



NEW YORK STATE SENATOR

Tony Avella

Court of Appeals Blocks Willets West Mega Mall

TONY AVELLA June 6, 2017

Queens, NY – Earlier today, the Court of Appeals, the state's highest court, issued a ruling in favor of Senator Tony Avella and other advocates fighting on behalf of parkland by blocking developers' plans to build a mega-mall on dedicated parkland in Flushing Meadows-Corona Park. The 5-1 ruling ends a years-long battle between Avella and the City of New York who wished to hand over the land to the developers.

The lawsuit filed by State Senator Avella, City Club of New York, NYC Park Advocates, Queens Civic Congress, members of Willets Point United Inc., and nearby residents/business owners against the Willets West mega-mall proposal, challenged the giveaway of 47 acres of Queens parkland worth an estimated \$1 Billion to build the Willets West mega-mall adjacent to Citi Field.

Today's decision of the Court of Appeals is a victory for the public trust doctrine and for parks. The decision is important in at least two respects. First, it reiterates that the Legislature's approval of any alienation of parkland must be specific. There is no dispute that the Legislature, in 1961, enacted a law that allowed the construction and leasing of Shea Stadium. This is the first time the Court of Appeals has held that even a law that concededly does alienate parkland will not be read as going any further than what it specifically says. As the Court said, any "proposed alienation [by the Legislature] must plainly fall within the scope of the legislative direction authorizing alienation."

The decision is also important because it suggests, consistent with prior precedents, that the public trust doctrine applies to parks, but also to “other lands held in the public trust,” such as streets, wharfs, and public buildings.

The original suit sought a declaratory judgment to invalidate approvals already granted to the project, as well as a permanent injunction to prevent the construction of a mega-mall on City parkland without the proper State legislative authorization or proper zoning. The trial court dismissed the suit, but in a unanimous decision in 2015, the Appellate Division reversed that ruling, granting injunctive relief to the petitioners and declaring that the development could go no further without state legislative approval. Today's decision of the highest court was in the appeal from that 2015 decision.

“As the lead plaintiff in this case and leader in the fight against this disgraceful attempt to usurp parkland, hearing that the Court of Appeals joined in the sound reasoning of the Appellate Division to protect parkland was music to my ears. Today's decision was a resounding victory for the public trust doctrine and residents across New York State. This land was intended to be used as parkland, not for the development of a mega-mall. In a city where public land is in short supply, simply handing over parkland would be an absolute disgrace and a betrayal of the public trust. This victory sets a precedent for decades to come that our government cannot give away our parkland or be complicit in a developer's heist of public land,” said **Senator Avella**.

The attorney representing Avella et al., John Low-Beer expressed his satisfaction with the ruling, “I'm very pleased at this outcome, not only for the principles that the Court reaffirmed, but also because the proposed project would have been injurious to many people, including the individual petitioners. I hope that this decision will lead to a better future for Willets Point and for Flushing Meadows Corona Park.”

The City Club of New York President, Michael Gruen said, "The City Club brought this action to stop the ravaging of Flushing Meadows Park in particular, and to prevent other public parks and places from being treated as dumping grounds for every favorite political project, and to fulfill the needs of government agencies for parking lots and other conveniences."

"In this case," he added, "the City was clearly cutting procedural corners in attempting to bypass the State Legislature. We objected to the implication that the ends justify the means. We successfully fought it here; we hope that we will not have to fight it again, but we do not intend to stand by if and when the issue arises again."

Mr. Gruen noted that the case was supported by many local residents and business owners. "For many of these people," he said, "the park has special meaning. I think of one woman whose daughter ran every day on the site where the mall would have been built. She ran because her doctor ordered it, to help her with an illness. We thank them. We particularly thank Senator Tony Avella who put a great deal of thought and effort into this cause."

"Queens Civic Congress is ecstatic that the tough battle to preserve city park land from developers has been won by the community. The City Club's attorneys have done incredible work in arguing this complex case. We thank Senator Avella for leading this effort and QCC is very pleased that this decision will set a precedent forever upholding the state's public trust doctrine and preserve our valuable public spaces," said **Queens Civic Congress President, Kevin J. Forrestal**.

"This is a tremendous victory for the public. This parkland never should have been given away for this irresponsible development. It is the job of the elected officials to protect public parkland not give it away to wealthy, politically connected developers. This was outrageous," added **NYC Park Advocates President, Geoffrey Croft**, a plaintiff in the case.