

Carter Ledyard & Milburn LLP
Memorandum

To: File (zzz00-224)
From: Christopher Rizzo
Subject: Legal Issues Related to Proposed Cricket Stadium in VCP 2024
Date: July 26, 2023

Issue

This memorandum addresses potential violations of law presented by the International Cricket Commission's request to New York City for a concession, permit or license to utilize approximately 20 acres of Van Cortlandt Park's parade grounds for a temporary, 34,000-seat cricket stadium ("Stadium"). ICC has not provided detailed plans for the Stadium or laid out its plan to comply with applicable laws and public review requirements. The observations in this memorandum are therefore preliminary and subject to change.

Short Answer

Prior to issuing any approval for a stadium in a Park, New York City needs to comply with the public trust doctrine, the State Environmental Quality Review Act, the New York City Zoning Resolution, local concession regulations and other laws. The review processes required by these laws will take a minimum of one year and probably two years. There is no legal way for the City to issue approvals for the Stadium that would allow construction to begin in early 2024 for summer 2024 use.

Analysis

1. Alienation: The public trust doctrine is a creature of common law that applies to all dedicated parkland in New York State. As a common law, it is based on centuries of court cases and decisions. It requires the following: no state, county or municipality can without state legislative approval (1) allow a nonpark use of parkland (i.e., "alienate" parkland) or (2) sell or lease parkland (for any purpose). A large stadium solely serving the purposes of a single commercial entity violates the public trust doctrine. Friends of Van Cortlandt Park v. City of York, 95 N.Y.2d 623 (2001) (Legislative approval is required when there is a substantial intrusion on parkland for non-park purposes, regardless of whether there has been an outright conveyance of title and regardless of whether the parkland is ultimately to be restored.) While the Appellate Division, First Department ruled in 2002 that an amphitheater is an appropriate park use, the small, existing amphitheater at issue in that case is not analogous to a new, large-scale stadium for use by a single commercial enterprise.. SFX Entertainment v. City of New York, 297 A.D.2d 555 (1st Dep't 2002) (approving City's licensing of Randall's Island amphitheater to private operator). Note that the City sought state legislative approval for Yankee Stadium, which was built on parkland. Also note that the First Department ruled against commercial uses on the parking lots around Citifield, which are parkland. Avella v. City of New York, 131 A.D.3d 77 (1st Dep't 2015).
2. Temporary or Deminimis Exceptions to the Public Trust Doctrine: About a dozen court decisions acknowledge an exception to the public trust doctrine for truly temporary or deminimis/minor incursions on parkland. These are intended, however, to allow for very short commercial uses (a private concert)

or for other important public (albeit nonpark) projects like highway construction. See Friends of Van Cortlandt Park (closure of 28 acres for up to five years could not be qualified as temporary or deminimis).

3. Alienation Process: Under New York law, the following public process applies to alienations: (1) a municipality drafts a bill for state legislative consideration; (2) the municipality undertakes environmental review of the project under the State Environmental Quality Review Act; (3) the local council passes a home rule resolution asking for state legislative approval; and (4) only then can the state legislature act, usually approving the request but with very significant mitigation requirements (usually replacement parkland or money). See Letter from Allison Crocker, NYS Department of Environmental Conservation to Christian Dipalermo, New Yorkers for Parks, November 30, 2007, <https://www.dec.ny.gov/regulations/29418.html>.
4. SEQRA: Commercial uses of this size, particularly in parks, are presumptively Type I actions under the State Environmental Quality Review Act. See 6 NYCRR 617.4 (alteration of 2.5 acres or more for nonresidential facilities in parks are Type 1 actions). Type 1 actions presumptively require an environmental impact statement to address: (1) all environmental impacts, (2) reasonable alternatives and (3) mitigation of impacts. See 6 NYCRR 617.4. The environmental impact statement for the Stadium will need to address traffic, transportation, parking, open space, visual impacts, historic resource impacts (e.g., enslaved persons burial ground, Van Cortlandt House, etc.) and other issues.
5. Concession Rules: To issue a sole source concession to ICC, the Mayor's Office of Contracts and its "Franchise and Concession Review Committee" need to find there is either only one source for the required concession or that it is to the best advantage of the City to grant the concession to one source. 12 NYCRR 1.02. ICC will need to articulate both the public benefit from the Stadium and fair market value compensation.
6. Zoning: The Zoning Resolution only permits stadiums in certain commercial and manufacturing zoning districts. NYC Zoning Resolution Section 74-41. That provision of zoning requires the City Planning Commission to issue a special permit for stadiums after complying with the Uniform Land Use Review Process, which requires community board and borough president reviews and votes by the Commission and City Council. The special permit would require a 1-2 year public review process. VCP is parkland that is surrounded by residential zoning districts. I am not aware of any special permit exception for a "temporary stadium" or a stadium on parkland. Moreover, the Zoning Resolution further states: "In the event that a public park or portion thereof is sold, transferred, exchanged or in any other manner relinquished from the control of the Commissioner of Parks and Recreation, no building permit shall be issued, nor shall any use be permitted on such former public park or portion thereof, until a zoning amendment designating a zoning district therefor has been adopted by the City Planning Commission and has become effective after submission to the City Council in accordance with the provisions." Zoning Resolution 11-13.

In addition to complying with the laws above, ICC will need to explain why the City's approval of the Stadium would not create a public nuisance and serves the public interest in such a compelling way that it would not be irrational, arbitrary and capricious.