



Long Island Land Use and Zoning

Court Denies Preliminary Injunction to Enjoin Shinnecock Nation's Project along Sunrise Highway



By John C. Stellakis on May 26, 2020



Last week, the New York Supreme Court, Suffolk County, denied an application for a preliminary injunction to enjoin the completion, maintenance and operation of two sixty-foot tall electronic billboard-monuments ("Project") on opposite sides of State Route 27 a.k.a. Sunrise Highway, which Project is owned by the Shinnecock Indian Nation

Support

A. The Project and the State's Action

In or about the spring of 2019, the Project's construction began. In late May 2019, the State of New York ("State") commenced an action against various defendants in **Commissioner of the State of New York Department of Transportation, et al. v. Polite, Index No. 610010/2019 [Sup Ct., Suffolk Co., May 18, 2020]**, seeking to prohibit the Project. The State claims, among other things, that the land upon which the Project is situated is not part of the Shinnecock Indian Reservation, is not aboriginal or sovereign land, and is within the State's right-of-way; therefore, the State has jurisdiction over any structures placed therein.

B. The Court's Previous Order Temporarily Restraining the Project

By Order to Show Cause issued May 24, 2019, the Court "stayed" the defendants and all those acting on their behalf from conducting any activities relating to the construction, maintenance or operation of the Project – pending a hearing on the State's application for a preliminary injunction. Since then, and despite the temporary restraining order, construction of the Project continued and at least part of it has been completed and is operational.

C. The Court Denies the Preliminary Injunction

In order to obtain a preliminary injunction, the movant must demonstrate (i) a likelihood of success on the merits, (ii) irreparable injury absent the granting of the preliminary injunction, and (iii) the equities balance in its favor. The Court held that the State failed to meet its burden of proof for a preliminary injunction.

1. Likelihood of Success

With respect to a likelihood of success on the merits and the status of the subject land, the Court noted the State's "showing largely relies on the outcome of inconclusive prior litigation between the State and the [Shinnecock] Nation, and others in federal court." In particular, the State relied upon a decision of the United State District Court for the Eastern District of New York addressing proposed gaming casinos, and which granted a permanent injunction; that decision, however, was vacated on appeal.

The Court found that the State's allegation that the subject land is not aboriginal or sovereign is subject to dispute, and that it is undisputed that the Nation's

encompassed essentially the entirety of what is now the Town of Southampton, which presence has been continuous. “Ultimately, the burden will be upon the State . . . to refute the defendants’ contention that the Nation has sovereign control over the [subject property]. On the current record, it is impossible to conclude that the [State] will succeed in doing so.” The Court also noted that the defendants continue to challenge the validity and effectiveness of the instruments which support the State’s case.

2. Irreparable Harm and Balancing the Equities

With respect to irreparable harm, the Court held that the Project’s electronic displays do not pose the disruptive consequences attributed to gaming, and the Project does not pose an unacceptable safety risk because it is being built to engineering standards. And, in balancing the equities, the Court found the advertising revenue from the Project represents an important source of income for the Nation.

The Court concluded “it is of the view that a preliminary injunction preventing operation of the [Project] is unwarranted, that the [State] would suffer not irreparable harm in the absence of a preliminary injunction, and that the equities do not balance in favor of the defendants [sic], provided defendants have constructed and are operating the [Project] in compliance with appropriate structural and other safety standards.”