



A rendering of the contested luxury towers planned for Two Bridges. | SHoP Architects

LOWER EAST SIDE

# Inside the legal fight for Two Bridges towers

*Opponents struck a blow to the skyscrapers in court Wednesday*

By **Caroline Spivack** | Jun 7, 2019, 8:30am EDT

A trio of lawsuits that seek to stymie three controversial Lower East Side towers moved forward in state Supreme Court, with both sides spelling out their arguments for and against the megadevelopments—including a supertall set to soar more than 1,000 feet.

In a blow to the city and developers, Judge Arthur Engoron extended a temporary restraining order on construction after several hours of legal sparring, and said there was merit to opponents' arguments.

“I like housing, but I don’t see how this can be built without ... City Council having a say in this,” Engoron said in a court room packed with dozens of community advocates.

At the crux of the debate is the developers’ application for a “minor modification” to raise three skyscrapers in the Two Bridges Large Scale Residential Development (LSRD) district. The City Planning Commission (CPC) approved applications by JDS Development Group, CIM Group, L+M Development Partners, and Starrett Development in December after months of fierce pushback from community groups and elected officials.

That process does not require the colossal luxury towers, which will loom over the traditionally low-rise, low-income neighborhood, to go through the city’s [Uniform Land Use Review Procedure](#). Therefore, avoiding City Council scrutiny and a vote that could have prevented the buildings from rising.

All three lawsuits are asking the courts to annul the City Planning Commission’s December decision, but each are arguing their case on different grounds. A challenge filed jointly by the City Council and Manhattan Borough President Gale Brewer argues that the skyscrapers were unlawfully approved because they must go through ULURP—a months-long process that culminates in a city council vote—before they can be built. The two other suits, each filed by a separate cadre of community groups, argue flaws in the developments’ environmental review process and zoning violations.

“It’s just going to destroy the neighborhood, and we cannot allow that,” City Council member Margaret Chin said at a rally ahead of Wednesday’s hearing; she was joined by Gale Brewer and Lower East Side leaders. In a statement, City Council Speaker Corey Johnson echoed local leaders concerns and called the megadevelopment a “dramatic reshaping of a neighborhood.”

“The Council takes its charter mandated land use authority seriously and we stand firm in our belief that the Two Bridges proposal is in no way a ‘minor modification,’” Johnson said.

All told, the buildings would bring 11,000 square feet of retail space and more than 2,700 new units to the neighborhood. Some 690 of those units are planned as permanently “affordable,” and of those, 200 are reserved for seniors. Affordability will likely be measured with at least 10 percent of those apartments with rents up to 40 percent of the Area Median Income (AMI), 10 percent at 60 percent of AMI, and 5 percent at 120 percent of the median. The median household income for the Lower East Side area in 2017 was just

over \$40,000—about 35 percent less than the city-wide household average of \$62,040, according to the [NYU Furman Center](#).

In defense of the CPC's approval process, attorneys for the city and the developers argued that the towers do not fall within a category that triggers the ULURP process and that there is no "limiting language" in the LSRD that prevents the buildings from rising—the shortest among the buildings is 730 feet.

Elected officials fear the spike in population will overburden the area's infrastructure and say ULURP would identify additional mitigation measures to ease the area's strain. Currently, the developers are kicking in \$40 million in upgrades to the East Broadway subway station that will make it ADA-accessible, \$12.5 million in repairs to a nearby NYCHA complex, and \$15 million in upgrades to three area parks. But "that's almost nothing compared to what we would get if we had a ULURP process," says Brewer. Not to mention, she stressed, that one tower would violate a 32-year-old [deed restriction meant to permanently ensure housing](#) for low-income residents with disabilities and the elderly.

If ULURP were in play, officials would have more of an opportunity to pour over project details and additional commitments could be negotiated, elected officials charge. But to involve the City Council through the ULURP process would be overstepping the legislative body's legal bounds, an attorney with the city's Law Department argued Wednesday.

"[There is] no interest in cutting City Council out of the process. That's not what this is about," said Rachel Moston, the assistant corporation counsel with the Law Department, during a Wednesday court hearing. "This is about the City Planning Commission cannot act in excess of its jurisdiction and manufacture a ULURP category where none exists."

Counsel for the developers charge that the size of the buildings—or the "800 pound gorilla in the court room" as Judge Engoron put it—doesn't matter when it comes to triggering ULURP. "The physical size of a building does not matter," said Janice MacAvoy with Fried Frank on behalf of the developers.

The developments, MacAvoy charges, are not requesting a modification to the city's zoning, but instead seek an "update to the site plan"—a document that charts out the footprint of a development. MacAvoy argues that the LSRD is "actually a definition not a zoning concept" and that the planned projects do not require special permits merely because of the LSRD.

The attorney representing the City Council shot back, charging that the towers’ “site plan destroys the very foundation of the special permit that the Council issues” in the LSRD.

“That can’t be enough, if that’s enough it makes a mockery of the whole special permit system,” said Debbie Greenberger with Emery Celli Brinckerhoff & Abady on behalf of the City Council. “What would even be the point of requiring a site plan to be put forward if it can just be changed willy nilly?”

Paula Segal, the attorney with the Equitable Neighborhoods Practice at the **Community Development Project**, asserts that because the buildings reside within the LSRD they must go through a process know as “authorization,” Segal told Curbed after Wednesday’s hearings. Segal represents the suit filed by Tenants United Fighting for the Lower East Side and four other community groups.

Engoron said he aims to reach a decision in the cases before August 3, but in the meantime, extended the temporary restraining order to halt construction. A spokesperson for the developers called the trio of lawsuits “wholly without merit.”

“Contrary to the plaintiffs’ arguments, the right to build is based on zoning laws—not personal policy preferences about building size,” the spokesperson said. The judge’s ruling to extend the restraining order “does not impact the projects because construction was not planned to start imminently,” the spokesperson continued.

The city’s Law Department was also unsatisfied with the judge’s ruling.

“We are disappointed with this ruling. We respectfully disagree with the court’s preliminary findings,” said Law Department spokesperson Nicholas Paolucci. “The approvals made by the City were appropriate and we will continue to defend against the claims challenging these important projects.”



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