STATE OF NEW YORK
SUPREME COURT COUNTY OF COLUMBIA

DONALD J. CHRISTENSEN,

Plaintiff,

-against-

Index No. 9745-05
RJI No. 10-07-0322

ROBERT F. O'BRIEN, COLUM RILEY, QUINTIN E. CROSS, LYLE J. SHOOK, JR., KATHY K. HARTER, LISA M. KENNEALLY, NORA M. HANCOCK-SNEAD, WILLIAM C. HUGHES, JR., ROBERT J. DONOHUE, SR., RICHARD P. GOETZ and MICHAEL VERTETIS, President, Constituting the Common Council of the City of Hudson, THE CITY OF HUDSON, T. ERIC GALLOWAY and THE LIHTAN COMPANY, INC.,

Defendants.

All Purpose Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

Appearances:

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DECISION

George B. Ceresia, Jr., Justice

In May 1968, the owners of property bordering Willard Place, which was then a private street, petitioned defendant City of Hudson (hereinafter City) to take title to and maintain the street. The petition was later presented to the City's legislative body, the Common Council, and referred to its Street and Sewer Committee, which recommended that the City take the necessary legal steps to gain title of the street. Thereafter, the Common Council passed a resolution authorizing the Department of Public Works (hereinafter DPW) to survey Willard Place and the City's Legal Advisor to conduct a title search.[1] In May 1969, the property owners conveyed "their right, title and interest in and to the private street known as Willard Place" to the City "for street and park purposes" (Plaintiff's Ex. 3). The Common Council subsequently passed a resolution to "lay out, open and dedicate as a public street, that thoroughfare known . . . as Willard Place" (Defendants' Ex. G, p. 166).

In 1985, plaintiff Donald Christensen (hereinafter plaintiff), together with his wife, purchased a single-family dwelling located at 8 Willard Place. A survey of plaintiff's property reveals that it is situated at the end of Willard Place's paved cul-de-sac. The survey

[1] Neither the survey, nor the results of the Legal Advisor's inquiry were included as part of the record herein.

also shows a small dotted section of land within interior of the cul-de-sac entitled "Willard Place Park" (Plaintiff's Ex. 4).[2] In 2004, the City sold 163 square feet of land situated northwest of the cul-de-sac to defendant The Lihtan Company (hereinafter Lihtan).

Several months later, plaintiff commenced the instant action seeking, among other things, rescission of the sale on the basis that the City violated the public trust doctrine. A bench trial was conducted before Acting Supreme Court Justice Paul Czajka; proposed findings of fact and conclusions of law were later submitted on behalf of the parties. However, Judge Czajka resigned from the bench without having rendered a written decision. Consequently, the matter was reassigned to this Court. In lieu of retrying the matter, counsel stipulated that this Court "may render a decision based upon the record adduced at trial . . . based on the condition that the Honorable George B. Ceresia, Jr. entertain oral argument prior to rendering his decision" (Stipulation, executed September 23 and 26, 2011). Accordingly, oral argument was held before this Court on November 9, 2011.

DISCUSSION

It is well-established that "dedicated park areas in New York are impressed with a public trust for the benefit of the people of the State" (Friends of Van Cortlandt Park v City of New York, 95 NY2d 623, 631 [2001]). For this reason, parkland may not be sold absent the express approval of the State Legislature (see Powell v City of New York, 85 AD3d 429, 430 [2011]; Matter of Angiolillo v Town of Greenburgh, 290 AD2d 1, 10 [2001]). Here,

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[2] For the sake of clarity, Judge Czajka referred to this area as "teardrop" shaped.

plaintiff, the party upon whom the burden of proof rests, asserts that the parcel in question was inalienable parkland and, therefore, could not be sold to The Lihtan Company without legislative approval (see Matter of Angiolillo v Town of Greenburgh, 290 AD2d at 11). For the reasons set forth below, the Court finds that plaintiff failed to satisfy his burden of establishing that the disputed parcel constitutes parkland subject to the public trust doctrine.

First, there is insufficient proof to demonstrate that the parcel sold to Lihtan is included in that which was originally conveyed to the City in 1969 "for street and park purposes" (Plaintiff's Ex. 3). In the absence of testimony from a surveyor or title expert,[3] the Court is left to determine the property boundaries by examining the documentary evidence admitted at trial. To this end, a 1985 survey of plaintiff's property and a 2003 survey of the area surrounding the parcel sold to Lihtan are consistent in one, critical fashion – they each refer to the section of land within the interior of the cul-de-sac as a park, whereas the disputed parcel lies well outside the confines of the cul-de-sac. For this reason, the Court finds that plaintiff has not established that the parcel in question was ever designated as a park on a survey map (see e.g. Powell v City of New York, 85 AD3d at 431).

Next, even if the Court were persuaded by plaintiff's argument that the park extends beyond the interior of the cul-de-sac, there is no evidence that the disputed parcel was dedicated for public use. "To establish that property has been dedicated for public use, there

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[3] Judge Czajka granted defendants' objection to preclude admission of a statement prepared by surveyor Paul Hite (Trial Transcript, p. 48-49).

generally must be an unequivocal express or implied offer by the owner, and where required, an express or implied acceptance by the public. Thus, a parcel of property may become a park by express provisions in a deed or legislative enactment or by implied acts, such as the continued use of the parcel as a park" (Matter of Angiolillo v Town of Greenburgh, 290 AD2d at 10-11 [internal citations omitted]; see Powell v City of New York, 85 AD3d at 431; Matter of Lazore v Board of Trustees of Vil. of Massena, 191 AD2d 764, 765 [1993]).

In this regard, City Clerk Tracy Delaney testified that, notwithstanding an extensive search of all City records, she could not locate any resolution within which the Common Council expressly dedicated any portion of Willard Place as a public park. To the contrary, the City records reveal that, from the outset, the Common Council only intended to accept the property as a street. For example, when the petition was first presented to the Common Council, the matter was referred to the Street and Sewer Committee, which concluded that "the City of Hudson should take title of that street" (Defendants' Ex. C [emphasis supplied]). Thereafter, the City's Legal Advisor submitted a written report of the "progress in the matter of taking over Willard Place as a city street" to the Common Council (Defendants' Ex. E [emphasis supplied]). Finally, the Common Council completed the process in November 1969 when it held a special meeting to "lay out, open and dedicate as a public street, that thoroughfare . . . known as Willard Place" (Defendants' Ex. G [emphasis supplied]). Inasmuch as the City accepted Willard Place for the purpose of creating a public street, it cannot be said that it was expressly dedicated as parkland (see e.g. Matter of Angiolillo v

Town of Greenburgh, 290 AD2d at 11; see also Powell v City of New York, 85 AD3d at 431; Matter of Lazore v Board of Trustees of Vil. of Massena, 191 AD2d at 765).

Finally, the only remaining issue for the Court's consideration is whether the City dedicated Willard Place as a park by implication. "[A]n implied dedication may exist when a municipality's acts and declarations manifest a present, fixed, and unequivocal intent to dedicate" (Riverview Partners v City of Peekskill, 273 AD2d 455, 455 [2000]; see Powell v City of New York, 85 AD3d at 431; Matter of Angiolillo v Town of Greenburgh, 290 AD2d at 11). Plaintiff and two of his neighbors, Angela Pace and John Leonardson, testified that they sometimes observed children, as well as elderly residents of an adjacent nursing home, spending time in the area. Plaintiff further testified that DPW personnel sometimes sat on the grass while eating lunch. Plaintiff also indicated that the DPW workers routinely mowed grass, trimmed hedges and plowed snow from the roadway.

On the other hand, plaintiff and his neighbors acknowledged that they never observed playground equipment, picnic tables, benches, garbage receptacles, or signs identifying the area as a public park. Indeed, plaintiff characterized the condition of the property sold to Lihtan as a "thicket," in which no activity took place (Trial Transcript, p.58). Likewise, Dylan Meyer, a college student who was raised in a home adjacent to Willard Place, recalled that the north side was "overgrown a lot" (Trial Transcript, p. 100). During his childhood, Meyer would occasionally retrieve a stray ball from the overgrowth, but he never physically stood or played in the shrubs and overgrowth.

For its part, the City denies that Willard Place was ever held out to be a park. Indeed, Mayor Richard Scalera explained that the only improvements made to the area were street improvements and further stated that the property sold to Lihtan was "overgrown with really unsightly, insignificant vegetation" (Trial Transcript, p. 167). Likewise, DPW foreman Charles Weed testified that the City has merely maintained Willard Place by completing road and drainage basin repairs, removing snow and mowing grass in the cul-de-sac. According to Weed, immediately before the disputed parcel was sold to Lihtan, the area was "just all grown up trees and bushes" (Trial Transcript, p. 146). Additionally, the City Department of Youth's recreation supervisor, George Bednar, indicated that the Youth Department has never sponsored activities at Willard Place.

Equally significantly, the relevant property tax assessment maps confirm the City's position that the disputed parcel was never dedicated as a park (see e.g. Matter of Lazore v Board of Trustees of Vil. of Massena, 191 AD2d at 766). To this end, City Assessor Garth Slocum explained that streets are simply designated as such on the tax maps because they are not assessed. In contrast, City parks are given an assessment value and an individual property class code. Here, the tax assessment maps clearly reflect that Willard Place is simply marked as a street. Based on the foregoing evidence, the Court finds that plaintiff failed to establish that the City dedicated Willard Place as a park by implication (cf. Riverview Partners v City of Peekskill, 273 AD2d at 455). Since the disputed parcel does not constitute a park, the Court concludes that the City was not required to obtain the

approval of the State Legislature before selling the property to Lihtan.

Accordingly, the Court renders a verdict for the defendant. Submit judgment on notice.

This Decision shall constitute the Court's findings of fact and conclusions of law.

Dated: Troy, New York
April 11, 2012

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Trial Transcript, dated July 8, 2010, with accompanying exhibits admitted into evidence;
2. Municipal Defendants' Closing Argument and Memorandum of Law, dated March 10, 2011;
3. Defendants The Lihtan Company's and T. Eric Galloway's Proposed Findings of Fact and Conclusions of Law, dated March 16, 2010;
4. Plaintiff's Proposed Findings of Fact and Post-Trial Memorandum of Law, dated April 22, 2011; and
5. Oral Argument Transcript, dated November 9, 2011.