SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 101392/2013

BD MGRS. THE PLAZA CONDOMINIUM

vs

N.Y.C.D.O.T.

Sequence Number : 001

ARTICLE 78

PART _____

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____ , were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

FILED

APR 29 2014

COUNTY CLERK'S OFFICE
NEW YORK

FOR THE FOLLOWING REASON(S): _____

Dated: 4/28/14

_____, J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM,

Petitioner,

Index No. 101392/13

For an Order Pursuant to Article 78 of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, JANETTE SADIK-KHAN, as Commissioner of the New York City Department of Transportation, CITIBANK N.A. and NYC BIKE SHARE, LLC,

Respondents.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affirmations in Opposition.....	2,3
Replying Affidavits.....	4
Exhibits.....	5

Petitioner Board of Managers of the Plaza Condominium ("petitioner") brings the instant petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") challenging respondents New York City Department of Transportation ("DOT"), Janette Sadik-Khan, as Commissioner of the DOT ("Ms. Sadik-Khan"), Citibank N.A. ("Citi") and NYC Bike Share, LLC's ("Bike Share") (hereinafter collectively referred to as "respondents") decision to install a bike share station across from the main entrance to one of petitioner's commercial units, better

known as the Plaza Hotel (the "Plaza"). For the reasons set forth below, the petition is denied.

The relevant facts are as follows. On May 27, 2013, DOT launched a public bike share program (the "Program") which is operated on DOT's behalf by respondent Bike Share, a subsidiary of Alta Bike Share, Inc. The Program is funded by sponsorship agreements and member revenue and Citi is the primary sponsor of the Program. Presently, the Program consists of 6,000 bikes and more than 300 self-service bike share stations that are accessible to the public 24 hours-a-day, 365 days-a-year. The service area of bike share stations includes Manhattan below 60th Street and the Brooklyn neighborhoods of Brooklyn Heights, Bedford-Stuyvesant, Williamsburg, Clinton Hill, Fort Greene and DUMBO. DOT alleges that to operate successfully, the Program requires a dense network of bike share stations to ensure that within the service area, users can easily locate and do not have far to travel to find a readily available station, either to obtain a bike or return it to a docking station.

Prior to launching the Program, a feasibility study of a bike share program in New York City was conducted by the New York City Department of City Planning ("DCP"). Additionally, the DOT alleges that it undertook a multi-year public planning process to determine the location of the stations. As evidenced by DOT's publication "NYC Bike Share, Designed by New Yorkers," the process included more than 150 public meetings, presentations and demonstrations, as well as over 200 meetings with elected officials, property owners and other stakeholders. As affirmed by Kate Fillin-Yeh, the Director of the Program, the station selection process began with the identification of technically viable sites at a greater than necessary network density that were presented to stakeholders for comments and suggestions. Ms. Fillin-Yeh further affirms that in determining individual station sizes, DOT planners used a computer model to analyze surrounding land use,

population, tourism rates, subway turnstile counts and other data on transit use throughout the Program area. The model also allegedly made use of newly available taxi GPS data on origins and destinations of trips throughout the City as well as trip durations and times of day. Additionally, Ms. Fillin-Yeh affirms that a wide array of factors were considered when coming to the final decision about where to place the docking stations such as requests and comments from the public, neighborhood preferences, proximity to transit and other destinations, distance from other bike share stations and access and proximity to bike lanes. According to the Program's siting guidelines (the "Siting Guidelines"), the technical considerations in evaluating a particular street location for placement of a bike share station included, *inter alia*, whether the area (a) was well-lit; (b) as close to the corner/crosswalk as possible; (c) had a minimum allowable curb lane width of eight feet; and (d) included parking lanes restricted as "No Parking" or "No Standing." Impermissible areas included bus stops; sites within fifteen feet of fire hydrants or bus stops; sites within ten feet of driveways; sites within three feet of crosswalks; and parking lanes that switch to driving lanes at specific times of day.

In or around February 2012, the DOT, as lead agency, initiated the environmental review of the Program and its Siting Guidelines pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review Act ("CEQR") and determined in April 2012 that it did not have a significant adverse impact on the environment. Additionally, respondents allege that prior to the installation of any bike share station, DOT notified landlords adjacent to the bike share stations with flyers or telephone calls informing them that a bike share station will be placed near their property.

In or around May 2013, the DOT allegedly notified the Plaza that it was proposing to install

a bike share station on the east side of Grand Army Plaza between West 58th and West 59th Streets across from the entrance to the Plaza. Specifically, respondents allege that as a courtesy to the Plaza, it called and e-mailed the Plaza on May 15, 2013 and distributed flyers to inform the Plaza of the bike share station's proposed location. Thereafter, members of the Plaza objected to the location on the ground that it would cause traffic and congestion at peak times. On or about June 11, 2013, representatives from the DOT and the Plaza met to discuss the bike share station and DOT's representative informed the Plaza's representative that the DOT would look into alternative locations for the bike share station.

On or about June 22, 2013, the DOT installed the bike share station on Grand Army Plaza across from the Plaza. The lane where the station is sited was previously designated as a no-standing area and was allegedly chosen for the following reasons: (1) it is situated between two iconic New York City attractions - Central Park and Grand Army Plaza - which would ensure a large number of visitors to the area; (2) it offers a convenient and safe place for people to begin and end rides; (3) it is conveniently located near three major subway lines; (4) it contains sufficient space to install a station that accommodates the requisite number of bikes to meet demand for the area; (5) it respects the preference of members of Community Board 5 for on-street rather than sidewalk stations; (6) its location does not interfere with neighborhood residences or local businesses; and (7) it is located on a wide street with a low volume of vehicular traffic compared to the streets in the area.

As an initial matter, this court finds that respondents' decision to place the bike share station in its location on Grand Army Plaza between W. 58th and W. 59th Streets was rational. On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an

administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v. Lewis*, 90 A.D.2d 748, 749 (1st Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v. City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); *see Pell v. Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)("[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.") "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to facts." *Pell,* 34 N.Y.2d at 231 (internal citations omitted). Additionally, "in reviewing administrative determinations, a court may not overturn an agency's decision merely because it would have reached a contrary conclusion." *Sullivan County Harness Racing Assoc. v. Glasser*, 30 N.Y.2d 269, 278 (1972).

In the instant matter, respondents' decision to site the bike share station in its location on Grand Army Plaza between W. 58th and W. 59th Streets across the street from the entrance to the Plaza was rational based on the fact that the bike share station was sited in accordance with the Program's Siting Guidelines and based on technical considerations and an extensive public input process, which included public hearings and community meetings. Specifically, DOT found that Grand Army Plaza was an appropriate location as it is centrally located, safe and convenient for the public to use; and it does not interfere with any existing businesses or utilities. Additionally, DOT has affirmed that the location of the bike share station provides unrestricted, 24/7 public access; ensures maximum visibility and access; does not impede the use of any existing facilities; is located

in a curb-lane that measures at least eight feet in width; is not in a bus stop; is not in a lane that becomes a driving lane at certain times; and is not within a restricted area.

Petitioners' assertion that DOT's decision was arbitrary and capricious because there were alternative locations for the bike share station and because the DOT ignored the Plaza's opposition to the bike share station is without merit. As an initial matter, DOT has affirmed that it considered alternatives to the Grand Army Plaza location but determined that those alternatives were not as ideal as they blocked necessary utilities and created pedestrian congestion because most of the sidewalks in the area are narrow. Additionally, the alternatives considered were eventually rejected due to the large number of metered parking spaces in the area, which prevents the installation of bike share stations as Bike Share must reimburse the City for any lost metered parking revenue pursuant to their contract. Further, DOT has affirmed that alternative Central Park locations in the area were rejected because the area is used by the New York City Department of Parks and Recreation ("DPR") for parking and storage of their maintenance vehicles or they were too close to existing bike share stations. Thus, DOT rationally rejected alternative locations for various reasons, including safety concerns and that alternative locations in the surrounding area would either be too costly or they would not comport with the siting guidelines. Additionally, the fact that DOT ultimately selected a location disfavored by petitioners does not support a finding that such decision was arbitrary and capricious. *See Association for Community Reform Now v. Bloomberg*, 52 A.D.3d 426 (1st Dept 2008)(upholding the rejection of petitioner's claim that the agency's decision was irrational because it rejected proposed alternative locations for its siting decision).

Petitioner's assertion that DOT's decision to locate the bike share station in front of the Plaza was arbitrary and capricious on the ground that it has created severe traffic congestion is also

without merit. As an initial matter, the DOT has affirmed that the siting process for the bike share station did not reveal any acute traffic issues at the site and that there remains nearly thirty eight feet of roadway space for vehicular traffic. The DOT further affirms that a typical New York City one-way traffic lane, such as Grand Army Plaza, is twelve feet wide. Thus, the fact that the current street width allows space for three lanes of traffic is indicative that such space is sufficient for the flow of traffic. Moreover, the DOT has provided details from a traffic study conducted prior to the installation of an upgraded signal at the intersection of Grand Army Plaza and W. 58th Street, which reveals that traffic on Grand Army Plaza was significantly lighter than a typical New York City road. Further, petitioner's reliance on photographs depicting the bike share station next to idling and moving vehicles for the proposition that the bike share station has caused increased traffic and congestion on Grand Army Plaza is unavailing and conclusory. The photographs fail to show that traffic congestion increased after the installation of the bike share station and plaintiff has provided no evidence regarding the traffic congestion prior to the installation of the bike share station. The evidence provided by petitioner that black cars wait to pick up hotel guests and condo residents and that this idling now takes up a lane of traffic next to the bike share station is also unavailing. This congestion appears to be the Plaza's own creation and does not appear to be solely caused by the bike share station.

Further, petitioner's assertion that the Bike Share Station must be removed because DOT failed to conduct the requisite environmental review pursuant to SEQRA and CEQR prior to installing the bike share station is without merit. CEQR incorporates the statutory requirements contemplated by SEQRA within the regulatory framework that governs city agencies. CEQR requires that all agencies determine whether the actions they undertake, fund, or approve may have a

significant adverse impact on the environment. However, not every action subject to SEQRA/CEQR review must undergo an environmental analysis in the form of an environmental impact statement ("EIS"). Actions listed as "Type I" actions may require that an EIS be prepared while actions listed as "Type II" actions are exempt from environmental review because they are actions which are predetermined not to result in significant environmental impacts. *See* NYCRR §§ 6.17(a) - (c); 62 RCNY § 6-15. "Unlisted" actions are those that do not fall within the Type I or Type II categories and may or may not require a full EIS. Type I and Unlisted actions generally require completion of an environmental assessment statement ("EAS") to determine whether an action may have potentially significant environmental impacts and whether an EIS is required. *See* RCNY § 5-05. A court's review of an agency's compliance with SEQRA is limited to "whether the agency identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination." *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417 (1986). In reviewing the agency's determination as to the potential for environmental impacts, a court may not substitute its judgment for that of the agency, weigh the desirability of a proposed action, or choose among alternatives. *See Merson v. McNally*, 90 N.Y.2d 742 (1997). Rather, a court must limit its review to whether the agency's determination was arbitrary, capricious, an abuse of discretion, or affected by an error of law. *See Akpan v. Koch*, 75 N.Y.2d 561 (1990). Further, generalized "community objections" to an agency's conclusions are insufficient to challenge an environmental review that is based on empirical data and analysis. *See WEOK Broadcasting Corp. v. Planning Bd. of Lloyd*, 79 N.Y.2d 373 (1992); *see also Vesey v. Zoning Bd. of Appeals*, 154 A.D.2d 819, 821 (3d Dept 1989)(a lead agency's expert opinion "may not be disregarded in favor of generalized community objections.")

In the instant proceeding, the DOT has established that it conducted a proper environmental review of the Program pursuant to CEQR and SEQRA. Naim Rasheed, DOT's Director of the Division of Traffic Planning, has affirmed that DOT initially determined that the Program was an Unlisted action because it did not fall within the Type I or Type II categories. Thus, DOT completed an EAS to determine whether the Program was likely to result in potential significant adverse environmental impacts and would require further analysis. Mr. Rasheed has affirmed that the DOT based the determinations made in the EAS on the CEQR Technical Manual (the "Manual"), which provides guidance in analyzing potential significant adverse environmental impacts. Pursuant to the Manual, the initial environmental assessment evaluates the program at issue against screening thresholds in nineteen impact categories in order to determine if further analysis is needed. If the lead agency determines that the screening or detailed analysis for each technical area shows that no significant adverse impact on the environment would occur, then it must issue a Negative Declaration. For Unlisted actions, once the agency issues a Negative Declaration, the environmental review analysis is considered complete. The DOT's EAS rationally concluded that the Program would not have significant adverse impacts on the environment pursuant to the categories cited in the Manual, including, *inter alia*, land use, zoning and public policy, historic and cultural resources, transportation, air quality, noise and neighborhood character and thus, further analysis was not warranted. On or about April 2, 2012, the DOT issued a Negative Declaration finding that the Program would not have a significant adverse impact on the environment.

Petitioner's assertion that DOT violated SEQRA and CEQR by finding that the bike share station did not have a negative environmental impact based on the traffic and congestion

experienced on Grand Army Plaza and based on its effects on the City's architectural and historic resources is without merit. As an initial matter, the EAS took the "hard look" required by SEQRA and rationally determined that the Program would not have a significant adverse environmental impact on traffic and congestion as it did not exceed the screening thresholds for further analysis. This was based on the finding that bike share users would not result in any new motorized vehicle trips and estimated that the Program would generate approximately 20 trucks per day throughout the entire Program in order to support bike share operations. Mr. Rasheed has affirmed that this amount of traffic is far below the screening threshold for further analysis of the per peak hour of traffic recommended in the Manual. Additionally, Mr. Rasheed has affirmed that maintenance and rebalancing of the bikes would primarily be conducted between midnight and 6:00 a.m. and that trucks would be distributed throughout the Program area, further reducing their impact on traffic. Additionally, the EAS took the required "hard look" and rationally determined that the Program would not have a significant adverse environmental impact on historic and architectural resources. This was based on the finding that the bike share stations would be sited in historic districts and some would probably be sited in proximity to architectural resources but that they are solar-powered, wireless, modular objects and held in place by their own weight so that placement of the stations does not require any digging, trenching or subsurface disturbance of any kind. Additionally, it rationally found that "[t]he stations are similar in scale and appearance to existing street furniture in New York City and will not affect the scale, visual prominence, or visual context of any historic building, structure, object, or landscape feature." The EAS noted that bike share stations have a lower profile than parked cars, bus shelters or newsstands and will not result in any screening or elimination of public views. Specifically, the bike share station at issue was placed on the street, is

lower in scale than the many cars that line Grand Army Plaza and is similar in appearance to nearby street furniture such as bus stations or vendor kiosks. As such, it does not significantly affect the scale, visual prominence or visual context of these landmarks. Further, Mr. Rasheed has affirmed that the DOT staff coordinated extensively with staff from the Landmarks Preservation Commission ("LPC") in developing the Program and that LPC reviewed and approved placing stations in historic districts. Petitioner's submission of statements from historians and professors objecting to the bike share station's placement due to the area's architectural and historic significance is unavailing as such "generalized community objections" is not evidence that DOT failed to take the "hard look" required. *See WEOK Broadcasting Corp.*, 79 N.Y.2d at 385.

Petitioner's assertion that DOT violated SEQRA and CEQR on the ground that it misclassified the Program's type as an Unlisted action but that it is actually a Type I action because the Grand Army Plaza bike share station is "substantially contiguous" to a historic building and site listed on the National Register of Historic Places is without merit. CEQR requires that the DOT review the Program *as a whole*, meaning that the environmental review must look at the Program overall following the Manual's guidelines for evaluating citywide programs. The Program, as a whole, is not substantially contiguous to a historic building and thus was properly classified as an Unlisted action. The fact that any one bike share station out of several hundred bike share stations may be located near a historic building does not mean that the Program is likely to have a significant impact on historic resources or that it requires review as a Type I action. Moreover, petitioner has failed to put forth any evidence to suggest that the DOT was required to evaluate the environmental impact of each individual bike share station as the Manual suggests that only a general review of the whole program is required.

Petitioner's assertion that DOT violated SEQRA and CEQR by failing to properly document its determination is also without merit. Once the DOT determined that the Program was an Unlisted action, it properly issued an EAS to analyze whether the Program would have a significant adverse impact on the environment and whether an EIS was required. After analyzing the Program pursuant to the CEQR Manual, DOT properly determined that the Program would not have a significant adverse impact on the environment and thus, an EIS was not required. It was at that point that the DOT issued its Negative Declaration which lays out the Program's details and provides a "Statement of No Significant Effect" determining that "the proposed action would not have a significant adverse impact on the environment." Petitioner fails to provide any evidence that such procedure was in violation of SEQRA or CEQR or that it was an insufficient documentation of DOT's determination.

Additionally, petitioner's assertion that the bike share station should be removed because DOT failed to comply with 34 RCNY § 2-10 based on the bike share station being "street furniture" containing, *inter alia*, prohibited advertisements and causing the accumulation of trash and debris, is without merit. A close reading of that statute reflects that it is applicable to private landowners abutting the public sidewalk who seek DOT's permission to use the abutting sidewalk for street furniture and items such as bicycle racks, small planters or non-electrical sidewalk sockets. Petitioner fails to cite any precedent for the proposition that DOT must file an application with itself to obtain its own authorization to use the City's public streets for purposes of public transportation as the DOT inherently possesses the right to use the public street in furtherance of the public interest. *See* New York City Charter § 2903.

Petitioner's assertion that the bike share station should be removed because the DOT

mischaracterized both the placement of the bike share station prior to its installation and the Plaza's opposition to the bike share station's location is without merit. As evidenced by the maps provided by the DOT, the DOT had intended to place the bike share station on Grand Army Plaza at least a month or two prior to its installation. The fact that the DOT looked for alternatives to the location and may only have settled on the existing location in early May 2013 is not evidence of any mischaracterization of the bike share station's location. Additionally, while DOT has affirmed that it reached out to landlords in the vicinity of all of the bike share stations to provide notice of each station location, such notice is merely a courtesy and is not required by law. The DOT is also not required to relocate a bike share station if it receives a complaint about its location as long as it comports with the Siting Guidelines.

Finally, petitioner's assertion that the bike share station should be removed because the DOT improperly segmented the environmental review of the installation of the bike share station and the upgrade of a traffic signal on W. 58th Street and Grand Army Plaza from amber to a full "stop and go" is without merit. Segmentation refers to the "division of environmental review of an action such that various activities or stages are addressed under [SEQRA] as though they were independent, unrelated activities, needing individual determinations of significance." 6 NYCRR § 617.2(ag). As a general matter, segmentation is disfavored because "[c]onsidering only a part or segment of an action is contrary to the intent of [SEQRA]." 6 NYCRR § 617.3(g)(1); *Matter of Friends of Stanford Home v. Town of Niskayuna*, 2008 NY Slip Op 3280, *2 (3d Dept 2008)("...individual projects should be considered together when they are integrated components of a larger plan...") "However, where seemingly related projects are, in fact, independent and not part of a larger plan of development, cumulative review is not required." *Matter of Friends of Stanford*

Home, 2008 NY Slip Op 3280, *2 (internal citations omitted).

In the instant proceeding, DOT has established that it did not improperly segment the environmental review of the installation of the bike share station and the upgrade of the traffic signal at issue. Mr. Rasheed has affirmed that the upgrade of the traffic signal at W. 58th Street and Grand Army Plaza was unrelated to the placement of the bike share station and was instead initiated by a resident's complaint in July 2012. Further, Mr. Rasheed has affirmed that the upgraded traffic signal was a Type II action that did not require its own environmental review because it fits within the Type II categories of "installation of traffic control devices on existing streets, roads and highways" and "routine or continuing agency administration and management." 6 NYCRR § 617.5(c)(16), (c)(20). Thus, the two actions are not "seemingly related" but rather are "independent and not part of a larger plan of development." *Matter of Friends of Stanford Home*, 2008 NY Slip Op 3280, *2 (internal citations omitted).

Accordingly, the petition is denied and is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 4/28/14

Enter: _____
J.S.C.