

207-211 W. 106 LLC v New York City Dept. of Transp.
2017 NY Slip Op 31072(U)
May 16, 2017
Supreme Court, New York County
Docket Number: 160425/2016
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 55

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207-211 W. 106 LLC, ABRO MANAGEMENT CORP.,

Petitioners,

DECISION/ORDER
Index No. 160425/2016

-against-

NEW YORK CITY DEPARTMENT OF TRANSPORTATION,
POLLY TROTTENBERG, NYC BIKE SHARE LLC

Respondents.

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HON. CYNTHIA KERN, J.:

Petitioners 207-211 W. 106 LLC (the "LLC") and Abro Management Corp. ("Abro") (hereinafter collectively referred to as "petitioners") bring the instant petition pursuant to Article 78 of the CPLR challenging respondents New York City Department of Transportation ("DOT"), NYC Bike Share, LLC ("Bike Share") and DOT Commissioner Polly Trottenberg's (hereinafter collectively referred to as "respondents") decision to install a bike share station in front of the residential apartment building located at 207 West 106th Street, New York, New York (the "Building"). For the reasons set forth below, the petition is denied.

The relevant facts are as follows. 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 Motivate International, Inc. The Program is funded by sponsorship agreements and member revenue. At the time of its launch, approximately 6,000 bikes were made available to the public at 332 stations. There are currently over 600 bike share stations at locations throughout New York City. The Program's current service area

includes Manhattan below 110th Street; the Brooklyn neighborhoods of Brooklyn Heights, Bedford-Stuyvesant, Williamsburg, Clinton Hill, Fort Greene, DUMBO, Boerum Hill, Cobble Hill, Carroll Gardens, Gowanus, Park Slope and Red Hook; and Long Island City in Queens. 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.

To determine the location of bike stations, DOT has engaged in an extensive and interactive public input process. Jennifer Sta. Ines (“Ines”), the Program’s Senior Planner, affirms that in total, including Phase 1 and Phase 2, the DOT has held 197 public bike share meetings, presentations and demonstrations in addition to 400 meetings with elected officials, property owners and stakeholders. Ines affirms that DOT selects sites for bike share stations based on technical criteria developed to protect the public’s safety, facilitate pedestrian, bike and vehicle traffic and minimize interference with the City’s streetscape (“Siting Guidelines”). The Siting Guidelines state, *inter alia*, that all sites must have unrestricted 24/7 access with maximum visibility, cannot impede facilities such as bus stops and fire hydrants and must have a minimum of fifteen bikes. On-street sites cannot be located in driving lanes, sidewalk sites cannot block main entrances to “major buildings,” such as the Empire State Building, cannot interfere with pedestrian travel patterns and should be installed at sites with at least sixteen feet of sidewalk space whenever possible. Ines affirms that the station selection process begins with the identification of technically viable sites, i.e., sites that satisfy the Siting Guidelines at an oversaturated network density so that there would be a number of choices for each station. In Phase 1 and Phase 2 of the Program, DOT worked to meet the basic rules of station spacing making sure that stations would be placed approximately 1,000 feet from each other. To identify locations that met these and various other requirements, in 2009, DOT staff divided a map of the

City into a grid of 1,000 square-foot sections. These grid sections were then investigated on foot to identify anywhere from four to twelve appropriate location options.

Phase 2 of the Program began in August 2015. Throughout 2015 and 2016, the DOT held meetings with and gave presentations to the relevant elected officials, community boards, civic organizations and business improvement districts about proposed bike share station locations. DOT staff also solicited public feedback and conducted public demonstrations and presentations of the Program during which public feedback was collected. Using this feedback, Program staff developed plans and logistical requirements in order to identify specific locations for bike share stations (“Draft Plans”) which were then presented to local community boards. The finalized Draft Plans are posted and released on the DOT website a few months after they are presented to the community boards. Prior to the installation of a bike share station, notifications to adjacent properties are completed by an outreach team which sends one or two staff members to perform door-to-door notification of the upcoming station installation. If, after three attempts, the staff members are unable to speak to someone, DOT mails out a notification of installation, in the form of a letter, informing tenants at the particular address of the upcoming station installation.

In early 2015, as part of Phase 2 expansion of the Program, the DOT began re-evaluating potential bike share station sites on the Upper West Side. This involved DOT field staff canvassing local streets and identifying numerous potential sites that conform to the Siting Guidelines within each 1,000 square-foot grid section. The grid section in which the bike station at issue is located – the “C07” grid square – runs approximately north-south from midway between 105th and 106th Streets until 109th Street and east-west from slightly east of Amsterdam Avenue until near Broadway. DOT field staff identified six potential bike share station sites within this grid section, including the location in front of the Building. This site was considered a good location for a bike share station by the DOT because of the lack of street infrastructure such as fire hydrants, bus stops, etc., and because of its proximity to the busy intersection of 106th Street and

Amsterdam Avenue which abuts numerous businesses and residences as well as three different New York City bus lines.

The DOT Manhattan Borough Commissioner's office presented the six potential locations to the Columbus Amsterdam Business Improvement District ("CABID") which then presented its feedback to Nina Haiman, then DOT's Manhattan Deputy Borough Commissioner on March 24, 2015. The CABID picked the parking lane directly in front of the Building as its top choice for the siting location of the bike share station within the C07 grid. Although the CABID asked about the possibility of moving the bike share station closer to Amsterdam Avenue to further increase its visibility, such move was not viable due to the presence of a bus stop directly adjacent to Amsterdam Avenue on the north side of 106th Street.

Consistent with the recommendation of the CABID, DOT selected the parking lane in front of the Building as the location for the bike share station (the "Bike Share Station") and included a station at this location in the Draft Plan for the Citi Bike Expansion that it presented to Manhattan Community Board 7 on May 12, 2015. The Final Plan for Manhattan Community Board 7 was released on the DOT website on July 9, 2015. The Bike Share Station, which has docks for 35 bikes, was installed on August 11, 2016. In total, the Bike Share Station measures 103 feet two inches wide which includes an eight foot eight inch break in the station, of which six feet two inches is traversable, around a preexisting manhole. Situated immediately adjacent to the Bike Share Station on its east side toward Amsterdam Avenue is a bus stop with a No Standing zone measuring 91 feet 11 inches wide and parking spots are situated immediately to the Bike Share Station's west side.

Petitioners now move for an Order pursuant to Article 78 of the CPLR declaring that respondents have acted arbitrarily, capriciously, irrationally and contrary to law by installing the Bike Share Station in front of the Building without affording at least a sixteen-foot space break in front of the main entrance to the Building and in a location that contains a manhole.

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 (1st 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, this court finds that respondents' decision to place the Bike Share Station in its location in front of the Building was rational based on the fact that the Bike Share Station was sited in accordance with the Program's Siting Guidelines and based on technical considerations and an extensive public input process. Specifically, DOT rationally found that the Bike Share Station's location was appropriate as it was convenient for the public to use as it was located near the busy intersection of 106th Street and Amsterdam Avenue; it does not interfere with any existing businesses or utilities; it provides unrestricted, 24/7 public access; it does not impede the use of any existing facilities; it is not located in a bus stop; it is not in a lane that becomes a driving lane at certain times; and it is not within a restricted area.

Petitioners' assertion that respondents' decision to place the Bike Share Station in its location is arbitrary and capricious because respondents failed to place a sixteen-foot space break in front of the main entrance to the Building is without merit as petitioner has failed to put forth any basis for such a requirement. Ines has affirmed that DOT has no policy pursuant to which it must place such a break in a

bike share station in front of a building. Indeed, Ines has affirmed that the DOT has sited several other bike share stations in front of main entrances to buildings, both residential and commercial, without a break in the portion of the bike share station located in front of the entrance and that doing so is not in violation of the Siting Guidelines. Ines affirms that the DOT specifically tries to avoid placing breaks in the bike share stations because such breaks increase the station's total width and thereby restrict street parking as parking is not permitted within a break in a bike share station. Although on a handful of occasions, the DOT has approved a break in a bike share station in front of the main entrance to a building, Ines affirms that it does so on a case-by-case basis depending on various factors including, but not limited to, the availability of additional space on the block. However, there is no policy requiring the DOT to do so.

Petitioners' assertion that the location of the Bike Share Station in front of the main entrance to the Building violates the portion of the City's contract with Bike Share pursuant to which "[Bike Share] may use Bridging or station plates with no docks to create gaps in Stations at building entrances" is without merit. Such contract provision does not require Bike Share to create such space breaks in bike share stations. Rather, it merely permits them to do so and respondents have affirmed that they have created such space breaks in other bike share stations but only after analyzing other factors.

Petitioners' assertion that the location of the Bike Share Station in front of the main entrance to the Building violates the Siting Guidelines is without merit. Ines affirms that the Siting Guidelines provide no limitation with respect to the buildings that on-street bike stations may face. With respect to sidewalk bike share stations, the Siting Guidelines provide that such bike share stations should not be "directly in front of main entrances to major buildings (e.g., Empire State Building)." However, as it is undisputed that the Bike Share Station is not located on the sidewalk and that the Building is not a "major building" akin to the Empire State Building, such provision does not apply. Moreover, petitioners' reliance on a Siting Guidelines provision which states that bike share stations "must not impede the use of any existing

facilities, such as bus stops or fire hydrants” is misplaced. The use of the term “facilities” refers to infrastructure on the sidewalk and not to buildings adjacent to the sidewalk and petitioners fail to provide any evidence that such term should be interpreted otherwise.

Petitioners’ assertion that the location of the Bike Share Station violates a New York City Rules and Regulations provision related to the placement of “street furniture” is also without merit. As an initial matter, the alleged provision cited by the petitioners, formerly, 34 RCNY § 2-10(c)(2), was repealed several years ago and is no longer part of the Rules and Regulations. However, even if it did apply, which it does not, the provision only required private entities seeking to place street furniture on public sidewalks to obtain a DOT permit but it did not apply when the DOT itself placed street furniture on the sidewalk. Moreover, the Bike Share Station is not located on the sidewalk and thus, would not be in violation of such provision if it were still part of the Rules and Regulations.

Petitioners assert that respondents’ decision to locate the Bike Share Station in front of the main entrance to the Building was arbitrary and capricious on the ground that very few bike share stations throughout the City are placed in front of main entrances to buildings. Specifically, petitioners assert that out of seven bike share stations mentioned by respondents in their opposition papers, only three bike share stations represent stations that block a building’s main entrance. However, the mere fact that there are only a small number of bike share stations which block the main entrance to buildings throughout the City is not evidence that respondents’ decision to place the Bike Share Station in front of the Building without providing for a space break in front of the main entrance to the Building was arbitrary and capricious.

Petitioners’ assertion that respondents’ decision to place the Bike Share Station in its location is arbitrary and capricious because it is in a location that contains a manhole is also without merit as petitioners fail to provide any basis for the assertion that siting a bike share station near a manhole is prohibited. Petitioner asserts that the location of the Bike Share Station violates the DOT practice “to

