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## Court deals blow to controversial Upper West Side tower

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A rendering of the tower planned for 200 Amsterdam Ave.

A court has overruled the city's decision to allow construction of an Upper West Side condo tower that has sparked **outrage from community groups and elected officials**.

The state Supreme Court ruling released Thursday afternoon delivered a stinging blow to developers SJP Properties and Mitsui Fudosan, who have already begun raising the nearly 670-foot tall spire proposed for 200 Amsterdam Ave.

The city's Board of Standards and Appeals, **which last year approved the project**, was ordered by the court to re-evaluate the tower using a protocol that appears to disallow the method that the developers used to justify its extraordinary size.

"This is a major victory," said Richard Emery, the attorney for the Municipal Art Society and the Committee for Environmentally Sound Development, the plaintiffs who challenged the project. "A development site where a developer wants to build can't just get around the zoning codes."

Opposition to the spire has focused on the **unorthodox way in which the builders cobbled together the development rights** for the project from several neighboring properties.

Critics of the tower likened the technique to gerrymandering—creating octopus-like tendrils that grabbed air rights and easements that normally would have been out of reach for the site. The result was that the developers could concentrate that bulk on the relatively small land parcel where the tower was to rise, permitting them to build a soaring spire.

SJP and Mitsui didn't amass the air rights themselves, but bought the odd development site from the previous owner in 2015.

The technique seemed to have been blessed by an obscure memo written by a Department of Buildings commissioner in the late 1970s.

The agency, however, has since disavowed that commissioner's opinion and the court found that the BSA had unreasonably granted approval to the tower without properly considering that about-face.

A source said the developers are likely to appeal the court's decision.

It wasn't immediately clear whether the court order would effectively scrap the tower that SJP and Mitsui had envisioned. The spire is currently being erected and likely could have its proposed height cut down if the developers are blocked from using all of the air rights that had been compiled for the project.

"We're going to pursue a temporary restraining order to stop the development," Emery said. "And we're going to go to the Dept. of Buildings to revoke their building permits. That's the next fight."

Emery said the goal of the plaintiffs is to limit the tower to roughly its current size, about 17 stories—a far cry from the 51 stories the developers have planned to raise.

"They had to know that this was a gerrymandered site, so they should have been aware of this reality that it could get overturned," Emery said.

In a statement, SJP said they disagree with some of the judge's ruling, which calls into question the validity of the Certificate of Occupancy of several completed and fully occupied residential buildings.

"The development team for 200 Amsterdam has followed the law completely and continues to make construction progress," said a spokesman for SJP. "200 Amsterdam's zoning permits were exhaustively reviewed by both the Department of Buildings and the BSA, the two city agencies with the primary responsibility for interpreting NYC's zoning codes. Following thorough analysis and public testimony, both agencies determined that the building fully conforms with the city's zoning laws."

The BSA can grant approvals even to projects that skirt the rules if the developers are able to prove they would suffer undue hardship from a decision handed down by the board.

Inline Play

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