



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**NEW YORK STATE'S HIGHEST COURT UNANIMOUSLY DISMISSES
NEIGHBORHOOD GROUP'S CHALLENGE TO NEW RESIDENTIAL BUILDING
IN CARNEGIE HILL HISTORIC DISTRICT IN NEW YORK CITY**

**IN A SEPARATE LEGAL DECISION TODAY, THE CITY LAW DEPARTMENT ALSO WINS ANOTHER LANDMARKS
CASE IN WHICH THE COURT OF APPEALS DENIES LEAVE TO APPEAL IN A MATTER INVOLVING A SCHOOL
THAT WANTED TO MAKE STRUCTURAL CHANGES**

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New York, March 25, 2004 – The New York Court of Appeals, in a unanimous decision issued today, dismissed as moot the appeal of *Citineighbors Coalition of Historic Carnegie Hill, et al.* The plaintiffs had challenged the New York City Landmarks and Preservation Commission's issuance of a Certificate of Appropriateness (COA) that had approved a proposal by 47 East 91st Street, LLC, the property owner, and Tamarkin Co., a real estate developer, to construct a nine-story building with a one-story penthouse.

In a second unrelated case, *Maxtone-Graham v. Landmarks Preservation Commission*, the Court, by denying leave to appeal to a Manhattan community resident who lives adjacent to a school, supported the Landmark Commission's position that a second public hearing was not required under the Landmarks Law and Open Meetings Law. The resident, Katrina Maxtone-Graham, had argued that after a hearing on whether or not a local school could make a structural addition, she should be entitled to a second hearing to address matters that arose during the first hearing and that she claimed involved substantial changes to the proposal to augment the school.

The Citineighbors Win

The first case won by the Law Department today involved a proposed building that would sit atop an existing Citibank structure located on the northeast corner of Madison Avenue and East 91st Street, a location within the Carnegie Hill Historic District. The COA was issued only after a two and one-half year review process, in which there was notable public participation and which led to a scaling back of the developer's original proposal, which the Commission had declined to approve because it was found to be too tall and too "tower like" in mass for the site.

In the case, the petitioners had challenged the approval on several grounds, including that the Commission's decision was arbitrary and capricious, and that an environmental review should have been done pursuant to the State Environmental Quality Review Act. Two lower courts found in favor of the city on all claims. In its decision today, the Court of Appeals ruled on procedural grounds, finding that the appeal was moot.

When the petitioners (including the actor Woody Allen) commenced their initial proceeding in July 2002 challenging the COA, they did not apply for a temporary injunction to halt the highly visible construction work by then underway at the site. The Court of Appeals, in its 7-0 decision today, found that this failure, which imposed all the financial risks onto the property owner and the developer, proved fatal, because the

building challenged is now substantially complete.

The result of this decision is to leave standing the earlier ruling of the Appellate Division, First Department. That court had affirmed the trial court's order, which held that Commission's issuance of a COA is not subject to the review procedures of the State Environmental Quality Review Act (SEQRA), and, as a result, it dismissed the petition. "The First Department's decision that Landmarks permits are not subject to the State Environmental Quality Review Act is the right result from both a legal and public policy perspective. Imposing the additional layer of SEQRA review on the permitting process would have provided no protections not already afforded by the City's stringent Landmarks Law while burdening owners of designated properties with a potentially expensive and time-consuming process," said Mark A. Silberman, General Counsel to the Landmarks Commission.

Dona B. Morris, a Senior Counsel in the Law Department's Appeals Division, handled the case at the appellate level, and Dana H. Biberman, a Senior Counsel in the Administrative Law Division, handled the case at the lower level. Mark Silberman of Landmarks also worked on the case at both court levels. Robert S. Davis, Judith M. Gallent and Inger K. Hultgren, of Bryan Cave LLP, represented the property owner and developer, who set forth and developed the mootness argument that ultimately was determinative.

The Maxtone-Graham School Win

This second case won by the Law Department today involved a proposal to add an addition to a Allen-Stevenson School located on the Upper East Side of Manhattan. The school had wanted to add floors for increased space. A local resident who lives adjacent to the school protested the Landmarks Commission's issuance of a COA, which allowed the school to proceed on the grounds that the revised plans for the school's addition warranted a second public hearing, so that she and other members of the public could comment.

The City won at both the trial court and appellate division levels. In each case, the courts ruled that the Landmarks Commission had not acted arbitrarily or capriciously. Moreover, the Appellate Division held that the Landmarks Commission properly utilized its expertise in determining whether the revised proposal required a second hearing. The Court said that under circumstances like this, deference to the Commission was required.

Today, the Court of Appeals denied leave to appeal, meaning both lower court decisions stand. This was a victory for the City. Meantime, the proposed additions to the school have been completed.

"This move today upholds the rights of the Landmarks Commission to make critical decisions within its field of expertise," said Julie Steiner, an Assistant Corporation Counsel in the Law Department's Appeals Division and the case's lead attorney. Ave Maria Brennan, a Senior Counsel in the Law Department's Administrative Law Division, handled the case at the lower court level. Mark A. Silberman, General Counsel to the Landmarks Commission, also worked on the case at both court levels

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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