

**TESTIMONY OF ALBERT K. BUTZEL
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**Public Hearing on St. Vincent's Hospital Expansion Plan and
Rudin Management Unit Residential Development (Phase 2)**

before the

New York City Landmarks Preservation Commission

June 3, 2008

Mr. Chairman, Honorable Commissioners:

My name is Albert K. Butzel. I am an attorney and represent Protect the Village Historic District. PVHD is a citizen's organization that opposes the applications of Rudin Management for a certificate of appropriateness for a new condominium development and St. Vincent's Hospital for a finding of hardship with respect to the O'Toole Building and a certificate of appropriateness for a new hospital tower. The reasons for the opposition will be described in greater detail by other PVHD members but in general they follow the reasons given in the first phase of this proceeding.

I will speak to the difficult legal issues that surround the new and revised applications. At the outset, however, I want to thank the Commissioners for the careful consideration they gave to the initial Rudin-St. Vincent's applications and the way in which you honored the Commission's mission and legacy. Over its 40 year history, the Commission has been the guardian of the City's historic resources, and the willingness you showed to play that role in the face of considerable political sentiment to the contrary honors yourself as well as your predecessors. My hope is that you will approach the revised applications with the same commitment.

I cannot say, however, that I am buoyed by the approach the Commission has taken following the initial rejection of the Rudin-St. Vincent's applications. To begin with, the haste with which this hearing has been called – barely a month after the early applications were effectively rejected and only two and a half weeks after the filings of the revised applications – is patently unfair. Moreover, the haste of the Commission, combined with the speed with which the Rudins and St. Vincent's filed their revised applications, has led many to believe that the process was preconceived from the outset – a suspicion that, while it may be ill-founded, reflects an appearance of doing the applicants' bidding that ill-serves both the Commission and the review process.

There are equally serious problems, legal in nature but substantively reflecting a basic unfairness, in the way the LPC is proceeding with the revised applications. I have provided for each of you a written Submission that begins with a summary of PVHD's substantive objections to the redesigned Rudin condominium development, the demolition of O'Toole and the design of the Hospital Tower. But the heart of the Submission is a listing of what I believe are the legal deficiencies in the Commission's approach and the legal infirmities that underlie the revised applications. I would ask you to turn to these – (they begin on page 4) – as I run through them.

First, we believe it is improper and indeed illegal for the Commission to separate the Rudin and St. Vincent's applications, including the hardship application. This is so because the two are integrally related. Specifically, the Rudin purchase of the East Campus provides the underpinning for building the ST. Vincent's tower on the O'Toole site. This was a basic claim in the applicants' original submissions, and the

Commission cannot pretend that the interrelationship does not continue to exist. In addition, under the City Planning Commission approvals given in 1979, the East Campus and the O'Toole property constitute a single tract, which was the basis for approving the Coleman and Link facilities. In my view, the LPC cannot subdivide the properties for the purposes of its consideration with the Planning Commission and the City Council first undoing the merger of the lots. The separation of the applications is thus artificial and illegal.

Second, and you will find this issue discussed on page 6. I do not believe the Commission can limit its consideration of hardship to the "physical", but must also consider "financial" circumstances. Again, you know that the proposed sale of the East Campus to the Rudins is to raise money to build the new hospital tower on the O'Toole site. The underpinnings of St. Vincent's application to demolish O'Toole are thus financial, which, must, therefore, be an element of the Commission's "hardship" analysis. Moreover, the "either/or" test St. Vincent's has asserted governs "hardship" is based on decisions that have been modified significantly by the **Grand Central** and **St. Bartholomew's** cases, both of which indicate that financial is the key element of any hardship claim.

Third, as I have spelled out at the top of page 6 of my written Submission, there is no basis for the underlying premise of St. Vincent's hardship application – namely, that the O'Toole Building cannot be used to support the Hospital's claimed charitable purposes. The evidence is indisputable that the O'Toole facility **can be used** to support these purposes because **it has been used** to support the Hospital's mission

for many years and **continues to be used** for that purpose today. St. Vincent's claim is that O'Toole cannot be used for the hospital it wants – i.e., a new high-rise tower. But that is not the proper test under the Landmarks Law or the judicial precedent.

Fourth, and this is absolutely critical to understand, St. Vincent's bought the O'Toole Building when it was already subject to the restrictions of the Landmarks Preservation Law – i.e., with full knowledge of them – and it therefore remains bound by them and cannot complain that they cause hardship. This reality has been well settled by the New York Court of Appeals in the Gazza case cited in the Submission. Equally important, if it were otherwise, St. Vincent's could buy the most important landmarked building in the City tomorrow and claim it was not suitable for a new self-contained hospital and thus can be torn down on the basis of hardship. This would gut the Landmarks Law, yet that is the essence of what St. Vincent's is asking here.

Fifth, as noted at the top of page 7 of the Submission, by selling off its East Campus, St. Vincent's would self-create the hardship that it claims justifies the demolition of the O'Toole Building. A self-created hardship cannot be the basis of a zoning variance, and equally, it cannot be the basis for a hardship finding under the Landmarks Law.

Sixth, the only basis upon which a hardship could possibly be found would be if there were no feasible alternatives. As I have pointed out in the written Submission, St. Vincent's has not come close to making a showing that there are no such alternatives. There are two points of this discussion I would like to emphasize to you today.

The first is that the test St. Vincent's has asserted for alternative sites – namely, that they must be sites it owns – has no basis whatever in law. Other sites that it does not own must be examined if there is an indication of potential feasibility, which, as I note, is clearly the case with its 6th Avenue site, which could be expanded by buying adjoining properties. The idea that the Commission's investigation of alternative sites is limited to those St. Vincent's currently owns is belied by the LPC precedent in, among other cases, the Marymount gym, where that school was required to show that it could not rent adequate space from other institutions or work a deal with a developer that would have allowed it to have new gym built for it at a nearby location.

The second point is that the Commission must look closely at the potential that Cabrini Hospital offers to St. Vincent's – either on an interim or a long term basis. As you may know, St. Vincent's will be taking three or four floors of Cabrini for its inpatient psychiatric services. But that leaves eight other floors at Cabrini empty. The question is why St. Vincent's cannot use these on an interim basis while it renovates its existing East Campus facilities, or even use them on a long term basis, a consolidation that, if feasible, would reuse existing facilities rather than having to build from scratch.

These, then, are the key legal issues I believe you need to understand and respect. I do not know what advice you are getting from your counsel, but I hope that you will take heed of the issues I have raised and be sure you understand them as you move forward in this process. There can be little doubt that the precedent you set in this case will either strengthen or weaken the Landmarks Law in a very significant way. I hope you will choose not to undercut it.

Thank you for your consideration.

Dated: June 3, 2008

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