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1 of 1 DOCUMENT

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**SECTION:** All Editions; Pg. 33**LENGTH:** 854 words**HEADLINE:** THREE-TIME LOSERS - NIMBY CROWD IN A TAILSPIN**BYLINE:** STEVE CUOZZO**BODY:**

THE local "Not In My Backyard" anti-development crowd is on an embarrassing legal losing streak. Three - count 'em, three - high-profile, anti-development nuisance suits were just thrown out of court in the space of as many weeks. And if the trend keeps up, the city as a whole will be the big winner.

\* Most notoriously, Woody Allen and some fellow Hollywood-on-the-Hudson NIMBYites took it on the chin a few weeks back: The state's highest court tossed a suit filed by rich residents of upper Madison Avenue over a tiny, 10-story condo building in their midst.

\* A few days later, a judge threw out a suit filed by East Side residents cranky over Memorial Sloan-Kettering Cancer Center's plan to build a 23-story research facility on East 68th Street. The neighbors, citing traffic, shadows and (of course) dire environmental consequences, claimed the project violates zoning, which designates the block as residential.

Zoning in the area allows an exception for hospitals, but the plaintiffs argued that Sloan-Kettering's scheme is not a hospital in the sense of a place with beds where patients go to be treated. Alas, the rules allow an exception for a "hospital-related facility." The losers are now deciding whether to waste their money on an appeal.

\* Then, last week, a court rejected an attempt by preservationist zealots to prevent the city from selling the long-vacant Edward Durrell Stone-designed eyesore at 2 Columbus Circle to the Museum of Arts and Design. The museum plans to replace its blank wall facing Central Park with an architecturally sensitive new facade that will include windows.

West Side activists, egged on by the writer Tom Wolfe, claimed the city's assessment of the sale's "environmental impact" was flawed because the city had "incorrectly" ruled that the building was not a "historic resource." But such decisions are the job of the Landmarks Preservation Commission - which declined to find the structure worthy of immortality.

With the suit out of the way, the city can realize \$35 million from the sale. The museum's collection can enjoy the greater public display it deserves - and the derelict hulk next to the new Time Warner Center can be restored to life.

It's too soon to call this a trend - but not too soon to hope so. Litigation or the threat of it imperils well-conceived proposals that range from big-box stores in the retail-starved outer boroughs to the new Jets stadium, which would bring the team back to town.

The cause of rational development won a big one last year when the courts upheld the sale by the state of a porn-dominated Eighth Avenue blockfront to The New York Times Co. and Forest City Ratner for the site of the media company's magnificent new headquarters.

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Property owners argued there was something unjust in eminent domain law. But the courts have often upheld the state's right to apply that law.

Those plaintiffs at least had a plausible case: They had to sell their land and buildings for what they regarded as too low a price. But in this spring's trio of lost cases, nobody was threatened with loss of property - or of anything tangible. They just didn't like certain perfectly appropriate plans that satisfied every city law.

To this day, NIMBY types remain emboldened by Federal Judge Thomas P. Griesa's infamous sabotage of Westway, the aborted 1980s plan to replace the ruined West Side Highway.

Griesa refused to grant the project a landfill permit because the Army Corps of Engineers had not, to his satisfaction, taken the habitat of Hudson River striped bass into account. Ever since, alleged environmental catastrophe is cited by every crank unhappy that his view will be blocked by a new building.

The dean of the city's land-use lawyers, Samuel ("Sandy") Lindenbaum, says, "Unfortunately, in most cases of significant land-use action, the matter doesn't end at the end of the administrative process" - i.e., the consideration of such issues as landmarking, zoning, air rights and environmental impact by public agencies or departments set up to deal with them.

"Over time, the amount of litigation seeking to overturn administrative decisions has increased," Lindenbaum says. The good news is that the law grants the courts "a great deal of deference to administrative judgments."

Such reasonable "deference" saved the day this spring. The condo tower to which Allen, Bette Midler and other celebs objected was already built. But why let common sense stand in the way of a public tantrum?

Because Allen & Co. failed to pursue their case in the proper way - i.e., seeking a temporary restraining order before construction began, a strategy the wealthy plaintiffs deemed too expensive - the appellate judges ordered them to pay all court-related costs of the case.

It's too early to break out the champagne. Lindenbaum says the three cases don't necessarily portend a "wind change in the attitude of the courts."

But perhaps if more courts take the example of the appellate panel and require those who file nuisance suits to pick up all court costs, things will change for good - and we can get on with making the city as great as it can be.

**GRAPHIC:** Woody Allen: Paying for frivolous suit.

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