

April 5, 2016

Hon. Bill de Blasio
Mayor, The City of New York
City Hall
New York, NY 10007

Re: Proposed Amicus Brief
The Friends of PS 163, Inc. et al. v. Jewish Home Lifecare, Manhattan

Honorable Mayor de Blasio:

We write on behalf of Community Board 7/Manhattan and our Upper West Side community to express our disappointment by the decision of your Administration to weigh in on behalf of Jewish Home Lifecare in its effort to develop a nursing home tower immediately adjacent to PS 163, given the numerous threats this poses to the school's children, teachers and staff. Throughout this process as our elected officials and community leaders have rallied to stand by the PS 163 families and the nearby residential and commercial communities, your Administration has stayed decidedly out of the fray, making the choice to weigh in now against the families and communities at a minimum surprising.

Public schools are being threatened by overdevelopment across the Upper West Side, and thanks to the dogged leadership and commitment of PS 163 parents, the public school community finally scored a victory when Justice Lobis issued her decision. Consistent with well-established law, her decision rightly recognized that when a significant construction project is proposed next to a public school, the impacts on the school must be seriously analyzed, considered, and appropriately mitigated, in order to safeguard the health and education of the children.

This decision did not prohibit construction next to a school, nor was it in conflict with the well-established standard of review under State and City law. It simply recognized that young children are at significant risk of environmental and health factors and therefore a developer must undertake a thorough review to protect them to the fullest extent possible. Justice Lobis did not, as your amicus claims, seek to supplant or rewrite the CEQR Manual.

Contrary to the claims by the City, Justice Lobis annulled DOH's environmental review because it failed to comply with the *CEQR Technical Manual* and with SEQRA, not in spite of its compliance. The Supreme Court accurately framed the analysis as "whether DOH sufficiently considered the particular effects of elevated noise levels, including levels above the *CEQR's Technical Manual* maximum acceptable interior level, on the children attending P.S. 163." Based on the evidence, the Court answered that question in the negative:

The FEIS did not address the particular adverse effects of elevated noise levels on children's learning abilities or performance in school, and did not respond to public comments raising such concerns, other than to reiterate its adherence to CEQR standards and the proposed measures offered by JHL, and to state that lower noise level standards are not achievable in urban environments. Considering the exceptional circumstances of this matter, involving an elementary school, with children as young as three years old, in extremely close proximity to the construction site, and DOH's finding that CEQR standards would be exceeded, even with the proposed mitigation measures, for nine months of construction, DOH's singular reliance on CEQR guidelines, which do not address the special circumstances here, falls short of showing that the requisite hard look was taken. (emphasis added).

It has been our hope that your Administration and others would embrace this well-established standard as a way to protect all public school children and help balance development with the health and education concerns of young children. Instead, the City Law Department is misrepresenting what CEQR requires, and it is also wholesale adopting the position of the developer without regard to the established facts or the wellbeing of the larger community. We are deeply disappointed and puzzled that your Administration would side with developers in an instance such as this where a respected State Court Judge held that a New York State agency, charged with protecting the public's health, failed to adequately follow state law.

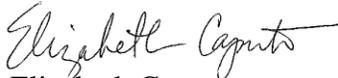
Moreover, your proposed amicus brief consistently refers to the confirmed reality of lead, arsenic and other known and unknown highly toxic substances already determined to be present in the soil at the proposed site, which are certain to be disturbed and made airborne through excavation and construction, as "dust." Incontrovertible science recognizes the immediate and irreversible damage to the health of anyone who is exposed even to small quantities of such substances. Here, the front door of an elementary school is less than 30 feet from the construction site containing these toxins. Science also confirms that those health effects are most keenly visited upon the very young and the very old, precisely the populations that the Court below recognized would be affected by exposure in this case. Referring to such certain and pernicious toxic exposure as "dust" is inconsistent with the progressive values that we believe we shared with Your Honor.

We continue to believe that the appropriate course would be for Your Honor to direct the Departments of Education, Environmental Protection, Health and Mental Hygiene, and the School Construction Authority to collaborate meaningfully with the parties to devise and implement protections for the vulnerable populations who are already at risk, and would be put at

greater risk were the appellate court to be influenced by your proposed submission. Such steps were outlined in our Resolution dated February 2, 2016 and our letter to the appropriate agencies dated March 15, 2016.

Against this background, we would ask Your Honor to request JHL to come to a meeting with other concerned elected officials and community members to discuss the most expedient path for JHL to gain a new facility at an alternative location. In addition, we respectfully call upon Your Honor to withdraw the proposed amicus brief and engage your Agencies in meaningful support of a beleaguered school and community.

Respectfully submitted,



Elizabeth Caputo
Chair, CB7



Eric Shuffler



Blanche Lawton

Co-chairs CB7 Youth, Education & Libraries Committee

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