

**Matter of Residential Bd. of Mgrs. of the Century
Condominium v Department of Transp. of City of
N.Y.**

2019 NY Slip Op 33169(U)

October 23, 2019

Supreme Court, New York County

Docket Number: 157445/19

Judge: Lynn R. Kotler

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

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

In the Matter of the Application of
THE RESIDENTIAL BOARD OF MANAGERS OF
THE CENTURY CONDOMINIUM, by its Treasurer
Paul Millman, and BONNIE EISLER

INDEX NO. 157445/19

MOT. DATE

- v -

MOT. SEQ. NO. 001 and 003

THE DEPARTMENT OF TRANSPORTATION OF THE
CITY OF NEW YORK et al.

The following papers were read on this motion to/for Art 78 (001) and dismiss (003)

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits

NYSCEF DOC No(s). _____

Notice of Cross-Motion/Answering Affidavits — Exhibits

NYSCEF DOC No(s). _____

Replying Affidavits

NYSCEF DOC No(s). _____

This is an Article 78 proceeding, whereby petitioners seek to challenge respondents' determination to construct, as well as the actual construction of, a protected bicycle lane along Central Park West in Manhattan (the bike lane").

Petitioners are The Residential Board of Managers of the Century Condominium, by its Treasurer Paul Millman (the "Board") and Bonnie Eisler. The Century Condominium (the "Condo") operates a building located at 25 Central Park West and Eisler is a single resident of that building. Petitioners argue that the bike lane should not be installed until respondent The Department of Transportation of the City of New York (the "DOT" or "NYCDOT") performs an environmental review pursuant to the State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review Procedure ("CEQR"). Petitioners also claim that the project is part and parcel of the Mayor's recently announced "Green Wave" plan, a policy initiative to improve cycling safety, and that both must be reviewed as a single project.

Respondents are the DOT and Polly Trottenberg, as Commissioner of the City of New York Department of Transportation. Respondents have answered the petition and oppose the relief sought. Respondents contend that bicycle lanes are exempt from SEQRA/CEQR review and are merely a part of DOT's ongoing and routine efforts to expand the citywide network of bicycle lanes, as part of its core mission to improve and enhance safety for cyclists, pedestrians, and motorists.

In motion sequence 003, Intervenor Kenneth B. Squire moves to dismiss the petition for lack of capacity pursuant to CPLR § 3211[a][3] to the extent it is filed by the Board. Petitioners oppose Squire's motion.

The motions are herein consolidated by the court for its consideration and disposition in this single

Dated: 10/23/19

HON. LYNN R. KOTLER, 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

decision/order. For the reasons that follow, the motion to dismiss is denied, the petition is denied and this proceeding is dismissed.

The court will first consider Squire's motion to dismiss in the interests of judicial economy, since a decision on it necessarily impacts the petition. Squire argues that the Board lacks capacity to bring this action. His argument is threefold: [1] the Board lacked the authority under the bylaws to commence this proceeding because it involves property not owned by the Condo; [2] this proceeding violates Real Property Law §339-dd; and [3] the Board did not follow the bylaws before filing this proceeding.

The Board maintains that it has commenced this proceeding pursuant to its power under section 2.2-1 of the bylaws relating to "the administration of the affairs of the Condo[]". While Squire argues that this proceeding does not fall within the affairs of the Condo, the court disagrees. Indeed, the bike lane is in the street abutting the Condo and petitioners allege that the Condo's residents will be affected by decreased parking and adverse impact on traffic and pedestrian crossings of Central Park West. These claims go to the heart of petitioners' environmental impact claims. As such, the court finds that the Board has the authority under the bylaws to challenge the DOT's installation of the bike lane. To hold otherwise would unnecessarily tie the hands of Condominiums and Cooperatives throughout the City and require individual shareholders and residents to commence their own actions or otherwise preclude challenges to actions which impact such persons.

RPL § 333-dd RPL § 339-dd states, in relevant part that:

Actions may be brought or proceedings may be instituted by the board of managers in its discretion, on behalf of two or more of the unit owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one unit.

The court agrees with petitioners that this statute does not serve to limit the Board's right to commence this proceeding. By its own terms, it does not expressly state that a Board may only bring on action on behalf of two or more unit owners with respect to claims relating to the common elements of a unit. To accept Squire's position on this point would violate basic rules of statutory construction.

Finally, assuming *arguendo* that Paul Millman, Treasurer of the Century Condominium, did not have standing to bring this proceeding on behalf of the Board when he purported to do so, Squire's arguments are unavailing. Conveniently enough, petitioners sought a thirty-day adjournment of Squire's motion to dismiss, a motion which petitioner was apprised would be forthcoming at oral argument on August 20, 2019 in open court. On September 17, 2019, the Board met in full compliance with the notice requirement set forth in Section 2.9 of the By-Laws, and the six members of the Board who attended the meeting unanimously ratified the decision to commence this proceeding." "[A] board's decision to commence [an] action, arguably voidable, was ratified by the subsequent acts of a majority of the condominium's unit owners and by a properly constituted board of managers (*Skytrack Condominium Bd. of Mgrs. v Windberk Partners*, 167 AD2d 381 [2d Dept 1990]).

Accordingly, Squire's motion to dismiss is denied.

The petition, however, is also denied. SEQRA and CEQR (collectively "SEQRA") require agencies to identify and assess the potential environmental impacts of certain proposed actions before funding, approving, or undertaking such an action (6 NYCRR §§ 617.1 and 617.3; 62 RCNY Ch. 5 and Mayoral Exec Ord No 91 of 1977). The court's review of an agency's SEQRA determination, including whether an action is exempt from environmental review, is limited to whether the determination was not made in accordance with lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion (*see Comm. to Stop Airport Expansion v. Town Bd. of E. Hampton*, 2 AD3d 850 [2d Dept 2003], *app. den.* 2 NY3d 703 [2004]; *see generally In re Community United to Protect Theodore Roosevelt Park v. City of New York*, 171 AD3d 567 [1st Dept April 18, 2019]).

There are three categories of actions under SEQRA, two of which require environmental review. Type I actions are presumed to have significant adverse environmental impacts (6 NYCRR § 617.4). Type II actions are not subject to environmental review (6 NYCRR § 617.6[a][1][i]; see generally 6 NYCRR § 617.5[c][1]-[46]). Finally, actions that do not fall under either category are called “Unlisted actions” and require further review (6 NYCRR § 617.2).

By way of background, many people have been seriously or fatally injured on Central Park West, pedestrians and bicyclists alike. Prior to the commencement of this proceeding, there was an unprotected bicycle lane on that street. Respondents explain that on October 2, 2018, the DOT “received a resolution from Community Board 7 in Manhattan requesting a protected bicycle lane along Central Park West.” This resolution was supported by several local officials. In June 2019, DOT presented a plan to upgrade the existing bicycle lane to a protected bicycle lane to Manhattan Community Board 7. On July 2, 2019, DOT received a formal resolution from Community Board 7 supporting its proposal for upgrades to the existing bicycle lane.

On the week of July 29th, DOT began to install the challenged protected bike lane. The DOT did not conduct an environmental review before it began said work. Eric Beaton, DOT’s Deputy Commissioner for Transportation Planning and Management, explains that “[b]icycle lanes installed by NYCDOT are generally Type II actions for purposes of SEQRA/CEQR” and “installing bike lanes is a routine activity that NYCDOT engages in frequently as part of its agency mission set forth in the City Charter.

Beaton further explains:

When complete, the protected bicycle lane will provide curbside access for buses, maintain all pre-existing vehicular travel lanes on Central Park West, accommodate existing traffic capacity during peak hours, shorten crossing distance for pedestrians, provide protected crossing signal phases for both pedestrians and cyclists, calm traffic, and provide expanded space for cyclists of all ages and experience levels. More importantly, it will enhance safety for cyclists who use Central Park West. In NYCDOT’s experience, the installation of protected bicycle lanes has resulted in significant safety improvements for all street users. Since NYCDOT began installing protected bike lanes in 2007, NYCDOT has observed a 15% drop in crashes resulting in injury and a 21% drop in all pedestrian injuries on corridors where protected bicycle lanes were installed. Overall, the average risk of cyclists being seriously injured in NYC has dropped by 76% since 2000

Petitioners argue that the bike lane is not routine and “implicates far more than mere traffic control devices.” They cite *Town of Bedford v. White*, 155 Misc2d 68 (Sup Ct, West Co 1992), aff’d, 204 AD2d 557 (2d Dept 1994) and *Chatham Green, Inc. v. Bloomberg*, 1 Misc3d 434 (Sup Ct NY Co 2003). The former dealt with the installation of a traffic signal in the Bedford Village Historic District and the latter, the installation of barriers and restrictions of use to create a secure zone around One Police Plaza in lower Manhattan. These cases are readily distinguishable.

Unlike either case, pre-existing vehicular traffic has been preserved. Indeed, Central Park West already had a bicycle lane, albeit unprotected. The challenged determination at issue can only be characterized as a reorganization of parking and a pre-existing bicycle lane.

Respondents’ determination that such an action will not have any significant adverse environmental impacts is rational and otherwise supported by the record.

The court also rejects petitioners’ claim that the bike lane constitutes impermissible segmentation of the Green Wave Bike Plan¹ (the “Plan”). The court agrees with respondents that the Plan is not an action for purposes of SEQRA, but merely a policy initiative. Indeed, the Plan describes itself as a vi-

¹ <https://www1.nyc.gov/html/dot/downloads/pdf/bike-safety-plan.pdf>

action for purposes of SEQRA, but merely a policy initiative. Indeed, the Plan describes itself as a vision for cycling in New York City and merely lists the bike lane as one of fifteen "2019 PROJECTS". Further, the Plan predates the bike lane and petitioners' arguments on this point are meritless. Most importantly, segmentation is not implicated here where petitioners cannot point to how any of the other fourteen bike lane projects through the five boroughs of New York City or the Plan's lofty vision for cycling safety relates to the bike lane on Central Park West so as to render DOT's determination limited solely to said bike lane improperly divided from the Plan (*cf. Coalition Against Lincoln West, Inc. v. Weinshall*, 21 AD3d 215 [1st Dept 2005]).

Accordingly, the petition is denied and this proceeding is dismissed.

CONCLUSION

In accordance herewith, it is hereby

ORDERED that motion sequence 003 is denied; and it is further

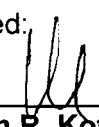
ORDERED that the petition is denied and this proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated:

10/23/19
New York, New York

So Ordered:


Hon. Lynn R. Kotler, J.S.C.