attached as Exhibit A to the Statement in Opposition).

Please note that we will be submitting separately an independent noise study analyzing the impacts of the proposed development on the neighborhood. Please also note that a copy of this submission and attachment is being sent to the applicant's counsel.

Sincerely,

Ross F. Moskowitz

NY 71042838v3

CC: Honorable Scott M. Stringer, Borough President
Daniel R. Garodnick, City Council Member
Ray Gastil, Director, Department of City Planning,
Alan Geiger, Department of City Planning,
David G. Liston, Chair, Community Board 8
Elizabeth McKee, District Manager, Community Board 8
111 East 85th Street Owners, Inc.
Shelly Friedman, Esq., Friedman & Gotbaum, LLP

Enclosures

NY 71042838v3

STATEMENT IN OPPOSITION

TO VARIANCE APPLICATION

OF CONGREGATION KEHILATH JESHURUN

AND THE RAMAZ SCHOOL

(November 5, 2007)

Affected Premises:

121/125 East 85th Street

Block 1514, Lots 10 & 13

Stroock & Stroock & Lavan LLP

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Ross F. Moskowitz, Esq.

NEW YORK CITY
BOARD OF STANDARDS AND APPEALS

Application: 172-07-BZ

Affected: Premise 121/125 East 85th Street
Block 1514/Lots 10 & 13
Manhattan

STATEMENT IN OPPOSITION

Applicant: Ramaz School &
Congregation Kehilath Jeshurun Synagogue
121 & 125 East 85th Street
New York, NY 10028

This statement in opposition to the variance application filed by the Trustees of Congregation Kehilath Jeshurun ("KJ") is submitted by Stroock & Stroock & Lavan LLP on behalf of 111 East 85th Street Owners, Inc., the immediately adjacent neighbor to the east of the proposed residential development.

As is explained in greater detail below, KJ's request for waivers and variances lacks merit as all of KJ's programmatic needs as presented can be met without the requested variances; KJ fails to demonstrate that its application satisfies the five findings required for approval of variances under the Zoning Resolution of the City of New York ("ZRCNY"). ZRCNY §72-21. Accordingly, the Board of Standards and Appeals must deny KJ's request for certain waivers and variances because variances for a non-profit institution should not be used to finance a for-profit real estate development project. There is no precedent that would allow the use of the variance process by a non-profit institution like KJ to profit $28 million through the sale of its development rights, and generate a $60.9 million profit to the project developer.[1] Such use of the variance process is grossly inappropriate as it is an abuse of the variance process and against the intent and purpose of the Zoning Resolution of the City of New York.

I) SUMMARY OF CONGREGATION KEHILATH JESHURUN'S PROPOSAL

The Trustees of Congregation Kehilath Jeshurun propose to demolish an existing school facility, and to construct a 28-story building that will house a new school, certain religious services, and approximately 53 residential apartment units in its place. In addition, KJ proposes certain alterations and additions to the existing synagogue. The project site, consisting of Lot 10 and Lot 13 of Block 1514, is located mid-block on the north side of East 85th Street, between Lexington Avenue and Park Avenue.[2] Lot 10 is zoned R-10 and most of Lot 13 is C5-1A, but a small western portion of Lot 13 is zoned R-10. The proposed new building, which will be developed on the eastern side of the project site, will be approximately 96 feet wide at the widest point, approximately 102 feet deep, and rise approximately 355 feet to the top of the screen wall. This new building will be built to the front, rear, and the easterly side property lines, and also abut the synagogue to the west for the first 4 floors, while cantilevering over this synagogue starting on the fifth floor. The first 10 floors of the building, including the cellars and sub-cellars, will house the new Ramaz School and several synagogue components. Floors 11 through 28 will be developed as residential apartments. The synagogue, located to the west of the new building, will undergo additions and alterations to provide a rooftop playground ("playroof") for the school children, and this playroof will also be used for religious ceremonies, other social and

[1] Metropolitan Valuation Services, Inc., Financial Analysis, 6, October 24, 2007 (hereinafter "MVS Report") (attached as EXHIBIT A to this statement).

[2] The existing synagogue is located within Lot 10 and the existing Ramaz School is located mostly within Lot 13.

recreational uses, and to house a Sukkah.[3] This modification will increase the height of the synagogue by approximately 8 feet 4 inches.

II) THE VARIANCE APPLICATION

Section 72-21 of the Zoning Resolution of the City of New York authorizes variance applications; however, an applicant must demonstrate compliance with five requisite findings described therein in order to secure an approval from the Board of Standards and Appeals ("BSA"). This requires that each of the five requisite findings be supported by substantial evidence. ZRCNY §72-21; *Albert v. Board of Estimate of the City of New York, et al.*, 101A.D.2d 836, 837 (1984). The following five findings are required for grant of a variance: a) there are unique conditions that present a practical difficulty or unnecessary hardship; b) because of the practical difficulties, strict conformance with the zoning resolution will not bring a reasonable return; c) that the requested variances, if granted, will not alter the essential character of the neighborhood or substantially impair use of adjacent properties; d) the practical difficulties were not created by the owner or the predecessor in title, and; e) the requested variance is the minimum necessary. ZRCNY §72-21. Failure to provide substantial evidence to support these five findings shall result in denial of any variance applications.[4]

Because KJ's proposal is beyond what is permitted on an "as-of-right" basis, its proposal requires approval of numerous waivers and variances. However, KJ's request must be denied because KJ has failed to provide substantial evidence to warrant each of the five required

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[3] Sukkah is a structure that is used during religious festivities.

[4] Notwithstanding that the applicant is a non-profit institution, all five findings must still be met as the applicant is seeking a variance for a for-profit venture. Indicative of all five findings being required is KJ's own submission of a financial feasibility analysis. Though woefully inadequate, this economic analysis demonstrates KJ's understanding that each finding of §72-21 must be met.

findings. The evidence presented by KJ is insufficient to support a finding that they have a unique condition, which has resulted in practical difficulties in complying with the zoning resolution. Additionally, KJ has failed to demonstrate that its programmatic needs cannot be met and that a reasonable return cannot be realized without the grant of its requested waivers and variances. In fact, as noted in the attached independent economic analysis for an "as-of-right" development, KJ would receive approximately $13.7 million for the development rights above the proposed community facility, and the project developer would receive roughly $24.7 million as profit. MVS Report, 6. Furthermore, KJ's proposed 28-story building will have substantially adverse impacts on the use and development of adjacent properties. Most importantly and most egregiously, KJ's requested variances are not the minimum necessary to afford relief.

KJ's variance requests are primarily for the new building with only **one** waiver being related to the alteration of the existing synagogue. The requested variances are as follows:

A) **Requested Waivers for the New Building**

1) Lot Coverage in R10 District – Under ZRCNY §24-11, lot coverage of interior lots in R10 zones must not exceed 70 percent. **KJ is requesting a lot coverage variance to cover approximately 94 percent of the site** with existing and new structures.

2) Maximum Base Height in R10 District – ZRCNY §23-663(b) provides that no structures developed under the Quality Housing Program exceeding 125 feet in base height be located within 10 feet of the rear yard line. **KJ requests a 194-foot maximum base height variance** to construct a structure 319-foot tall (355 feet to the top of the screen wall) within 10 feet of the rear yard line.

3) Rear Yard Obstructions in R10 District – ZRCNY §24-36 requires a minimum rear yard of 30 feet. However, §24-33(b) permits structures to be located in the rear yard if that structure is a community facility, but limits height of such structures to either one story or 23 feet above grade,

whichever is lower. **KJ is requesting a 19-foot 8-inch height variance** in order to construct a school facility, which will be 42 feet 8 inches high at the rear property line.

4) Base Height for Quality Housing Development in R10 District – ZRCNY §23-633 provides that maximum base height along street frontage cannot exceed 125 feet. KJ proposes a base height of 136 feet 8 inches, and is therefore **requesting an 11-foot 8-inch base height variance**.

5) Building Height in R10 District – Pursuant to ZRCNY §23-633, no building structure shall exceed a maximum permitted height of 185 feet. The new building as proposed by KJ will be 319 feet tall, which is more than 70 percent taller than that which the R10 district permits. **KJ requests a 134-foot maximum height variance**.

6) Street Wall Setback in C5-1A District – ZRCNY §35-24(c) requires a minimum street wall setback of 15 feet from East 85th Street, a narrow street. The new building as proposed by KJ would be setback 10 feet instead of the 15-foot setback as required. **KJ is requesting a 5-foot setback variance**.

7) Maximum Building Height in C5-1A District – The maximum building height permitted under ZRCNY §35-24 is 210 feet. The proposed building is 319 feet high (not including the mechanical bulkhead and the screen wall). **KJ is requesting a 109-foot building height variance**.

8) Street Wall Continuity in C5-1A District – ZRCNY §35-24(b)(3) requires that street wall be located along the street line and extend along the entire street frontage. KJ's new building will have a 10-foot recess at the residential entrance for a length of 20 feet 2 inches. **KJ is requesting a 10-foot street wall continuity variance at this location**.

9) Mechanical Bulkhead and The Screen Wall – ZRCNY §23-62(d) requires that aggregate width of mechanical bulkheads not exceed 30 feet. It further requires that the product of the aggregate width and the average height not exceed a figure equal to four times the width of the street walls of the building. The aggregate width of the mechanical bulkhead and the screen wall is 62 feet 10 inches and the combined height of the mechanical bulkhead with the screen wall is 36 feet. **KJ is requesting a 32-feet 10-inch aggregate width variance and a 1,654-square foot wall area variance**.

10) Quality Housing Recreation Space – ZRCNY §28-31 requires that at least 2.8 percent of the residential floor area be dedicated as recreation space, which must be provided entirely as indoor recreational space or outdoor recreational space. The regulations do not permit combining indoor and outdoor recreational space to meet the recreational space needs. KJ proposes to provide 1,725 SF of outdoor recreational space and 911 SF of indoor recreational space, which does not comply with the Quality Housing Recreation Space requirements. KJ must provide a minimum of 2,601 SF of recreational space, all of which must be either indoors or outdoors. **Accordingly, KJ seeks a variance to allow the use of both indoor and outdoor recreational space to meet the recreational space requirements**.

B) **Variances Relating to Renovation/Alteration of the Existing Synagogue**

11) Increase in Building Height Nonconformity – ZRCNY §54-31 provides that a nonconforming building may be enlarged provided that nonconformity is not increased or new nonconformities are not created. The existing synagogue is nonconforming with respect to rear yard requirements. KJ proposes to construct a playground on the roof. The existing roof will be raised 8-foot 4-inches in order to accomplish this modification. **KJ requests a variance to increase the height nonconformity of the existing synagogue by 8 foot 4 inches**.

For the above requested waivers and variances, KJ has failed to demonstrate through substantial evidence that its application satisfies all of the required findings under ZRCNY §72-21. Hence, the BSA must deny KJ's variance application.

III) THE APPLICANT DOES NOT SATISFY THE REQUIREMENTS OF ZRCNY §72-21.

A) **There Are No Unique Physical Conditions Giving Rise to Practical Difficulties.**

The first requisite finding under ZRCNY §72-21 is the presence of unique physical conditions, which must create practical difficulties. It is further required that the difficulties are not created from the strict application of the zoning resolution in the neighborhood. In order for physical conditions to be unique, they may not be ones generally applicable throughout the district. *Douglaston Civic Ass'n, Inc. v. Klein*, 51 N.Y.2d 963, 965 (1980). This means that if the condition that is causing the practical difficulties is generally prevalent in the area such that when a variance is granted to relieve the practical difficulties it results in a material change of the district, then that condition is not unique. *Id.* The grant of a zoning variance is conditioned on the unique physical conditions of the lot and not on one's particular spatial needs. *9 White Street Corp., et al. v. Board of Standards and Appeals of the City of New York*, 122 A.D.2d 742, 744 (1st Dep't 1986). A unique condition must be one that is "peculiar to and inherent in the particular zoning lot." ZRCNY §72-21(a). The need for additional space does not "make the existing physical conditions unique and does not create a hardship or practical difficulty within the meaning of the zoning resolution." *9 White Street Corp.*, 122 A.D.2d at 744. Personal inconvenience arising from need for additional space does not provide substantial evidence to support the §72-21(a) finding. *Galin v. Board of Estimate of City of New York*, 72 A.D.2d 114, 117-18 (1st Dep't 1980). Practical difficulties arise when a property or a structure on a property cannot be used without conflicting with certain provisions of the zoning resolution. *Bienstock v. Zoning Bd. Of Appeals of Town of East Hampton*, 187 A.D.2d 578, 580 (2d Dep't 1992). Without a showing of practical difficulties, a variance application must be denied. ZRCNY §71-21(a).

Despite numerous claims by KJ that they have many unique physical conditions, the site does not contain any unique physical conditions that give rise to practical difficulties as required under ZRCNY §72-21(a). KJ states that the existing synagogue building is a "unique and irreplaceable non-complying specialized building … [which] prevents and precludes any further development of its footprint." STATEMENT IN SUPPORT, 20. KJ proposes to add a playroof to the roof of the existing synagogue building, which they plan to use as playground for the school children and for the religious, ceremonial, social and recreational purposes of the congregation. The fact that this synagogue is a 105-year old building may be a unique condition, however KJ has failed to demonstrate why it would create practical difficulties to add a playroof in conformance with the Zoning Resolution. Though still objectionable due to increase in noise and activities (due to the proximity of the new playroof to the easterly side of 111 East 85th Street), an addition of a playroof without increasing the nonconformity of this nonconforming synagogue building appears to be possible by not building within the required rearyard setback area.

In addition, KJ cites a number of deficiencies with the existing synagogue, including its lack of handicap accessibility, expansion incapability, access difficulties, and lack of space. STATEMENT IN SUPPORT, 7-9. Despite these claims, KJ has not provided any evidence to substantiate the alleged deficiencies, other than a mere assertion that accessibility problems are prevalent between the synagogue and the existing Ramaz School. KJ's comment that the elevator does not reach the third floor is misleading as the existing floor plans show elevator stops on the third floor. A review of the existing floor plans and the proposed floor plans demonstrates that KJ's alleged deficiencies relating to handicap accessibility problems on the third floor mezzanine of the synagogue can be resolved without any of the requested variances. To resolve this alleged deficiency, KJ would only have to remove a portion of the eastern wall on the third floor of the synagogue and add a wider door with deeper and wider landings, as shown on the proposed third floor plan. Additionally, it is unclear from KJ's construction plans how new elevators in the proposed building will provide handicap accessibility to the third floor mezzanine of the synagogue since the construction plans show a set of stairs between the new elevator and the third floor mezzanine of the synagogue. Even assuming that these deficiencies do exist, KJ has failed to show how practical difficulties will arise from compliance with the zoning resolution. The synagogue is rectangular in shape and the redevelopment site,[5] where the existing Ramaz School is currently located, (Lot 13 and a small portion of Lot 10) is also rectangular. KJ has not demonstrated how construction of a new building to house the Ramaz School and other religious services that would mitigate these deficiencies with the existing synagogue, while complying with the ZRCNY, would create practical difficulties within the meaning of the ZRCNY. The existence of such deficiencies, if true, may demonstrate only the desire for a renovation of an existing building or a construction of a new building, but it does not demonstrate the need for the requested variances.

KJ also proposes to demolish an existing building, consisting of two interconnected structures, and to build a 28-story building, which will rise approximately 355 feet to the top of the screen wall. KJ claims a number of deficiencies with this existing building, including: 1) undersized gymnasium; 2) lack of storage; 3) structural incompatibility for the kindergarten and nursery school children relating to steep stairs and lack of restroom facilities; 4) lack of administrative space; 5) inefficient circulation; 6) need for ancillary religious and social space; 7) need to expand the Early Childhood Center and the Lower School; 8) small classroom sizes; and 9) lack of specialized learning spaces. First, these deficiencies are not physical conditions inherent in the lot. These merely stem from a desire for additional space, which does not "make the existing physical conditions unique and does not create a hardship or practical difficulty … " 9 *White Street Corp.*, 122 A.D.2d at 744. These alleged deficiencies merely demonstrate that KJ desires a larger and more efficient building to accommodate its religious and educational programs, but it does not show that KJ has any practical difficulties in complying with the

[5] The portion of the zoning lot that will be redeveloped with the proposed mixed-use building.

zoning resolution since the size of the redevelopment site should allow construction of a new building that will be able to accommodate KJ's religious and educational programs within the zoning restrictions. Again, KJ has failed to demonstrate how these deficiencies lead to practical difficulties in complying with the ZRCNY.

KJ asserts that the incapability of the development site to utilize the zoning floor area attributable to the zoning lot is a unique condition. STATEMENT IN SUPPORT, 20. The remaining redevelopment site, consisting of Lot 13 and a small portion of Lot 10, is rectangular in shape and has over 8,000 square feet of lot area. This development site is one that is easily developable and the fact that KJ cannot use all of its allowed floor area on the development site is neither a unique condition nor a practical difficulty. There is no requirement that a property owner utilize all of its allowed floor area for the site. KJ's desire to construct a 28 story mixed-use building that consists of 18 floors of residential apartments is entirely economically driven as stated in its application. STATEMENT IN SUPPORT, 14 (*"[T]he inclusion of the residential uses ... represents an appropriate and common "monetization" of an existing resource ... which has as its sole purpose the correction of the programmatic deficiencies giving rise to this application."*). KJ's desire to construct a large mixed-use building is "one of a personal nature," which does not constitute practical difficulties. *Bienstock*, 187 A.D.2d at 580. There are no unique physical conditions associated with this lot. Hence, there are no practical difficulties associated with complying with the ZRCNY.

KJ also states that the need to align the new building to the existing synagogue is a unique condition. However, as the architectural plans show, the existing synagogue is also rectangular in shape and covers almost all of Lot 10. At the ground level, the two buildings will be interconnected by a lobby and five double-hung doors that will connect the new cafeteria to the meeting room of the synagogue. On the second floor, the two buildings will be interconnected by two doors. One door will connect the third floor of the two buildings. The fourth floor will not have a connection and the fifth floor of the new building will open up to the proposed playroof. These are challenges that are typically found in construction of a new building that connects to an existing building, and such cannot qualify as a unique condition or a practical difficulty.

Furthermore, KJ asserts that the fact that Lot 13 is within two different underlying zoning districts, one residential (R-10) and the other commercial (C5-1A), is a unique physical condition that creates practical difficulties. This split zoning is the basis for five variance requests, including lot coverage, front and rear base height, rear yard obstructions, and building height. If the entirety of Lot 13 were within a commercial zone, some of these variances might not be necessary. However, KJ has failed to provide substantial evidence to demonstrate that this split zoning leads to practical difficulties as it appears to be entirely possible to design and construct a building, which at a minimum, would meet the base height, maximum building height, and rear yard obstruction requirements. Such building, built in compliance with the ZRCNY, should be able to provide all of KJ's programmatic needs and also provide space for some residential apartments as well. KJ's desire to build a 355-foot tall, 28-story mixed-use building with 18 floors dedicated to residential use is purely economically driven. STATEMENT IN SUPPORT, 18.

Lastly, KJ maintains that in order to provide contemporary educational floorplans, it is impossible to provide yards, setbacks and building streetwalls as required by the zoning resolution. However, KJ has not provided any information on why it would not be possible to provide a contemporary educational floorplan without the requested variances. The preliminary construction plans show that the biggest room to be constructed in the new building is the assembly hall at roughly 3,600 square feet in area. The development site is over 8,000 square feet in size. Such development site would easily be able to accommodate a combination of assembly hall, gymnasium, classrooms, and other educational facilities without the need for variances. As the construction plans show, it appears that the need for one of the variances arises from KJ's desire to construct an assembly hall with double height ceilings. If the assembly hall were constructed to be single height or located to another floor or portion of the proposed building, at least one variance would not be necessary. The need to provide a contemporary educational floorplan is not a unique physical condition on site and therefore, cannot be a practical difficulty.

For the reasons above, KJ has entirely failed to provide substantial evidence to demonstrate that it has unique physical conditions on site, which are inherent to the site, that would cause them practical difficulties in complying with the ZRCNY. As discussed above, KJ's alleged unique conditions are false, and KJ will not suffer any practical difficulties in strictly complying with the ZRCNY. Redevelopment to construct a new building and the addition of a playroof on the existing synagogue are possible without the requested variances, which leads to the conclusion that there are no practical difficulties arising out of unique physical conditions. The need for additional space or personal inconvenience does not qualify as a unique condition and it certainly does not create practical difficulties. The alleged difficulties are created because KJ wishes to construct a 355-foot tall building that satisfies all of its spatial needs that also generates a large profit.

B) **KJ Can Realize a Reasonable Return and Its Programmatic Needs Can Be Satisfied Without the Requested Variances.**

A variance application must be supported by substantial evidence to show that the property will not yield a reasonable return without the variance. ZRCNY §72-21(b). Although "churches and schools occupy a different status from mere commercial enterprises," which warrant special considerations, *Diocese of Rochester v. Planning Bd. Of Town of Brighton*, 1 N.Y.2d 508,523 (1956), such considerations are not given if they engage in activities that are non-religious, non-educational, or otherwise for-profit in nature. Hence, even a religious organization must provide substantial evidence to support this finding when it is engaged in profit-making activities.

KJ is a religious institution that has traditionally been engaged in educational services. If KJ had elected to offer only religious and educational services within the new building, KJ would not have to demonstrate conformance with ZRCNY §72-21(b). However, KJ's proposed 28-story building will contain 18 floors of residential apartments; other residential features will also be included within the first 10 floors of this proposed building. Requesting variances in order to finance a project is an inappropriate use of the variance process. Hence, KJ is required to demonstrate that without the requested variances, the property will not yield a reasonable return. However as the following discussion shows, KJ has completely failed to provide substantial evidence to support this finding.

To calculate the reasonable rate of return, the focus "must be on whether any conforming use will yield a reasonable return. *Soho Alliance v. New York City Board of Standards and Appeals*, 264 A.D.2d 59, 64 (1st Dep't 2000) (*affirmed*, 741 N.E.2d 106). This requires a showing that "there is no reasonable possibility that development of the zoning lot in strict conformity with the Zoning Resolution would bring a reasonable return." *West Village Houses Tenants' Association, et al. v. New York City Board of Standards and Appeals, et al.*, 302

A.D.2d 230. 231 (1st Dep't 2003). While this does not require a dollar and cents analysis for every permissible use, an analysis must be sufficient to demonstrate that the property cannot yield a reasonable return without a variance. *Red Hook/Gowanus Chamber of Commerce v. New York City Board of Standards and Appeals*, 12 Misc.3d 1165(A), 8 (Kings Co. 2006). The applicable standard is whether a reasonable return can be realized without the variance and not whether a higher rate of return is possible with the grant of the variance. *Bath Beach Health Spa of Park Slope, Inc. v. Bennett*, 176 A.D.2d 874, 875 (2nd Dep't 1991). A mere showing that one use is more profitable than another does not justify a variance. *Greenbaum v. Board of Estimate of the City of New York*, 148 A.D.2d 92, 97 (1st Dep't 1989).

As a variance applicant, KJ must provide substantial evidence to show that the property cannot yield a reasonable return without the variance. To support the contention that a variance is required in order for the property to yield a reasonable return, KJ submitted an economic analysis by Robert B. Pauls, LLC. However, this analysis contains many analytical errors, misstatements, and incorrect conclusions. An independent economic analysis, completed by Metropolitan Valuation Services, shows that the property is able to yield a reasonable return within the confines of the zoning restrictions placed on site. MVS Report, 1. This analysis was prepared in conformity with and subject to the Code of Professional Ethics and Standards of Professional Appraisal Practice, and contains methods and techniques recognized by the Appraisal Standards Board of the Appraisal Foundation. The MVS Report shows four fundamental flaws in Pauls' analysis:

i) The analysis assigns the same value to the cost of development rights to calculate return for both the "as-of-right" development and the proposed development, ignoring the fact that development rights are calculated on a per square foot basis;

ii) Comparable sales data underestimates the true value of the proposed apartments because the comparables used do not reflect the fact that the proposed apartments will be new and on higher floors;

iii) The price per square foot must be adjusted for inflation to reflect market conditions at the time the apartments will be ready for sale and occupancy; and

iv) Certain costs in the development cost summary are not actual costs. MVS Report, 2-5.

The MVS report corrected the errors contained in Pauls' analysis, and concluded that even development "as-of-right" would be able to achieve a profit of approximately $24.7 million or a 56% return on a $42.2 million investment, while providing for a payment of roughly $13.7 million to KJ for the development rights. MVS Report, 6. This greatly exceeds the 6.3% rate of return identified to be "sufficient for consideration as an investment opportunity. STATEMENT IN SUPPORT, 29. In arriving at this conclusion, MVS determined that the comparables used by Pauls were not appropriate and found other more suitable comparables, which actually were similar to the proposed project in terms of age, location, view, size, and other relevant factors, as opposed to the ones used by Pauls. Based on these comparables, MVS was able to arrive at a sales price of $2,000 per square foot for the proposed apartments, after price adjustments for relevant factors and time were made, as compared to the price per square foot of $1,134 to $1,285 used by Pauls. Also, the cost for the development rights in the "as-of-right" development was reduced to reflect the true value of development rights, which is a product of the total amount of buildable square feet on a given site and the value of that one buildable square foot for a given property.[6] Hence, the cost for development rights for the "as-of-right" scenario was adjusted to $13.7 million, rather than the $27.9 million as contained in Pauls' analysis. Furthermore, development costs were changed to show the decrease in land cost, which also

[6] In this case, Pauls' analysis assigns the same price of $27,959,793 for both 61,366 square feet of development rights (proposed development) and 30,106 square foot of development rights ("as-of-right" development) to arrive at a conclusion that "as-of-right" development cannot be profitable. MVS Report, 5.

lowered loan costs. Finally, transfer tax was taken out from the construction cost analysis since buyers generally pay those taxes. MVS Report, 5. By using accurate appraisal methods and using reliable data, the MVS report shows that construction of apartments, even in the "as-of-right" scenario can achieve a large profit. If developed "as-of-right," KJ would receive approximately $13.7 million for its sale of development rights and the project developer would be able to achieve a 56% return on investment or a profit of $24.7 million.[7] This rate of return far exceeds the 6.3% rate of return, which is stated by KJ to be minimally sufficient, and all reasonable minds would agree that such figures represent a reasonable return. KJ has failed to demonstrate through substantial evidence that variances are necessary to achieve reasonable returns. KJ is seeking the requested waivers and variances because KJ's proposed development would generate an enormous profit of $60.9 million or a 77% return on a $79.1 million investment. MVS Report, 6.

C) The Grant of Variance will Alter the Essential Character of the Neighborhood and Substantially Impair the Appropriate Use and Development of Adjacent Properties.

The grant of the requested variances will adversely impact the neighborhood and adjacent properties. It is acknowledged that religious and educational facilities "occupy a different status from mere commercial enterprises, and when the church enters the picture, different considerations apply." *Westchester Reform Temple v. Brown*, 239 N.E.2d 891, 894 (1968). Factors such as character of residential area, effect on property values, loss of tax revenues, and traffic hazards are inadequate to preclude construction of a religious facility. *Id.* However, these factors are controlling in a commercial structure. *Id.* Even religious and educational portions of

[7] An "as-of-right" development of apartments would cost $43,968,140, including the purchase of development rights. Sales of these residential apartments would generate a revenue of $68,674,000. Even an "as-of-right" development would generate a healthy profit of $24.7 million or a 56% return on equity. MVS Report, 6.

the new building must "accommodate factors directly relevant to public health, safety or welfare..." *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583, 595 (1986).

KJ is a non-profit entity that provides both religious and educational services. Normally, KJ would be afforded greater flexibility in its plans to replace or expand its facilities, however because a major portion of its new building will contain for-profit residential uses, special considerations given to churches and schools do not apply in this case. KJ proposes a 355-foot tall building with 53 units of new apartments on the site that will have an average unit size of approximately 1,320 square feet. There are numerous negative impacts associated with this residential development such as: traffic impacts; shadow impacts, neighborhood character impacts; noise impacts; and construction impacts. In addition, the proposed building will have an impact on the synagogue itself, which has some potential historical significance (as acknowledged by KJ in its application). Interestingly, and perhaps telling of KJ's attitude toward this process, the environmental review barely mentions this potential impact and is devoid of any substantive analysis on these points.

KJ's proposal will add 53 new households or 213 new residents to East 85th Street and increase the number of workers by 11 workers and the number of students by approximately 48 students. This equates to approximately 272 additional residents, workers and students. The addition of 272 people to a narrow and already crowded street like East 85th, which is a through street used to cross Central Park to the west side, will significantly impair the use of adjacent properties. KJ's proposal will directly contribute to a significant growth in both pedestrian and vehicular traffic and demand for services, such as open space, and also increase noise, odor, dust, and garbage in the neighborhood, however KJ has failed to submit a single proposal to mitigate any of these negative impacts.[8] Additionally, the building as proposed will be one of the tallest in the immediate vicinity, which would create shadow impacts to the surrounding properties, thereby significantly reducing the availability of sunlight to numerous properties in the vicinity. Again, KJ's environmental review makes only passing references to these impacts. As is discussed previously and herein, noise impacts during and after construction will also be great. Furthermore, KJ proposes a playroof for the new Ramaz School on top of the Synagogue, which will abut the residential building to the east and be in close proximity to other residential buildings in the neighborhood. Noise from this playroof will negatively affect the residents during the day as children gather on the playroof and during other various hours as the playroof is used for social, recreational and religious purposes. Given the playroof's proximity to its immediate easterly neighbor, it is disingenuous to suggest that noise, odor and dust from activities atop the playroof will not impair the use of adjacent properties. Once again, KJ's environmental review ignores these impacts.

KJ also asserts that its synagogue has potential historic significance as a building that is over a century old, however its environmental assessment fails to analyze the impacts that a new and modern 28-story tower will have on this potentially historic structure. The new building will cantilever over this 4-story synagogue starting from the fifth floor. It is doubtful that such a large structure that encroaches upon the air space of a century-old building with potential historic significance will not have any negative visual and design impacts.

Courts have noted that even religious and educational uses must be accommodating to the public health and welfare. In this instance, there is a mix of residential, educational, and

[8] KJ's proposal does not include a provision for vehicular parking. Environmental Assessment Statement, 5.

religious uses that will have a significant impact on the surrounding area. KJ's proposal fails to demonstrate consistency with the required finding that the grant of variances will not alter the essential character of the neighborhood or substantially impair use of adjacent properties.

D) **The Requested Variances are Not the Minimum Necessary as Required by ZRCNY §72-21(e).**

The variances requested by KJ are not the minimum necessary as required by ZRCNY §72-21(e). KJ does not present any evidence on whether the variances requested are the minimum necessary. There is no indication that any other use requiring a lesser or no variance has been explored. *Greenbaum*, 148 A.D.2d at 94. KJ alleges that there are a number of unique physical conditions on site, which present practical difficulties. As discussed previously, there are no unique conditions on site that present practical difficulties in complying with the zoning resolution. Rather, the difficulties are self-created by the desire to construct new religious and educational facilities, along with 53 new apartment units, and to profit from such development. The use of the variance process by a non-profit institution to finance the development of a for-profit building is extremely troubling and presents significant long-term implications for future project developments in Manhattan. The grant of variances requested by KJ would be precedent setting in nature and would result in an avalanche of similar requests from other not-profit institutions.

Furthermore, there is no nexus between the difficulties cited in the application to the variances requested. The requested variances must cure the difficulties cited in the application. *9 White Street Corp*, 122 A.D.2d at 744 (an addition of a penthouse to serve as living quarters is unlikely to cure the problem of a narrow and dark building). However, many of the variances requested by KJ do not provide relief for the alleged difficulties that they claim to have. The requested variances are unrelated to the educational programs at the new Ramaz School or the synagogue as the requested variances are mostly to allow the construction of luxury, high-rise apartments, which do not directly relieve the alleged hardships relating to KJ's programmatic needs. The residential apartments do not have a functional relationship to the school or the synagogue. Thus, granting variances to permit the construction of residential apartments cannot relieve the hardships relating to the programmatic needs of the school and the synagogue, as alleged by KJ. Although KJ maintains that the need for the streetwall variance is driven by contemporary educational standards, STATEMENT IN SUPPORT, 21, it is clear that the streetwall continuity variance has no connection to the educational portions of the new building, as it is clearly a way to delineate the residential lobby from remainder of the building. STATEMENT IN SUPPORT, 25. Even the rear yard obstruction variance that KJ seeks in order to construct a school assembly hall is not driven by educational standards, but by KJ's desire for other uses, such as its faculty dining area on the second floor and more so for the residential apartments on floors 11 through 28.

KJ does not provide any connection between the difficulty and the relief requested other than the assertion that the development site is incapable of utilizing the zoning floor area attributable to the entire property in requesting variances to construct a residential tower. However, this fails the nexus requirement, as it would be possible to utilize the entire floor area on the site without the grant of variances. Lastly, there is no requirement that a landowner utilize all of the floor area that he has available for a given piece of property; therefore it cannot be a difficulty. KJ's desire to fully utilize the allowed floor area for a given site is driven by a desire to maximize profits, and requesting variances in order to finance a project is grossly inappropriate, constituting an abuse of the variance application process. Because KJ's variance requests are against the spirit and purpose of the Zoning Resolution of the City of New York, the Board of Standards and Appeals must deny KJ's application.

IV) CONCLUSION

The New York State Court of Appeals has cautioned against piecemeal variances, such as the ones requested by KJ, which ultimately alter the nature of the neighborhood and may cause "far greater hardships than that which a variance may alleviate." *Village Board of Fayetteville,* 53 N.Y.2d at 259-60; *quoting Matter of Otto v. Steinhilber,* 282 N.Y. 71, 77-8 (1939). Unjustified variances may destroy or diminish the value of nearby properties and adversely affect those who obtained residences in reliance upon the design of zoning ordinance. *Village of Fayetteville*, 53 N.Y.2d at 260. Granting the variances requested by KJ would destroy property values and have adverse effects on neighboring properties, which would ultimately lead to "greater hardships than that which a variance may alleviate."

KJ has failed to provide substantial evidence to support each of the required findings in ZRCNY § 72-21. There are no unique conditions on site that create practical difficulties. Any difficulties that KJ encounters arise from its own profit motive. KJ can realize a reasonable return and also fulfill its programmatic needs without the grant of the requested variances. Granting the variances will have adverse effects on the neighboring properties and the district. Lastly, KJ is requesting variances that are not the minimum necessary, which do not have any nexus to the alleged hardships. Because KJ has failed to provide substantial evidence as required, its variance application must be denied.

EXHIBIT A

METROPOLITAN VALUATION SERVICES

REAL ESTATE CONSULTING AND APPRAISAL

October 24, 2007

Stroock & Stroock & Lavan, LLP
180 Maiden Lane
New York, NY 10038

re: 121 -125 East 85th Street
(Block 1514, Lots 10 and 13)
New York, NY - the "CKJ/Ramaz Site"

Greetings:

Pursuant to your authorization, Metropolitan Valuation Services, Inc. ("MVS") has reviewed the "Feasibility Study" prepared by Robert B. Pauls, LLC (undated) and the "Statement in Support of Certain Variances" prepared by Friedman & Gotbaum LLP dated June 20, 2007 analyzing potential mixed-use development on the CKJ/Ramaz Site. This study has been presented within a Restricted Format report. The report has been prepared in conformity with and subject to the Code of Professional Ethics and Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The report contains recognized methods and techniques that materially contribute to a proper evaluation of the real estate problem under consideration. The report has been prepared subject to the attached Basic Assumptions and Limiting Conditions. The depth of discussion contained in this presentation is specific to the immediate needs of the client and can only be relied upon by a reader familiar with the subject property and similar-type properties. We are not responsible for any unauthorized use of this restricted format report. This reporting format is in compliance with the specific guidelines of Standard 2-2 of USPAP. This report should not be construed to represent an appraisal of the premises, as we were not engaged to appraise the CKJ/Ramaz site, but rather to review the Feasibility Study and its conclusions. We have not addressed any issues concerning market-rate rent for the community space at the proposed property as raised in the New York City Board of Standards and Appeals Notice of Objections dated September 27, 2007 as the Feasibility Study did not include such.

Based upon our review of The Robert B. Pauls Feasibility Study, we have concluded that it is critically flawed by poor judgment and erroneous mathematical technique. Accordingly, its conclusions cannot be relied upon. Further, we have concluded that the development of the CKJ/Ramaz Site with an "as of right" building is economically feasible and could result in a payment to CKJ/Ramaz of as much as $28,000,000 for development rights above the proposed community use facility envisioned to be constructed on the site while at the same time providing for a $24,700,000 profit to the project developer. The following report details the reasoning supporting these conclusions.

METROPOLITAN VALUATION SERVICES, INC.
444 Park Avenue South – Suite 402
New York, NY 10016
Phone (212) 213-8650 Fax (212) 213-8621

Overview

The Trustees of Congregation Kehilath Jeshurun ("KJ") have applied for a zoning variance from the City of New York that will enable the construction of a new 28-story mixed-use building comprised of 18 floors of multifamily residential space atop 10 floors of community facility space containing a total zoning area of 186,241 square feet. The "as of right" development of the existing site would permit construction of a mixed-use building that is 16 floors in height comprised of the same 10 floors of community facility space but only 6 residential floors. The total net residential area "as of right" is reported in the Feasibility Study to be 34,337 square feet. The zoning variance would increase the residential component by 18 floors and total 69,991 square feet of net residential area.

In support of the zoning variance application, KJ has relied upon the Feasibility Study prepared by Robert B. Pauls to demonstrate that "Because of the physical conditions there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of this resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot." (page 28, Friedman & Gotbaum).

The purpose of this assignment is to review the accuracy and reliability of the Feasibility Study to determine if its conclusions can be relied upon as the basis for the zoning variance. We will present our findings in this report in the order in which they are presented in the Feasibility Study.

Site Description

The site description appears to be accurate.

Zoning and Development Options

The net residential building area in the "as of right" scenario is reported to be 34,337 square feet and 69,991 square feet with the variance scenario. These sizes are not consistent with the zoning FAR and are assumed to be based upon calculations prepared by FXFOWLE Architects P.C. for KJ.

Site Valuation – "As Is"

The inclusion of 1655 Madison Avenue as a sale comparable is ill-advised. It is a narrow townhouse style lot not capable of supporting the type of construction envisioned for the subject property or any of the other comparables.

As the Feasibility Study reviewed by us is not dated, we have concluded from the adjustment grid on page 5 that it was produced sometime around mid-2006, as no time adjustments are applied for sales around that date. As we are reviewing data pertinent to October, 2007, we believe that a further upward time adjustment for improved market conditions is warranted.

The CKJ/Ramaz site occupies a prime Upper East Side location, midblock between Park and Lexington Avenues, south of 86th Street. In our opinion, there should be greater upward location adjustments for Sales No. 1, 2 and 4.

The concluded value of $455.62 per square foot of zoning floor area (FAR) is the mathematical average of the four adjusted sales. Concluding a value to the exact average is generally considered to be poor appraisal practice. Further, given that little if no reliance should be place on Sale No. 4, use of the average renders the unit value conclusion of $455.62 per square foot of FAR highly suspect.

On page 6 of the Feasibility Study Mr. Pauls relies upon a ratio of 60.6% to determine that there is 61,366 square feet of zoning area attributable to the residential component of the proposed development. The source of this ratio is not documented and is somewhat inconsistent with the net rentable area 69,991 square feet utilized elsewhere in his report.

Comparable Leases and Sales

The Feasibility Study contains no comparable leases. There are however, five comparable sales presented on page 7 in Exhibit 3. All are noted to be in the same neighborhood as is the subject property. These sales are utilized as the basis for determining that the average sales price of the "as of right" condominiums that could be constructed on the CJ site would be $1,134 per square foot and $1,285 per square foot for the larger, variance granted building. We have reviewed the sales and the buildings in which these apartments are located and have concluded that reliance upon these sales is fully unreliable unless substantial upwards adjustments based on the observations presented in the following paragraph are applied.

All the sales cited are re-sales in older buildings. Sale No. 1, Evans Tower, was constructed in 1986; Sale No. 2, Le Trianon, was built in 1984; Sale No. 3, The Ventura, was built in 1986 and converted to a condominium in 2002; Sale No. 4, the Richmond, was built in 1937 as a warehouse and converted to a condominium in 1994; and Sale No. 5 was built in 1999 as a rental and converted to condominium ownership in 2005. The adjustment table illustrates no upward adjustment for age and building condition, which should be considerable (probably in the range of 20% to 30%) as the proposed subject property will be generally 25 years newer than these properties when it is introduced to the market. Further, although the typical unit size for the proposed CJ condominium is stated to be between 1,310 and 1,431 square feet, only Sale No. 2 (1,335 square feet average) has units averaging anywhere near this size. Sale No. 1 has an average unit size of 997 square feet; Sale No. 3, 827 square feet; Sale No. 4, 1,949 square feet; and Sale No. 5, 884 square feet. The size adjustment applied is both inconsistent and irrelevant. Finally, no recognition was made for the fact that the proposed subject property will begin on the eleventh floor and afford generally superior views and exposures than the comparables given the higher average floor height. A large upward adjustment would be expected for this factor.

Overall, these sales are not considered to be comparable and the values concluded therefrom are fully unreliable. The appropriate comparable set would be comprised of sales activity in newly constructed buildings in the neighborhood presently marketing units. We have performed this survey, which is summarized as follows:

The Lucida, located at 151 East 85th Street (located a few steps away on the east side of Lexington Avenue) is an 18-story mixed-use project containing 110 condominium apartments, 24 rental apartments, and a 96,585 square foot multilevel retail component. The retail component will have space at grade level, the second level, and 2 cellar levels of the project. The 24 rental apartments are located on the 3rd through 5th floors, while the 110 condominium apartments are located on the 6th through 18th floors. Occupancy is scheduled to be completed in January, 2009. According to confidential information received by us, there are more than 71 units already sold, at an average sale price of $1,826 per square foot, and another 27 units out for contract at an average sale price of $1,956 per square foot. Unit sizes average 2,387 square feet.

The Brompton, located at 151 East 85th Street, is a 22-story condominium under construction with completion anticipated in late 2008. This 22-story building, located at the comer of Third Avenue, contains a total of 191 units above ground floor retail. Marketing began in Spring 2007, and according to confidential information received by us, 77 units already sold at an average sale price of $1,633 per square foot. Unit sizes average 1,334 square feet.

300 East 79th Street, located at the corner of Second Avenue, is a 42-unit building under construction with Spring, 2008 occupancy anticipated. Marketing began in the Summer of 2007 and according to confidential information received by us, 35 units area already sold or under contract at an average sale price of slightly more than $1,600 per square foot. Unit sizes average 1,369 square feet.

170 East End Avenue, occupying the entire blockfront between East 87th and 88th Streets, is a 2-tower 19-story development containing a total of 106 units. Occupancy reportedly began a few months ago and only 6 units remain unsold. Average sales prices are approximately $1,868 per square foot. Unit sizes average about 2,300 square feet.

985 Park Avenue is a 15-story, 7-unit condominium that was recently completed. Located between East 87th and 88th Streets, this property features duplex and triplex units. This property is fully sold out at an average price of $2,235 per square foot. Unit sizes average 2,654 square feet.

A 21-story 57-unit condominium is planned for 305 East 85th Street, at the corner of Second Avenue. According to the offering plan to be submitted to the New York State Attorney General, prices will average $1,865 per square foot. Unit sizes average 1,865 square feet.

Based upon our review of the current sales data of similarly new buildings in the neighborhood, it is quite reasonable to assume that a new condominium at the CKJ/Ramaz site, constructed to a market standard with respect to unit finishes and amenities, located atop a building base that would rise the equivalent of at least 15 stories (assuming that the community use facility below has typical institutional ceiling heights), could achieve prices equal to or greater than most of these cited properties. Given that it would take probably at least 2 years before a condominium on the subject property could be at the point of marketing, we have concluded that an average sale price of about $2,000 per square foot can be expected. The Feasibility Study's conclusion of prices of $1,135 to $1,285 per square foot is completely without merit.

Cost Analysis

The Feasibility Study relies upon construction cost estimates prepared by McQuillkin Associates, Inc. In the absence of any supporting documentation, we have accepted these cost estimates for purposes of our review and analysis.

Pro Forma Analysis

The Feasibility Study makes reference on page 10 to lease rates and vacancy rates. Since the property is to be sold as condominiums, the reference to lease and vacancy rates is puzzling.

A critical flaw in the Feasibility Study is noted on Exhibit 7 (page 12). In estimating the estimated project profit, both the "as of right" and proposed development scenarios "charge" the developer $27,959,793 for the site. Classification of the site value evidently refers to the value of the acquired development rights above the proposed community use facility. By charging the developer the same price for 61,366 square feet of FAR or 30,106 square feet of FAR, Mr. Pauls has effectively increased the price per square foot of FAR in the "as of right" scenario to a whopping $928.72 per square foot ($27,959,793 divided by 30,106 square feet). It is no wonder there is a negative return when the cost of the development site is 72% of the aggregate sales prices of the finished condominium units. Correctly, Exhibit 7 should have used an apportioned land value based upon the ratio of 49.06% (34,337 square feet of net residential area under the as of right scenario versus 69,991 square feet as proposed), or $13,716,841.

Exhibit 7 on page 12 also portrays the total return as an "Annual Return As % of Cost." This is incorrect, as it is simply the total return on cost, and is not annualized.

Development Cost Summary

Exhibit 8 on page 13 of the Feasibility Study contains a table summarizing the development costs. This table contains several inaccuracies and inconsistencies. The first cost category is labeled "Land & Bldg Value." As this line item refers to the site cost, there is no building value.

The estimated construction loan amount for both development scenarios is calculated by Mr. Pauls to be 85% of the total land and building costs. For the "as of right" scenario, the estimated construction loan is $58,178,006, and interest on that loan is charged accordingly. However, as previously illustrated, the "land value" in these calculations should be $13,716,841 for the "as of right" scenario, reducing the estimated construction loan to $29,433,046 (($13,716,841 + $20,910,272) x 85%)).

There is an expense line item for "Transfer Tax." This is calculated at 1.75% of aggregate residential sales revenues and assumes that it is paid for by the condominium developer. For the last 20 years virtually every new condominium built in Manhattan has charged the buyer for this expense. We see no reason why the proposed condominium at the subject property should be any different.

The "Con. Loan Int. Loan Rate" line expense, meaning construction loan interest loan rate, was previously cited on pages 10 and 11 to be 9.0%, yet 8.75% appears to be employed here.

Conclusions

The principal subjective variable in the Feasibility Study is the price per square foot of the finished condominium units proposed for the subject property. We believe we have demonstrated that the values employed by Mr. Pauls are unsupportable and wrong. Rather, a value of $2,000 per square foot is more realistic.

There is a critical flaw in the methodology employed in the Feasibility Study. Charging the developer for almost twice as much developable square footage in the "as of right" scenario is an egregious error.

To address the various errors in the Feasibility Study we have prepared the following tables to illustrate the correct application of Mr. Pauls' "Pro Forma Analysis Summary." In our calculations, we have revised the "as of right" site value by eliminating the "Transfer Tax" charge, adjusting the construction loan interest to reflect the reduced "as of right" loan amount, and adjusting the "Residential Brokerage" line item to reflect higher sales revenues.

As illustrated on MVS Exhibits A and B, we have presented a comparative analysis of the Robert B. Pauls Feasibility Study with the following presentation:

- Robert B. Pauls "as of right" – this column restates the numbers contained exactly in the Feasibility Study.
- Robert B. Pauls "as of right" REVISED – this column restates the numbers contained exactly in the Feasibility Study with revisions to accurately reflect the lower apportioned land value and accordingly adjusts the construction loan and consequently the construction loan interest and lender. Further, no transfer tax has been debited.
- MVS "as of right" – this column is the same as the Robert B. Pauls "as of right" REVISED but employed a more accurate market value of $2,000 per square foot for the condominium units. Residential brokerage fees were adjusted accordingly.
- Robert B. Pauls "as proposed" – this column restates the numbers contained exactly in the Feasibility Study.
- MVS as Proposed with Variance – the column utilizes the same assumptions as the MVS "as of right" but utilizes a saleable area of 69,991 square feet.

MVS EXHIBIT A
PRO FORMA ANALYSIS SUMMARY – COMPARATIVE ANALYSIS

	Robert B. Pauls "as of right"	Robert B. Pauls "as of right" REVISED	MVS "as of right"	Robert B. Pauls as Proposed with Variance	MVS as proposed with Variance
Building Area (sq.ft.)					
Residential Area (sq.ft.) (1)	34,337	34,337	34,337	69.991	69,991
Price per Square Foot	$1,135	$1,135	$2,000	$1,285	$2,000
Residential Apartment Sales	$38,960,535	$38,960,535	$68,674,000	$89,986,955	$139,982,000
Capital Investment Summary					
Site Value	$27,959,793	$13,716,841	$13,716,841	$27,959,793	$27,959,793
Base Construction Costs (1)	20,910,272	20,910,272	20,910,272	32,773,397	32,773,397
Estimated Soft Costs	9,307,941	7,558,219	9,341,027	16,935,235	18,360,166
Special Costs	0	0	0	0	0
Estimated Total Development Costs	$58,178,006	$42,185,332	$43,968,140	$77,668,425	$79,093,356
Return on Investment					
Project Development Cost	$58,178,006	$42,185,332	$43,968,140	$77,668,425	$79,093,356
Less: Residential Apartment Sales	(38,960,535)	(38,960,535)	(68,674,000)	(89,986,955)	(139,982,000)
Estimated Project Profit	($19,217,471)	($3,224,797)	$24,705,860	$12,318,530	$60,888,644

(1) As per Robert B. Pauls, LLC Feasibility Study
Source: Robert B. Pauls, LLC, computations by MVS

MVS EXHIBIT B
DEVELOPMENT COST SUMMARY

	Robert B. Pauls "as of right"	Robert B. Pauls "as of right" REVISED	MVS "as of right"	Robert B. Pauls as Proposed with Variance	MVS as proposed with Variance
Gross Sales Revenues	$38,960,535	$38,960,535	$38,960,535	$89,986,955	$68,674,000
(per square foot)	$1,135	$1,135	$2,000	$1,285	$2,000
Land Value	$27,959,793	$13,716,841	$13,716,841	$27,959,793	$27,959,793
Base Construction Cost	20,910,272	20,910,272	20,910,272	32,773,397	32,773,397
Estimated Soft Costs	9,307,941	7,558,219	9,341,027	16,935,235	18,360,166
Special Costs	0	0	0	0	0
Estimated Total Development Costs	$58,178,006	$42,185,332	$43,968,140	$77,668,425	$79,093,356
Estimated Construction Loan Amount	$41,539,555	$29,433,046	29,433,046	$51,623,211	$51,623,211
Estimated Soft Costs					
Architectural & Engineering Fees	$1,045,514	$1,045,514	1,045,514	$1,638,670	$1,638,670
Construction Management	627,308	627,308	627,308	983,202	983,202
Inspections, Borings & Surveys	25,000	25,000	25,000	25,000	25,000
Developer's Legal Fees	100,000	100,000	100,000	75,000	75,000
Permits & Approvals	20,000	20,000	20,000	50,000	50,000
Accounting	10,000	10,000	10,000	10,000	10,000
Real Property Tax	0	0	0	0	0
Insurance	418,205	418,205	418,205	655,468	655,468
Appraisal Fees	30,000	30,000	30,000	30,000	30,000
Title Insurance	95,063	95,063	95,063	95,063	95,063
Transfer Tax	681,809	0	0	1,574,772	0
Construction Loan Interest	3,427,013	2,428,226	2,428,226	5,807,611	5,807,611
Construction Lender's Fees	415,396	346,271	346,271	516,232	516,232
Construction Lender's Legal Fees	50,000	50,000	50,000	50,000	50,000
Bank Inspector's Engineer	25,000	25,000	25,000	25,000	25,000
Residential Brokerage	2,337,632	2,337,632	4,120,440	5,399,217	8,398,920
Total Estimated Soft Costs	$9,307,940	$7,558,219	$9,341,027	$16,935,235	$18,360,166

(1) Note: All estimated soft costs are as per Robert B. Pauls, LLC Feasibility Study except as noted
Source: Robert B. Pauls, LLC, computations by MVS

The Feasibility Study reported that the "as of right" development would result in a loss of $19,217,471 to the project developer, rendering it economically infeasible. Correcting Mr. Pauls' erroneous excess charge of $14,242,952 for development rights that are not be transferred and eliminating the transfer tax results in a loss of $3,224,797 as illustrated in the revised schedule. Recognizing that the sales revenues are woefully understated, the project profit jumps to a positive $24,705,860 when an appropriate average sales price of $2,000 per square foot for the condominium units is considered. This is illustrated in the MVS "as of right" calculations. Mr. Pauls' reports a project profit of $16,935,235 for the "as Proposed with Variance" scenario in the Feasibility Study. Correcting and revising those numbers results in a project profit of $60,888,644.

Based upon of review and revision of the Feasibility Study we have reached the following conclusions regarding the feasibility of development on the CKJ/Ramaz Site and the report itself.

- The Robert B. Pauls Feasibility Study is critically flawed by poor judgment and erroneous mathematical technique. Accordingly, its conclusions cannot be relied upon.
- Appropriate revision of the Feasibility Study reveals that development of the "as of right" building on the CKJ/Ramaz Site results in a project profit of $24,705,806. This profit margin equals 36% of the condominium sell-out value of $68,674,000.
- The land value ascribed by Mr. Pauls may be far lower than what could be achieved in the open market. On page 29 in the Statement in Support, Friedman & Gottbaum, LLP, attorneys for KJ, state that "a 6.3 percent rate of return, which the Feasibility Study determines to be minimally sufficient for consideration as an investment opportunity." Applying a more generous 15.0% return would yield the project developer a profit of $10,300,000 as per our calculations. The difference between the $24,705,806 we calculated as project profit and a 15.0% project profit of $10,300,000 is $14,405,806. Applying this differential to the CKJ/Ramaz Site value results in a value to CJ of $28,122,647 ($13,706,841 plus $14,405,806).
- Based upon our analysis of the Robert B. Pauls Feasibility Study, we have concluded that the development of the CKJ/Ramaz Site with an "as of right" building is economically feasible and could result in a payment to CJ of as much as $28,000,000 for development rights above the proposed community use facility envisioned to be constructed on the site while at the same time providing for a $24,700,000 profit to the project developer.

It has been a pleasure to be of service to you. Please do not hesitate to call with any questions you may have regarding our assumptions, observations or conclusions.

Very truly yours,

METROPOLITAN VALUATION SERVICES, INC.

Martin B. Levine

By: Martin B. Levine, MAI
Chairman
NY Certification 46000003834

ASSUMPTIONS AND LIMITING CONDITIONS

This report has been prepared under the following general assumptions and limiting conditions:

1. No opinion is intended to be expressed and no responsibility is assumed for the legal description or for any matters which are legal in nature or require legal expertise or specialized knowledge beyond that of a real estate appraiser.
2. Title to the property is assumed to be good and marketable and the property is assumed to be free and clear of all liens unless otherwise stated. All mortgages, liens and encumbrances have been disregarded unless so specified within this report.
3. The appraiser has made no legal survey nor have we commissioned one to be prepared. Therefore, reference to a sketch, plat, diagram or previous survey appearing in the report is only for the purpose of assisting the reader to visualize the property.
4. The subject property is analyzed as though under responsible ownership and competent management with adequate financial resources to operate the property within market parameters.
5. It is assumed in this analysis that there were no hidden or unapparent conditions of the property, subsoil, or structures, including hazardous waste conditions, which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
6. Information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. Some information contained within this report may have been provided by the owner of the property, or by persons in the employ of the owner. Neither the consultant nor Metropolitan Valuation Services, Inc. ("MVS") shall be responsible for the accuracy or completeness of such information. Should there be any material error in the information provided to or obtained by the consultant; the results of this report are subject to review and revision.
7. The consultant assumes that no hazardous wastes exist on or in the subject property unless otherwise stated in this report. The existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The consultant has no knowledge of the existence of such materials on or in the subject property. The consultant however, is not qualified to detect such substances or detrimental environmental conditions. The consultant has inspected the subject property with the due diligence expected of a professional real estate appraiser. The consultant is not qualified to detect hazardous waste and/or toxic materials. Any comment by the consultants that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The value estimates rendered in this report are predicated upon the assumption that there is no such material on or affecting the property which would cause a diminution in value. No responsibility is assumed by the appraiser for any such conditions, or for any expertise or environmental engineering knowledge required to discover same. The client is urged to retain an expert in this field if so desired.
8. The consultants have inspected the exterior of the subject property with the due diligence expected of a professional real estate appraiser. MVS assumes no responsibility for the soundness the property's structural or mechanical systems and components. We accept no responsibility for considerations requiring expertise in other professional fields. Such considerations include, but are not limited to, soils and seismic stability, civil, mechanical, electrical, structural and other engineering and environmental matters.
9. It is assumed that there is full compliance with all applicable federal, state, and local land use laws and environmental regulations and unless non-compliance is noted, described, and considered herein.
10. The Americans with Disabilities Act (ADA) became effective January 26, 1992. The appraiser has not made a specific compliance survey and/or analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more elements of the ADA. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, the appraiser did not consider possible noncompliance with the requirements of the ADA in estimating the value of the subject property.
11. It is assumed that all required licenses, consents or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report is based.

12. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the consultant, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval of the appraisers.
13. Unless prior arrangements have been made, the consultant, by reason of this report, is not required to give further consultation or testimony, or to be in attendance in court with reference to the property that is the subject of this report.
14. Unless otherwise noted, this report has not given any specific consideration to the contributory or separate value of any mineral and/or timber rights associated with the subject real estate.
15. Disclosure of the contents of this report is governed by the Bylaws and Regulations of the Appraisal Institute.
16. This report has been made subject to current market terms of financing. The opinions cited herein are valid only as of the date of report. Any changes that take place either within the property or the market subsequent to that date of value can have a significant impact on value.
17. Forecasted income and expenses that may be contained within this report may be based upon lease summaries and operating expense statements provided by the owner or third parties. MVS assumes no responsibility for the authenticity or completeness of such data.
18. This report is intended to be used in its entirety; if not presented in its entirety, the conclusions presented herein may be misleading.
19. This report has been prepared for the exclusive benefit of the addressee (the client), its successors and/or assigns. It may not be used or relied upon by any other party. Any other parties who use or rely upon any information in this report without our written consent do so at their own risk. Any person or entity not authorized by MVS in writing to use or rely this report, agrees to indemnify and hold MVS and its respective shareholders, directors, officers and employees, harmless from and against all damages, expenses, claims and costs, including attorneys fees, incurred in conjunction with defending any claim arising from or in any way connected to the use of, or reliance upon, the report by any such unauthorized person or entity.

Extraordinary Assumptions
An extraordinary assumption is defined as an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.

This report employs no extraordinary assumptions.

***Hypothetical* Conditions**
A hypothetical condition is defined as .that which is contrary to what exists, but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.

This report employs no hypothetical conditions.

CERTIFICATE OF APPRAISAL

I, Martin B. Levine, MAI certify that to the best of my knowledge and belief that:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

This appraisal was not prepared in conjunction with a request for a specific value or a value within a given range or predicated upon loan approval.

Martin B. Levine, MAI has made a personal inspection of the exterior of the premises which is the subject of this appraisal. Martin B. Levine, MAI has extensive experience in the appraisal of similar properties.

The Appraisal Institute conducts a program of continuing professional education for its designated members. MAI and RM members who meet minimum standards of this program are awarded periodic education certification. I, Martin B. Levine, MAI am currently certified under the Appraisal Institute's continuing education program.

Martin B. Levine, MAI has been duly certified to transact business as a Real Estate General Appraiser (New York State certification #46000003834).

No one provided significant professional assistance to the person signing this report.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

METROPOLITAN VALUATION SERVICES, INC.

Martin B. Levine

By: Martin B. Levine, MAI
Chairman
For the Firm

MARTIN B. LEVINE, MAI
CHAIRMAN - METROPOLITAN VALUATION SERVICES

MARTIN B. LEVINE is a co-founder of Metropolitan Valuation Services, Inc. Mr. Levine is primarily responsible for the appraisal of commercial, non-multifamily properties, as well as for the company's quality control, reporting format, staff development and business relationships.

Mr. Levine has more than 32 years of experience in real estate appraisal. During his career Mr. Levine has appraised virtually every property type and performed a vast array of consulting assignments including feasibility and alternative use studies. Mr. Levine's clients include local, regional, national and foreign banks, Wall Street conduits, insurance companies, pension funds, private investors, government agencies and attorneys.

As a former executive vice president of a national valuation and due diligence firm for fourteen years, Mr. Levine oversaw one of the largest staff of professional appraisers in the Metropolitan New York area. Mr. Levine's responsibilities included marketing and professional oversight of five appraisal teams led by specialists in Metropolitan New York commercial and multifamily valuation, hospitality, retail, and New Jersey. Appraisal assignments included trophy office buildings, regional shopping centers, major industrial complexes, large-scale multifamily complexes and hotels. Properties appraised were concentrated in Metropolitan New York, but many clients utilized the firm for their national assignments, including multi-property portfolios.

Previous appraisal experience includes eleven years at The Chase Manhattan Bank, where Mr. Levine managed the largest institutional appraisal staff in New York City and oversaw all appraisals conducted for bank clients doing business in New York. Mr. Levine was also the Director of Real Estate Consulting for Planned Expansion Group, where he managed a small consulting group attached to an architectural and planning concern. Assignments included appraisals, land use and feasibility studies and economic forecasting.

Mr. Levine is a designated member of the Appraisal Institute (MAI) and is certified by the State of New York as a real estate General Appraiser. Mr. Levine received his Bachelor of Architecture and Master of City and Regional Planning degrees from Pratt Institute and has completed numerous courses in finance and real estate. He has served as Chairman of the Admissions Committee of the Metropolitan New York Chapter of the Appraisal Institute, and he has served on the Chapter's Board of Directors. Mr. Levine has been qualified and testified as an expert witness in New York, Brooklyn, Newark, Riverhead and Mineola courts.