SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

THE COMMITTEE FOR ENVIRONMENTALLY SOUND DEVELOPMENT and THE MUNICIPAL ART SOCIETY OF NEW YORK,

Plaintiffs,

v.

AMSTERDAM AVENUE REDEVELOPMENT ASSOCIATES LLC and ACP AMSTERDAM III LLC,

Defendants.

Index No.

COMPLAINT

Plaintiffs the Committee for Environmentally Sound Development and the Municipal Art Society of New York, by and through their attorneys, Emery Celli Brinckerhoff & Abady LLP and Charles Weinstock, for their Complaint, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action pursuant to CPLR § 3001 seeking (a) a declaration that the zoning lot where Defendants plan to build a 55-story luxury condominium (the "New Building") was improperly formed under Section 12-10 of the Zoning Resolution; and (b) an order preliminarily and permanently enjoining Defendants (collectively, the "Owner") from continuing construction of the New Building.

2. The New Building would be located at 200 Amsterdam Avenue on the Upper West Side and would be the tallest building on the West Side north of 61st Street. It would fundamentally transform the character of this historic neighborhood, casting long shadows over the streets and nearby buildings, and further crowding sidewalks that are less navigable every year. It would provide *no* new access to open space – the ostensible zoning justification for its enormous height – where neighborhood residents could find respite from the hustle of the city.

3. The Owner obtained a building permit from the New York City Department of Buildings ("DOB") on September 27, 2017 (the "Permit"). The Permit, however, is illegal. Section 12-10 requires that zoning lots be composed only of whole "lots of record," i.e., tax lots "shown on the official tax map of City of New York." Mere fragments of tax lots cannot be joined, either with each other or with whole tax lots, to create a zoning lot. But the zoning lot here does exactly that.

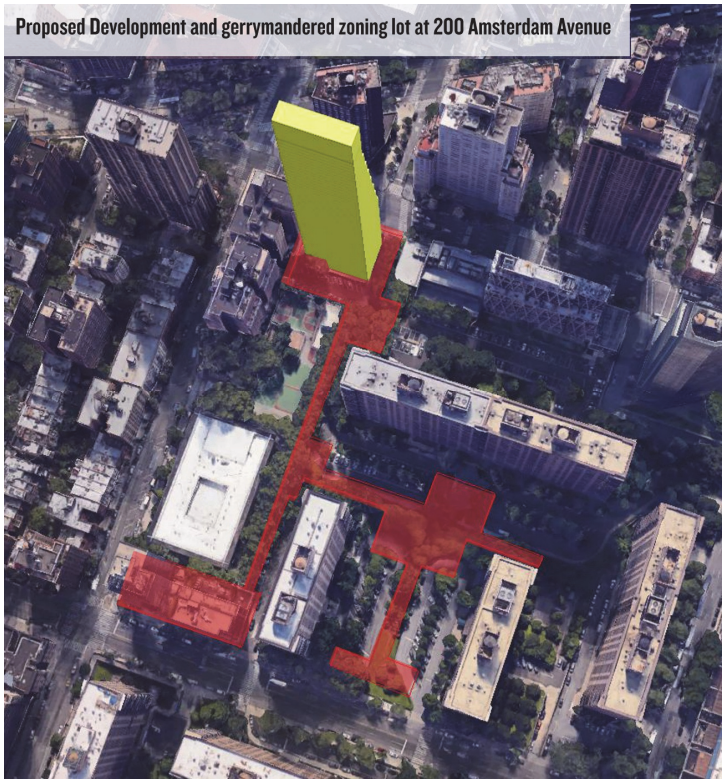
4. Removing any doubt that the lot is illegal, the agency that issued the underlying building permit, the New York City Department of Buildings ("DOB"), has recently confirmed — in the clearest terms — that a zoning lot, for purposes of constructing a larger new building, cannot be created by merging a whole tax lot with parts of other tax lots.

5. In May 2017, plaintiff the Committee for Environmentally Sound Development ("CFESD") filed an administrative challenge to the Permit with the Manhattan Borough Commissioner. After the Borough Commissioner refused to revoke the Permit, CFESD appealed to the Board of Standards and Appeals (the "BSA"). The appeal is currently pending, but a resolution is still months away; the next public hearing is not scheduled until June 5, 2018. If the Owner is permitted to continue construction until the BSA decides, it may be too late to stop the building, even if the BSA agrees with DOB that the Permit should never have been issued.

6. No example better illustrates the wisdom of excluding partial tax lots than the zoning lot here, a 39-sided polygon with fragments so widely scattered across the neighboring property – the Lincoln Towers apartment complex – that its various pieces can be joined only by narrow ten-foot-wide strips of land – one of which is the length of nearly two football fields (the "Gerrymandered Zoning Lot"). Even the original recorded documents that created the lot refer

to it as the "Gerrymander."

7. The zoning lot (orange) and the proposed building (yellow) are pictured below in an image created by the Municipal Art Society using 2018 Google Earth:



8. This diagram depicts a cynical end-run around a statute meant to provide open, verdant, and genuinely usable space. This zoning lot makes a mockery of the statute.

9. From the beginning, the lot was a flagrant outlier. Its design flouts both the language and obvious intention of the statute, and depends on an interpretation of the law that has been rejected by government agencies, practicing lawyers, and legal scholars – in reports, for example, by the agency that *drafted* the statute for the City Planning Commission, the Department of City Planning; in the leading treatise on New York property law; and in law journal and law review articles. The Owner has been on notice that sooner or later, the

Gerrymandered Zoning Lot would be found to violate the Zoning Resolution.

10. Construction is still in the excavation phase. At this point, it can be stopped with relatively little disruption. The Owner will retain the right to submit plans for a smaller building on the site, consistent with the Zoning Resolution, and the excavation work that has been done thus far will be equally useful for that project. The Owner will still be able to enjoy a high rate of return on its investment.

11. With the public hearing postponed until June, the BSA will not be able to decide the case before at least the middle of the summer. If the Owner is allowed to continue construction until then, it will argue that it is too late to undo the work. Unfortunately, the BSA does not have the authority to stay construction pending its consideration of the case. The only available remedy is an injunction by this Court.

12. In this plenary action, Plaintiffs seek a declaration stating that the Permit is illegal and an injunction barring the construction of the New Building on the Gerrymandered Zoning Lot pending the BSA's resolution of CFESD's appeal.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to CPLR §§ 3001 *et seq*.

14. Venue is proper within New York County pursuant to CPLR §§ 503 and 507 because the action arises from the siting of the building in New York County and because Plaintiffs reside in New York County.

PARTIES

15. Plaintiff CFESD is a non-profit corporation founded in 1989 and organized under the laws of New York State with a principal office in New York County. It is an all-volunteer

watchdog group dedicated to preserving the quality of life in an increasingly dense city.

16. Among CFESD's volunteers are individuals who live in close proximity to the Gerrymandered Zoning Lot and stand to suffer more crowded streets and sidewalks, lost light and air, overextended infrastructure, and the general disruption of their historic neighborhood by the New Building.

17. Plaintiff the Municipal Art Society of New York ("MAS") is a non-profit corporation organized under the laws of New York State with its principal place of business at 488 Madison Avenue, Suite 1900, New York, New York 10022. Founded in 1893, the organization is dedicated to creating a more livable City by advocating for thoughtful urban planning, design, and preservation. MAS has played an integral role in the City's land use history, helping to establish the City Planning Commission and the Landmarks Preservation Commission, saving Grand Central Terminal, restoring more than 50 works of public art, and founding the Public Art Fund, the New York Landmarks Conservancy, the Waterfront Alliance, and other organizations committed to improving the city's public spaces.

18. MAS is a membership organization, and a number of its members will be directly impacted by the 200 Amsterdam proposal at issue in this case. MAS has approximately 1,320 members citywide. On the Upper West Side, it has approximately 190 members who live in zip codes 10023, 10024, and 10025. MAS has 27 members who live within a quarter of a mile radius of the project, 17 of whom are senior members (aged 62 and up).

19. CFESD and MAS bring this suit on behalf of themselves and their members and volunteers – those who live and work on the Upper West Side, and those who live and work elsewhere but regularly visit the area, walking, shopping, biking, and otherwise taking advantage

of this singular neighborhood. They will no longer be able to enjoy it in the same way if the New Building goes forward. The building will also establish a dangerous precedent for future out-of-scale mega-towers on illegally composed zoning lots.

20. Defendant Amsterdam Avenue Redevelopment Associates, LLC ("AARA") is a Delaware limited liability company with its principal office in New York City. AARA is the fee owner of Lot 133 on Block 1158 of the City's official Tax Map (the "Development Site"), and seeks to construct the New Building at that site.

21. Defendant ACP Amsterdam III, LLC ("ACP III") is a Delaware limited liability company with its principal office in New York City. ACP III is the fee owner of Lot 9133, an airspace parcel directly above Lot 133.

STATEMENT OF FACTS

I. The Zoning Resolution and Open Space

22. The Development Site lies on a "superblock" bounded by West End Avenue, Amsterdam Avenue, and West 66th and 70th Streets. It is identified as Block 1158 on the City's tax map. The block was created as part of the 1957 Lincoln Square Urban Renewal Plan, and its centerpiece is a federally-subsidized middle-income housing complex, Lincoln Towers, completed in 1964: five 29-story apartment buildings, set widely apart from one another, surrounded by trees, gardens, playgrounds, and off-street parking.

23. This "towers in the park" conception of city life undergirds the 1961 Zoning Resolution, one of whose purposes is to create "better standards of open space . . . for rest and recreation." ZR § 21-00(d). This philosophy is expressed in the statute's "open space ratio" for certain residential districts, a formula for setting the minimum required open space on a zoning

lot as a percentage of the total floor area of all buildings on the lot. ZR §§ 12-10, 23-15, 23-151. As the Department of City Planning's original 1961 *Zoning Handbook* explained, the open space ratio is the "primary device" for insuring adequate open space in zoning lots with multiple buildings. If a developer wants to build a bigger, taller building, it must prove that the lot has the additional open space to accommodate it.

24. If an owner does not have the necessary open space, it is permitted to merge its tax lot with one or more contiguous whole tax lots. ZR § 12-10. Since the open space ratio is based on the amount of open space in the newly merged lot, not the older, smaller one, the developer is free to use the excess open space from the annexed property to put up a bigger building on the original tax lot.

II. The History of the Gerrymandered Zoning Lot

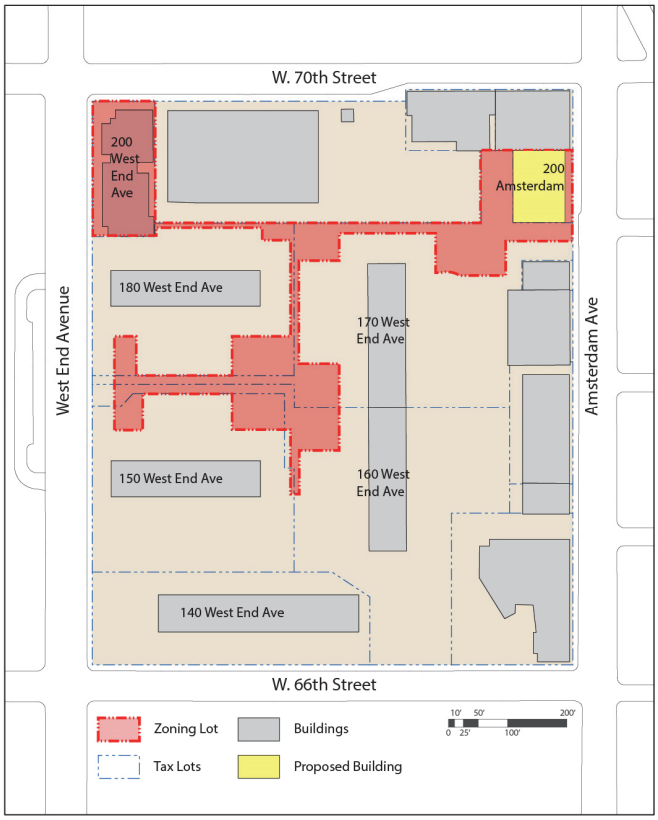
25. The Gerrymandered Zoning Lot took its final form in 2015, pursuant to a Declaration with Respect to Subdivision of Zoning Lot, dated June 11, 2015, and recorded in the City Register's Office on June 18, 2015.

26. The Gerrymandered Zoning Lot consists of fragments from four Lincoln Towers tax lots and two whole tax lots. The fragments of tax lots are from: (i) Condominium Lots 1001-1007 (formerly Tax Lot 1), (ii) Condominium Lots 1101-1107 (formerly Tax Lot 70), (iii) Condominium Lots 1201-1208 (formerly Tax Lot 80), and (iii) Condominium Lots 1401-1405 (formerly Tax Lot 30). The whole lots are Tax Lot 133, where the New Building would be built, and Condominium Lots 1501-1672 (formerly Tax Lot 65), the site of an existing 27-story residential condominium built in 2006 at 200 West End Avenue.

27. The Gerrymandered Zoning Lot has a total area of 110,794 square feet, of which

the Owner claims 87,972 as "open space" for 200 Amsterdam. A significant portion of the so-called open space is parking spaces and driveways; the remainder is land.

28. The following diagram created by planner George M. Janes shows the current Gerrymandered Zoning Lot.



29. The Owner purchased the Gerrymandered Zoning Lot on October 15, 2015.

III. The Gerrymandered Zoning Lot Violates the Zoning Resolution

30. Section 12-10 of the Zoning Resolution clearly establishes that a zoning lot can be created only by merging whole tax lots; it cannot be created by merging a whole tax lot with fragments of other tax lots.

31. DOB itself has now acknowledged, unequivocally, that the statute prohibits the

inclusion of partial tax lots in zoning lot mergers.

32. As early as January 31, 2018, less than three months after the Permit was issued, DOB distributed a draft bulletin expressly stating that only whole tax lots could be merged into a zoning lot – in other words, that the agency should never have issued the Permit.

33. In March 2018, DOB restated its conclusion in a letter to the BSA: "a plain text reading of the definition of zoning lot does not permit the formation of a zoning lot consisting of partial tax lots . . . . [Z]oning lots are required to contain *entire* tax lots."

34. The agency that drafted the Zoning Resolution for the City Planning Commission, the Department of City Planning, has also repeatedly confirmed this interpretation. In its 2015 survey of transfer development rights, for example, the Department states: "[Zoning lot mergers] combine contiguous *tax lots* within a block."[1]

35. The Department of City Planning's *Zoning Handbook* defines a zoning lot as "a tract of land comprising a single *tax lot* or two or more adjacent *tax lots* within a block."[2]

36. The legislative history further supports this interpretation. The phrase "lot of record" was first introduced in the 1961 Zoning Resolution – 16 years *before* the City Council amended the statute to require that zoning lot documents be recorded. In 1961, the *only* recorded lots were the tax lots on the City's official Tax Map.

37. The zoning practice of the last 40 years is consistent with this plain reading of the statute. Upon information and belief, only six of the estimated 1,700 zoning lots that have been

[1] Department of City Planning, *A Survey of Transferrable Development Rights Mechanisms in New York City* (2015) at 5 (emphasis added), available at www1.nyc.gov/assets/planning/download/pdf/plans-studies/transferable-development-rights/research.pdf.

[2] Department of City Planning, *Zoning Handbook* (2011) at 149 (emphasis added).

merged since 1977 have included a partial tax lot, and in each of these six cases, the circumstances were unique.

IV. Administrative Proceedings

38. On September 27, 2016, the Owner applied to DOB for a permit to build the New Building, and on May 9, 2017, DOB approved the proposed zoning diagram.

39. On May 15, 2017, pursuant to DOB's Zoning Challenge procedure under Section 101-15 of the Rules of the City of New York, CFESD challenged the diagram by appealing to the DOB Borough Commissioner. With an accompanying statement from planner George M. Janes, CFESD enumerated the plan's violations of the Zoning Resolution. The statement was also signed by the Manhattan Borough President, Gale Brewer, and City Council Member Helen Rosenthal.

40. Two months later, on July 10, 2017, the Borough Commissioner issued "a notice of objections and an intent to revoke to verify the open space ratio and that the zoning lot was properly formed."

41. On September 18, 2017, in response to the notice of objections, the Owner submitted additional project information (form "AI1"), and the agency lifted the notice to revoke.

42. On September 27, 2017, the DOB issued the Permit (Building Permit No. 122887224-01-NB) for the New Building, allowing for construction of a 668-foot tall, 55-story building, with a floor area of 350,695 square feet – 347,970 for 112 apartments and 2,725 for community facilities.

43. On October 12, 2017, plaintiff MAS objected to the project in a letter to the

Commissioner of DOB.

44. On October 12, 2017, the Owner began work at the Development Site.

45. On October 25, 2017, CFESD filed an appeal to the BSA arguing that the zoning lot merger was illegal and that even if it were legal, the claimed open space did not meet the statutory requirements to qualify as such space.

46. On December 8, 2017, the BSA issued a Notice of Comments, requesting that CFESD provide more information about the history of the property, and about the legal and factual bases of its arguments.

47. On January 9, 2018, CFESD responded to the BSA with a letter and revised Statement of Facts.

48. On January 31, 2018, DOB's First Deputy Commissioner, Thomas Fariello, circulated a "Draft Bulletin" confirming that partial tax lots could *not* be used in zoning lot mergers. According to the Bulletin, a properly merged lot is "a tract of land that consists of one tax lot or two or more tax lots (not parts of tax lots)."

49. On March 7, 2018, the Owner submitted a memorandum to the BSA in response to CFESD's appeal.

50. On March 9, 2018, DOB submitted a letter to the BSA in response to CFESD's appeal, expressly confirming the definition of "zoning lot" that it had proposed in the January 31, 2018 Draft Bulletin: "a plain text reading of the definition of zoning lot does not permit the formation of a zoning lot consisting of partial tax lots. . . . [Z]oning lots are required to contain *entire* tax lots."

51. On March 27, 2018, CFESD submitted a reply to the Owner's memorandum.

52. On March 27, 2018, the BSA held a first public hearing on the challenge, and then set a schedule for additional briefs and a second public hearing to be held on June 5, 2018.

53. Plaintiff MAS provided testimony to the BSA on March 27, 2018, objecting that the Gerrymandered Zoning Lot does not comply with the requirements of a "zoning lot," and with respect to how open space was used to increase the height of the building.

54. On April 17, 2018, CFESD submitted a letter responding to the issues raised by the Owner, DOB, and the BSA at the public hearing.

V. The Current Status of the Construction

55. The Owner is currently excavating the Development Site.

56. The photograph below depicts the Development Site on April 23, 2018.

VI. Plaintiffs Face Irreparable Injuries

57. Plaintiffs and their members and volunteers would be irreparably injured if the Owner is permitted to proceed with construction of the New Building while the BSA is considering the pending appeal by CFESD.

58. The New Building would reduce the available light and air, and cast significant shadows over the block and neighborhood.

59. The New Building would make the neighborhood darker and cast morning shadows on the Matthew P. Sapolin playground that lies 60 feet west of the Development Site, interfering with public enjoyment of this valuable asset.

60. The New Building would increase street traffic and pedestrian congestion, during and after its construction, and further strain the local infrastructure.

61. Residents of the New Building could neither use nor have access to any of the claimed "open space" on the Gerrymandered Zoning Lot.

62. The New Building would not create any new open space available to either its residents or neighbors beyond.

63. The Owner's failure to provide the open space required by the Zoning Resolution undermines the vision upon which both the 1961 Zoning Resolution and the Lincoln Towers construction were premised.

64. Upon information and belief, the Owner knew prior to their purchase of the Gerrymandered Zoning Lot, and certainly prior to the start of construction in October 2017, of the legal risk of proceeding with the New Building.

65. Upon information and belief, the Owner has been advised throughout by

experienced zoning counsel.

CAUSE OF ACTION
(Declaratory Judgment and Permanent Injunction for Violation of the New York City Zoning Resolution)

66. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

67. The New Building lies on the Gerrymandered Zoning Lot.

68. The Gerrymandered Zoning Lot includes partial tax lots and is therefore in violation of Section 12 of the Zoning Resolution.

69. If the Gerrymandered Zoning Lot violates the statute, then the zoning lot for the New Building consists only of the Development Site (Lot 133). The Owner cannot claim any open space not on the Development Site, and therefore lacks the open space required to construct the New Building.

70. The Owner has nevertheless commenced construction.

71. There is a significant risk that, if construction is permitted to continue, it will progress to the point that either this Court or the BSA may decline to enforce the statute, even if it determines that the New Building is illegal.

72. Plaintiffs have no adequate remedy at law to ensure compliance with the Zoning Resolution while the BSA decides the pending CFESD appeal.

73. Plaintiffs are entitled to a declaration that construction of the New Building violates Section 12-10 of the Zoning Resolution.

74. Plaintiffs are entitled to emergency relief enjoining all construction of the New Building pending the resolution of the BSA appeal, and a preliminary injunction and a

permanent injunction restraining and enjoining the Owner, its agents, servants, representatives, and employees from performing any work in contravention of Section 12-10 of the Zoning Resolution.

75. No prior application for the relief requested herein has been made.

WHEREFORE, Plaintiffs respectfully request that this Court grant them the following relief:

i. A temporary restraining order and preliminary injunction ordering the Owner to take all action necessary to halt construction at the Development Site pending the BSA's decision on the pending appeal filed by plaintiff CFESD;

ii. A judgment declaring that the Gerrymandered Zoning Lot was improperly formed under Section 12-10 of the Zoning Resolution;

iii. A permanent injunction judgment ordering the Owner to take all action necessary to comply with Section 12-10 of the Zoning Resolution at the Development Site;

iv. An award of Plaintiffs attorneys' fees, costs, and disbursements in this action; and

v. Such other and further relief that the Court deems just and proper.

Dated: New York, New York
April 25, 2018

EMERY CELLI BRINCKERHOFF
& ABADY LLP

/s/
Richard D. Emery
Katherine Rosenfeld
Ashok Chandran

600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

CHARLES WEINSTOCK

/s/
8 Old Fulton Street
Brooklyn, New York 11201
(323) 791-1500

Attorneys for Plaintiffs