

Environmentalism Smothers New York

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By Richard Miniter

As they swarm into New York for next week's primary, presidential candidates are wondering aloud what to do about the city's current economic slump. They should meet with Jerry Goldfeder, a Manhattan lawyer who may have made that a moot question by stopping development in New York altogether.

Mr. Goldfeder is an anti-development activist who wants to halt the Columbus Center project, a 57-story complex of offices, stores and apartments that Boston Properties is planning to build at Columbus Circle on Manhattan's West Side. In 1990 he sued Boston Properties, New York City, and several city and state agencies, alleging everything from violations of the Housing Act to failure to apply for the necessary permits for a garage.

Most of his claims were settled or dismissed. But Mr. Goldfeder found one argument that worked: He won a court ruling delaying the project because the city is in violation of the federal Clean Air Act.

The act compels the Environmental Protection Agency to write and enforce national air-quality standards for various pollutants, including carbon monoxide. Each state must create an implementation plan. If a state or local government fails to fulfill the plan, citizens can sue to force compliance.

Mr. Goldfeder sued, alleging that New York was in violation of the carbon monoxide standard set by the state. New construction, he argued, lures more automobiles into Manhattan and boosts carbon monoxide levels even further. He sought an injunction halting development of Columbus Center until a new environmental impact statement is prepared showing how violations of the standard would be avoided. Last July, U.S. District Judge Shirley Wohl Kram ruled in Mr. Goldfeder's favor and awarded summary judgment. Boston Properties is appealing.

If the ruling stands, the city may be forced to deny all permits for new construction, because federal air-quality standards are next to impossible to meet. If the city falls out of compliance for any single pollutant for eight hours on any day of the year at any site, it is considered a "nonattainment" area by EPA regulators.

The carbon monoxide standard at issue is nine parts per million. Of the 10 test sites near the proposed Columbus Center project, only one is expected to exceed the legally permitted level, according to the latest environmental impact statement. That site will experience carbon monoxide levels reaching 12.9 parts per million if the project is not built, and 13.3 parts per million if it is built. This is a statistically insignificant difference: Measuring instruments are imprecise, so the EPA requires that comparisons between carbon monoxide concentrations be rounded to the nearest integer. Thus, either figure would be rounded to 13 parts per million.

Judge Kram acknowledged that "under this method of calculation the Project has no legally cognizable effect on carbon monoxide emissions at that site." But she said that although individual projects may cause no measurable harm by themselves, they could have a harmful cumulative impact. A succession of increases could be hidden if each were small enough to be overlooked in the rounding.

Judge Kram also invoked an EPA requirement that new projects "mitigate existing carbon monoxide violations, even those not of the projects' own making." She ordered the city to come into compliance by Nov. 15, 1992. If the city fails to meet this deadline, the halt to construction at Columbus Center will become permanent, and the court will impose fines until the city comes into compliance.

Judge Kram's ruling would seem to entail a complete halt to development in New York City. But shutting down the city is an inefficient way to reduce pollution.

In fact, the assumption that more cars mean more air pollution is not necessarily true. A University of Denver study, which measured tailpipe emissions from cars in several major cities, found that more than half of all carbon monoxide emissions came from only 10% of the cars and trucks on the road. In fact, 70% of vehicles comply with strict federal emissions standards, and thus produce no measurable pollution.

The best way to combat air pollution, then, would be to target those, mostly older, cars that produce the bulk of it. But clean air is not Mr. Goldfeder's only concern. Mr. Goldfeder, who lives near the Columbus Center site, says: "If the neighborhood wanted the project to go forward, we would not have brought the lawsuit that we did. Obviously there is an antipathy toward large projects like this."

It is an antipathy shared by many political activists. Increasingly, environmental laws are their weapon of choice. A report by New York State Sen. Franz Leichter called for a moratorium on development on the West Side because the North River sewage plant is overburdened. This report -- "Trump Card or Royal Flush?" -- was one factor leading Donald Trump to scale down his Trump City proposal. Another way to halt development is by invoking the Clean Water Act, with which the city is also out of compliance.

Environmental lawsuits can be lucrative. Several federal environmental laws permit "citizen suits," which give just about anyone the right to bring past, present or potential polluters to court. Successful plaintiffs can collect attorney's fees -- although defendants must pay their own legal costs even if they win. While individual lawyers may profit, developers and the city are left to pay the tab.

Mr. Minitzer is associate producer of the PBS program "TechnoPolitics." A longer version of this article appeared in the winter issue of The City Journal.

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