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WHEN PARKLAND IS NOT REALLY PARKLAND

(Bronx, NY) The case of the Bronx Council for Environmental Quality (BCEQ) and Young vs. the City of New York, et al. concerning Pier 5 and the Public Trust Doctrine was denied. Without any oral arguments, the Supreme Court of the State of New York in New York County sided with the City in a written decision claiming that we failed to reach the burden of proof.

While the City agrees that the land has been under the control of the Parks Department it states that it is not parkland subject to alienation. The essence of the City's position is that if land under the jurisdiction of Park is unimproved, it is not a park. The public has no way to determine whether or not a park is a park.

The definition of parkland can be found in the New York State Office of Parks and Historic Preservation Handbook on Alienation (2017) under the description of the land subject to parkland alienation:

“The dedication of land to park purposes may be either formal or implied. Formal dedication is an official act by the governing body of the municipality, such as the passage or adoption of a formal resolution or local law. Implied dedication is shown by actions or declarations by a local government that are unmistakable in their purpose and decisive in their character as to intent to dedicate land for use as parkland. Examples include a municipality publicly announcing its intention to purchase the land specifically for use as a park, “master planning” for recreational purposes, budgeting for park purposes, “mapping” land as parkland, accepting State or Federal park grant funds, or constructing recreational facilities. Long continued and accepted use of land as a park can also constitute dedication through implication. Implied dedication of parkland only exists if the landowner's act or declaration clearly indicates an intention to permanently create parkland, and it does not exist when, for example, property is simply being managed as parkland under temporary or provisional terms.” (Underlining added for emphasis. Footnotes removed) ([NYS 2017 ALIENATION HANDBOOK](#)). See page 4.

Even though petitioners submitted large amount of evidence and data, the court rejected it and stated that we “failed to produce any documentary evidence that demonstrates that the DPR ever held out the Pier 5 parcel as a “Mill Pond Park Extension.” Among the submitted evidence (see page 8 of 15) the court received was:

- Department of Parks and Recreation accepted jurisdiction and control over both Mill Pond Park and Pier 5 land to create a permanent park and kept the land for over ten years
- City Planning and the Bronx Borough President issued reports recognizing Pier 5 potential waterfront public use
- BCEQ received a permit to use and construct the pop-up wetland, and asked the managing agency – the Parks Department, to include and map the area from 161st Street



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- to 149th Street along the Harlem River in the BCEQ New York State Department of State Brownfield Opportunity Area Step 2 (two grants totaling more than \$750,000)
- Pier 5 was labeled as a “Mill Pond Park Extension” on a ZOLA Planning Map
 - 2008 New York City Arts Commission plans for Mill Pond Park that included Pier 5 even though it was unfunded

New York City sits at a turning point between development and sustainability. Only New Orleans has more people living less than 4 inches above high tide. According to “Climate Central,” NYC has the highest population count in the country of people living within the rising tide increasing the risk.

“By the metric of most people living on land less than 10 ft above the high tide line, New York City is most threatened in the long run, with a low-lying population count of more than 700,000. Sixteen other cities, including New Orleans, La.; Norfolk, Va.; are on the list of places with more than 100,000 people below the line.” (<http://www.climatecentral.org/news/us-with-10-feet-of-sea-level-rise-17428>).

Clearly, prioritizing a pro-active environmental coastal policy is essential to a sustainable city. Coastal policy protects not just our waterways but the private and public investment that is bringing New Yorkers to their waterfront. Waterfront development should not occur without it.

Pier 5 is located on the Bronx side of the Harlem River waterfront north of 149th Street. It is in a flood zone and that area experienced an 8-9 foot surge during Sandy – even though it hit on low tide. For many years, this waterfront community advocated for the Harlem River Greenway and rejected placing housing on the high-risk flood plain.

The BCEQ is considering its next options.

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