

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

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DISTRICT 4 PRESIDENTS' COUNCIL;
THE CITYWIDE COUNCIL ON HIGH SCHOOLS;
EUGENIA SIMMONS-TAYLOR; MARINA ORTIZ;
and MATTHEW WASHINGTON;

Petitioners,

-against-

THE FRANCHISE AND CONCESSION REVIEW
COMMITTEE OF THE CITY OF NEW YORK;
MICHAEL R. BLOOMBERG, Mayor of the City of New
York; ANTHONY CROWELL, Special Counsel to
Mayor Michael R. Bloomberg; WILLIAM C.
THOMPSON, JR., Comptroller of the City of New York;
MICHAEL A. CARDOZO, Corporation Counsel for the
City of New York; MARK PAGE, Director of the New
York City Office of Management and Budget; SCOTT
STRINGER, President, Borough of Manhattan; each in
his official capacity as member of The Franchise and
Concession Review Committee of the City of New York;
THE NEW YORK CITY DEPARTMENT OF PARKS
AND RECREATION; and THE CITY
OF NEW YORK,

Respondents.

For a Judgment Pursuant to Article 78 of the CPLR
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Index No.
IAS Justice

VERIFIED
PETITION

TO: THE SUPREME COURT OF THE STATE OF NEW YORK

Petitioners District 4 Presidents' Council, the Citywide Council on High Schools, Eugenia Simmons-Taylor, Marina Ortiz and Matthew Washington, by their attorneys, Norman Siegel, Esq. and Stroock & Stroock & Lavan LLP, as and for their Verified Petition (the "Petition"), respectfully allege as follows:

1. This is a special proceeding brought against Respondents pursuant to Article 78 of the CPLR.

2. This proceeding arises out of Respondents' failure to comply with the requirements of the Uniform Land Use Review Procedures ("ULURP") contained in the New York City Charter § 197-c and the Rules of the City of New York ("RCNY") Title 62, Chapter 2.

PARTIES AND JURISDICTION

3. Petitioner District 4 Presidents' Council is comprised of the Presidents of the Parents' Associations/Parent Teacher Associations ("PTA") for each school located in East Harlem in District 4 of the City School District of the City of New York.

4. Petitioner the Citywide Council on High Schools an elected body that represents all parents of public high schools students citywide.

5. Petitioner Eugenia Simmons-Taylor is the parent of a public school student and the President of the PTA at the Young Women's Leadership High School of East Harlem, President of the Presidents' Council District 4 and resides in New York County.

6. Petitioner Marina Ortiz is an East Harlem community advocate, a member of the Randall's Island Community Council, created as a forum for input into Randall Island's development and use, and resides in New York County.

7. Petitioner Matthew Washington is a community activist and resides in New York County.

8. Respondent the Franchise and Concession Review Committee ("FCRC") is empowered under the City Charter to review and approve franchisees and franchise agreements in the City of New York (the "City").

9. The FCRC consists of the following officials or their designees: the Mayor of New York City (who serves as Chairperson), the City Comptroller, the Corporation Counsel,

the Director of the New York City Office of Management and Budget, an additional Mayoral Designee; and the Borough President of Each Borough affected by the transaction in question.

10. Respondent Michael R. Bloomberg is the Mayor of the City and a member of the FCRC.

11. Respondent Anthony Crowell is Special Counsel to Mayor Michael R. Bloomberg and a member of the FCRC.

12. Respondent William C. Thompson, Jr. is the Comptroller of the City and a member of the FCRC.

13. Respondent Michael A. Cardozo is the Corporation Counsel of the City and a member of the FCRC.

14. Respondent Mark Page is the Director of the City Office of Management and Budget and a member of the FCRC.

15. Respondent Scott Stringer is the President of the Borough of Manhattan and a member of the FCRC. Respondent Stringer dissented from the FCRC vote herein challenged and is named only as a formality because of his membership in the FCRC.

16. Respondent the New York City Department of Parks & Recreation is an agency of New York City. Its principal place of business is The Arsenal, Central Park, New York 10021.

17. Respondent the City of New York is a municipal corporation organized under the laws of the State of New York and a political subdivision of the State of New York.

18. Upon information and belief, the FCRC does not have a principal place of business, but held the vote at issue herein at 22 Reade Street, New York, New York 10017.

19. The jurisdiction of the Court to hear this proceeding is based upon Article 78 of the Civil Practice Laws and Rules.

20. Venue is proper in New York County under CPLR 506(b) because the Respondents made the determination complained of in New York County.

FACTUAL BACKGROUND

21. On or about October 11, 2006, the City – through the City Department of Parks & Recreation – and the Randall’s Island Sports Foundation (“RISF”) entered into discussions to have the City convert certain current parklands located on Randall’s Island into sports fields (the “Concession”).

22. The deal contemplated that the RISF be granted a concession for those fields, and would in turn grant sub-concessions (equivalent to no-bid contracts) with a consortium of 20 largely tony private schools, for a period of 20 years, to use the overwhelming majority of the sports fields during the prime after-school hours. A complete list of the 20 schools that make up the consortium is annexed hereto as Ex. A.

23. Upon information and belief, many public schools in the area surrounding Randall’s Island lack any, much less adequate, playing fields. Upon information and belief, 58 public schools in District 4 (the school district neighboring Randall’s Island) share only eight existing ball fields.

24. The Concession would exclude these public school students from large areas of a public park during the peak after-school hours, when playing fields are most needed.

25. Notice of a public hearing was published in the City Record from January 23, 2007 – February 13, 2007. A public hearing was held on February 13, 2007, a transcript of which is annexed hereto as Ex. B.

26. The FCRC voted to grant the Concession on February 14, 2007, a transcript of that hearing is annexed hereto as Ex. C, and issued a resolution that converted public parklands to private use (the “Resolution”), a copy of which is annexed hereto as Ex. D.

27. The Resolution provides, in part, that:

The concession with RISF will commence when 75% of the sports fields are deemed substantially complete and shall end on the 20th anniversary of the concession commencement date. RISF shall grant a subconcession to the Randall's Island Fields Group LLC ("Schools Group"). The member schools of the Schools Group ("Schools") will receive guaranteed permitted use of two-thirds of the field time in the after-school time period for approximately 20 weeks a year. New York City public schools will have priority for one-third of the field time in the same time period.

28. The terms of the concession are apparently contained in a draft document dated January 29, 2007, entitled “Randall’s Island Sports Fields Improvement Project Agreement” between the City and Randall’s Island Sports Foundation and Randall’s Island Fields Group LLC (the “Agreement”) (annexed hereto as Ex. E). The Agreement provides, *inter alia*, that the private schools have an absolute right to review any changes contemplated by the City to the park construction plans, construction that will occur prior to the effective date of the Concession or the granting of any specific sub-concession. Ex. E at 9. Upon information and belief, the Agreement has yet to be executed.

29. The City’s granting of this concession was in violation of law, as the City failed to follow the proper review procedures for the granting of this type of concession – one that, as a matter of law, is considered a “major concession.”

30. A concession is defined in the New York City Charter as:

A grant made by an agency for the private use of city-owned property for which the city receives

compensation other than in the form of a fee to cover administrative costs, except that concessions shall not include franchises, revocable consents, and leases.

N.Y.C. Charter § 362(a).

31. A “major concession” is defined, in relevant part, as:

A concession shall be considered a major concession if it will cause one or more of the thresholds given for the specific uses listed below to be exceeded:

* * *

(f) an open use which occupies more than 42,000 square feet of open space other than parkland;

* * *

(g) an open use which occupies over 30,000 square feet of a separate parcel of parkland;

RCNY, Title 62, Ch. 2 § 7-02.

32. Under either of these definitions, and using any basis of calculation, the Concession is a major concession. By its terms, 171 acres (or 7.4 million square feet) more than satisfies the requirements of the City Charter.

33. Upon information and belief, the City contends that only 12.5 acres, or 544,500 square feet, of unused parkland would be converted to new athletic fields. This number alone surpasses the requirements for the Concession to be considered a major concession. Upon information and belief, the actual size and characterization of the project, however, has been obscured by the City to avoid ULURP review.

34. The RISF website concedes that the Concession would essentially double the number of existing athletic fields (a total of 65 fields – in comparison, almost twice the number of athletic fields in Central Park). See Ex. F, available at

<http://www.risf.org/sportsfield.html>. According to RISF, these fields would include soccer, softball, baseball, football, lacrosse, field hockey and rugby fields. Ex. G, available at http://www.risf.org/project_sports2.html. Given the acreage requirements for such athletic fields, the 12.5-acre computation could not account for all of the converted land. See generally <http://nfhs.org/sports.aspx>.

35. The City acknowledges that the total size of the project is 171 acres or 7.4 million square feet. It claims that 158.5 acres are currently devoted to “active recreational purposes,” and thus would not be a change in existing use. This claim is, upon information and belief, a smoke screen to avoid ULURP review. See Ex. C at 00023. First, the phrase “active recreational purposes” is vague, and is not co-extensive with “athletic fields” under ULURP. See, e.g., RCNY, Title 62, Ch. 2 § 7-03(b)(3). Second, upon information and belief, a significant portion of the 158.5 acres of parkland consists of open wooded areas and landscaped parklands used for picnics, sunbathing, Frisbee tossing and the like, and is not, in fact, made up of actual athletic fields. Thus, upon information and belief, the portion of the Concession that is of “changed use” is significantly larger in scope than the 12.5 acres that Respondents present. Annexed hereto is a chart (Ex. H), based upon data contained in the site plan itself (Ex. I, available at <http://risf.org/forms/Plan2.pdf>), that demonstrates how a sampling of five separate areas of the Park (totaling 1,424,380 square feet or 32.6 acres of the project) would have a significantly changed use under the Concession.

36. Moreover, the sports fields to be turned over to the private schools are not yet constructed, nor does the Resolution contemplate that construction would be completed at the time the Concession begins. See Ex. D. This artificial, two-step formulation would seem to be designed to support the City representative’s testimony regarding the pre-existing use of the land,

but in fact belies another attempt to avoid ULURP review. Respondents cannot properly create a condition and then subsequently use that condition to avoid statutory obligations.

37. Upon information and belief, the FCRC, in approving the Concession, failed to address issues concerning the nature of existing versus contemplated use (and ways to mitigate concerns thus raised), issues at the heart of the ULURP process.

38. If a major concession, the Concession must be evaluated pursuant to ULURP, which is contained in New York City Charter § 197-c, and the implementing rules in the RCNY. Under the RCNY, section 2-01 of ULURP sets forth when an action is subject to its procedures. Section 2-01(f) provides in relevant part that

requests for proposals and other solicitations for
franchise pursuant to Charter § 363 and *major*
concessions as defined pursuant to Charter § 374

are subject to ULURP. RCNY Title 62, Ch. 2, § 2-01(f) (emphasis added).

39. Indeed, the FCRC recently granted a concession to the Department of Parks and Recreation to build the Randall's Island Aquatic Center (the "Aquatic Center"). Before granting the concession to the Aquatic Center, the proposal was subject to the ULURP land use process and as such was reviewed by others besides the FCRC, including Community Board 11, the Manhattan Borough President, and the Department of City Planning.

FIRST CAUSE OF ACTION

40. Petitioners repeat and reallege the allegations set forth in paragraphs 1 through 39 as if fully set forth herein.

41. The FCRC improperly failed to comply with the ULURP procedures in granting the Concession, thus failing to perform a duty enjoined upon it by law pursuant to CPLR 7803(1).

42. The Resolution approving the Concession should therefore be annulled, and the FCRC directed to comply with ULURP.

SECOND CAUSE OF ACTION

43. Petitioners repeat and reallege the allegations set forth in paragraphs 1 through 42 as if fully set forth herein.

44. The FCRC improperly failed to comply with the ULURP in making a determination in violation of lawful procedure pursuant to CPLR 7803(3).

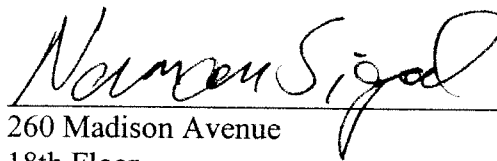
45. Petitioners have no adequate remedy at law.

WHEREFORE: Petitioners respectfully request that this Court issue an Order:

(a) Finding that the FCRC failed to comply with the ULURP procedures in granting the Concession, thus failing to perform a duty enjoined upon it by law pursuant to CPLR 7803(1); (b) Finding that the FCRC failed to comply with the ULURP in making a determination in violation of lawful procedure pursuant to CPLR 7803(3); (c) Annuling the resolution; (d) Remanding this matter to the FCRC to comply with ULURP; (e) Awarding Petitioners their costs of this proceeding, including reasonable attorney fees, and (f) Providing such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 14, 2007

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