

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK - CIVIL TERM - PART 56
3 -----X

3 In the Matter of the Application of
4 CARNEGIE HILL NEIGHBORS; MUNICIPAL ART
5 SOCIETY OF NEW YORK; FRIENDS OF THE
6 UPPER EAST SIDE HISTORIC DISTRICTS,
7 INC., CIVITAS CITIZENS, INC., DIEGO
8 BARBERENA, and CHARLES E. HARRISON,

INDEX NUMBER:
161375/2017

Petitioners,

7 A Judgment Pursuant to Article 78 of the
8 Civil Practice Law and Rules,

9 - against -

10 CITY OF NEW YORK; NEW YORK CITY COUNCIL;
11 NEW YORK CITY PLANNING COMMISSION; NEW
12 YORK CITY EDUCATIONAL CONSTRUCTION FUND;
13 AVALONBAY COMMUNITIES, INC.,

Respondents.

-----X

14 PROCEEDINGS
15 71 Thomas Street
16 New York, New York
17 March 5, 2019

16 B E F O R E :

17 HONORABLE JOHN J. KELLEY,

18 JUSTICE OF THE SUPREME COURT

19 A P P E A R A N C E S :

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SENIOR COURT REPORTER

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1 THE CLERK: *Carnegie Hill Neighbors versus New York*
2 *City, et al.*

3 THE COURT: Who is arguing? What is your name?

4 MS. BOST SEATON: Good morning, Your Honor.
5 Christina Bost Seaton from Fisher Broyles.

6 THE COURT: Christina?

7 MS. BOST SEATON: Bost Seaton.

8 THE COURT: With a B?

9 MS. BOST SEATON: With a B. I'm sorry. I have a
10 cold since Disney World. It's affecting my voice.

11 THE COURT: It's okay.

12 Who is arguing?

13 MS. McCAMPHILL: Amy McCamphill.

14 THE COURT: Amy what?

15 MS. McCAMPHILL: McCamphill, for the City of New
16 York.

17 THE COURT: Spell your last name.

18 MS. McCAMPHILL: M-c-C-a-m-p-h-i-l-l.

19 THE COURT: Very good.

20 So this is an Article 78, judicial review with the
21 City Planning Commission.

22 Do you want to be heard?

23 MS. BOST SEATON: Yes, thank you, Your Honor. Good
24 morning.

25 So we believe that this is a critical litigation

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1 that has really significant precedential effect for the City
2 and development within the City. And the determinations
3 were based upon a critical error of law; namely, that the
4 Marx Brothers Playground is not a park and accordingly that
5 it has development rights that could be and which were used
6 to make a bigger project than would otherwise be permissible
7 underneath the zoning resolution.

8 The Marx Brothers Playground is and has always been
9 a park. And we've submitted ample evidence to that effect,
10 including, notably, two affidavits from the former parks
11 commissioner, Adrian Benepe, who is here today, in the
12 corner over there.

13 Critically, the decision makers who voted on the
14 determinations were not aware that the respondents took the
15 position that Marx Brothers Playground and all similarly
16 situated parks were not, in fact, parks. This was not
17 disclosed in the land use applications. It was not
18 disclosed in the final EIFs or any of the previous
19 iterations of that document. And that infected the entire
20 process and rendered it unfair, arbitrary and capricious,
21 and an abuse of discretion.

22 And when the decision makers found out that that
23 was the case, they were outraged.

24 We submitted evidence in Exhibit D to the Janes
25 affidavit that when the community board's parks committee

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1 discovered that the respondents took the position that MBP
2 is not and has never been a parkland, they were outraged and
3 called for support for the project to be rescinded.

4 When Governor Cuomo found out that there was
5 a -- confusion or misapprehension as to the park's status of
6 the Marx Brothers Playground, he attached a chapter, an
7 amendment calling for the New York State Parks Department to
8 investigate the status of Marx Brothers Playground as a
9 park.

10 And, Your Honor, since we submitted our papers, in
11 September of 2018, the City Council held a hearing on this
12 very step -- this very question, the parkland status of the
13 jointly operated playgrounds.

14 And at that hearing, the council member in charge
15 of the hearing, Barry Grodenchik, said that this particular
16 transaction raised red flags to him, and the view that a
17 playground is not parkland is a view that I do not share.
18 Moreover, Council Member Andrew Cohen, from the Bronx said,
19 he was quote, Very concerned and he had only just learned
20 that the playground in his neighborhood did not have the
21 protections of a park.

22 So there's not a hypothetical concern here that
23 there could have been a different outcome, we have actual
24 evidence that would suggest that there could have been a
25 different outcome here.

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1 Moreover, the state senate has just passed a bill
2 to increase the standards for municipalities seeking to
3 alienate parks. And we -- that passed 61 to nothing in the
4 state senate and is believed to have passed the assembly as
5 well.

6 These determinations, if not undone, could set a
7 very dangerous precedent. There are 265 other parks that
8 are also jointly operated playgrounds that have the same
9 status as the Marx Brothers Playground. They represent
10 37 percent of New York City's playgrounds and they're
11 particularly concentrated in neighborhoods that are
12 otherwise lacking in available recreational space.

13 THE COURT: Why wasn't the State joined?

14 MS. BOST SEATON: The State determinations
15 were -- were not really relevant in this particular case.
16 And by the time that we got involved, time to appeal from
17 them had already passed.

18 And -- and to be honest, Your Honor, because of all
19 of the confusions and misrepresentations in the various
20 documents, it took experts hired by the petitioners and
21 petitioners' counsel quite a long time to really unpack what
22 had actually happened here.

23 THE COURT: So are you saying, then, that what the
24 state legislature did is insufficient?

25 MS. BOST SEATON: Well, Your Honor --

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1 THE COURT: I'm not really following you.

2 MS. BOST SEATON: Of course.

3 So -- so the particular determinations in this case
4 were based upon the undisclosed assumption -- there's two
5 undisclosed assumptions: First of all, that all jointly
6 operated playgrounds do not -- are not parkland under New
7 York State law. That was not in any of the papers until the
8 Maldonado letter, which was submitted after the hearing
9 before the CPC, and which would not typically be a document
10 that Council members would look at when making their
11 determinations.

12 And the second -- the second assumption that was
13 not disclosed was that jointly operated playgrounds are not
14 considered to be public parks underneath the zoning
15 resolution. And that was not set forth within any of the
16 documents.

17 So because there are 265 other playgrounds that
18 have exactly the same rights that are pertinent to them, if
19 this is --

20 THE COURT: Just --

21 MS. BOST SEATON: -- unchallenged --

22 THE COURT: Let me tell you something, first of
23 all --

24 MS. BOST SEATON: Of course.

25 THE COURT: -- I just have some -- seriously just

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1 have some questions about what the argument is and how this
2 all ties together.

3 MS. BOST SEATON: Sure.

4 THE COURT: I'm going to be reserving decision on
5 this at the end of the day, there is no mystery to this,
6 because there really is a lot involved and I really want to
7 take a closer look at it.

8 MS. BOST SEATON: We appreciate that.

9 THE COURT: I just want to understand something,
10 though.

11 MS. BOST SEATON: Yes.

12 THE COURT: This is really a secret challenge,
13 isn't it?

14 MS. BOST SEATON: So the -- no. So there
15 is -- there is a secret challenge that's part of it, but it
16 is also a challenge to the land use determinations, so those
17 are two separate and independent bases upon which you can
18 challenge the determinations.

19 THE COURT: So the --

20 MS. BOST SEATON: So the land use determination is
21 one determination, and the SEQR, the environmental review
22 SEQR aspects are part of the final determinations. But
23 they're not the whole of the final determinations.

24 THE COURT: So you're saying that the land use
25 determination was arbitrary and capricious because they

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1 didn't consider the true nature of the land?

2 MS. BOST SEATON: And based upon an error of law;
3 namely, the interpretation of Section 1210 of the zoning
4 resolution --

5 THE COURT: Okay.

6 MS. BOST SEATON: -- and particularly the
7 definition of a public park.

8 Effectively what respondents are asking the Court
9 to do is to bless an amendment to Section 1210. They want
10 to read in the word "exclusive" into the definition of a
11 public park.

12 So 1210 effectively says that a public park is any
13 piece of open space, including it says specifically a
14 playground that is within the jurisdiction and control of
15 the commissioner of parks.

16 And they have argued that it has to be within the
17 exclusive jurisdiction of the commissioner -- the
18 commissioner of parks in order to constitute parkland.

19 THE COURT: Is there any other argument that you
20 wish to make before I hear from respondents?

21 MS. BOST SEATON: I mean, we'd like to revisit the
22 public policy aspects again.

23 Effectively, what the respondents have tried to do
24 here is to amend the definition of public park without there
25 being any public policy debate as to whether or not that is

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1 a good thing to do.

2 It has long been considered that JOPs are parkland
3 under New York State law. That was specifically stated in
4 the --

5 THE COURT: That is why they got the state
6 approval; right?

7 MS. BOST SEATON: Well -- and we believe that their
8 conduct demonstrates that to be the case. However, if you
9 look at the Maldonado letter again, attached to Exhibit L of
10 our amended petition, in the Maldonado letter they say that
11 JOPs are not and have never been parkland.

12 THE COURT: You don't happen to have a copy?

13 MS. BOST SEATON: I do, but it's about 25 pages.

14 THE COURT: The Maldonado letter?

15 MS. BOST SEATON: Correct. So it might be hard for
16 even Your Honor to find these particular references at this
17 point in time.

18 THE COURT: Okay.

19 MS. BOST SEATON: But the Maldonado letter has one
20 tiny line buried within it in this sort of non-key
21 submission as part of this process that says that the JOPs
22 are not and have never been parkland for purposes of State
23 law, but we alienated in this case out of an abundance of
24 caution because MTA alienated it in 2004.

25 That statement in and of itself makes no sense

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1 because the City has to seek alienation legislation, not the
2 MTA that would have sought that legislation.

3 So the City has now taken two steps in this
4 particular action that shows that they believe that this
5 land was parkland.

6 But buried within the Maldonado letter they say
7 "That was actually just a mistake, and going forward we
8 don't think for any of these 266 jointly operated
9 playgrounds we have to seek alienation legislation."

10 That has been contradicted by the City throughout
11 decades of history. The most recent time that we found was
12 the 2007 Plan NYC, that said that jointly operated
13 playgrounds are dedicated parkland and they are protected
14 and limited from development.

15 And the City, in fact, changed its conduct after
16 the 2007 Plan NYC, and when they sought to expand the use of
17 schoolyards to the public, they started a brand-new program
18 called The Schoolyards to Playgrounds Program. And in those
19 particular -- in order to avoid them becoming dedicated
20 parkland, the City submitted -- has created contracts and
21 memorandum of understanding that specifically say we do not
22 intend for this piece of land to become dedicated parkland.

23 THE COURT: I'm trying to boil down -- boil down
24 what your argument is on that. I think what you're saying
25 is that the legislative approval was secured under false

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1 pretenses?

2 MS. BOST SEATON: Yes, Your Honor.

3 THE COURT: Okay. Even if that's true, is that
4 sufficient to annul a legislative enactment where the State
5 is not even a party?

6 MS. BOST SEATON: Well, I think that's an
7 interesting question. And -- and to be honest that's
8 something that all of the petitioners have sort of been
9 muddling with it's not entirely clear --

10 THE COURT: Okay.

11 MS. BOST SEATON: -- and the state law experts that
12 we've consulted with are entirely true.

13 But for our purposes, we think it's sufficient that
14 Your Honor null and void the City law determinations,
15 because that is pursuant to which the zoning resolution
16 changes were made that would allow this development to
17 proceed.

18 THE COURT: Okay.

19 MS. BOST SEATON: And -- and let me just sort of
20 skip to the end here.

21 THE COURT: Okay.

22 MS. BOST SEATON: Lest we -- lest I not get a
23 chance to say this, we're not antidevelopment. I typically
24 sit on this side of the table. We're not antidevelopment.

25 THE COURT: You don't have to defend your

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1 representation. We're all lawyers for clients.

2 MS. BOST SEATON: We support affordable housing; we
3 support development. What we don't support is the fact that
4 this was all sort of done in an incredibly deceptive way
5 with no discussion about the hard questions here. It's a
6 hard question about whether or not we should change the
7 zoning resolution to hold that public parks have development
8 rights.

9 That might be something that would be a good thing
10 for the City to do, but only after a transparent public
11 discussion.

12 And the fact that the City did this in sort of a
13 hidden and deceptive way indicates that they were trying to
14 basically get something for nothing here. Develop -- go
15 ahead.

16 (There is a pause in the proceedings.)

17 THE COURT: All right. Ms. McCamphill?

18 MS. BOST SEATON: Um --

19 THE COURT: Yes?

20 MS. BOST SEATON: I'm sorry. I was in the middle
21 of saying something, if you don't mind.

22 THE COURT: I apologize.

23 MS. BOST SEATON: I just want to quantify a little
24 bit the public policy aspects of this as well.

25 This would be a taking of approximately 20 to 40

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1 million square feet of development rights, which is the size
2 of ten Empire State Buildings, that is a full city block
3 development, from the parks department and from the
4 communities in which these parks are located.

5 Development rights have value. And for them to
6 suddenly appear on the map and be incorporated in
7 developments, again, without any sort of discussion as to
8 how that value should be sliced up is really fundamental and
9 oppose the idea of good governance.

10 Thank you, Your Honor.

11 MS. McCAMPBILL: Good morning, Your Honor. Your
12 Honor has this exactly right. This is a ULURP claim. This
13 is not --

14 THE COURT: Don't assume by my questions that I'm
15 leaning one way or the other.

16 MS. McCAMPBILL: Okay, Your Honor.

17 THE COURT: I'm seriously -- I've got a lot of
18 questions in this case.

19 MS. McCAMPBILL: Okay. Sure.

20 But I think the characterization of this claim as a
21 ULURP claim is precisely right, Your Honor. This is not a
22 claim about whether this site is a park. It's certainly not
23 a park. It was subject to alienation legislation that was
24 duly enacted by the legislature, signed into law by
25 Governor Cuomo, and it was properly rezoned by the City's

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1 ULURP process.

2 It's not a question of whether this site was ever a
3 park. Because, again, whether it was or wasn't, what
4 matters now is the current land use status and whether the
5 land use approvals met the arbitrary and capricious
6 standard. And they certainly did, Your Honor.

7 Now, petitioners try to argue that the status of
8 the Marx Brothers Playground was not properly before the
9 decision makers when they approved this project. But the
10 record shows, Your Honor, that that is inaccurate.

11 The petitioners cite the ULURP application. The
12 ULURP application clearly says, on page 1, what the current
13 zoning is of this site. It shows that this site is subject
14 to zoning.

15 Page 3 of the ULURP application -- and this is
16 Exhibit 10 to the Roberts' affirmation -- shows the current
17 and proposed zoning for the site. It shows that the site is
18 not considered a park now, and will not be considered a park
19 under the project.

20 The ULURP application also includes detailed zoning
21 maps and zoning charts. And a detailed project description
22 that explains the current and proposed zoning. There is no
23 ambiguity in the ULURP application.

24 Same exact thing for the final environmental impact
25 statement, the FEIS, Your Honor. This is attached as

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1 Exhibit 26 to the Roberts' affirmation.

2 The FEIS includes a chapter, Chapter 2, discussing
3 land use, zoning, and public policy. Chapter 2 makes it
4 very clear the current and proposed zoning for the site. It
5 shows that the site is not considered a park now and will
6 not be considered a park under the project approvals.

7 The FEIS also includes a response to comments
8 chapter, Chapter 22. In response to comments that this site
9 should be considered a park, the FEIS says very clearly
10 "This site is not a city or a state park. It is not a
11 public park under the zoning resolution. And it has a floor
12 area associated with it that is being used for the
13 development of this project." Clear as day in the FEIS,
14 which was before the City Planning Commission and the City
15 Council when they approved this project.

16 Moreover, Your Honor, the petitioners had ample
17 opportunity to raise their argument before the decision
18 makers that this site should be considered a park, and they
19 did.

20 The record shows that the petitioners made this
21 argument to the city -- excuse me, to the community board,
22 Community Board 11.

23 Petitioners also made this argument to the City
24 Council. And testimony to this effect was also presented to
25 the City Planning Commission. The City Planning Commission

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1 report approving this project explicitly discusses the
2 testimony regarding whether the site should be considered a
3 park. And the City Planning Commission approved the
4 project.

5 City Council also had this testimony before it and,
6 again, the FEIS, obviously, and the ULURP application, and
7 the City Council unanimously approved the project.

8 The fact that the decision makers disagreed with
9 the petitioners' view about whether this site should be
10 considered a park does not show that the project approvals
11 were arbitrary and capricious, Your Honor.

12 The petitioners to show -- right now just to argue
13 that -- in support of their argument that the decision
14 makers were concerned, petitioners cite a draft letter from
15 a community board committee that was never sent, Your Honor.

16 Again, the community board did approve the project
17 after hearing testimony from the petitioners.

18 Governor Cuomo, also after receiving a letter from
19 the petitioners arguing that he shouldn't sign the
20 alienation legislation, signed the alienation legislation in
21 October of 2017.

22 Again, petitioners had ample opportunity to make
23 their claims during the public review process that this site
24 should be considered a park. The decision makers heard
25 those claims, approved the project, and the alienation

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1 legislation was signed into law by Governor Cuomo.

2 Moreover, Your Honor, petitioners are trying
3 to -- today argue that this is a site with 260 JOPs, it is
4 not. It's a case about one JOP, the Marx Brothers
5 Playground and about the approval process for this one
6 particular project.

7 And in that approval process, again, the current
8 and future land use status of the parcel was clear as day to
9 the decision makers when they approved the project.

10 THE COURT: Okay.

11 Give me one second.

12 MS. McCAMPHILL: Sure.

13 THE COURT: Thank you.

14 Do you want to respond at all?

15 MR. KARMEL: May I be heard, Your Honor?

16 THE COURT: I'm sorry. Who are you?

17 MR. KARMEL: Philip Karmel.

18 THE COURT: When I asked who was arguing, I didn't
19 hear a name. I'm sorry.

20 MR. KARMEL: For Avalonbay Communities.

21 THE COURT: Philip?

22 MR. KARMEL: Philip Karmel, K-a-r-m-e-l, for
23 respondent Avalonbay Communities.

24 THE COURT: Thank you, Mr. Karmel. How can I help
25 you?

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1 MR. KARMELE: There is a lot of paper before the
2 Court, so much so I couldn't --

3 THE COURT: No kidding.

4 MR. ROBERTS: -- bring it all to the courtroom
5 today. I think this is -- the entire issue that's been
6 raised by petitioners can be resolved if Your Honor looks at
7 only two of the documents before the Court, which I think
8 are very important.

9 Petition Exhibit K sets forth the alienation
10 legislation enacted by the state legislature.

11 THE COURT: Okay.

12 MR. KARMELE: So if this was a park -- I know there
13 is a dispute about that, but if it was a park, the public
14 trust doctrine has been set aside, we have permission from
15 the state legislature to use this for a purpose other than a
16 park. That is Petition Exhibit K.

17 The second document that I think is particularly
18 noteworthy is Petition Exhibit C. Petition Exhibit C sets
19 forth one of the land use approvals at issue in this case.

20 There were -- they were all done together. But
21 technically there are separate land use approvals. They
22 were all voted on at the same time by both the City Planning
23 Commission and the New York City Council.

24 Petition Exhibit C is the special permit approval,
25 which is one of the land use approvals that were obtained

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1 for this project.

2 It's an approval under Section 74-75 of the zoning
3 resolution. And that's what the document says. If you now
4 go back and look at the document, you'll see that
5 it's -- the -- it's been changed a little bit. It's now
6 codified at Section 74-751. But at the time of this
7 approval, it was 74-75.

8 That is a land -- that is a type of special permit
9 that applies when land is owned by the New York City
10 Educational Construction Fund.

11 So before this development occurs, the City, which
12 currently has title to the property, is going to deed that
13 property to the New York City Educational Construction Fund.
14 And the ECF will be the owner of the property and will
15 develop the property pursuant to that special permit.

16 Quite obviously at that time, whatever may have
17 been the case going back for the last 50 years, at that time
18 this will not be a public park. It will not be under the
19 jurisdiction of the parks department. It won't even be
20 owned by the City of New York, and it's not going to be
21 regulated by the parks department at that time. It's going
22 to be owned by this separate organization called the New
23 York City Educational Construction Fund, pursuant to a
24 provision specifically set forth in the zoning resolution to
25 allow the ECF to develop projects of this kind, which

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1 involve -- this particular project involves three new public
2 high schools as well as private development.

3 So the very first sentence that petitioners
4 uttered, petitioners' counsel uttered in this courtroom,
5 which is that this development is premised on using the
6 development rights of a public park, and that was the,
7 quote, error of law, unquote, that is the heart of
8 petitioners' argument is totally wrong. Because at the time
9 that this development occurs, this will not be a public park
10 under any conceivable definition of that term.

11 I know there's a dispute between the City and the
12 petitioners about historic documents. None of that is at
13 all relevant to this case. I think the City is absolutely
14 correct, this was never a park, because to be a park you
15 need ex- -- very clear intent to permanently dedicate the
16 land as a park, and that hasn't been shown here.

17 But that issue is not even before the Court.
18 Because what matters is whether this development project
19 that the community board approved, the borough president
20 approved, the city planning commissioner approved, the City
21 Council approved, the New York State Legislature approved,
22 and the governor approved, whether that -- this development
23 will be lawful at the time that the building permit is
24 applied for and these buildings are built. And, of course,
25 it will be lawful. And it is fully authorized.

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1 And this idea that this case somehow turns on or
2 involves hundreds of pieces of property that are also not
3 before the Court has no basis whatsoever.

4 This is specific to this project. A hard look was
5 taken. And all of these issues were addressed very
6 carefully by the City agencies.

7 So I'm sure the Court will look carefully at all of
8 the paper before it. But I think those two documents, in
9 particular, resolve the central legal theory that the
10 petitioners have put before the Court.

11 THE COURT: Thank you.

12 MR. ROBERTS: Your Honor, if I can be heard? I'm
13 Jonathan Roberts, representing New York City Educational
14 Construction Fund.

15 THE COURT: Your name, sir?

16 MR. ROBERTS: Jonathan Roberts.

17 Very briefly, Your Honor, I want to respond to one
18 point related to the letter submitted --

19 THE COURT: Is anybody else arguing that I don't
20 know about?

21 MR. ROBERTS: We're it, Your Honor.

22 The letter submitted by Jennifer Maldonado, the
23 executive director of New York City Education Construction
24 Fund, on June 1st.

25 This was after the hearing of the city planning

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1 committee, but before the vote. In the normal course of
2 events, questions were raised at the hearing and further
3 submission was made. There is nothing nefarious about this.

4 There is, as you'll see when you review the
5 documents, a fulsome letter describing the legal position
6 that ECF and its co-respondents have taken, nothing
7 nefarious. And it is clearly before the decision makers
8 when the decision was made.

9 Thank you.

10 MS. BOST SEATON: Hi, Your Honor --

11 THE COURT: Did you want to replay?

12 MS. BOST SEATON: Yes, Your Honor. Just a couple
13 of points. So --

14 THE COURT: Make it very brief.

15 MS. BOST SEATON: Very brief.

16 So the City points to what they say are voluminous
17 disclosures that specifically say that this was not a park.
18 They can't quote any language from there. From any of the
19 filings that say that is the case because there is no
20 language to the effect that it's not a park. In fact, all
21 of the language points in the other direction, particularly
22 with regards to the alienation.

23 The main thing that they point to is the zoning map
24 which they claim shows that the park was zoned. But if you
25 look at the two Harris affirmations that we submitted, in

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1 fact, the zoning map showed that it was not zoned, and to
2 the extent that we argue that it shows that it was not
3 zoned, they say that there was some mistake at some point in
4 the City planning office with regards to how the map was
5 drawn.

6 So every time we point out something to them, they
7 claimed that there was some mistake or an abundance of
8 caution and --

9 THE COURT: But even if it were a park, doesn't the
10 alienation legislation pretty much --

11 MS. BOST SEATON: Well, with regards to the state
12 law question, but everybody in this room wants to avoid what
13 the plain language of the zoning resolution says.

14 And the plain -- the zoning resolution deals with
15 whether or not it is a public park for purposes of zoning.

16 And the public -- and the zoning resolution is
17 plain on its face. I have a copy here for Your Honor, if
18 you would like to read it yourself.

19 It says that a public park is not zoned for
20 purposes of floor-area ratio, it has no transferable
21 development rights. It is a longstanding principle of law
22 that public parks are not zoned and do not have development
23 rights.

24 So the real question in this case with regards to
25 this particular property is whether or not the Marx Brothers

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1 Playground was a public park for purposes of the zoning
2 resolution.

3 And let's talk about what it says, because --

4 THE COURT: We don't need to.

5 MS. BOST SEATON: No one here wants to. It was
6 passed in 1961. This definition has not changed since 1961.

7 It's any -- and I'll just say the relevant part,
8 any playground within the jurisdiction and control of the
9 commissioner of parks.

10 And we submitted ample, ample evidence to show that
11 it is within the control of the parks department, also that
12 it is within the jurisdiction of the parks department. The
13 City's own databases show that it is both within the
14 jurisdiction of the parks department and education. So the
15 only way for the City to prevail on this is to say that it
16 has to be exclusively within the jurisdiction of the Parks
17 Department, and that's not what the zoning resolution says.

18 THE COURT: Okay.

19 MS. BOST SEATON: And in October of this year, the
20 First Department overturned a decision by the Supreme Court
21 that had affirmed an Article 78 proceeding interpreting
22 Section 1210 of the zoning resolution, interpreting 1210 of
23 the zoning resolution as a matter of law, it is clear and
24 unambiguous. There is no discretion to go forward with the
25 interpretations of the City agencies when interpreting the

Proceedings

1 zoning regulation.

2 THE COURT: I want to thank counsel very much.
3 We've done a lot of reading already on this case and I've
4 got a lot more. But I appreciate the fact that you have now
5 really tee'd up the issues for us. And I really understand
6 what all the arguments are and we'll issue a decision out
7 shortly. Thank you.

8 * * *

9
10 The foregoing is hereby certified to be a true and
11 accurate transcript of the proceedings as transcribed from
12 the stenographic notes.

13
14 **SIGNATURE IS ONLY VALID WHEN IN BLUE INK**

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17 KAREN PERLMAN, RMR, CRR
18 SENIOR COURT REPORTER
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