



DEPARTMENT OF LAW
CITY OF CHICAGO

August 23, 2013

BY MESSENGER

The Honorable Kathleen G. Kennedy
Circuit Court of Cook County
Richard J. Daley Center, Room 2502
50 W. Washington St.
Chicago, Illinois 60604

Re: 3565 N. Pine Grove Condominium Association v. Chicago Dept. of Transportation, *et al.*,
No. 13 CH 19311

Set for emergency hearing on August 23, 2013 at 2:00 p.m.

Dear Judge Kennedy:

Enclosed please find a courtesy copy of Defendant's Memorandum of Law in Opposition to Motion for Temporary Restraining Order.

Sincerely,

Grant Ullrich
Assistant Corporation Counsel
Constitutional and Commercial Litigation Division
(312) 744-7864

Enclosures

cc: Jeannine Cordero

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

THE 3565 N PINE GROVE)
CONDOMINIUM ASSOCIATION)
 Plaintiff,)
 v.)
CHICAGO DEPARTMENT OF)
TRANSPORTATION, *et al.*,)
 Defendants.)

No. 13 CH 19311

NOTICE OF FILING

TO: JEANNINE M CORDERO
jay9c@yahoo.com

PLEASE TAKE NOTICE that on **August 23, 2013**, the undersigned counsel filed with the Clerk of the Circuit Court of Cook County at 50 W. Washington St, Chicago, Illinois, 60602, Defendant City of Chicago's MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER, copies of which have been served upon the plaintiff by electronic mail.

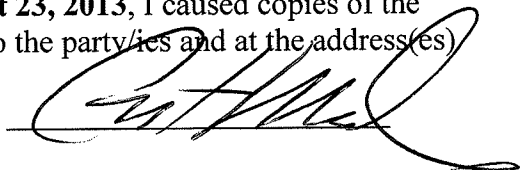
Respectfully submitted,
STEPHEN R. PATTON,
Corporation Counsel for the City of Chicago

By: 
Assistant Corporation Counsel

Grant Ullrich
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(312) 744-7864
Attorney for Defendant

CERTIFICATE OF SERVICE

I, **Grant Ullrich**, an attorney, hereby certify that on **August 23, 2013**, I caused copies of the above referenced documents to be sent by electronic mail to the party/ies and at the address(es) listed above.



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

THE 3565 N PINE GROVE)	
CONDOMINIUM ASSOCIATION)	
)	
Plaintiff,)	
)	No. 13 CH 19311
v.)	
)	Hon. Kathleen G. Kennedy
CHICAGO DEPARTMENT OF)	Room 2502
TRANSPORTATION, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS’ MEMORANDUM OF LAW IN OPPOSITION
TO MOTION FOR TEMPORARY RESTRAINING ORDER**

Defendant, City of Chicago (the “City”), by its counsel, Stephen R. Patton, Corporation Counsel, respectfully submits the following memorandum of law in opposition to Plaintiff’s emergency request for a temporary restraining order and/or preliminary injunction.

INTRODUCTION

On August 22, 2013, Plaintiff filed a Verified Complaint for Injunctive and Other Relief and a “Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction.” Based on the documents the Defendants have received and a review of the clerk’s electronic docket, Plaintiff has not filed a separate motion, but a request for temporary restraining order and/or preliminary injunction is among the relief prayed for in the complaint. (Compl. at 5.)

Plaintiff complains that a Divvy Bike Sharing Station (“Station”) to be installed (and which has now been installed) on Pine Grove Avenue, immediately south of Addison Street in Chicago, violates its right to due process and asks for an order enjoining its installation.

LEGAL STANDARD

A party seeking a temporary restraining order or preliminary injunction is required to demonstrate: (1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case. *Mohanty v. St. John Heart Clinic*, 225 Ill. 2d 52, 62 (2006). In this case, Plaintiff: (1) does not have a legal right to control the public way adjoining its property; (2) has an adequate remedy at law if its property is damaged (which it has not been); and (3) has not raised a fair question as to likelihood of success on the merits and is not entitled to injunctive relief. Additionally, Plaintiff seeks to enjoin governmental entities and/or public officials in the exercise of a discretionary function which is not a proper exercise of the judicial power. Finally, the balance of equities weighs against an injunction.

ARGUMENT

Plaintiff Does Not Have a Legal Right to Control the Public Way Adjoining Its Property

Plaintiff alleges that the Station will be installed either on Pine Grove Avenue (a public street) or on the public parkway between Pine Grove Avenue and the public sidewalk bordering the 3-unit condominium building at 3565 N. Pine Grove Avenue. Plaintiff does not allege the Station will be installed on Plaintiff's land. Plaintiff claims that the Station will: (1) diminish "already scarce parking" on the public street; (2) "bring traffic of strangers to the front door at all hours of the day or night" and strangers might follow children into the building; (3) "bring trash, noise, commerce and other problems"; (4) add a "substantial commercial presence adjacent to [a] residential building"; (5) devalue its condominium units; and (6) "destroy thousands of dollars of [parkway] improvements made by residents." Plaintiff does not have a legal right: (1) for its

members to park on the public street if the municipality chooses to disallow parking; (2) to restrict the hours or users of the public street and sidewalks adjoining its land; (3) to maintain historical traffic patterns on a public street; (4) to direct municipal improvements on the public way adjoining its land so that there is no economic effect on Plaintiff's property; or (5) to install and maintain private improvements on the public way if the municipality decides to perform work to the public way.

Plaintiff alleges that it was entitled to notice of the installation of the Station. (Compl. ¶ 8). The starting point in any procedural due process analysis, however, is a determination of whether a protectable life, liberty or property interest is threatened with impairment or deprivation. *Polyvend, Inc. v. Puckorius*, 77 Ill. 2d 287, 293-94. If not, "no process is due." *Id.* at 294. To assert a protectable property interest, a Plaintiff must have more than a unilateral expectation—there must be an entitlement founded in state law. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

The streets, sidewalks and parkways of a city are held in trust by the municipal authorities for the benefit of the public, and the primary right to use the public way belongs to the public, not abutting landowners. *Hawthorne Bank of Wheaton v. Village of Glen Ellyn*, 154 Ill. App. 3d 661, 667 (2d Dist. 1987). An abutting landowner has no special claim to use of the public way. *Id.* at 668. Accordingly, a municipality may regulate parking and other uses of the public way, and prohibit parking altogether if it will further the public use. *Haggenjos v. City of Chicago*, 336 Ill. 573, 577 (1929).

Because the public way is held in trust for the public as a whole, a private landowner has no reasonable expectation that use of the public way adjoining his or her property will only be used during certain hours or by members of the public who are known to the landowner.

Additionally, a private landowner has no property interest in the flow of traffic on an adjoining public roadway and a municipality may undertake public works which increase or decrease traffic flow without liability. *Dept. of Public Works & Buildings v. Bills*, 66 Ill. App. 2d 170, 176 (3d Dist. 1965). The increase or decrease in traffic may have an impact on property values, but the municipality is not liable for this. *Id.* Increased traffic may also increase noise, light, or air pollution but these also do not create municipal liability. *Schmidt v. County of Cook, Ill.*, No. 93 C 6610, 1995 WL 383048 at *5 (N.D. Ill. Jun. 21, 1995). Finally, even if the bike station had been installed in the parkway, a municipality is not liable for the replacement cost private improvements removed from the public right of way, such as the parkway, when the public right of way is the municipality's property. *Id.* at *7.

Because Plaintiff cannot assert a legitimate entitlement to: (1) parking on the public street if the municipality chooses to disallow parking; (2) restricting the hours or users of the public street and sidewalks adjoining its land; (3) maintaining historical traffic patterns on a public street; (4) directing municipal improvements on the public way adjoining its land so that there is no economic effect on Plaintiff's property; or (5) maintaining private improvements on the public way if the municipality decides to perform work to the public way, it does not have a protectable property or liberty interest and as a matter of constitutional law, "no process is due." *Polyvend, Inc.*, 77 Ill. 2d at 294.

**Plaintiff Has An Adequate Remedy At Law
If Its Property Is Damaged by Public Works
And an Injunction is Not Authorized**

When a public improvement project damages private property, but does involve actual physical invasion by the municipality, there is an adequate remedy at law in a common law suit

for monetary damages and injunctive relief is not available. *Granite City Moose Lodge No. 272 v. Kramer*, 96 Ill. 2d 265. In this case, Plaintiff's property has not actually been damaged in a legally-recognized way, as discussed above, although that is the essence of Plaintiff's allegations. Because Plaintiff would have an adequate remedy at law if its property had been damaged, it may not obtain injunctive relief here.

**Discretionary Acts of Public Officials
Are Only Reviewable if Arbitrary and Capricious**

Additionally, Plaintiff's request asks this court to review the discretionary act of a public official in placement of the Station. The discretionary acts of public officials are only reviewable if they are arbitrary and capricious. *Bigelow Group, Inc. v. Rickert*, 377 Ill. App. 3d 165, 171 (2d Dist. 2007). Absent arbitrary and capricious exercise of executive authority, or a showing of fraud, criminality or gross injustice, a court may not review or enjoin discretionary decisions of a public official without offending the principle of separation of powers. *Id.* at 173. Here, placement of the Station was within the sound discretion of city officials, and Plaintiff does not allege that its placement was arbitrary, capricious, or otherwise in violation of law. Accordingly, an injunction against the City of Chicago would violate the principle of separation of powers and is not available.

**Plaintiff Has Not Raised a Fair Question
As to Likelihood of Success on the Merits**

Plaintiff's Complaint neither establishes a fair question as to likelihood of success on the merits, nor alleges that property of the Plaintiff which will be destroyed if an injunction is not issued. Accordingly, Plaintiff is not entitled to injunctive relief.

**Public Interest Weighs In Favor of
City And Against Plaintiff**

Finally, the balance of equities weighs in favor of allowing the Station to remain. When a Plaintiff has satisfied the first four factors for injunctive relief (which they have not here), a court should also balance the equities to determine if an injunction is appropriate. *Lumbermen's Mutual Casualty Co. v. Sykes*, 384 Ill. App. 3d 207 (1st Dist. 2008). The City has determined that the Divvy bike-share program will have beneficial effects on traffic, the environment, and the economy. Here, the public interest weighs in favor of allowing the City, as trustee for the public, to use the public street in the manner it has determined will most benefit the public.

Date: August 14, 2013

Respectfully submitted,

STEPHEN R. PATTON,
Corporation Counsel for the City of Chicago

By: 
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