Matter of Park W. Vil. Tenants' Assn. v Division of Hous. & Community Renewal of the State of N.Y.
2014 NY Slip Op 31908(U)
July 22, 2014
Supreme Court, New York County
Docket Number: 100415/14
Judge: Anil C. Singh
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[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

PARK WEST VILLAGE TENANTS

-v-

DNCR

INDEX NO. 100415/2014

MOTION DATE _____

MOTION SEQ. NO. 061

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

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

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

Dated: July 22, 14

HON. ANIL C. SINGH
SUPREME COURT JUSTICE, J.S.C.

JUL 22 2014

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 61

----------X

In the Matter of the Application of
PARK WEST VILLAGE TENANTS' ASSOCIATION,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

DIVISION OF HOUSING AND COMMUNITY RENEWAL OF THE STATE OF NEW YORK and PWV ACQUISITION LLC,

Respondents.

----------X

DECISION AND ORDER

Index No. 100415/14

UNFILED JUDGMENT

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HON. ANIL C. SINGH, J.:

This Article 78 proceeding arises out of an order of the New York State Division of Housing and Community Renewal ("DHCR") upon an application by the owner of an apartment complex for permission to modify the existing parking arrangement for rent-stabilized tenants.

The housing complex, known as Park West Village, is located between 97th Street and 100th Street on the upper west side of Manhattan. Respondent PWV Acquisition LLC ("PWV" or "Owner") is the owner and landlord of the subject premises.

The tenants are represented by petitioner Park West Village Tenants'

Association (the "Tenant's Association"), which is composed of rent-stabilized tenants who reside in three rental buildings – 784, 788 and 792 Columbus Avenue – at the housing complex. Members of petitioner have parking spaces affected by the DHCR order.

Petitioner moves by order to show cause to vacate or modify the Order by DHCR dated February 14, 2014, as arbitrary and capricious; for costs and disbursements pursuant CPLR 8101; for reasonable attorneys' fees pursuant to CPLR 8601(a); to enjoin PWV from implementing the DHCR order by constructing new parking lots at Park West Village; to enjoin PWV from eliminating and/or relocating the existing outdoor parking provided at the 97th and 100th Street parking lots; and to enjoin PWV from requiring members of the Tenants' Association who currently park in the 97th and 100th Street parking lots to relocate to the newly-configured outdoor parking lots at Park West Village.

DHCR and PWV oppose the Article 78 petition. Additionally, PWV opposes the injunctive relief sought by the Tenants' Association.

The proceedings below were commenced by PWV's filing of an Application for Modification of Services (Rent Stabilized Units Only) with DHCR on June 25, 2012. The application states in pertinent part:

> By this application, the Owner seeks an order authorizing the relocation of the parking spaces to a new outdoor parking lot (the

> "New Outdoor Lot") to be constructed by the Owner at its own expense, in a different area of the property only steps away from the buildings. The Owner believes that such relocation constitutes no more than a *de minimis* change which does not require that DHCR grant permission to modify services. However, the Owner has filed this application in an abundance of caution to avoid any later claim that this application was required but was not filed.
>
> In any event, the Owner requests that this application be granted without any reduction in rent on condition only that the Owner complete all required construction of the new outdoor parking lot and roadways (as well as the relocation of playground equipment and benches) at its own expense.

(Petition, exhibit E).

Following a hearing, the DHCR's local Rent Administrator issued an Order dated January 17, 2013, granting the Owner's application to modify the service by relocating the outdoor parking spaces to a new outdoor parking lot. The Rent Administrator wrote:

> Pursuant to the Rent Regulatory Regulations, an owner may file an application to modify or substitute required services, at no change in the legal regulated rent, on grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law and Code or the NYC Rent and Eviction Regulations.
>
> The Rent Administrator after consideration of the evidence on file, finds that the owner's application for permission to modify service by relocating the parking spaces to a new outdoor lot is not inconsistent with the above provisions and grants the application. The issue regarding construction of a nursing home on the property versus used [sic.] as a parking lot is not relevant to the issue of whether the modification proposal preserves existing parking. Objections to the construction of a new building are more appropriately addressed to the

local municipal authorities.

(Petition, exhibit G).

In the local Rent Administrator's order, the Owner was permitted to modify the parking service at the subject premises by moving existing outdoor parking to parking spaces in new outdoor parking areas to be created, and it was found that owner's representations that the recreational, open, and/or green areas presently existing at the subject premises would be fully and adequately replaced with new and other recreational, open, and/or green areas was sufficient to allow modification without any change in the rents of the affected rent-stabilized tenants.

The tenants filed Petitions for Administrative Review (PAR) challenging portions of the findings and determinations of the Rent Administrator.

The PAR Order dated February 14, 2014, modified the Rent Administrator's findings and determinations to the extent that it recognized that the proposed modification transformed certain open, green or recreational space, including the central area in front of 788 Columbus Avenue with lawns, trees, shrubs, flowers, benches, and walkways, and such transformation constituted a reduction of a required ancillary service. Accordingly, DHCR permanently reduced the legal regulated rent equally for each tenant by the most recent guideline of 4%.

Regarding substitution of parking service, DHCR, after acknowledging the

acceptance of subsequent submissions made before the Rent Administrator, "as well as explicit clarifications made on PAR," affirmed the Rent Administrator's Order in approving the plan for the modification of services, which included the relocation of parking to the newly created outdoor lot and maintenance of parking spaces in the underground garage at 808 Columbus Avenue for rent-stabilized tenants who presently rent such spaces and for rent-stabilized tenants who choose to rent available spaces in the future.

To summarize, the DHCR order allows the owner to eliminate two original and still-existing outdoor parking lots with 141 parking spaces; to eliminate approximately 54,000 square feet of existing recreational, outdoor and green space; and to pave over most of that outdoor space to create 86 outdoor parking spaces in new locations proposed by the Owner; and to maintain 117 onsite indoor parking for tenants who currently parked their vehicles indoors and for rent-stabilized tenants who may want parking in the future.

This reconfiguration of parking at Park West Village will clear the way for the Owner to use one of the eliminated lots for a real-estate development deal. The Owner has contracted to swap one of the existing parking lots for land on West 106th Street owned by Jewish Home Lifecare ("JHL"). PWV will build luxury housing on 106th Street, and JHL will build a 20-story nursing home tower on the

97th Street parking lot. The Tenants' Association opposes the construction of the nursing-home tower on the ground that it will result in the loss of air, light and views; increased traffic; and subject residents to excessive noise and pollution.

Discussion

The role of a court in reviewing a decision of an administrative agency is limited, with the standard of review being whether the administrative determination was in violation of a lawful procedure or was affected by an error of law or was arbitrary and capricious and without a rational basis in the administrative record (see, CPLR 7803; Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231 [1974]). The court cannot conduct a de novo review of the facts and circumstances or substitute the court's judgment for that of the agency's determination (see, Greystone Management Corp. v. Conciliation and Appeals Bd., 94 A.D.2d 614, 616 [1st Dept. 1983], affd. 62 N.Y.2d 763 [1994]). Instead, the court reviews the record as a whole to discern whether a rational basis exists to support the findings of the administrative agency (Nelson v. Roberts, 304 A.D.2 20 [1st Dept. 2003]). "If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency" (Peckham v. Calogero, 12 N.Y.3d 424, 431[2009]).

Where an administrative determination necessitates an evaluation of the facts within an administrative entity's area of expertise, the determination must be accorded great weight and judicial deference (Nelson v. Roberts, 304 A.D.2d 20, 23 [1st Dep't 2003]; Flacke v. Onondaga Landfill Systems, Inc., 69 N.Y.2d 335, 363 [1987]). While judicial review must be meaningful, it is not the role of the courts to weigh the desirability of any action or to choose among alternatives (6 N.Y. Jur.2d Article 78 sec. 13). "The judicial function is at an end once it has been determined that an agency's conclusion has a sound basis in reason" (6 N.Y. Jur.2d Article 78 sec. 15).

In its first cause of action, petitioner alleges that the DHCR Order is arbitrary and capricious as it approves a new parking plan with an important element – underground parking in a fourth building – that was not in the Owner's applications, which this Court specifically prohibited in the absence of DHCR approval, and as to which the tenants were never given notice or an opportunity to comment. PWV made an application to DHCR for permission to move parking from two outdoor lots to new outdoor spaces that were to be constructed. The Rent Administrator approved that plan, although it reduced parking from 198 spaces provided by the certificates of occupancy to 86 spaces. Petitioner argues that on the PAR, DHCR, instead of reversing the Rent Administrator's Order for improperly

decreasing services, changed the plan without notice to the Tenants' Association. Now, the plan included parking in an underground parking garage at 808 Columbus Avenue.

Petitioner contends in its second cause of action that it was never given a chance to comment on the reasons that parking in the underground lot was not a suitable substitute for the outdoor parking lots. Accordingly, petitioner maintains that the DHCR Order of February 12, 2014, violated its right to due process under the United States and New York Constitutions.

Petitioner's contention that DHCR changed the Owner's plan without notifying petitioner and allowing petitioner to comment on the amended plan, violated DHCR's own rules as well as due process of law, is without merit.

The Owner's plan had two components: 1) a new outdoor parking lot for tenants who wanted to park above ground; and 2) indoor parking at 808 Columbus Avenue for those tenants who wished to be underground. DHCR did not rule on an amended application, as argued by petitioner.[1] Rather, during the administrative proceedings before DHCR, the parking plan took form through submissions and comment by counsel for the parties. PWV's original application to DHCR related

[1]The DHCR order reflects that the Owner's application was not amended. It stated: "First, the Commissioner accepts that the owner's plan for the proposed modification at issue in this case comprises the owner's applications, subsequent submissions made before the Rent Administrator, as well as explicit clarifications made on PAR ..." (at p. 8)

to the 81 cars that were to be parked in the new outdoor space. The Tenants' Association raised the issue of rent-stabilized tenants who did not currently park their vehicles at Park West Village but who may wish to do so in the future.

In a submission to DHCR dated November 20, 2012, the Owner made it clear that future tenants would not be permitted to park in the outdoor lots. However, the underground garage at 808 Columbus Avenue would be available for this category of tenants. Furthermore, PWV in its November 20th submission advised DHCR that under the June 13, 2007 Zoning Lot Development Agreement ("ZLDA"), it was required to reserve 198 spaces, of which 34 were in current use by tenants in the 808 Columbus Avenue garage.

The Tenants' Association was on notice of the Owner's plan related to indoor parking for future rent-stabilized tenants. In fact, the Tenants' Association in its PAR argued as follows:

> The provision of 198 outdoor parking spaces constitutes the required service that the Owner must provide to the Tenants, since the Owner provided that number of outdoor parking spaces to the Tenants on the base date for that service ...
>
> The Owner here claims that it is still providing the 198 spaces because that number of spaces is included in the underground garage at 808 Columbus Avenue and under the ZLDA, are "reserved for these tenants with above-ground parking" (Owners's Response, p. 10). But, regardless of any zoning approval Owner may have for the underground garage at 808, it cannot count those spaces as available to the subject buildings because Owner never obtained DHCR permission

> to move above-ground parking underground." (Tenants' Association PAR, February 21, 2013, p. 37)

Since the issue had been raised by both the Tenants' Association and PWV, DHCR put the parties on explicit notice that it was considering the Owner's plan to utilize the underground garage for future rent-stabilized tenants who may seek parking. DHCR by letter dated August 1, 2013, asked the parties to provide

> "evidence concerning the exact number of outdoor parking spaces that the tenants who are entitled to outdoor parking spaces will require after the modification of services at issue in these proceedings is effectuated. It has been alleged that several of these tenants have elected to use the underground parking offered by the owner as a substitution for their original outdoor spaces. It is also unclear how many tenants are actually entitled to such outdoor parking spaces, and how many will still require said spaces after the proposed modification."

Both the Owner and the Tenants Association responded to DHCR's August 1, 2012 request and addressed both aspects of the plan to provide outdoor spaces for those rent-stabilized tenants who kept their vehicles above ground, as well as the adequacy of the underground garage for rent-stabilized tenants who in the future may desire parking.

The first and second causes of action are dismissed as they lack merit.

In its third cause of action, petitioner alleges that the February 14, 2014 DHCR Order approving 117 indoor spaces at the underground garage is not an adequate substitute for the existing outdoor parking and is inconsistent with the

Rent Stabilization Law and Rent Stabilization Code. PWV is not the owner of 808 Columbus Avenue or its underground garage. The Tenants' Association argues that if the owner of the underground garage decides to terminate the tenants' parking, the rent-stabilized tenants will be without a remedy. Pursuant to Section 60 of the Multiple Dwelling Law, the rent-stabilized tenants in the buildings in Park West Village, other than 808 Columbus Avenue, must vacate their parking spaces on thirty-day notices.

PWV disputes these claims and contends that the owner of 808 Columbus Avenue does not have the legal authority to terminate the indoor parking rights of the rent-stabilized tenants of Park West Village, as ZLDA is binding on the current and all future owners of 808 Columbus Avenue. Accordingly, the Owner insists that it will continue to maintain the indoor spaces as required by ZLDA and DHCR.

Rent Stabilization Code Section 2522.4(e) allows an owner to modify or substitute a required service provided "such modification or substitution is not inconsistent with the [Rent Stabilization Law] or Code." The test is whether there is an "adequate substitute" for the modification of the service (see Matter of Lite View LLC v. New York State Div. of Hous. & Community Renewal, 97 AD3d 105 [1st Dept. 2012]).

Here, DHCR ordered PWV to create and maintain 86 outdoor parking spaces

and "117 indoor parking spaces in the onsite underground parking garage, for rent by the rent stabilized tenants of the subject premises." (DHCR Order at p. 11). DHCR directed that "the owner is required to maintain the spaces referred to in this paragraph and to provide these spaces as they became available to rent stabilized tenants seeking such spaces in the same manner as these spaces have hitherto been made available to such tenants." (Id. at p. 12)

DHCR's order does not make any findings as to whether the indoor parking in the underground garage is an adequate substitute for parking at the 97th and 100th Street parking lots. Nor does DHCR state whether the modification or substitution is consistent with the Rent Stabilization Law or Code.

DHCR argues that the Order requires the Owner to maintain parking spaces in the underground garage. In the event the Owner in the future decides not to maintain the indoor spaces, the tenants' remedy is to seek an automatic and permanent rent reduction.

This argument ignores the fact that 117 parking spots may be lost forever if it is later determined that ZLDA does not protect the parking spots for future rent-stabilized tenants in 808 Columbus Avenue. Although the record contains evidence regarding the June 13, 2007 ZLDA, and the parties in their submissions to DHCR raised arguments concerning whether or not the zoning resolution preserves parking

spots in the 808 Columbus Avenue underground garage, DHCR did not address the issue.

This matter is remanded to the administrative agency on petitioner's third cause of action for DHCR to make findings pursuant to RSC 2522.4(e) whether the Owner's plan to modify or substitute a required service by reserving parking spaces in the 808 Columbus Avenue underground garage – which is owned by a different entity – is not inconsistent with the Rent Stabilization Law or Code, and whether the plan is an adequate substitute for the modification of the parking service provided at the current time on the outdoor lots taking into consideration the parties' respective arguments concerning ZLDA and Section 60 of the Multiple Dwelling Law.

The fourth cause of action alleges that the parking plan approved by DHCR results in a significant reduction of services to the rent-stabilized tenants of Park West Village. Petitioner points out that DHCR granted the owner's application despite its finding that the plan to move parking from its current location will result in a "measurable loss of green space" – eliminating a park that is at least 25,000 square feet – without finding that there is any necessity to do so.

According to petitioner, the only possible reason for the Owner to move parking from its current location to the green space is to allow the Owner to engage

in a land swap deal – that is, the Owner wants to use one of the lots where cars are currently parked for development purposes. To that end, it seeks to eliminate the parking lots that currently exist and convert the green space into parking lots.

DHCR expressly found that the Owner's proposed modification to the central area between the three buildings of Park West Village "while not inconsistent with the purposes and intent of the Rent Stabilization Law and Code, will result in a measurable loss of green space, sitting, and general open recreational space ..." (Petition, exhibit A, p. 9). DHCR ordered a permanent rent adjustment of $48.25 to compensate the tenants of rent-regulated apartments for the loss of green and open space.

The Tenants' Association argues that DHCR's order was arbitrary and capricious, as it allowed the Owner to decrease services with a measurable loss of green space. No compelling reason was given for this loss.

This Court disagrees. The Owner's application was granted pursuant to RSC Section 2522.4(e)(3), which allows for a decrease in rent, provided as noted above, "such decrease is not inconsistent with the RSL or this Code." DHCR made such a finding. The RSC does not require that a compelling reason be given for the decrease of service. Nor is an owner required to establish that the service is no longer used, the cost of the service is prohibitive or other changed circumstances.

The cases cited by the Tenants' Association are inapposite, as the landlords were attempting to eliminate existing services. Here, all of the tenants of Park West Village will be able to continue utilizing the green space. The loss of green space was compensated by a permanent rent reduction. This is an issue within the expertise of DHCR.

The fourth cause of action is dismissed.

Petitioner alleges in the fifth cause of action that rent-stabilized tenants will suffer significant reduction in services based on PWV's intention to construct a nursing home on the 97th Street parking lot. The Order by DHCR was arbitrary and capricious in that DHCR refused to consider this reduction in service in deciding the Owner's application.

With regard to the issue of the reduction in services based on the planned construction of a nursing home tower, DHCR stated as follows:

> The scope of the instant proceeding is limited to a simple review of the owner's applications to modify the parking service. Therefore, neither the allegations made by the owner regarding different and past projects (referencing the Bunten cases mentioned above), nor the allegations made by the tenants regarding possible future projects (referencing a possible future construction of a nursing home on the premises), are relevant to the instant case, which is, again, strictly limited to a determination of the owner's instant applications to modify the parking services. The parties are advised to bring issues concerning any future development or construction on the subject premises to the attention of the proper agencies and authorities when and if such issues become ripe.

The refusal by DHCR to consider claims of loss of air, light, noise and increased traffic was neither arbitrary nor capricious. PWV's application was for the modification of services seeking, inter alia, to relocate parking spaces allocated to rent-stabilized tenants from the two outdoor lots to a newly configured outdoor parking lot. DHCR permitted the modification of parking services upon various conditions with a rent reduction.

What the Owner intends to do with the 97th and 100th Street lots in the future is beyond the scope of the Owner's application. Nor does DHCR have the jurisdiction or expertise to consider how future construction will affect the residents of Park West Village.

This Court recognizes that the proposed construction may have a significant irrevocable impact upon the residents of Park West Village. However, these concerns must by addressed by the appropriate entities, such as the local Community Board and the Office of the Borough President, as well as New York City agencies, such as the Department of Buildings, the City Planning Commission and the Department of Health, which have the jurisdiction and expertise to hear and address such concerns.

The fifth cause of action is dismissed.

Next, turning to the Tenants' Association's request for injunctive relief,

PWV is enjoined from eliminating the existing outdoor parking at the 97th and 100th Street parking lots pending a determination of the remand to DHCR on petitioner's third cause of action.

Petitioner has established a likelihood of success on the merits. RSC Section 2522.5[e][3] requires that an owner may not modify or substitute a required service without first obtaining approval from DHCR. While DHCR granted approval of the plan, this court has remanded the matter to the administrative agency to rule on the issue of whether PWV's plan to modify or substitute parking spaces in the 808 Columbus Avenue underground garage is not inconsistent with the Rent Stabilization Law or Code; and whether the plan is an adequate substitute for the modification of the parking service as it pertains to the 117 indoor parking spots for rent-stabilized tenants. The status quo must be maintained pending the ruling by DHCR.

Petitioner will suffer irreparable injury if a preliminary injunction is not granted. As noted above, PWV intends to consummate the real-estate swap with the Jewish Home. Jewish Home intends to build its new facility on the 97th Street lot. If DHCR ultimately determines that PWV may not modify the parking service as it relates to the 117 parking spots in the underground lot, those spots may be lost permanently unless the status quo is maintained.

The equities balance in favor of petitioner.

The $75,000 bond posted by the Tenants' Association in the related action (Peyton v. PWV Acquisition LLC, 35 Misc.3d 1207(A), 2012 WL 1130202 [Sup. Ct., N.Y. Cty., 2012] aff'd 101 A.D.3d 446 [1st Dept., 2012]), which has not been discharged by this Court, shall remain in place as a condition for this preliminary injunction.

The Tenants' Association's application to enjoin PWV from implementing the DHCR order by constructing new parking lots at Park West Village, and to enjoin PWV from requiring members of the Tenants' Association who currently park in the 97th and 100th Street parking lots to the newly configured lots, is denied.

Based on this Court's denial of the fourth and fifth causes of action in this Article 78 proceeding, petitioner is not likely to succeed on its claim that the newly configured outdoor parking plan approved by DHCR is arbitrary and capricious and will result in a significant reduction of services to the rent-stabilized tenants of Park West Village by the elimination of green space. The loss has been compensated by a permanent rent reduction. The conversion of green space into parking lots is unfortunate, but an unavoidable result of the desire of members of the Tenants' Association to retain their outdoor parking spaces and desire of PWV to develop its property.

Finally, petitioner's application for attorneys' fees pursuant to CPLR 8601(a) is denied. DHCR's ruling on the Owner's application for the modification of services was substantially justified. Therefore, an award of attorneys' fees is unwarranted (see Crabtree v. DHCR, 294 AD2d 287 [1st Dept. 2002]).

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted, as set forth above; and the matter is remanded to the respondent DHCR to take further action consistent with the decision of this Court; and it is further

ORDERED that PWV is enjoined from eliminating the existing outdoor parking at the 97th and 100th Street parking lots pending a determination of the remand to DHCR.

Date: July 22, 2014
New York, New York

Anil C. Singh

JUL 22 2014

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

UNFILED JUDGMENT
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