

Court of Appeals

STATE OF NEW YORK

In the Matter of the Application of
RANDY PEYTON, on behalf of the Estate of MAGGI PEYTON,
—and— *Petitioner-Respondent,*

HILLEL HOFFMAN, DEAN HEITNER, HELEN T. HOFFMAN, WINIFRED
ARMSTRONG, EMILY MARGOLIS, EDWARD GARELICK, CATHERINE UNSINO,
EILEEN SALZIG, JULIETTE LEAK, MARTIN ROSENBLATT, SANDRA CHEITEN,
GERALD SIDER, and DEAN DACIAN,
Intervenors-Petitioners-Respondents,

For an Order of Certiorari pursuant to New York City Administrative Code
Ch. 2 Sec. 25-207,

—against—

NEW YORK CITY BOARD OF STANDARDS AND APPEALS, MARGERY PERLMUTTER,
Chair, SUSAN M. HINKSON, Vice Chair, EILEEN MONTANEZ, and DARA OTTLEY-
BROWN, each in her capacity as a Commissioner of Board of Standards and Appeals,
JEWISH HOME LIFECARE, INC., and PWV ACQUISITION, LLC,
Respondents-Appellants.

**BRIEF FOR AMICI CURIAE
PUBLIC SCHOOL 163 SCHOOL LEADERSHIP TEAM
AND FRIENDS OF PUBLIC SCHOOL 163, INC.
IN SUPPORT OF PETITIONERS-RESPONDENTS**

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February 19, 2020

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CORPORATE DISCLOSURE STATEMENT

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.1(f) & 500.23(a), proposed *Amicus Curiae* the Public School 163 School Leadership Team and Friends of Public School 163, Inc. state that they are not-for-profit organizations created by regulation and have no parent corporations, subsidiaries or affiliates.

STATEMENT OF INTEREST OF THE *AMICI CURIAE*

Public School 163 School Leadership Team

The Public School 163 School Leadership Team is authorized as an officially sanctioned school body with responsibility to set P.S. 163's educational agenda in alignment with the school budget by the New York City Department of Education Chancellor's Regulation A-655, pursuant to section 100.11 of the New York Codes, Rules and Regulations.

Friends of Public School 163, Inc.

Friends of Public School 163, Inc., the Public School 163 Parent-Teacher Association ("PTA"), is a not-for-profit corporation organized under the laws of the State of New York and exempt from paying federal, state and local taxes. The PTA represents the interests of the approximately 1,050 parents and the 50 teachers of students attending P.S. 163, the Alfred E. Smith School ("P.S. 163"). P.S. 163 is a pre-K–5 elementary school with approximately 600 students between the ages

of three and 11. The student body has a majority minority demographic (64% African-American or Hispanic), and more than half (52%) are socioeconomically disadvantaged, eligible for the federal free and reduced lunch program. The incidence of asthma among the P.S. 163 student population—more than 7.5%—is greater than average for New York City public schools. The student body at P.S. 163 includes children from P811M, a special-education school for severely disabled children. These particularly vulnerable students are integrated into the classes that P.S. 163 offers to all of its students. At least 14% of students at the school have a learning disability. More than 15% of the students at P.S. 163 live in the Park West Village apartment buildings that benefit from significant open, green space, which creates a quiet and very positive learning environment where P.S. 163 students can thrive. P.S. 163 is no more than 20 feet from the zoning lot and the proposed construction project.

Amici were petitioners-appellants in a prior case before this Court, *Friends of Public School 163, Inc. v. Jewish Home Lifecare*, 30 N.Y.3d 416 (2017), in which they challenged the environmental impacts of the proposed construction, particularly the impact of deafening noise and lead dust, on the children of P.S. 163.

ARGUMENT

The *Amici* submit this brief urging the Court to affirm the decision of the Appellate Division, First Department, which reversed a Supreme Court, New York County order upholding a 2015 resolution of the New York City Board of Standards and Appeals. The Appellate Division, First Department, held that, for a rooftop space “to be considered open space for the purposes of satisfying the open space requirement under the Zoning Resolution,” it must be “accessible and usable by all residents” on the zoning lot. *Matter of Peyton v. New York City Bd. of Stds. & Appeals*, 166 A.D.3d 120, 138 (1st Dep’t 2018). This is the only possible sensible interpretation of the plain language of the Zoning Resolution. The *Amici* write to emphasize the importance of maintaining open space for the school children of P.S. 163, many of whom also live with their parents in the Park West Village apartments that border the school and the zoning lot.¹

First, the Appellate Division, First Department, decision aligns with New York City’s long-standing efforts to regulate building construction and city development to ensure through zoning adequate open living space for its citizens and, in particular, for children who live and learn in the immediate community.

¹ The *Amici* were shocked to learn that Appellants continued to litigate *Friends of Public School 163 v. Jewish Home Lifecare*, 30 N.Y.3d 416 (2017) through to a final decision by this Court although zoning changes in 2016 had rendered the project unbuildable, and the case therefore moot, even before the decision of the Appellate Division, First Department in 2017.

Second, the Appellate Division, First Department, decision properly recognized the important values and policy reasons for protecting open space as a vital resource to New Yorkers. Open space makes it possible for P.S. 163 students to access the vital resources of light, air and sense of place that support physical and mental well-being. Daylight and sunlight are critically important for children when they are both inside and outside. Open spaces allow for greater air circulation and provide area for air pollution to dissipate, thus reducing the pollution to which New York school children are exposed in everyday life and, even more critically, when construction is nearby. The Zoning Resolution's open space regulations ensure that all New York City residents—and most notably, young, vulnerable children—have access to these life-sustaining resources. Therefore, the Appellate Division, First Department, decision that protects such spaces must be upheld.

Third, the Appellate Division, First Department, decision must be affirmed to avoid the safety risks caused by the sandwiching of traffic on West 97th Street and the creation of a new north-south bypass between the proposed building and 784 Columbus Avenue. If the proposed construction were to take place, the additional traffic in the area would endanger all pedestrians but most importantly the young students of P.S. 163. The need for open space is heightened when the existing open space becomes more dangerous due to increased vehicular traffic.

In noting that the construction of JHL’s proposed building “would nonetheless [create] a substantial open space reduction,” the Appellate Division, First Department, emphasized the importance of maintaining open spaces in New York City residential districts. *Matter of Peyton v. New York City Bd. of Stds. & Appeals*, 166 A.D.3d 120, 133 (1st Dep’t 2018). Open space is critical in all neighborhoods of New York City and is especially important in zoning lots with multiple buildings in multiple use groups that include an educational campus such as that of P.S. 163.

I. THE APPELLATE DIVISION DECISION ALIGNS WITH THE HISTORY OF SUPPORTING EQUITY THROUGH BUILDING RESTRICTIONS IN NEW YORK CITY.

The Appellate Division, First Department, decision reflects a long history of supporting community health and equity for New Yorkers through building restrictions and regulations. Its decision mitigates disparities in access to life-sustaining open space for New Yorkers, thereby helping to reconcile the “tale of two cities” (New Yorkers with financial and social capital versus those without). This is a particularly significant focus when one recognizes that a majority of the student body at P.S. 163 is socially disadvantaged.

The history of New York City real estate development is a long tale of balancing the welfare of the City’s less fortunate residents against the commercial interests of developers seeking to make every square inch of space profitable. The

First Tenement House Act, passed in 1867, required residential rooms to have windows but was circumvented when builders complied with the law by building windows opening to other interior spaces. See “1867 First Tenement Law” (Living City Archive, last visited Jan. 5, 2020),

http://www.tlcarchive.org/htm/framesets/themes/tenements/fs_1867.htm. The law was updated in 1879 to require that windows open to the outdoors, to which developers responded by creating narrow, dim air shafts to ventilate windows. See “1879 Dumbbells” (Living City Archive, Jan. 5, 2020),

http://www.tlcarchive.org/htm/framesets/themes/tenements/fs_1867.

The publication of *How the Other Half Lives* ultimately forced policymakers to address the terrible living conditions created by tenement developments. See “Jacob Riis: Revealing ‘How the Other Half Lives’” (Libr. Congress, last visited Jan. 3, 2020), <https://www.loc.gov/exhibits/jacob-riis/riis-and-reform.html#obj006>; Laura Bliss, “How the Battle for Sunlight Shaped New York City” (CityLab, Dec. 18, 2016), <https://www.citylab.com/equity/2016/12/how-the-battle-for-sunlight-shaped-new-york-city/510917/>. Author Jacob Riis noted the close proximity of immense disparities in Manhattan, stating that just by turning a corner a traveler can move from a scene of “prosperity to poverty.” Jacob A. Riis, “How the Other Half Lives” (1890, p. 29), <https://www.gutenberg.org/files/45502/45502-h/45502-h.htm>. He wrote about the tenement neighborhoods’ “[s]unless and joyless”

atmosphere. *Id.*, at 33. Riis' reform work led to the passage of regulations that increased access to open space and airflow for tenement residents in New York City in 1901. *See Bliss, supra*. The law required new buildings to be built with courtyards to ensure adequate space for air and light enter through windows. *Id.*

Reform promoting open spaces continued when New York City's Zoning Resolution of 1916 was enacted, in part to protect the public's and other buildings' access to light and air resources and to reduce traffic and transit congestion.

David W. Dunlap, "Zoning Arrived 100 Years Ago. It Changed New York City Forever" (N.Y. Times, July 25, 2016),

<https://www.nytimes.com/2016/07/26/nyregion/new-yorks-first-zoning-resolution-which-brought-order-to-a-chaotic-building-boom-turns-100.html> (noting that the

regulation of building heights helped allow sunlight to reach the streets below and reduce the density in Manhattan). In 1961, the zoning resolution was overhauled, this time with a direct focus on incentivizing the development of open space around buildings. *See* N.Y.C. Dept. of City Planning, "City Planning History" (NYC.gov, last accessed Jan. 6, 2020),

<https://www1.nyc.gov/site/planning/about/city-planning-history.page> (noting the "towers in the park" zoning resolution concept). In the 1980s, the "sunlight provision" was added, which restricted the amount of sky new buildings could obstruct in the more congested areas of Manhattan. *See Bliss, supra*; Michael

Goodwin, “Of Sunlight, Shadows and New Midtown Zoning Rules” (N.Y. Times, July 18, 1982), <https://www.nytimes.com/1982/07/18/weekinreview/of-sunlight-shadows-and-new-midtown-zoning-rules.html> (observing “there wasn’t much debate that the city had to do something in order to prevent more and more of its streets from turning into dark canyons”).

Through the many changes to the zoning resolution, policymakers have focused on enhancing equity and ensuring access to public resources, while balancing the need for economic development and accommodating the city’s growing population. Just as Jacob Riis urged privileged New Yorkers to acknowledge “how the other half lives,” this case provides the opportunity to reflect on the equities and disparities of the current zoning law. The zoning resolution as it is drafted enhances the quality of life for New Yorkers by guaranteeing the availability of open space to local residents, including the most vulnerable who attend P.S. 163 and reside in the Park West Village complex. Upholding the Appellate Division, First Department, decision will ensure that the zoning resolution is correctly interpreted to advance the closing of the gap between the “two cities” that the city administration seeks to reconcile.

II. THE DECISION OF THE APPELLATE DIVISION MUST BE AFFIRMED TO PROTECT VITAL OPEN SPACE RESOURCES.

A. The Appellate Division Decision Properly Accounts for the Illumination Benefits of Open Space.

Open space is necessary to provide daylight (natural illumination) in buildings. *See* J. Strømman-Andersen & P.A. Sattrup, “The Urban Canyon and Building Energy Use: Urban Density Versus Daylight and Passive Solar Gains” (43 Energy & Buildings, 2011, p. 2011). Open spaces outside of buildings allow daylight to enter through windows and brighten rooms, *see* Strømman-Andersen, *supra*, at 2019, thereby enabling occupants’ circadian rhythms to regulate. *See* Rana Sagha Zadeh et al., “The Impact of Windows and Daylight on Acute-Care Nurses’ Physiological, Psychological, and Behavioral Health” (7 HERD: Health Environments Res. & Design J., 2014, p. 37). Proper circadian alignment (of which natural light exposure is one component) can “potentially improve the synchronization of the body clock, peak cognitive performance, and work activities” *See id.* (citing Joan E. Roberts, “Circadian Rhythm and Human Health” (Photobiology.info, July 27, 2010), <http://photobiology.info/Roberts-CR.html>). Daylight has generally been found more effective than electric lighting in increasing alertness and cognitive performance, which is critical to the students at P.S. 163. *See* Mirjam Münch et al., “Effects of Prior Light Exposure on Early

Evening Performance, Subjective Sleepiness, and Hormonal Secretion” (126 Behav. Neuroscience, 2012, p. 200).

In addition to providing access to natural light, open space around buildings allows for sunlight exposure, *see* J. Strømman-Andersen, *supra*, at 2011, both for occupants inside of buildings (*id.*) and for people outside. Moderate sun exposure outdoors is helpful in preventing vitamin D deficiency, *see* Jörg Reichrath, “The Challenge Resulting from Positive and Negative Effects of Sunlight: How Much Solar UV Exposure is Appropriate to Balance Between Risks of Vitamin D Deficiency and Skin Cancer?” (92 Progress Biophysics & Molecular Biology, 2006, p. 14), and can help people suffering from depression reduce cognitive impairment. *See* Shia T. Kent et al., “Effect of Sunlight Exposure on Cognitive Function Among Depressed and Non-Depressed Participants: A REGARDS Cross-Sectional Study” (Envtl. Health, July 28, 2009, p. 10-12). Inside, sunlight streaming through windows creates positive psychological reactions in building occupants. *See* Belinda L. Collins, “Review of the Psychological Reaction to Windows” (8 Lighting Res. & Tech., 1976, p. 84). Sunlight, even more so than daylight, requires the existence of unobstructed open space for it to be accessible to individuals. *See* David Fleming et al., “Valuing Sunshine” (68 Regional Sci. & Urb. Econ., 2017, p. 268).

In zoning lots with multiple buildings in multiple-use groups, the illumination benefits of open space extend to the occupants of nearby buildings, such as the students and their teachers at P.S. 163. Sunlight exposure in the school (or workplace) can improve mental health and attitudes. *See* Mihyang An et al., “Why We Need More Nature at Work: Effects of Natural Elements and Sunlight on Employee Mental Health and Work Attitudes” (PLoS ONE, May 23, 2016, pp. 7-8). Similarly, studies of natural illumination in schools have shown that “full-spectrum daylighting in classrooms can promote overall health, reduce stress hormones, and enhance student performance.” Dongying Li & William C. Sullivan, “Impact of Views to School Landscapes on Recovery from Stress and Mental Fatigue” (148 *Landscape & Urb. Plan.*, 2016, p. 151) (citing Rikard Küller & Carin Lindsten, “Health and Behavior of Children in Classrooms with and Without Windows” (12 *J. Env'tl. Psychol.*, 1992, pp. 315-316)); Michael H. Nicklas & Gary B. Bailey, “Daylighting in Schools: Energy Costs Reduced...Student Performance Improved” (17 *Strategic Plan. Energy & Env't*, 1997, pp. 49-50); Patricia Plympton et al., “Daylighting in Schools: Improving Student Performance and Health at a Price Schools Can Afford” (*Nat'l Renewable Energy Lab.*, 2000, p. 6), <https://www.nrel.gov/docs/fy00osti/28049.pdf>. Therefore, open space should be protected to allow community members to benefit from full access to daylight and sunlight.

B. The Appellate Division Decision Properly Values the Protective Benefits of Open Space on Air Quality.

Air pollution, a major health issue for New York City residents—particularly the children who attend P.S. 163—is mitigated by open spaces. *See* Iyad Kheirbek et al., N.Y.C. Dept. of Health & Mental Hygiene, “New York City Trends in Air Pollution and its Health Consequences” (2013, 2), <https://www1.nyc.gov/assets/doh/downloads/pdf/environmental/air-quality-report-2013.pdf> (estimating that fine-particle air pollution contributed to more than 3,000 deaths annually in New York City from 2005 to 2007); Chenyuan Sha et al., “The Impact of Urban Open Space and ‘Lift-Up’ Building Design on Building Intake Fraction and Daily Pollutant Exposure in Idealized Urban Models” (633 *Sci. Total Env’t*, 2018, p. 1321) (research reveals that “open space settings reduce total [wind] flow resistances induced by buildings and act as ventilation corridors”).

New York City air pollution comes from a variety of sources, including vehicle emissions, factories and fuel-burning machinery, and impacts all people, indoors and outdoors. N.Y.C. Dept. of Health & Mental Hygiene, “New York City Air Quality Programs Reduce Harmful Air Pollutants” (HealthyPeople.gov, Nov. 17, 2016), <https://www.healthypeople.gov/2020/healthy-people-in-action/story/new-york-city-air-quality-programs-reduce-harmful-air-pollutants>; Jeremy Hinsdal, “By the Numbers: Air Quality and Pollution in New York City” (State Planet, June 6, 2016), <https://blogs.ei.columbia.edu/2016/06/06/air-quality->

[pollution-new-york-city/](#). Though most people spend more than 90% of their time indoors, exposure to outdoor pollutants occurs from airflow through doors, windows, ventilation systems and cracks in buildings. *See* Sha et al., *supra*, at 1315. Therefore, children (and adults) in urban environments, especially those near traffic centers, are particularly at risk of being exposed to air pollutants. *Id.* Daytime workers and pedestrians experience especially high levels of air pollution exposure in dense urban spaces. Ying Zhou & Jonathan I. Levy, “The Impact of Urban Street Canyons on Population Exposure to Traffic-Related Primary Pollutants” (42 Atmospheric Env’t, 2008, p. 3087) (finding in a Midtown study that, of the air pollution matter inhaled or ingested, 80% was inhaled by pedestrians and daytime office workers). Open space reduces the exposure of air pollution to school children, residents and others.

The dangerous impacts of air pollution pose more risks to young children, including those attending P.S. 163, than adults. *See* “Air Pollution and Children’s Health” (Cal. Env’tl. Protection Agency’s Off. Env’tl. Health & Assessment, 2003), <https://oehha.ca.gov/media/downloads/faqs/kidsair4-02.pdf>. Infants and children breathe more air than adults by volume. *See* Tara Zupancic et al., “The Impact of Green Space on Heat and Air Pollution in Urban Economies” (Mar. 2015, p. 8), <https://davidsuzuki.org/wp-content/uploads/2017/09/impact-green-space-heat-air-pollution-urban-communities.pdf>. Because of their size and rapid lung

development during childhood, children are more exposed to local air pollutants than adults. *Id.* (citing Philip J. Landrigan et al., “Children’s Health and the Environment: A New Agenda for Prevention Research” (106 *Envtl. Health Persp.*, 1998, p. 788)).

Air pollution can lead to respiratory issues and illnesses, including asthma, chronic obstructive pulmonary disease and cardiovascular disease. *Id.* (citing Prakesh S. Shah & Taiba Balkhair, “Air Pollution and Birth Outcomes: A Systematic Review” (37 *Env’t Int’l*, 2011, p. 499)). In 2000, New York City children were hospitalized for asthma at almost twice the rate of children across the United States as a whole, and asthma was the leading cause of hospitalization for New York City children ages zero to 14, which encompasses the age range attending P.S. 163 on a daily basis. *See* Renu Garg et al., “Asthma Facts, Second Edition” (N.Y.C. Dept. of Health & Mental Hygiene, May 2003, p. 7), <https://www1.nyc.gov/assets/doh/downloads/pdf/asthma/facts.pdf>. In New York City, children of color are more likely to be diagnosed with asthma. *See* “Childhood Asthma and the Asthma Counselor Program of the East Harlem Asthma Center of Excellence” (N.Y.C. Dept. of Health & Mental Hygiene, June 2017, p. 1), <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief90.pdf> (“Black children were five times as likely and Latino[] children were three times as likely as White children to have been diagnosed with asthma (22% and 15% vs.

4%). Asian children were twice as likely as White children to have been diagnosed with asthma (10% vs. 4%).”). Because open space provides the lifesaving function of mitigating air pollution, it should be appropriately valued and protected.

Furthermore, construction increases air pollution. *See* Deborah E. Dickerson, “Environmental Relative Burden Index: A Streamlined Life Cycle Assessment Method for Facilities Pollution Prevention” (11 *J. Green Building*, 2016, p. 95); Valery Azarov et al., “The Study of Local Dust Pollution of Atmospheric Air on Construction Sites in Urban Areas” (in 2 “International Scientific Conference Energy Management of Municipal Facilities and Sustainable Energy Technologies EMMFT 2018,” Vera Murgul & Marco Pasetti, eds., 2019, p. 430). Construction-related dust pollution impacts local residents, most specifically P.S. 163 students, construction workers, local residents and nearby office workers. Ming Hu, “Assessment of Effective Energy Retrofit Strategies and Related Impact on Indoor Environmental Quality” (12 *Journal of Green Building*, 2017, p.38). Therefore, it is especially imperative that adequate open space is available to mitigate increased levels of air pollution that is particularly harmful for school children, such as those attending P.S. 163, when construction projects are underway locally.

C. The Appellate Division Decision Accounts for the Sense of Place Value Provided by Open Space.

Sense of place has been defined as “the lens through which people experience and make meaning of their experiences in and with place.” Jennifer D. Adams, “Theorizing a Sense of Place in a Transnational Community” (23 *Child, Youth & Environments*, 2013, p. 47). Sense of place simultaneously pertains to “geographical place, social community/environment and . . . psychoanalytic meaning.” Allison Williams & Peter Kitchen, “Sense of Place and Health in Hamilton, Ontario: A Case Study” (108 *Soc. Indicators Res.*, 2012, p. 258). People can derive a sense of place from any size of space, from inside their home to a whole nation. *See* Anahita Zendehdelan et al., “The Perception of the Sense of Place in Public Spaces’ Quality Through the Five Senses ‘Case Study of Naqsh-e-Jahan Square, Isfahan, Iran’” (3 *J. Basic & Applied Sci. Res.*, 2013, p. 1012). Places influence individuals’ and communities’ way of thinking. *See id.* Strong sense of place is connected to higher social capital, both of which encourage civic engagement. *See* Albert Acedo et al., “Place and City: Toward a Geography of Engagement” (*Heliyon*, 2019, p. 12). Development of sense of place can empower disenfranchised community members, specifically those attending P.S. 163, and help them become more engaged in their communities. *See* Marissa E. Bellino & Jennifer D. Adams, “Reimagining Environmental Education: Urban Youths’ Perceptions and Investigations of Their Communities” (14 *Revista Brasileira de*

Pesquisa em Educação em Ciências (Brazilian Journal of Research in Science Education), 2014, p. 37).

Quality urban planning and spatial design can enhance a person's sense of place in his or her home environment and other areas he or she visits, including schools, workplaces and vacation destinations. *See* Zendehtelan et al., *supra*. Urban planners and policymakers, therefore, have the opportunity to support positive thinking and experiences for individuals and communities with the way in which they design spaces for people to live and interact. *See* N.Y.C. Dept. of City Planning, "Design Principles for Planning New York City" (NYC.gov, last visited Jan. 4, 2019), <https://www1.nyc.gov/assets/planning/download/pdf/plans-studies/urban-design-principle/urban-design-principle-one-pager.pdf?r=3>. Urban planners and decisionmakers should be especially mindful of their role in creating sense of place for historically marginalized groups. *See id.* In working to enhance or restore sense of place for marginalized communities, urban planners and lawmakers can help create equity in New York City. *See id.*

Open spaces play a critical role in supporting individuals' and communities' positive sense of place in urban environments by providing access to nature, *see* Mark S. Taylor et al., "Research Note: Urban Street Tree Density and Antidepressant Prescription Rates—A Cross-Sectional Study in London, UK" (136 Landscape & Urb. Plan., 2014, p. 174), and by mitigating congestion. ZR § 21-

00(d). In accordance with its design principle, the New York City Department of City Planning “celebrates . . . the natural systems that underlie” neighborhoods and uses natural areas to help “generate a powerful and unique sense of place” for New Yorkers. *See* N.Y.C. Dept. of City Planning, *supra*. The Zoning Resolution codifies the importance of open space in creating positive sense of place for residents. ZR § 21-00(d) (stating Residence Districts’ purposes include “to provide open areas for rest and recreation, and to break the monotony of continuous building bulk, and thereby provide a more desirable environment for urban living in a congested metropolitan area.”).

Open spaces with even sparse natural elements have a positive impact on mental health and can improve individuals’ and communities’ emotional interactions with their environment. *See* Taylor et al., *supra* (finding that presence of street trees in a neighborhood can be linked to improved mental health and reduced stress). Natural elements have also been found to enhance attention capacity and reduce stress for students, *see* Li, *supra*, at 153, 156 (finding that students with green window views had better stress recovery and attention restoration than peers with barren window views and recommending the addition of shrubs or trees to school parking lots and athletic fields). These studies demonstrate that open spaces with even minimal vegetation benefit students, such as those attending P.S. 163.

III. THE APPELLATE DIVISION DECISION MUST BE AFFIRMED TO PREVENT DANGEROUS TRAFFIC HAZARDS.

The Appellate Division, First Department, decision protects against dangerous traffic conditions that would result from the construction of a nursing home facility at the proposed location. West 97th Street is the most heavily trafficked thoroughfare on the Upper West Side, with vehicles crossing Central Park from the East Side to the West Side Highway in large part because the next northerly street that allows traffic to travel from east to west does not occur until West 105th Street. *See* Traffic Report of Robert Chamberlin, prepared on October 17, 2011 in response to a Community Board 7 Resolution on October 4, 2011 asking for a traffic study of the area between Central Park West, West 100th Street, West 97th Street and the Henry Hudson Parkway, *Friends of Public School 163, Inc. v. Jewish Home Lifecare*, 30 N.Y.3d 416 (2017) (report part of Appendix submitted to this Court). The construction activities and the proposed building would exacerbate and further negatively impact the existing congestion on West 97th Street and require the creation of a new north-south bypass between the proposed building and 784 Columbus Avenue. These changes to the traffic pattern would impermissibly endanger the vulnerable, young students attending P.S. 163.

The Zoning Resolution provides for safety in Residence Districts in part through efforts to “protect residential areas, as far as possible, against heavy traffic and against through traffic of all kinds.” ZR § 21-00(c). Traffic-related deaths are

a leading cause of death by injury in New York City. N.Y.C. Dept. of Health & Mental Hygiene, “Motor Vehicle Occupant Fatalities in New York City” (2017, p. 1), <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief85.pdf>. Traffic dangers are more pronounced for children. *See* NYC Dept. of Health & Mental Hygiene, “Understanding Child Injury Deaths: 2003-2012 Child Fatality Review Advisory Team Report” (Apr. 2015, p. 1), <https://www1.nyc.gov/assets/doh/downloads/pdf/survey/2018cfrat-report.pdf> (stating that between 2003 and 2012, motor vehicle accidents were the leading cause of injury death for children ages one to 12, and pedestrian victims accounted for more than two-thirds of child deaths). Neighborhood traffic dangers impact children’s ability to play outside and use active transportation—all critical elements and features for the children at P.S. 163. *See* Alison Carver et al., “Play it Safe: The Influence of Neighborhood Safety on Children’s Physical Activity” (14 *Health & Place*, 2008, pp. 217, 224). The dangers of increased traffic in this area would impact the students at P.S. 163, many of whom also reside adjacent to the zoning lot.

The dangerous impacts of increased traffic around the zoning lot heighten the need for open space to ensure safe places in and through which P.S. 163 students can move and be active in a safe and healthy environment. Therefore, this Court should affirm the Appellate Division, First Department, decision.

CONCLUSION

This Court should affirm the decision of the Supreme Court, Appellate Division, First Department, in full and require Appellants to explain when and under what circumstances they learned that the proposed nursing home facility could not be built on the zoning lot.

Dated: New York, New York
 January 29, 2020

Respectfully submitted,



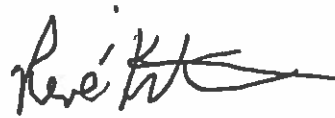
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CERTIFICATION

I certify pursuant to 500.13(c)(1) that the total word count for all printed text in the body of the brief, exclusive of the statement of the status of related litigation; the corporate disclosure statement; the table of contents, the table of cases and authorities and the statement of questions presented required by subsection (a) of this section; and any addendum containing material required by subsection 500.1(h) of this Part is 4,365 words.

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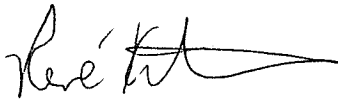


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**CERTIFICATION REQUIRED BY COURT OF APPEALS RULES OF
PRACTICE § 500.23(a)(4)(iii)**

No party or their counsel contributed content to this amicus brief or participated in the preparation of this brief in any other manner; no party or their counsel contributed money that was intended to fund preparation or submission of the brief; and no person or entity, other than movant or movant's counsel, contributed money that was intended to fund preparation or submission of the brief.



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Date: February 4, 2020