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ZONING AND LAND USE PLANNING

'Public Trust' Ruling Puts a Brake on Development

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Early last month, the New York Court of Appeals issued a decision that has made development of a particular blighted area of Queens significantly more difficult—and that may have similar repercussions in the future for the development of other property throughout the state.

In *Matter of Avella v. City of New York*, 2017 N.Y. Slip Op. 04383 (N.Y. June 6, 2017), the court upheld a decision by the Appellate Division, First Department, blocking construction of the so-called "Willets West" project on Citi Field's parking lot, where Shea Stadium once stood. The court, relying on the public trust doctrine—a fixture of New York law for well over a century—found that the proposed development had not been authorized by the New York State Legislature and, therefore, could not move forward. The court's narrow reading of what the Legislature had authorized—over the dissent of Chief Judge Janet DiFiore—suggests that in the future it might construe other legislative directives as narrowly when the public trust doctrine is at issue.

Background

The court discussed the public trust doctrine in a decision it issued nearly 150 years ago. In *Brooklyn Park Commrs. v. Armstrong*, 45 N.Y. 234 (1871), the court held that, when a municipality has taken land "for the public use as a park," it must hold that property "in trust for that purpose" and may not convey it without the sanction of the Legislature. Two years later, in *Matter of Petition of Boston & Albany R.R. Co.*, 53 N.Y. 574 (1873), the court ruled that parklands held by a village were held "upon a special trust and for public use. The village could not dispose of them or divert them from the purpose to which they were dedicated."

More recently, in 2001, the court summarized the history of the public trust doctrine in *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623 (2001), explaining that the state's courts "have time and again reaffirmed the principle that parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes."

Under the public trust doctrine, only the state legislature has the power to alienate land, such as parkland, held in the public trust for purposes other than those for which it has been designated. In other words, as the court observed in *Potter v. Collis*, 156 N.Y. 16 (1898), even though a municipality may own land dedicated to public use, the title of the municipal corporation to the public streets is "held in trust for the public, and the power to regulate those uses [is] vested solely in the Legislature."

The court has explained that the Legislature's authorization to alienate land held in public trust must be "plainly conferred" by its "direct and specific approval." Whether the state

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Legislature had provided such approval of the Willets West project was at the heart of *Avella*.

Willets West

In 2011, Queens Development Group (QDG) proposed a two-phase project for developing Willets Point, a 61-acre area of land near Citi Field that has long been considered to be blighted. Willets Point has no sewers, sidewalks, or streetlights; has potholed and rutted streets; and is prone to flooding.

The plan called for construction, in several staged phases, of retail space, a hotel, an outdoor space, a public school, and affordable housing in the Willets Point neighborhood, and the construction of a large-scale retail complex on property known as Willets West—currently, Citi Field's parking lot.

QDG included Willets West in the development proposal under the theory that "the creation of a retail and entertainment center at Willets West w[ould] spur a critical perception change of Willets Point, establishing a sense of place and making it a destination where people want to live, work, and visit."

The city approved QDG's proposal in May 2012. Thereafter, a state senator, not-for-profit organizations, businesses, taxpayers, and users of Flushing Meadows Park brought an action seeking to enjoin the proposed development. They alleged that because the Willets West development was located within parkland, the public trust doctrine required legislative authorization, which had not been granted.

The Supreme Court, New York County, denied the petition and dismissed the proceeding. The Appellate Division, First Department, unanimously reversed and granted the petition to the extent of declaring that construction of Willets West on city parkland "without the authorization of the state legislature" violated the public trust doctrine, and enjoining any further steps toward its construction.

> The court's ruling in 'Avella' suggests that, to limit the risk of violating the public trust doctrine, local governments, developers, and property owners should make every effort to ensure that state legislation clearly authorizes the specific actions they seek to take with respect to park or other land that has been dedicated to public use.

The Court of Appeals granted QDG and related entities leave to appeal.

The Court's Decision

In its decision, the court examined whether the New York State Legislature had authorized construction at Willets West, on property that the petitioners contended was city parkland, of the retail shops, movie theater, restaurants, food court, public programming spaces, and rooftop farm proposed by QDG.

To resolve that question, it reviewed the legislation the state Legislature had enacted in 1961, codified in Section 18-118 of the Administrative Code of the City of New York and titled, "Renting of Stadium in Flushing Meadow Park; exemption from down payment requirements." This legislation authorized the development on city parkland of what came to be known as Shea Stadium. The court ruled that the statute did not permit Willets West to move forward.

The court explained that subdivision (a) of Section 18-118 granted the city the right to enter into contracts, leases, or rental agreements for persons wishing to use, occupy, or carry on activities in the whole or in any part of a stadium with appurtenant grounds, parking areas, and other facilities. In the court's view, nothing in that language authorized the construction of a shopping mall or movie theater; rather, it authorized the city to enter into agreements permitting others to use the stadium and its "appurtenant facilities."

The court ruled that the "clear implication" of the reference to "appurtenant facilities" was that any such facilities "must be related to, part of, belonging to, or serving some purpose for, the stadium itself." A shopping mall and movie theater, according to the court, were not consistent with typical uses of a stadium.

The court then pointed out that subdivision (b) of Section 18-118 was

limited to agreements the city might enter into for "the right to use, occupy or carry on activities in, the whole or any part of such stadium, grounds, parking areas and other facilities." The words "other facilities" could not be read as a legislative grant to authorize the private construction of anything deemed by the city to improve trade and commerce, the court ruled. More particularly, it decided that the 1961 legislation did "not authorize the construction of a retail complex and movie theater."

Although it found that the "plain language" of the 1961 statute did not authorize the proposed construction, it considered the legislative history and ruled that it also demonstrated that the Legislature had not authorized the city to do more than enter into agreements for use of the stadium for public—not commercial—purposes.

The court began with the title of the statute, "Renting of a Stadium in Flushing Meadow Park; exemption from down payment requirements," and said that it suggested nothing at all about legislative authorization for anything other than a stadium. Indeed, it added, the title pertained "only to the renting of the stadium and exemption from statutory requirements that would have required a down payment."

Consistent with the bill's title, the court continued, the legislative history demonstrated that the statute was intended to authorize the lease, rental, or licensing of the stadium, not the construction of unrelated facilities. For example, it noted that a memorandum in support of the bill from the mayor's office said that the bill would authorize the city "to lease or rent, from time to time, for customary municipal stadium purposes, the 55,000-seat stadium with 5,500 parking spaces…proposed to be constructed" by the city in Flushing Meadow Park upon such terms and conditions as may be agreed upon by the city "and the persons leasing or renting the stadium."

The court pointed out that the city had requested the legislation to grant it the right to rent the stadium to private entities, "not to construct new and unrelated facilities for private business purposes." Legislative authorization to rent the stadium and its grounds to private parties could not "under our longstanding construction of the public trust doctrine, constitute legislative authorization to build a shopping mall or movie theater," the court declared.

The court acknowledged that the remediation of Willets Point was "a laudable goal." It noted that QDG and various amici had asserted that the Willets West development would immensely benefit the people of New York City by transforming the area into a new, vibrant community, and that QDG's plan might be the only means to accomplish that transformation. The court stated, however, that those contentions had "no place" in its consideration of whether the Legislature had granted authorization for the development of Willets West on land held in the public trust.

Of course, it concluded, the Legislature remained free to alienate all or part of the parkland for whatever purposes it were to see fit, "but it must do so through direct and specific legislation that expressly confers the desired alienation."

Conclusion

New York City and the appellants clearly believed that they had authorization from the 1961 law to proceed with the Willets West project. The court's ruling suggests that, to limit the risk of violating the public trust doctrine, local governments, developers, and property owners should make every effort to ensure that state legislation clearly authorizes the specific actions they seek to take with respect to park or other land that has been dedicated to public use.