

Peckslip Advocates for Sch. Safety, Inc. v City of New York

2025 NY Slip Op 33173(U)

August 25, 2025

Supreme Court, New York County

Docket Number: Index No. 158621/2024

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON

PART

37

Justice

-----X

PECKSLIP ADVOCATES FOR SCHOOL SAFETY, INC.,

Petitioner,

- v -

THE CITY OF NEW YORK, ERIC ADAMS, BRAD LANDER, THE NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, THE NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES, THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, MOLLY WASOW PARK, BREAKING GROUND HOUSING DEVELOPMENT FUND CORPORATION, 320 PEARL STREET PROPCO LLC,

Respondents.
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INDEX NO. 158621/2024

MOTION DATE 10/25/2024, 10/25/2024

MOTION SEQ. NO. 002, 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 55, 57, 61, 63, 66, 69, 96,

were read on this motion to

DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 56, 58, 62, 64, 67, 70, 97,

were read on this motion to

DISMISS

Upon the foregoing documents and for the reasons stated hereinbelow and at oral argument held on July 30, 2025, the motions to dismiss are denied, the petition is granted, and the Court hereby enjoins respondents from opening or operating a proposed homeless shelter at 320 Pearl Street, New York, NY, absent the filing of a new Fair Share Statement that complies with the law.

In this Article 78 special proceeding, petitioner ask this Court to annul respondents' selection of a former Hampton Inn hotel, located at 320 Pearl Street, as the site for a Safe Haven Shelter ("SHS") for unhoused adult individuals ("the Shelter"). NYSCEF Doc. No. 1. Petitioner claims that the City's decision to locate the Shelter at the subject location is arbitrary and capricious, due to its close proximity to a public elementary school, and that the selection process was flawed, as it violated the City Charter. NYSCEF Doc. No. 1. Despite the tortured procedural history described in some detail below, the instant Special Proceeding is ready for a final determination.

Background

New York City has enshrined the right to shelter for unhoused families and individuals in law, court order, and consent decree. See Callahan v Carey, "Final Judgment by Consent," Index No.

425821/1979 (Sup Ct, New York County 1981). To comply with the City's obligations, respondent New York City Department of Homeless Services ("DHS"), the agency charged with providing shelter to all eligible families and individuals, maintains an Open-Ended Requests for Proposals ("OERFP") process, pursuant to which interested social services providers can submit proposals to open shelters in the City. NYSCEF Doc. No. 77.

Through the OERFP process, prospective providers propose new shelters for available sites. The proposals are "evaluated and scored by agency program experts working with the [Department of Social Services] Contracts Office in accordance with the [Procurement Policy Board] Rules." Affidavit of Melvin Browning at ¶ 19, NYSCEF Doc. No. 73. "In evaluating proposals, agency experts consider many factors, including the need for the proposed shelter, capacity at the proposed location, the building's suitability as a residential space for the proposed population, the scope of the proposed client services, the experience of the provider, pricing, and other operational matters." *Id.* Also considered are the Fair Share Criteria developed by the City Planning Commission and set forth in Appendix A to Title 62 of the Rules of the City of New York ("RCNY"). *Id.* at ¶ 25. DHS analyses the Fair Share Criteria in a Fair Share Statement that it submits to the Mayor, with copies to the affected Community Board, Borough President, and the Department of City Planning. *Id.* at ¶ 26.

In a letter dated May 7, 2024, DHS notified respondent Breaking Ground Housing Development Fund Corporation ("Breaking Ground") that its proposal to place a Safe Haven Shelter ("SHS") at 320 Pearl Street was selected for negotiations. NYSCEF Doc. No. 82.

In a letter dated June 13, 2024, respondent New York City Department of Social Services ("DSS") informed Community Board 1's ("CB1") district manager that respondent anticipated opening a 106-bed SHS run by Breaking Ground at 320 Pearl Street by Fall 2024. NYSCEF Doc. No. 4.

Petitioner submits an affirmation from Anthony E. Hannigan, a licensed master social worker and board member of respondent Breaking Ground from 1991 until 2021, who attests that SHS shelters:

place minimal requirements upon residents and are designed to appeal to homeless people with mental illness and substance use issues living on the street or in public spaces and unwilling or unable to navigate or tolerate larger, conventional shelter settings. One hundred percent of the inhabitants of Safe Haven shelters suffer from mental illness and/or substance use issues.

NYSCEF Doc. No. 108. Mr. Hannigan acknowledges that he is "personally interested in P.S. 343, The Peck Slip School, because my son and daughter-in-law live near the school and my three-year-old granddaughter may attend the school in the future." *Id.* ¶ 5.

On June 25, 2024, CB1 passed a resolution opposing an SHS at 320 Pearl Street. NYSCEF Doc. No. 13. In the resolution, CB1 noted, inter alia, that: the Shelter "abuts The Peck Slip School, a public pre-k to 5th grade school with an active entrance and exit less than 40 feet from the

[Shelter] entrance”; “[t]he DSS/DHS notification was sent at the end of the school year with only six and a half school calendar days left, the PTA does not operate in the summer and CB1 is off in August”; and “insufficient notice denies any real opportunity for significant public engagement for this facility.” *Id.*

On September 17, 2024, after the required reviews, DHS submitted a Fair Share Statement describing the Shelter to the Mayor, CB1, the Manhattan Borough President, and the Department of City Planning. NYSCEF Doc. No. 81.

On September 18, 2024, petitioner commenced the instant Special Proceeding simultaneously with a Verified Petition and a proposed Order to Show Cause (Motion Sequence 1), seeking a temporary restraining order and preliminary injunction. NYSCEF Doc. No. 34. Petitioner argues, inter alia, that respondents: failed to produce a Citywide Statement of Needs to put the community on notice of the Shelter; failed to perform a required Fair Share analysis and produce a Fair Share Statement; failed to hold community informational meetings; and arbitrarily and capriciously decided to place the Shelter next to a public elementary school, a decision “contrary to common sense” and an abuse of discretion. NYSCEF Doc. No. 33.

Also on September 18, 2024, DHS held its first public information session about the Shelter. NYSCEF Doc. No. 73 ¶ 44.

On September 23, 2024, the parties stipulated to withdraw petitioner’s Order to Show Cause application, as respondents still needed to review the proposal and approve the Shelter, which in any event could not open until 2025. NYSCEF Doc. No. 36. As part of the stipulation, the parties agreed that respondents had been properly served and set a briefing schedule. *Id.* On September 25, 2024, this Court denied Motion Sequence 1 without prejudice, solely as moot. NYSCEF Doc. No. 37.

On October 10, 2024, DHS published a notice of public hearing in the City Record for the proposed contract between DHS and Breaking Ground. NYSCEF Doc. No. 84. On October 24, 2024, respondents held a virtual public hearing addressing the proposed contract. NYSCEF Doc. No. 73 ¶ 46.

On October 25, 2024, respondents the City of New York (the “City”); Eric Adams, in his capacity as Mayor of the City of New York; Brad Lander, in his capacity as Comptroller of the City of New York; DSS; DHS; the New York City Human Resources Administration (“HRA”); and Molly Wasow Park, in her capacity as Commissioner of DSS, DHS, and HRA (collectively, “City Respondents”); and Breaking Ground each filed motions (Motion Sequences 2 and 3) to dismiss the petition as premature. NYSCEF Doc. Nos. 38, 52.

On November 20, 2025, DHS held its second public information meeting about the Shelter. NYSCEF Doc. No. 73 ¶ 47. Petitioner’s notes about the meeting (which was recorded and is available on YouTube at <https://youtu.be/qOyVkjMSck>), state that DHS Administrative Director Julie Harrison allegedly said that:

the residents of the proposed Pearl Street Safe Haven have physical, mental and substance abuse, a combination of all those things. (28:17). She added that DHS and the Safe Haven provider cannot force residents from sleeping outside the Safe Haven. They can only engage with residents. She noted, I understand this is very frustrating. I'm not gonna say, sit here and say, oh, you know, it's the greatest location at 320 Pearl Street. (1:41:10).

NYSCEF Doc. No. 112.

On January 21, 2025, the New York City Office of Management and Budget approved the signed contract between Breaking Ground and DSS. NYSCEF Doc. No. 85. On March 4, 2025, the Comptroller "registered" the contract. NYSCEF Doc. No. 73 ¶ 49.

On March 20, 2025, this Court so-ordered a stipulation that provided as follows: as a contract for the Shelter had now been registered, respondents would withdraw their motions to dismiss; a briefing schedule for the petition; petitioner would not file an amended petition before respondents answered. NYSCEF Doc. No. 71.

At this point, a tangled technical issue occurred that this Court will now attempt to untangle. Although Motion Sequence 1, petitioner's request for a preliminary injunction, had already been decided, the parties proceeded to file the rest of their papers as if Motion Sequence 1 had not been decided and as if it had been a Notice of Petition seeking Article 78 relief. In the interest of justice, and as all parties agreed at oral argument, the Court now follows suit. Accordingly, the Court has read and reviewed all of the documents under Motion Sequence 1 and will proceed as if it were a Notice of Petition. However, for technical reasons, this Decision and Order is being filed under Motion Sequences 2 and 3, which, despite being withdrawn, this Court has not officially decided until now.

On April 11, 2025, respondents answered. NYSCEF Doc. Nos. 72, 91, 93. On May 2, 2025, this Court so-ordered another stipulation of adjournment, in which petitioner again stated that it did not intend to amend the petition. Thus, the petition is ripe for judicial review and determination.

Arguments

Several of petitioner's arguments are moot, as City Respondents indisputably produced a Citywide Statement of Needs and a Fair Share Statement and held the requisite informational meetings. Not surprisingly, petitioner argues that:

the determination to place an adult Safe Haven homeless shelter with the riskiest homeless population of any shelter in New York City consisting of residents with mental health issues, substance abuse issues, criminal issues, including sex offender convictions, directly next to a school with children between the ages of 3 and 11 is prima facie arbitrary, capricious, and an abuse of discretion.

NYSCEF Doc. No. 1 ¶ 53.

In opposition, City Respondents argue, inter alia, that: the plan to place the Shelter was made pursuant to the City's mandate to shelter homeless New Yorkers; the plan was properly announced; the City performed the required Fair Share analysis and released the required Fair Share Statement; the City held the required informational meetings; and respondents are sensitive to community concerns and have already proactively acted to address some of the specific issues in the petition (e.g. covering a shared courtyard; offering to position Shelter staff near the School entrances). NYSCEF Doc. No. 94. City Respondents also argue that the determination to place the Shelter was a rational exercise of DHS' discretion, based on the needs of the City and the community. Id. Further, City Respondents argue that petitioner's unease with the location of the Shelter is speculative and based on stigma. Id.

In support, City Respondents submit, inter alia: the September 7, 2024 Fair Share Statement for the Shelter (NYSCEF Doc. No. 81); the Citywide Statement of Needs for financial years 2024-2025 and 2025-2026 (NYSCEF Doc. Nos. 89, 90); and an affirmation from Melvin Browning, DSS' Associate General Counsel, describing the City's mandate to shelter the homeless, the current mayoral administration's comprehensive "Housing Our Neighbors" plan to address homelessness, the siting process for new shelters from proposal to community review to opening, the need for shelters in lower Manhattan, and the subject Shelter's siting process and execution (NYSCEF Doc. No. 73).

In reply, petitioner argues that respondents failed to adhere to Appendix A Title 62 of the RCNY, "Criteria for the Location of City Facilities," which states, in part, that the City shall seek to:

a) Site facilities equitably by balancing the considerations of community needs for services, efficient and cost-effective service delivery, and the social, economic, and environmental impacts of city facilities upon surrounding areas.

h) Promote government accountability by fully considering all potential negative effects, mitigating them as much as possible, and monitoring neighborhood impacts of facilities once they are built.

NYSCEF Doc. No. 112.

Petitioner further argues that City Respondents "completely failed" to balance the pluses and minuses of the proposal. Petitioner emphasizes that the Fair Share Statement fails to demonstrate that City Respondents considered that the Shelter would be adjacent to an elementary school and what effect this might have on the community. Id.

In a sur-reply with leave of Court, City Respondents argue that petitioner's challenges to the Fair Share Statement were improper, as the petition alleges that City Respondents had not produced the Statement when, in fact: it had been provided to all required recipients the day before the petition was filed, had also been filed on NYSCEF at Doc. No. 42 on October 25, 2024, and petitioner had twice stipulated that it did not intend to amend its petition (and, in fact, did not). NYSCEF Doc. No. 113.

Further, City Respondents argue that that the Fair Share Statement properly considered all the applicable Fair Share Criteria codified at 62 RCNY, Appendix A, including the specific criteria for residential facilities, such as the subject Shelter, described in § 6.5 of Appendix A. Id. City Respondents also argue that petitioner does not, and cannot, cite any Fair Share Criteria that requires that the Fair Share Statement specifically name an adjacent school, or any opposition to the facility, and argue that the Fair Share Statement did discuss the school when it mentioned “public facilities and institutions” within 400 feet of the Shelter. Id. Section 4.1(b) of the Fair Share Statement reads in relevant part:

4.1(b) Extent to which neighborhood character would be adversely affected by a concentration of City and/or non-City facilities.

The Facility would appear and operate similarly to other transitional residences, which are found throughout the City, and would be compatible with this neighborhood that has a mix of uses, including multi-family elevator and walk-up buildings, mixed residential and commercial buildings, commercial and office buildings, public facilities and institutions, transportation and utility buildings, vacant land, and parking facilities. The absence of any significant alterations to the subject building also limits the project's potential to impact the neighborhood's physical character.

NYSCEF Doc. No. 81.

In a sur-sur-reply with leave of Court, petitioner argues, inter alia, that because of the various stipulations adjourning respondents' motions to dismiss, petitioner did not see the Fair Share Statement when it was first filed on NYSCEF and only became aware of it when City Respondents answered the petition. NYSCEF Doc. No. 114. Petitioner also argues that there is no prejudice to respondents, as the Court granted leave for the parties to file sur-replies. Id. See Ocan Hill, infra (“the City was allowed to submit a sur-reply to the Petitioners' objection to the Fair Share Review.”) Finally, petitioner argues, essentially, that the Fair Share Statement is inadequate because it fails to demonstrate that the City considered “[c]ompatibility of the facility with existing facilities and programs in the immediate vicinity of the site.” Id.

Discussion

The Court will consider the petition as if it were amended to include arguments about the Fair Share Statement, as there is no prejudice to either party where, as here, both parties have had an opportunity to submit, and have submitted, substantive sur-replies on the subject topic.

The applicable standard in an Article 78 proceeding is “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.” CPLR 7803(3). An administrative determination will only be found arbitrary and capricious if it is “without sound basis in reason, and in disregard of ... the facts.” Century Oper. Corp. v Popolizio, 60 NY2d 483, 488 (1983) citing Matter of Pell v Board of Educ. Of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 (1974). Moreover “[i]t is well settled law that a court may not substitute its judgment for that of the board or body it reviews unless the decision under review

is arbitrary and unreasonable and constitutes an abuse of discretion or is contrary to law.” Dempsey v New York City Dept. of Educ., 108 AD3d 454, 454 (1st Dept 2013), aff’d, 25 NY3d 291 (2015). If the administrative determination has a rational basis, there can be no judicial interference. Matter of Pell, at 231-232. Simply put, courts may not second-guess administrative determinations.

Although respondents cite Cnty. Planning Bd. No. 4 v Homes for the Homeless, 158 Misc 2d 184, 191-92 (Sup Ct, NY County 1993), for the proposition that “[t]he Fair Share Criteria are not regulations which dictate procedures for agencies; rather, they are criteria which ‘are intended to guide the siting of city facilities[,]’” other courts have, more recently, viewed the matter differently. For instance, in Ocean Hill Residents Ass’n v City of New York, 33 Misc 3d 1230(A) (Sup Ct 2011), the Ocean Hill court noted that:

the preface to the Criteria does not state that the Criteria are not regulations. The preface reads only, “These Criteria are intended to guide the siting of city facilities, as provided by Section 203 of the City Charter.” 62 RCNY § Appx. A to Title 62. More significantly, the Criteria were enacted as part of the Rules and Regulations of the City of New York, pursuant to the mandate of the City Charter.

The Ocean Hill court also reasoned that although the City “has discretion to give some of the Criteria more weight than others in a particular case[,] the agency must consider all the applicable criteria and this requirement to consider the criteria has the force of law.” Id. Further, “implicit in the requirements of the Criteria is that siting[s] must be based on an honest analysis of the Criteria, and that any departure from the Criteria must have a rational basis.” Id. “[A] flagrant disregard of the Criteria could give rise to a cause of action.” Id. “[S]iting must be based on an honest analysis of the Criteria.” Id.

In the final analysis, there are two eight-hundred pound gorillas in the room. The first is the fact that the proposal would place a shelter for troubled adults adjacent to a school for three-to-eleven-year-olds. Rightly or wrongly, this has alarmed some of the school parents and other members of the community. Nevertheless, that is a decision entrusted to the City, and the City has decided in favor of the siting.

The second eight-hundred pound gorilla is the City’s cavalier attitude towards fulfilling its obligation to demonstrate that it seriously considered the siting criteria. One criterion, pursuant to “Article 4: Criteria for Siting or Expanding Facilities, 4.1(a)[,]” is the “[c]ompatibility of the facility with existing facilities and programs in the immediate vicinity of the site.” Here, as petitioner argues in its sur-sur-reply (at 3):

All the boilerplate language in the Fair Share Analysis noted was that there were “public facilities and institutions” in the vicinity. That language could refer to municipal parking lots It definitely did not provide ... anyone reviewing the Fair Share Analysis with notice that there was a pre-kindergarten and elementary school directly next to the proposed Safe Haven Shelter.

Respondents' argument that they demonstrated that they considered the juxtaposition of the Shelter and the School by stating that they reviewed "public facilities and institutions" within a 400-foot radius is whistling past the graveyard at best and disingenuous at worst. Why require a meaningful statement when mere boiler-plate will do? The children and parents of PS 343 are not entitled to dictate who their neighbors are, but they are entitled to know that the City seriously considered the particulars and the advisability, or lack thereof, of the subject proposal. See generally, Silver v Dinkins, 158 Misc 2d 550, 555 (Sup Ct, NY County 1993) (City had failed to comply with Fair Share Criteria as a matter of law when, inter alia, it made no mention of "compatibility of the [multiagency garage and fueling] facility with the 12 schools within a one-half mile radius of the facility, one of which is within one block of the proposed site."). The Silver court also said: "The court is not attempting to override the respondents' determination as arbitrary or lacking a rational basis. Rather, the court perceives that no consideration was accorded to the factors bearing on 'fair share.' To pay lip service to these factors is not enough." Id. at 550, 556.

The Fair Share Statement asserts that DHS "does not anticipate any significant cumulative negative impact on neighborhood character by use of the Site[.]" NYSCEF Doc. No. 81. Yet, as discussed, the only arguable mentions of the adjoining pre-k and elementary school in the Fair Share Statement is that there are "public facilities and institutions" within 400 feet of the Shelter. Id. That is insufficient as a matter of law.

Respondents stated at oral argument that there would be a smoking lounge at the Shelter in a courtyard adjoining the School, albeit covered by a "metal roof." There is no evidence that the City considered that second-hand smoke could infiltrate into and permeate the School. The Fair Share Statement also failed to demonstrate that the City considered the significant community opposition (see NYSCEF Doc. No. 13).

Further, in light of DHS's description of SHS as a "low barrier program" and SHS's lack of rules "against residents using drugs, alcohol or weapons[.]" petitioner's contention that the Shelter will likely bring crime, sex offenders, drugs and paraphernalia such as syringes, "around the corner on Peck Slip street, which is the open-air playground for P.S. 343 during the school day" is more than merely speculative, as respondents contend. NYSCEF Doc. No. 112. (cf., Rebirth of Bergen St. Block Ass'n v City of New York, 55 Misc 3d 1203(A) (Sup Ct 2017) ("petitioners did show that the Bergen Street facility is right next to a public school and did assert a panoply of problems created by the numerous other shelters in the community, including increased crime, garbage, and loitering which can reasonably be expected to be exacerbated by the opening of an additional shelter in the area."))

Here, the Fair Share Statement failed to demonstrate, as required, that the City balanced "the social, economic, and environmental impacts of city facilities upon surrounding areas" and that the City fully considered "all potential negative effects." See RCNY § Appx. A to Title 62.

In sum, regardless of whether the siting is a good or bad idea, the approval process was significantly and fatally flawed.

The Court has considered respondents' other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, respondents' motions to dismiss are denied; the petition of Peckslip Advocates for School Safety, Inc. is granted; and the Court hereby enjoins respondents the City of New York, Eric Adams, Brad Lander, the New York City Department of Social Services, the New York City Department of Homeless Services, the New York City Human Resources Administration, Molly Wasow Park, Breaking Ground Housing Development Fund Corporation, 320 Pearl Street Propco LLC, and anyone acting on their behalf, etc., from opening or operating a proposed homeless shelter at 320 Pearl Street, New York, NY, absent the filing of a new Fair Share Statement that complies with the law.

HON. ARTHUR F. ENGORON

8/25/2025
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/>	
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