

Mount Builders LLC v James Oddo
2015 NY Slip Op 32528(U)
February 11, 2015
Supreme Court, Richmond County
Docket Number: 080154/2015
Judge: Philip G. Minardo
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF RICHMOND

MOUNT BUILDERS LLC,

Petitioner,

-against-

JAMES ODDO, in his official capacity as
 Borough President of Staten Island,

Respondent.

DCM PART 6
 HON. PHILIP G. MINARDO

DECISION AND ORDER

Index No.: 080154/2015

Motions No.: 003

The following papers were fully submitted on the 17th day of December, 2015.

	Papers Numbered
Petitioner's Order to Show Cause with Affirmation and Exhibits dated December 10, 2015	1
Affirmation in Opposition, of Respondent James Oddo with Exhibits dated December 17, 2015	2
Affidavit of Robert E. Englert with Exhibits dated December 16, 2015	3

In this matter, petitioner filed an order to show cause requesting this court issue an order enforcing the decision and order of this court dated November 9, 2015 and directing respondent, Staten Island Borough President James Oddo, in his official capacity to comply with the November 9, 2015 order.

In support of the order to show cause, petitioner alleges that respondent did not "comply" with the November 9, 2015 order in that he issued names for streets that would be considered derogatory.

The November 9, 2015 order mandated the issuance of certain house numbers for the petitioner's development at 239 Fingerboard Road, Staten Island, New York. Prior to the order, petitioner brought an action under CPLR Article 78 for a writ of mandamus to compel Respondent Borough President James Oddo to issue house numbers to petitioner for its development, after Respondent had failed to do as required by the New York City Administrative Code and the City Charter.

Petitioner is a limited liability company, which is the owner of the development in question, and is seeking to subdivide the property into approximately 250 residential units. Respondent is the Borough President of Staten Island.

Petitioner, through its architect, submitted to respondent a house number site plan, survey and list of suggested street names on December 12, 2014. Petitioner provided nine requested names including Pearl View Lane, Silver Bridge Drive, Timber Lane, Lamb Run, Lazy Bird Lane, Amber Heights Drive, Rabbit Ridge Road, Willow Reach Lane, and Turtle Drive. Petitioner alleges that on November 27, 2015, the Borough President issued house numbers and street names that were inconsistent with the petitioner's requested street names. The names issued included Cupidity Drive, Fourberie Lane, and Avidita Place. Petitioner alleges the street names provided are derogatory in nature and an abuse of the respondent's discretion. Petitioner further pleads that the Borough President should select from the nine options provided.

Respondent James Oddo opposes the order to show cause and claims that he complied with the spirit of the November 9, 2015 order, and the issuance of street names is well within his discretion and was not done so in an arbitrary or derogatory manner.

Under the New York City Charter §82, 45 Rules of the City of New York Ch. 5 and the New York City Administrative Code §§3-505 and 3-506, the Borough President has the power to "adjust and renumber such street [numbers] as the same may be required from time to time. In

numbering and renumbering houses, the Borough President shall leave sufficient numbers on each block, so that, under any circumstances, there would be but one block where a change would be required, in case of renumbering at any subsequent time.” (N.Y.C. Adm. Code §3-506) This power to number and renumber streets is ministerial in nature and non-discretionary, except as provided therein.

However, within these sections there is no specific authority vested in the Borough President to issue street names. It is apparently an administrative function which the office of the Borough President of Staten Island has assumed from the boards of aldermen, since it appears inherently attached to the issuance of new street numbers. In *Bacon v Miller*, 247 N.Y. 311, 160 N.E. 381, 57 A.L.R. 456 (1928), Judge Martin of the Court of Appeals explained that “there is no vested right in the name of the street or in the number originally assigned to a house upon the street. The power to change the name of streets is akin to the power vested in the boards of aldermen and common councils to change the grade of streets or to close them altogether.” *Bacon*, 247 N.Y. at 318, (citing *McCabe v. City of New York*, 213 N. Y. 468, 107 N. E. 1049; *Darling v. Jersey City*, 80 N. J. Law, 514, 78 A. 10, affirmed 84 N. J. Law, 758, 86 A. 1102; *Eldridge v. Fawcett*, 128 Wash. 615, 223 P. 1040.) The Borough President held the power to renumber pursuant to the Administrative Code and City Charter, and no longer shares this power to name with the boards of aldermen.

Robert E. Englert, the Director of the Division of Land Use, Planning & Infrastructure in the Office of the Staten Island Borough President, explained that when new house construction is planned for private roads, a request for house numbers and street names are submitted to the Topographical Bureau under his division.

The Topographical Bureau recommends that the developer of the new construction provide a list of preferred names. The Topographical Bureau then compares those names to

existing names within the borough, considers whether the name is too long, is not easily annunciated, is offensive, insensitive, or profane. If a name is too similar to existing street names, Mr. Englert explains that calls to city services such as 911 may be delayed due to the street confusion. Mr. Englert affirms that “[t]here is also an increased possibility that the dispatcher, even if provided with the correct road name, may incorrectly communicate it to the first responder.” Englert Affirmation ¶17. If any issue arises with a requested name, the Topographical Bureau alerts Mr. Englert, as director. New names are then chosen. Mr. Englert does not identify the procedure for choosing new names, yet he does affirm that the office does not maintain a list of prospective street names.

In this matter, petitioner requested nine new street names with the house numbers for the new development, *to wit*, Pearl View Lane, Silver Bridge Drive, Timber Lane, Lamb Run, Lazy Bird Lane, Amber Heights Drive, Rabbit Ridge Road, Willow Reach Lane, and Turtle Drive. The Office of the Borough President asserts that new names were chosen because five of the requested names by petitioner were too similar to already existing street names within the Borough of Staten Island and could cause confusion. The names were also considered lengthy, which would require an adjustment of font on the street signs. Furthermore, the Office of the Borough President felt the remaining requested names were insensitive and would “inflammate the controversy that has engulfed this proposed development since its inception.” Affirmation in Opposition ¶ 17.

Following with the argument of the Office of the Borough President, in order to cure the similarity of the names, lengthiness, confusion, insensitivity and controversy surrounding these names, i.e., names such as “Lazy Bird,” three replacement names were provided: Cupidity Drive, Fourberie Lane, and Avidita Place. Cupidity is apparently defined as an “inordinate desire for wealth.” Fourberie is defined as “trickery, deception.” Avidita is defined as “consuming greed.”

Apparently, the Topographical Bureau is of the impression that these names are easily annunciated, and are not lengthy, offensive, insensitive, or profane. It is also presumably assumed that these names being easy to pronounce, would be more clearly understood by a 911 dispatcher. Concurrently, following the assertion of the Office of the Borough President, these provided names which mean greed, trickery, and deception, are not considered insensitive nor will they inflame controversy.

The manner by which these names were chosen is not identified. Although it is clear that this matter would not be before this Court if in its renaming process the Office of the Borough President chose replacement street names which honored fallen Staten Island residents such as Army Staff Sgt. Michael H. Ollis, who died when he protected a Polish soldier from a suicide bomber in 2013, or Army Sergeant Ian T. Sanchez, 26, who perished in 2006 as the result of a roadside bomb. Such names would have satisfied the Office of the Borough President's street naming guidelines, and honored distinguished county residents. Nevertheless, this does not seem to have been the desired outcome.

Whatever the goal may have been, this Court cannot change it. Judge Martin further explained that: “[t]he courts [...] have no general supervision over legislation, whether it be that of the Legislature or the board of aldermen, and, like other functions of government, have limited powers.” *Bacon, supra* at 319. He further noted that the Court had “no power to inquire into the reasonableness” of the resolution which changed sections of Fourth Avenue to Park Avenue in the Borough of Manhattan in 1924. *Id.* The Court is similarly limited herein.

There is no apparent legislative authority or legal precedent which delineates the precise manner in which the Borough Presidents assumed this power to name, nor as to how street names are chosen, although this Court notes that the power appears to rest with the Office of the Borough President.

Therefore, it is within Borough President James Oddo's discretion to decide if the street names of the residents of the Borough of Staten Island should reflect greed, a Lazy Bird, or a fallen hero.

Accordingly, it is hereby

ORDERED, that the Order to Show Cause of petitioner is denied.

This shall constitute the decision and order of the Court.

Dated: February 11, 2015

E N T E R,

/s/ Philip G. Minardo
HON. PHILIP G. MINARDO, J.S.C.