ALM | LAW.COM

New York Law Journal

ZONING AND LAND USE PLANNING

No Walk In the Park for Municipal Recreational Fees

By John C. Armentano

May 27, 2025

There are few things in life as pleasurable as spending time at a park on a sunny day. Parks play a crucial role in enhancing neighborhood quality by offering recreational spaces, promoting social cohesion, improving mental and physical health, and preserving nature. They serve as communal areas that foster community togetherness and contribute to the overall well-being of those who visit them.

The importance of green spaces for mental and physical well-being cannot be overstated. Significant planning and resources go into allocating the space, features, and upkeep of your favorite local park. Often, additional funds, not additional land, are needed to develop and maintain these recreational facilities.

In New York State, municipalities have the authority to require developers to dedicate land for park, playground, or recreational purposes as part of the residential development process. If a municipal planning board finds there is not enough land in a new development available to allocate to that use during the site plan process, the municipality can require the developer to pay a fee in lieu of setting aside land. See Town Law §274-a(6)(c), Village Law §7-725-a(6)(c), and General City Law §27-a(6)(b). The statutes governing subdivision approval contain similar language. See Town Law §277, Village Law §7-730 and General City Law §33.

Courtesy photo

John C. Armentano

Recently, in *Beechwood Latch LLC v. Incorporated Village of Southampton*, No. 608423/2020 (N.Y. Sup. Ct. 2023), the Village of Southampton overreached, assessing a $2.8 million park fee against a 19-unit luxury condominium development after final approvals for the development were secured. The project's developer

JOHN C. ARMENTANO *is a partner with Farrell Fritz in the firm's Hauppauge, Long Island office. He practices in the areas of land use, zoning, and municipal law. He can be reached at jcarmentano@farrellfritz.com.*

challenged the fee in court, alleging that the mandatory fee Southampton demanded under its local code was too high and exceeded the authority the New York Village Law granted Southampton to levy that fee.

The Supreme Court ruled in favor of the developer. The decision serves as a reminder to New York municipalities that they cannot mechanically assess park fees that are out of proportion with the government interests served by the fees.

Recreation Fees In Lieu of Parkland Dedication

Recreation fees in lieu of parkland land dedication are fees imposed by local governments on developers as a condition for subdivision or site plan approval. Their purpose is to mitigate the impact of new development on the public's access to recreational spaces by calculating a recreation fee instead of the actual dedication of land.

The decision serves as a reminder to New York municipalities that they cannot mechanically assess park fees that are out of proportion with the government interests served by the fees.

New York Village Law §7-730(4), along with New York Town Law §277(4), state that before a village/town planning board may approve a subdivision plat containing residential units, the subdivision plat must show a park or parks suitably located for playground or other recreational purposes when such a showing is required by the planning board.

Land set aside for parks or other recreational purposes "may not be required" if the planning board finds that a "proper case" exists for not doing so. The findings "shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the [village/town] based on projected population growth to which the particular subdivision plat will contribute."

If a planning board makes such a finding, but also finds that a suitable park or parks of adequate size to meet the requirement cannot be properly located on the plat, the planning board "may require a sum of money in lieu of" the reservation of park land "in an amount to be established by the [village/town] board."

When determining the suitability of available land for use as a park, a board "shall assess the size and suitability of lands shown on the subdivision plat which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood."

The funds a town or village collects from a developer "shall be deposited into a trust fund to be used by the [village/town] exclusively for park, playground or other recreational purposes, including the acquisition of property."

The New York Court of Appeals tackled park fees in *Matter of Bayswater Realty & Capital Corp. v. Planning Board of the Town of Lewisboro*, 76 N.Y.2d 460 (1990) (N.Y. 1990). Specifically, the court examined whether it should annul Lewisboro's Planning Board demand that Bayswater pay a recreation fee where the planning board made no findings under Town Law §277 that the proposed development presented a "proper case" for requiring parkland or that the open spaces set aside in the proposal

were not of sufficient size or of the character to fulfill the requirement.

The court held that Lewisboro's Planning Board was required to make the determinations mandated by Town Law §277 before imposing a recreation fee and remanded the case to the planning board for further consideration and for required findings if appropriate.

The court further held that "the [New York State] Legislature could not have intended to give planning boards unrestricted power to impose at whim on developers the requirement that they set aside lands or pay money in lieu thereof."

The final constraint is that there must be a nexus and "rough proportionality" between the fee a municipality is assessing against a developer and the impact the developer's project will have on its surroundings

It noted that "such unlimited authority would conflict with the basic rule that there must be a showing of a sufficient nexus between the imposition of such a financial burden on a private party and the public benefit to be achieved therefrom."

As alluded to by the Court of Appeals, park fees are also subject to the Fifth Amendment's Takings Clause. In *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013), the U.S. Supreme Court held that monetary exactions, like park fees, "must satisfy the nexus and rough proportionality requirements of *Nollan [v. California Coastal Comm'n,* 483 U.S. 825 (1987)] and *Dolan [v. City of Tigard,* 512 U.S. 374 (1994)]."

In those cases, the court held that a government entity cannot condition the approval of a land-use permit on the owner's relinquishment of a portion of their property unless there is a "nexus" and "rough proportionality" between the government's demand and the effects of the proposed land use.

A Cautionary Tale for Municipalities and Their Park Fees

In *Beechwood Latch LLC v. Incorporated Village of Southampton*, Beechwood Latch LLC (Beechwood) challenged Southampton's assessment of a $2.8 million park fee, arguing that Southampton's Village Code §93-75 was ultra vires, null and void, because it mechanically required a park fee in all cases. Specifically, §93-75 stated that when "the planning board determines that a park site cannot be properly located within the plat...the subdivider shall be required to pay a fee to the Village."

The problem, according to Beechwood, was that Village Law §7-725 authorizes Southampton to require park fees on a discretionary basis. It states that parkland "may not be required until the planning board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the village," and that "[i]n the event the planning board makes a finding...the planning board may require a sum of money in lieu thereof...."

The court agreed. Noting that Southampton's $2.8 million park fee was a condition to the Southampton Zoning Board's approval of the

site plan, the court held Southampton's Village Code was ultra vires, null and void, because it mandates a park fee in all cases even though the New York State Legislature, pursuant to Village Law §7-725, "clearly did not intend that a park fee be mandatory in all cases."

The court found that Southampton's Planning Board did not make any specific findings about the recreational needs created by Beechwood's development plans. It noted that Southampton did not offer affidavits or other proof as to what Southampton's Planning Board or Zoning Board relied on to determine that new park facilities would be needed. Importantly, Southampton did not submit "a study, methodology, or procedural process" by which it determined a park fee was justified, such as population growth projections or surveys.

Evaluating Beechwood's claims under the Fifth Amendment, the court observed Southampton could not support that the $2.8 million park fee was proportionate to the government interest advanced by the requirement of such a fee. For example, Southampton did not submit evidence showing its future needs necessitated such a fee.

The court also explained that the park fee, which amounted to $150,669.64 a unit, was 1500% more than the assessed park fee in another development in Southampton. Thus, the court held, there was no proportionate nexus between the fee and the need for additional parkland, which made the fee unconstitutional.

Beechwood is a reminder to New York municipalities that they cannot assess park fees unchecked without supporting information. The first constraint is that the park fees assessed are discretionary. The second constraint is that municipalities must present findings showing their proposed park fees are justified. That justification will likely have to come from objective, quantifiable data.

The final constraint is that there must be a nexus and "rough proportionality" between the fee a municipality is assessing against a developer and the impact the developer's project will have on its surroundings. Park fees that are excessive considering a project's impact will likely fail to survive a challenge under the Fifth Amendment and must comply with the intent of the State's statutes to be justified.