



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**STATE'S HIGHEST COURT UNANIMOUSLY
FINDS THAT CITY ACTED CORRECTLY IN REQUIRING
SCHOOL DORM DEVELOPER TO HAVE
EDUCATIONAL AFFILIATIONS**

***EAST VILLAGE DEVELOPER HAD SOUGHT TO BUILD ON SITE OF FORMER P.S. 64
BUT LACKED A COMMITMENT FROM A SCHOOL***

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, media@law.nyc.gov

New York, March 25, 2008 – The New York State Court of Appeals, the state's highest court, today unanimously overturned a lower appellate court ruling in the case of a developer who sought to develop a 19-story school dormitory at the site of the former P.S. 64.

The applicant had claimed that he intended to construct a dormitory, which would allow him to build a far larger building than if it were a simple residential building (that is, 19 stories versus 10 stories). The Department of Buildings required that the owner show that the dorm would be affiliated with a school or schools, rather than merely be an "apartment house" for students. This requirement was upheld by the Board of Standards & Appeals (BSA), but the developer, Gregg Singer – via his company, 9th & 10th St., LLC – then sued.

Mona Sehgal, General Counsel for the Department of Buildings, said: "This developer lacked proof of an affiliation with an educational institution, yet attempted to take advantage of the additional bulk available to dormitories under the community facility provisions of the Zoning Resolution. Today, the Court of Appeals agreed with our decision to deny a building permit to the developer. This is an important step toward preventing abuse of the community facility provisions are intended for uses that actually provide services to the community."

Stephen McGrath, a Deputy Chief in the Law Department's Appeals Division and the attorney who argued the case before the Court of Appeals, added: "One of the City's main concerns was that, given the developer had no formal affiliation with an educational institution, he would not be providing the City with a community facility – but rather, he would be building a profitable residence building that would be higher than normally permissible."

After Singer began his lawsuit, the City initially prevailed in the district court case in New York County Supreme Court. However, a mid-level appellate court – the Appellate Division, First Department – then disagreed.

Today, the State's highest court unanimously (7-0) overruled the mid-level appellate court and found for the City. The Court of Appeals said that BSA and Buildings properly required that the applicant prove that an educational institution or institutions had committed to be affiliated with this project. The developer had argued in court that it did not have to obtain the commitment of an educational institution until after it

had constructed the building.

In rejecting the petitioner's argument, the Court of Appeals wrote in its ruling: "It would create needless problems if [the] petitioner built a 19-story building, only to find that it could not use it in a legally permitted way. The City would then face a choice between waiving the legal restrictions and requiring the building to remain vacant or to be torn down. The City's officials did not act arbitrarily or capriciously in trying to avoid that dilemma."

Senior Counsel Virginia Waters of the office's Administrative Law Division, who argued the case successfully in the trial court, said: "We are gratified that the Court recognized that the City acted properly in seeking to avoid the inherent dilemma in the developer's position."

In addition to these attorneys, Cheryl Payer of the Appeals Division also worked on the briefs in both the Appellate Division and the Court of Appeals. Paralegal April Wright prepared the record on appeal.

This developer is involved with other legal cases involving this building and the City, including a claim for damages and a challenge to the landmarks designation of the former P.S. 64. (Editor's Note: P.S. 64 was one of many schools closed during the fiscal crisis in the late 1970s.)

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