

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ROBERT A. SCHRIESHEIM,
Plaintiff(s),

v.

WINNETKA PARK DISTRICT,
Defendant(s).

Case No.: 2022CH10550
Calendar 7

ORDER

THIS MATTER coming before the Court on Defendant's Motion to Dismiss, the Court being fully advised on the matter. It is hereby ordered:

I. Count I

Defendant's Motion is GRANTED. Section 10(b) of the Illinois Park District Code authorizes a park district to convey property to a nongovernmental entity in exchange for other real property "of substantially equal or greater value as determined by 2 appraisals of the property and of substantially the same or greater suitability for park purposes without additional cost to the district." 70 ILCS 1205/10-7(b). Plaintiff alleges that Defendant is violating the Code because, based on Plaintiff's independently performed appraisals, the land to be received in the property exchange is not of substantially equal or greater value and, based on current expenditures and a comment made by Commissioner James in a May 2020 meeting, is not of substantially the same or greater suitability for park purposes without additional cost to the district.

The Exchange Agreement was entered into on October 10, 2020. Compl. ¶ 50. Plaintiff alleges in his complaint that Defendant had appraisals done on the 261 Sheridan Road Property and the Centennial Park Property prior to discussing and voting on the Exchange Agreement. Compl. ¶¶ 30, 34, 50, 55 76. During oral arguments, Plaintiff acknowledged that Defendant has submitted the appraisals relied upon by the Park District prior to executing the Exchange Agreement and supporting affidavits. As such, Plaintiff does not dispute that Defendant had the requisite appraisals

of the properties prior to executing the Exchange Agreement and that the appraisals were valid at the time the Exchange Agreement was executed. Compl. ¶¶ 50, 55. Plaintiff, therefore, concedes that Defendant complied with the statutory requirements. Even if Plaintiff disagrees with the findings of Defendant's appraisals, there is no requisite standard of appraisal specified in the statute. Besides arguing that now the appraisals at least two years out of date, Plaintiff does not raise any issue with the validity of the appraisals at the time they were relied upon.

Additionally, attached to Plaintiff's Complaint are the minutes of the Special Board Meeting held on September 30, 2020, which reflects a unanimous vote in favor of Ordinance 580. Compl. Ex. D. Attached to the minutes is a copy of the ordinance which includes the Park Board's findings that "[b]ased upon the information provided at the public meeting held September 29, 2020, the Park Board hereby finds and determines that the 261 Parcel is of ... substantially greater suitability for park purposes without additional cost to the Park District." Compl., Ex. D at 5. Plaintiff's allegations do not show that Defendant violated the Code. Instead, Plaintiff seeks to have the findings of the Park Board subjected to judicial review because of a difference in opinion on the suitability of the property to be used as a park. A municipal ordinance is presumed to be valid and the party attacking its validity has the burden of overcoming this presumption by clear and convincing evidence. *Bright v. Evanston*, 57 Ill. App. 2d 414, 425 (1st Dist. 1965). If there is any room for a reasonable difference of opinion, the Court will not substitute its judgment for that of the legislative body. *Id.*

Plaintiff cites to *Noyola v. Board of Education* to assert that the ordinance is reviewable. In *Noyola*, the plaintiff alleged that the public officials failed to or refused to comply with the requirements imposed by statute, and the court found that they could be compelled to comply by means of a writ of mandamus. 179 Ill. 2d 121 (1997). Here, Plaintiff's own allegations concede

that Defendant complied with the Code requirements. As such, there was no violation of the Park Code in this case and Count I of Plaintiff's Complaint is dismissed with prejudice.

II. Count II

Count II of Plaintiff's Complaint alleges that Defendant is attempting to transfer public trust land in violation of the public trust doctrine. Defendant argues that Count II is insufficiently pled pursuant to section 2-615 of the Illinois Code of Civil Procedure. Defendant asserts that it is not clear what accumulated public trust land Plaintiff is describing. The Court disagrees. Plaintiff sufficiently alleges facts that reasonably indicate what land Plaintiff claims is public trust land. However, a complaint must be legally and factually sufficient to bring the claim within the legally recognized cause of action alleged. 735 ILCS 5/2-615. To state a cause of action under the Public Trust Doctrine, facts have to be alleged indicating that: (1) certain property is held by a governmental body for a given public use; (2) the governmental body has taken action that would cause or permit the property to be used for purposes inconsistent with its originally intended public use; and (3) such action is arbitrary and unreasonable. *Paschen v. Winnetka*, 73 Ill. App. 3d 1023, 1027 (1st Dist. 1979). Plaintiff alleges that the proposed conveyance would obstruct the property held in trust for the public, interfere with the right of citizens to use and enjoy the property, and impair the value of the trust property. Compl. ¶¶ 95-97. Plaintiff does not, however, allege facts that would show Defendant acted arbitrarily or without reason. Therefore, Defendant's motion is granted and Count II is dismissed without prejudice.

III. Count III

Count III of Plaintiff's Complaint alleges a claim for *ultra vires*, stating that Defendant had no authority to dispose of public trust land. Count III, however, cites no legal basis for its claim and alleges only conclusions that any conveyance of public trust land is an *ultra vires* act without

seeking any relief. Therefore, Count III is insufficiently pled to sufficiently bring the claim within a legally recognized cause of action.

WHEREFORE, it is so ordered:

1. Count I and Count III of Plaintiff's Complaint are dismissed with prejudice.
2. Count II of Plaintiff's Complaint is dismissed without prejudice.
3. This matter is set for status on, November 1, 2023, at 9:30 a.m. via Zoom Teleconference (Meeting ID: 943 7767 4389; Passcode; 980847; Dial-in: (312) 626-6799).

Judge Eve M. Reilly

Entered:

UCI 02 2023

Circuit Court-2122



Judge Eve M. Reilly