

**Matter of Cambridge Owners Corp. v New York City  
Dept. of Transp.**

2013 NY Slip Op 32701(U)

October 28, 2013

Supreme Court, New York County

Docket Number: 100727/13

Judge: Cynthia S. Kern

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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: \_\_\_\_\_  
Justice

PART 55

THE CAMBRIDGE OWNERS CORP.

INDEX NO. 100727/13

-v-

MOTION DATE \_\_\_\_\_

CITY OF NEW YORK DEPT OF TRANSP, et. al.

MOTION SEQ. NO. 001

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s) \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

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is decided in accordance with the annexed decision.

**FILED**

OCT 30 2013

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 10/28/13

PK, J.S.C.

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
In the Matter of the Application of

CAMBRIDGE OWNERS CORP.,

Petitioner,

Index No. 100727/13

For an Order Pursuant to Article 78  
of the Civil Practice Law and Rules,

**DECISION/ORDER**

-against-

THE NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION, JANETTE SADIK-KHAN,  
Commissioner of Transportation, in her official  
capacity, CITIBANK, N.A. and NYC BIKE SHARE, LLC,

Respondent.

**FILED**  
OCT 30 2013  
NEW YORK  
COUNTY CLERKS OFFICE

-----X  
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross-Motion and Answering Affidavits.....	<u>2,3</u>
Replying Affidavits.....	<u>4,5</u>
Exhibits.....	<u>6</u>

Petitioner Cambridge Owners Corp. (“petitioner” or “Cambridge”) brings the instant petition pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) challenging respondent New York City Department of Transportation’s (“DOT”) decision to install a bike share station in front of the building located at 175 West 13<sup>th</sup> Street, New York, New York (the “building”). Respondents DOT, NYC Bike Share, LLC (“Bike Share”) and Citibank, N.A. (“Citi”) cross-move for an Order pursuant to CPLR § 3211 dismissing the petition. For the

reasons set forth below, both cross-motions are granted and the petition is denied.

The relevant facts are as follows. Petitioner is the owner of the building, a 20-story apartment house with 137 apartments, which is situated on the north side of West 13<sup>th</sup> Street at Seventh Avenue in New York City. The building is located within the geographic boundaries of Manhattan Community Board No. 2 (“CB 2”). On May 27, 2013, DOT launched a public bike share program (the “Program”) which is operated on DOT’s behalf by respondent Bike Share, a subsidiary of Alta Bike Share, Inc. The Program is funded by sponsorship agreements and member revenue and Citi is the primary sponsor of the Program. Presently, the Program consists of 6,000 bikes and more than 300 self-service bike share stations that are accessible to the public 24 hours-a-day, 365 days-a-year. The service area of bike share stations includes Manhattan below 60<sup>th</sup> Street and the Brooklyn neighborhoods of Brooklyn Heights, Bedford-Stuyvesant, Williamsburg, Clinton Hill, Fort Greene and DUMBO. DOT alleges that to operate successfully, the Program requires a dense network of bike share stations to ensure that within the service area, users can easily locate and do not have far to travel to find a readily available station, either to obtain a bike or return it to a docking station.

Prior to launching the Program, a feasibility study of a bike share program in New York City was conducted by the New York City Department of City Planning (“DCP”). Additionally, the DOT alleges that it undertook a multi-year public planning process to determine the location of the stations. As evidenced by DOT’s publication “NYC Bike Share, Designed by New Yorkers,” the process included more than 150 public meetings, presentations and demonstrations, as well as over 200 meetings with elected officials, property owners and other stakeholders. As affirmed by Kate Fillin-Yeh, the Director of the Program, the station selection process began

with the identification of technically viable sites at a greater than necessary network density that were presented to stakeholders for comments and suggestions. Ms. Fillin-Yeh further affirms that in determining individual station sizes, DOT planners used a computer model to analyze surrounding land use, population, tourism rates, subway turnstile counts and other data on transit use throughout the Program area. The model also allegedly made use of newly available taxi GPS data on origins and destinations of trips throughout the City as well as trip durations and times of day. Additionally, Ms. Fillin-Yeh affirms that a wide array of factors were considered when coming to the final decision about where to place the docking stations such as requests and comments from the public, neighborhood preferences, proximity to transit and other destinations, distance from other bike share stations and access and proximity to bike lanes. According to the Program's siting guidelines, the technical considerations in evaluating a particular street location for placement of a bike share station included, *inter alia*, whether the area (a) was well-lit; (b) as close to the corner/crosswalk as possible; (c) had a minimum allowable curb lane width of eight feet; and (d) included parking lanes restricted as "No Parking" or "No Standing." Impermissible areas included bus stops; sites within fifteen feet of fire hydrants or bus stops; sites within ten feet of driveways; sites within three feet of crosswalks; and parking lanes that switch to driving lanes at specific times of day.

In or around February 2012, the DOT, as lead agency, initiated the environmental review of the Program and its siting guidelines pursuant to the requirements of the City Environmental Quality Review Act ("CEQR"). Ms. Fillin-Yeh affirms that since at least April 27, 2012, the DOT planned to install a bike share station on the north side of West 13<sup>th</sup> Street near Seventh Avenue. This is also evidenced by the site map provided by the DOT, dated April 27, 2012,

which shows a bike share station on the north side of the street. After the conclusion of the review process, in April 2013, 39 bike docks (the “Bike Share Station”) were installed on the north side of West 13<sup>th</sup> Street near Seventh Avenue in front of the building. Thereafter, the DOT removed an approximately sixteen foot portion of the bike share station directly in front of the building’s entrance pursuant to a request made by petitioner. By a Notice of Petition and Verified Petition dated May 13, 2013, petitioner commenced the instant proceeding challenging the DOT’s decision to install the Bike Share Station at its location on the north side of West 13<sup>th</sup> Street.

The court first turns to DOT’s cross-motion to dismiss the petition. As an initial matter, that portion of the cross-motion which seeks dismissal of the petition on the ground that petitioner lacks standing is denied. In order to establish standing, petitioner must show that it has “suffered an injury in fact, distinct from that of the general public.” *Transactive Corp. v. New York State Dep’t of Soc. Servs.*, 92 N.Y.2d 579, 587 (1998). “[P]ersons directly affected by a determination that would result in the diminished aesthetic, recreational, or financial value of an area, have standing to challenge the determination.” *Brown v. New York City Landmarks Preserv. Comm’n*, 32 Misc.3d 1213 (Sup. Ct. N.Y. Cty. 2011). In the instant action, petitioner has standing to bring this Article 78 proceeding as it has demonstrated that it is directly affected by the location of the Bike Share Station and that it has suffered an injury distinct from that of the general public. Petitioner, a cooperative corporation, is comprised of hundreds of residents who live in the building directly adjacent to the Bike Share Station. As set forth in the Verified Petition, the residents of the building have been adversely affected by the location of the Bike Share Station due to, *inter alia*, garbage accumulation in front of the building, increased traffic in

front of the building and issues with emergency responders accessing the building's entrance, issues which are distinct from those experienced by the general public. Additionally, these quality of life and aesthetic type of injuries have been recognized by the courts as a basis for standing. See *Matter of Duke & Benedict v. Town of Southeast*, 253 A.D.2d 877 (1998) (owner of nearby property who alleged actual or potential noneconomic harm from project alleges harm that is different from public at large); see also *Matter of Committee to Preserve Brighton Beach & Manhattan Beach v. Council of City of New York*, 214 A.D.2d 335 (1<sup>st</sup> Dept 1995) (standing derived from proximity of petitioners' residences to the project which they alleged would impact on their sightlines, availability of light and potential flow of sea air). As petitioner has sufficiently alleged injuries which would affect its residents in a manner wholly distinct from that of the public at large, it has standing to bring this Article 78 proceeding.

That portion of DOT's cross-motion seeking to dismiss the petition on the ground that it presents a non-justiciable issue is also denied. It is well-settled that "[t]o promote and facilitate travel on street and highway, a municipality may...in the exercise of an unquestioned governmental function, regulate and control traffic and public transportation." *Cities Serv. Oil Co. v. City of New York*, 5 N.Y.2d 110, 115 (1958). Furthermore, "such an act 'will not be restrained nor will the courts assume the management and control of [the] highways'" unless found to be arbitrary and capricious. *Id.*, citing *Perlmutter v. Greene*, 259 N.Y. 327 (1932). Where an agency's action is arbitrary and capricious, contrary to law, or an abuse of discretion, CPLR § 7803 expressly authorizes the Supreme Court to intervene. See CPLR §7803(3); see also *Alkpan v. Koch*, 75 N.Y.2d 561 (1990). Here, as petitioner alleges that the DOT's decision to install the Bike Share Station on the north side of West 13<sup>th</sup> Street in front of its building was

arbitrary and capricious, this court may review the merits of the proceeding.

However, that portion of the cross-motion which seeks to dismiss the petition on the ground that the DOT's decision to install the Bike Share Station in its current location is rational is granted. On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1<sup>st</sup> Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)("[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.") "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to facts." *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, it was rational for the DOT to install the Bike Share Station at its location in front of the building on the north side of West 13<sup>th</sup> Street as the location of the Bike Share Station fits squarely within the applicable DOT siting guidelines. The DOT has affirmed that the location of the Bike Share Station provides unrestricted, 24/7 public access; it ensures maximum visibility and access; it does not impede the use of any existing facilities; it is located in a curb-lane that measures at least eight feet in width; it is not in a bus stop; it is not in a lane that becomes a driving lane at certain times; and the site is not within a restricted area.

Petitioner's assertion that the Bike Share Station violates the siting guidelines because it is located in a "lane[] that become[s] [a] driving lane[]" at certain times (e.g., rush-hour lanes)" is without merit. William Lee, the Manhattan Borough Engineer of the Office of Manhattan Borough Engineering, Division of Traffic and Planning of the DOT has affirmed that the lane in which the Bike Share Station is located is not a lane that becomes a driving lane at certain times and therefore, the location of the Bike Share Station does not violate the siting guidelines. Prior to the placement of the Bike Share Station on West 13<sup>th</sup> Street, the lane was regulated with a sign that stated "No Parking 8AM - 6 PM Except Sunday." Mr. Lee affirms that "[i]f this lane was a driving lane during certain times of the day, the sign would have had the wording 'No Standing' instead of 'No Parking.'" Indeed, Mr. Lee affirms that the lane at issue could not have been a lane that became a driving lane at certain times as "vehicles...were permitted to stop and to stand in order to drop off or pick up passengers, or load or unload packages or other types of property, and commercial trucks were permitted to make deliveries." Specifically, 34 RCNY § 4-08(a)(4) provides:

**Parking prohibited.** When parking is prohibited by signs or rules, no person shall stop a vehicle, attended or unattended, except temporarily for the purpose of and while expeditiously receiving or discharging passengers or loading or unloading property to or from the curb.

Petitioner's assertion that the lane at issue was a lane that became a driving lane at certain times because vehicles used the lane for driving during the hours of 8:00 a.m. through 6:00 p.m. is also unavailing. The fact that some drivers may have taken advantage of the no-parking restriction and driven in the curb lane between those hours is irrelevant to a determination of the proper use of the lane pursuant to the City's traffic law and whether such use was a violation of the siting

guidelines. When petitioner allegedly complained to the DOT in 2008 of traffic conditions on West 13<sup>th</sup> Street, the DOT could have designated the lane as a “driving lane” by prohibiting any standing or stopping, but it did not.

Additionally, it was rational for the DOT to install the Bike Share Station in front of the building as DOT has established that it took valid safety concerns into consideration. The Bike Share Station is near the intersection of the westbound traffic along West 13<sup>th</sup> Street and the southbound traffic along Seventh Avenue which provides motor vehicles traveling west on 13<sup>th</sup> Street with the option of turning left onto Seventh Avenue. DOT has affirmed that its policy is to avoid placing bike share stations on the side of the street constituting the “inside” of a turn when it is able to. Therefore, it was rational for the DOT to choose the north side of West 13<sup>th</sup> Street as the location for the Bike Share Station. Petitioner’s assertion that certain bike share stations around the city do not comport with this rule as many are located on the “inside” of a turn is without merit. The only issue before this court is whether DOT’s decision to install the Bike Share Station at issue on the north side of West 13<sup>th</sup> Street was rational. As the DOT has established that the location comports with the DOT’s siting guidelines and as the DOT has affirmed that the decision to place the bike share station on the north side of the street was made after safety issues were taken into consideration, this court finds that such decision was a rational one.

Petitioner’s assertion that the Bike Share Station should be removed because DOT failed to notify the Community Board and the Landmarks Preservation Commission of the exact location of the bike share station on West 13<sup>th</sup> Street prior to its installation, in violation of the City Charter § 1116(b), which makes it a misdemeanor for a City employee to knowingly make a

false or deceptive report, is without merit. In making such an assertion, petitioner relies on a DOT bike share station location map, dated March 14, 2013, which petitioner alleges reflects a bike share station on the south side of West 13<sup>th</sup> Street, across the street from the building. However, the map is a general one which includes many bike share station locations and the bottom portion of that map specifically states “[t]his map is for illustrative purposes only. Station placements are neither exact nor final; locations are subject to change....” Additionally, a copy of the specific site plan for the Bike Share Station at West 13<sup>th</sup> Street and Seventh Avenue demonstrates that at least as of April 27, 2012, respondents planned to install the Bike Share Station on the north side of West 13<sup>th</sup> Street.

Additionally, petitioner’s assertion that the Bike Share Station should be removed because DOT failed to comply with 34 RCNY § 2-10 is without merit. A close reading of that statute reflects that it is applicable to private landowners abutting the public sidewalk who seek DOT’s permission to use the abutting sidewalk for street furniture and items such as bicycle racks, small planters or non-electrical sidewalk sockets. Petitioner fails to cite any precedent for the proposition that DOT must file an application with itself to obtain its own authorization to use the City’s public streets for purposes of public transportation as the DOT inherently possesses the right to use the public street in furtherance of the public interest. *See* New York City Charter § 2903.

Petitioner’s assertion that DOT’s decision to install the Bike Share Station on the north side of West 13<sup>th</sup> Street violates the Americans with Disabilities Act (“ADA”) is also without merit. Petitioner alleges that the Bike Share Station “[makes] the Building inaccessible to its disabled residents” as it is a “barrier placed by the DOT in front of the entranceway to the

Building.” As an initial matter, the Bike Share Station is no longer a barrier in front of the entranceway to the building as the area in front of the building abutting the building’s awning and entranceway has been cleared of bikes, as requested by petitioner. Additionally, petitioner has failed to establish that the DOT has violated any provision of the ADA. Although petitioner alleges that DOT has denied services, benefits and programs to the building’s disabled residents, it does not allege specifically how the placement of the Bike Share Station in front of the building impairs or denies the building’s disabled residents the benefits rightfully due to them. The ADA requires that any facility constructed or altered by, on behalf of, or for the use of a public entity shall be designed so that the facility is readily accessible and usable by individuals with disabilities. *See* 28 CFR § 35.151(a) & (b). A facility includes pedestrian routes or vehicular ways located in the public right of way. *See* 28 CFR § 35.151. However, the installation of the Bike Share Station on the north side of West 13<sup>th</sup> Street in front of the building in no way changes the rights and abilities of the building’s disabled residents. Petitioner does not allege that the Bike Share Station blocks access to a curb ramp or that the building’s disabled residents are denied the opportunity to participate in the Program. Furthermore, petitioner’s assertion that the installation of the Bike Share Station in front of the building violates the ADA because an ambulette or Access-a-Ride vehicle cannot fit in the space directly in front of the building’s entrance is without merit as petitioner has failed to establish that these are requirements of the ADA.

Finally, petitioner’s assertion that the Bike Share Station must be removed because DOT failed to conduct the requisite environmental review pursuant to CEQR prior to installing the Bike Share Station is without merit. CEQR incorporates the statutory requirements contemplated

by the State Environmental Quality Review Act (“SEQRA”) within the regulatory framework that governs city agencies. CEQR requires that all agencies determine whether the actions they undertake, fund, or approve may have a significant adverse impact on the environment.

Specifically, a city agency must take into account any adverse impact on such factors as land use, zoning and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic and cultural resources; urban design and visual resources; natural resources; hazardous materials; water and sewer infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; and construction impacts. Additionally, an agency performing pursuant to SEQRA has a “continuing duty to evaluate new information relevant to the environmental impact of its actions...so that important new information will not be ignored by the decision maker.” *Matter of Glen Head-Glenwood Landing Civil Council, Inc. v. Town of Oyster Bay*, 88 A.D.2d 484, 494 (2d Dept 1982); *see also* 6 NYCRR § 617.9(a)(7)(i)(b).

In this case, DOT has established that it conducted a sufficient review of the Program, which includes the siting guidelines, pursuant to CEQR and that it found that the Program would not have a significant adverse impact on the environment. Petitioner’s assertion that “no environmental impact study was conducted prior to or after the eleventh-hour switch of locations and installation of the Bike Share Station in front of the Building” is without merit. Even if the DOT had originally planned on installing the Bike Share Station on the south side of West 13<sup>th</sup> Street, the “switch” to the north side of the street is immaterial. As this court has already found, the location of the Bike Share Station on the north side of West 13<sup>th</sup> Street comports with DOT’s siting guidelines, which were reviewed pursuant to CEQR prior to the start of the Program.

Thus, petitioner has failed to establish that any last minute “switch” of the location of the Bike Share Station requires further CEQR review.

Finally, Citi and Bike Share’s cross-motion for an Order pursuant to CPLR § 3211 dismissing the petition as against them on the ground that it fails to state a cause of action is granted. On a motion addressed to the sufficiency of a pleading, the facts pleaded are assumed to be true and accorded every favorable inference. *See Morone v. Morone*, 50 N.Y.2d 481 (1980). “Where a pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to ‘whether it states in some recognizable form any cause of action known to our law.’” *Foley v. D’Agostino*, 21 A.D.2d 60, 64-65 (1<sup>st</sup> Dept 1977), citing *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956). In this action, Citi and Bike Share’s cross-motion to dismiss the petition is granted on the ground that petitioner has failed to allege a cause of action or assert any claims against them. Petitioner does not allege that Citi or Bike Share had any involvement with, or discretion over, DOT’s placement of the Bike Share Station. In fact, Ms. Fillin-Yeh has affirmed that Bike Share is merely the entity operating the Program on behalf of DOT and that Citi is merely the primary sponsor of the Program.

Accordingly, the cross-motions to dismiss the petition are granted and the petition is denied. The petition is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 10/28/13

**FILED**

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*JK*  
J.S.C.

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