Save Our Parks v. Kempthorne (S.D.N.Y. 2006)

NEW YANKEE STADIUM REPLACES PARKLAND

Save Our Parks v. Kempthorne, 06 Civ. 6859, 2006 U.S. Dist. LEXIS 85206 (S.D.N.Y. 2006),

planned construction of a new Yankee Stadium violated the Land and Water Conservation Fund Act

because development plans required that this “portion of parkland currently protected by the federal Land and Water Conservation Fund be converted to private use.”

Section 6(f)(3) prohibits any property acquired or developed with LWCF assistance from being converted from public outdoor recreational use unless the Secretary of the Interior approves the conversion. 16 U.S.C. § 4601-8(f)(3).

only authorized to approve conversions:

(1) if he finds it to be in accord with an existing statewide comprehensive outdoor recreational plan (SCORP); and

(2) only upon such conditions as he deems necessary "to assure the substitution of recreational properties of at least equal fair market value and of reasonably equivalent usefulness and location."

delegated the authority for approval of conversions pursuant to the LWCF to the Director of the National Park Service (NPS).

whether the National Park Service's approval of this conversion violated Section 6(f) (3) of the Land and Water Conservation Fund Act. 16 U.S.C. § 460l-8(f) (3).

FACTS

final plan for the new Yankee Stadium would require construction on 22.42 acres of New York City parkland which were adjacent to the current stadium grounds.

project, however, included a complete replacement of all parkland and recreational facilities torn down as a result of construction,

resulting in an expansion of total parkland acreage to 24.56 acres.

project designated three parcels of land which were not currently parkland to serve as a substitute for the conversion parcel:

the old site of Yankee Stadium, parkland running alongside the Harlem River, and a city street to be converted into a landscaped walkway.

July 17, 2006, the NPS approved the conversion as having met the requirements set forth by Section 6(f)(3) of the LWCF,

concluding that “the replacement parkland would be of at least equal fair market value and of reasonably equivalent usefulness and location.”

NPS found “the conversion was in accordance with the Statewide Comprehensive Outdoor Recreation Plan for New York, and that all practical alternatives had been considered.”

unsuccessful litigation in state court, Save Our Parks brought a lawsuit in federal district court

alleging NPS approval of the conversion violated Section 6(f) (3) of the Land and Water Conservation Fund Act. 16 U.S.C. § 460l-8(f) (3).

APA REVIEW

APA established the following "arbitrary and capricious" standard for federal courts to review such challenges

arbitrary and capricious standard of review is particularly deferential to an agency’s determination.

reviewing court would determine “whether the decision was based on a consideration of the relevant factors and whether there is a clear error in judgment.

charged to ensure that our inquiry into the facts relevant to the agency's decision is searching and careful,

ultimate standard of review is a narrow one, and we are "not empowered to substitute our judgment for that of the agency.

federal district court would be “particularly deferential to an agency’s determination” as required by the APA under the applicable “arbitrary and capricious” standard.

ALTERNATIVES EVALUATION

Save Our Parks claimed NPS had failed to ensure that “all practical alternatives to the proposed conversion had been evaluated" before approving a conversion.

court disagreed

entire chapter of the final environmental impact statement (FEIS) had evaluated “the feasibility of all alternatives” suggested by Save Our Parks, including the “construction of the new stadium on the current site of the park” preferred by Save Our Parks.

NPS had examined the alternatives and found none of them s "proved viable in meeting the project goals and objectives,"

NPS had fulfilled its legal obligations under the LWCF regulations, i.e.,

“NPS will only consider the conversion request if the request meets a list of several requirements, including that "[a]ll practical alternatives to the proposed conversion have been evaluated," 36 C.F.R. § 59.3

“regulations do not require the NPS to undertake an independent evaluation of all practical alternatives to the proposed conversion.”

regulation simply mandates that NPS ensure “the state has done this analysis prior to the submission of a conversion.”

court found that “NPS adequately ensured that all practical alternatives to the project with regard to conversion had been evaluated” by the state actors in the FEIS.

SCORP COMPLIANCE

Save Our Parks also argued that it was "not clear from the record that NPS conducted an independent review of the project's compliance with the New York SCORP [Statewide Comprehensive Outdoor Recreation Plan]."

Save Our Parks claimed the NPS “did not address how the SCORP's goals are met by the removal of existing parkland and the destruction of nearly 400 mature trees with the intention of creating other parkland in the future and waiting generations for replacement trees to mature."

federal district court disagreed.

NPS had determined the project was consistent with one of the expressed goals of the SCORP, i.e., “improved delivery of recreational services, including field game and general park uses for the Bronx.”

court found that “NPS explicitly addressed the issue of destruction of trees in its Responses to Conversion Comments, noting that the DPR's [Department of Parks and Recreation] tree placement program would work to replace the environmental functions of the trees lost with construction.”

EQUIVALENT USEFULNESS

Save Our Parks further contended that the NPS's decision to allow for the conversion violated the LWCF Act because “the replacement parcel was not reasonably equivalent in usefulness and location.”

federal district court once again noted its role under the APA in reviewing such challenges to agency actions, i.e., “the high degree of deference this Court should afford the NPS in its conversion determination.”

role in evaluating the agency's decision to approve of the conversion is not to ask whether we would have come to the same conclusion,

but instead to determine whether the NPS so erred in its decision to approve the conversion as to constitute an abuse of its discretion

scope of the Secretary's authority and discretion," the federal district court noted that “Section 6(f)(3)'s promulgated standards afford a considerable degree of discretion to the Secretary of the Interior, and the NPS.”

NPS had the authority to approve proposed conversions "upon such conditions as [the Secretary] deems necessary," in order to ensure that any converted parkland is replaced with land of "reasonably equivalent usefulness and location." 16 U.S.C. § 4601-8(f)(3).

applying the proper scope of review under the APA, the federal district court found the LWCF Act afforded the Secretary and NPS a “high degree of discretion” in determining “reasonable equivalence” and what conditions to impose on a particular conversion to ensure replacement land is reasonably equivalent in usefulness and location.

Save Our Parks claimed that “the recreational facilities to be placed at the site of the current Yankee Stadium will not be available to the community for some period of time” and, therefore, were not equivalent in usefulness and location to the parkland lost to construction.

Save Our Parks claimed that there were “no guarantees that replacement facilities will ever be built.”

“NPS is not required by the LWCF regulations to reject a conversion proposal if the proposed substitute parcels are not immediately available to the public as equivalent recreational parklands.”

LWCF regulations simply require NPS to “amend the original project agreement to substitute the replacement parcel for the parcel of land which was converted.” 36 C.F.R. § 59.3(c).

City had stated that "every effort has been made to ensure that the replacement facilities will be available for use by the community as quickly as possible after the conversion parcel is taken out of use.

FEIS contained a construction schedule which had been developed to “minimize, to the maximum extent practicable, the time that recreational facilities would be unavailable."

federal district court, “the regulations governing conversion do not require close proximity between the converted parklands and their substitute grounds.” 36 C.F.R. § 59.3(b)(3)(ii).

court found that LWCF policy and regulations provide “administrative flexibility to determine location recognizing that the property should meet existing public outdoor recreation needs.”

court recognized that “[r]eplacement property need not necessarily be directly adjacent to or close by the converted site.”

court noted that “replacement property need not provide identical recreational experiences or be located at the same cite, provided it is in a reasonably equivalent location."

federal district court found the substitute parcels would be reasonably equivalent in usefulness and location to the converted park lands lost to construction.

planned conversion replaces a 10.67 acre piece of parkland with 16.44 acres of new parkland, a gain of nearly 6 acres, along with brand new recreational facilities to replace those razed over the course of construction.

majority of this parkland will remain centrally located, directly across the street from the land replaced, and the remainder will consist of newly accessible waterfront parkland on the banks of the Harlem River, a short walk away.

Save Our Parks had also objected to the adequacy of the substitution on the basis that "there appears to be nothing that guarantees that the replacement facilities will be built.”

federal district court noted that the original LWCF federal grant created a binding agreement which would continue when the grant agreement was amended pursuant to an approved conversion.

court found the conversion amendment would ensure that “the State of New York is required to provide equivalent facilities pursuant to the original LWCF grant on the new substituted parcel.”

LWCF creates for an "ongoing, repeat player type of situation," whereby the federal government can exclude the State of New York from future participation in the LWCF if it does not follow through on its commitments.

Save Our Parks claimed the substitute properties do not meet the recreational needs of the community because they included "passive" areas with no recreation facilities.

recreational facilities are designed specifically to replace all existing fields and courts. Although the replacement parkland will include passive park space, this space does not

come at the expense of the "active" recreational facilities. Nor is the capacity for passive park use an undesirable feature of the new parklands, by any standard.

CONCLUSION

federal district court found that the NPS had acted properly and had not violated the LWCF Act when it approved the conversion of parkland protected by an earlier LWCF grant to allow the building of a new Yankee Stadium.

federal district court denied the request by Save Our Parks to issue an order to prevent NPS approval of the project.