

# 12 Illegal Stories Back To The Courts

by  
Genie Rice

CIVITAS since its beginnings in 1981 has focused on quality of life issues, in particular zoning and land-use policies. With perseverance and support CIVITAS has intervened in the case of 108 East 96th Street, a luxury residential building which towers 12 stories above the existing zoning limit.

Four years ago in the summer of 1986 CIVITAS discovered and brought to the Department of Buildings' attention the fact that a 31-story building under construction at 108 E. 96th Street was 12 stories higher than allowed by zoning. The City issued a stop-work order requiring the developers, Parkview Associates, to cease all construction above the 19th floor.

Parkview Associates applied to the Board of Standards and Appeals (BSA) for an opinion on the stop-work order. During the three month lapse before the case was heard Parkview accelerated construction, working from the top of the building down.

In October 1986, the BSA affirmed the stop-work order and the top 12 stories were declared illegal. All construction then ceased above the 19th floor. The luxury building remains in this unfinished state today.

Parkview appealed to the New York State Supreme Court, then the Appellate Division, and then the Court of Appeals. In all cases their position was not upheld. At each step CIVITAS and "friends of the court" joined New York City in opposing Parkview's position. The Court of Appeals final and unanimous decision stated that "reasonable diligence by any good faith inquirer would have disclosed the true facts." Parkview persisted, however, petitioning the U.S. Supreme Court which refused to hear the case, thus leaving intact the Court of Appeals decision.

Taking another tack, Parkview applied to the BSA for a variance from the zoning which would have allowed the 12 illegal stories to remain. Five hearings and seven months later the BSA unanimously denied the variance request. Parkview refuses to accept this denial and refuses to dismantle the top twelve stories of their building. They continue the fight in court.

Parkview Associates are now claiming that the Board of Standards and Appeals' most recent decision, denying them a variance, was "arbitrary and capricious." Furthermore, Parkview made an attempt to extricate CIVITAS from the case, but Judge Kenneth L. Shorter ruled that CIVITAS has the right to intervene with New York City.

On January 22, 1990 the case is to be heard. The City is represented by its corporation counsel; CIVITAS by Bob Davis, Karl Coplan and Charles Warren of Berle, Kass & Case; and 17 city-wide "friends of the court" by Martin Gallent, former vice-chair of the City Planning Commission and William Hegarty and Tim Bradley of the Municipal Art Society.

Zoning, adequate and enforced, is the bottom line and is what will make the city livable in the decade ahead. That is why this case is so important to CIVITAS and all New Yorkers. CIVITAS will carry it to the end.

Friends of the Court include: American Planning Association; Carnegie Hill Neighbors; City Club; Coalition for a Livable West Side; Committee for the Washington Mkt. Hist. Dist. of the Tribeca Comm. Assn.; Eastside Improvement Society; Eastside Rezoning Alliance; Friends of the Upper East Side Historic Districts; Goat Hill Association; Gray Panthers East and West; Landmark West; Lenox Hill Neighborhood Assoc.; Municipal Art Society; Sutton Area Community, Inc.; Union Sq. Park Community Coalition; Yorkville Civic Council; 1235 Park Avenue Condominium.