

## Westchester Dog Owners Win Appeal

### ***Appeals Court Reverses Trial Court's Dismissal of Complaint against New Rochelle's Ward Acres Ordinance and Allows Pre-Trial Discovery to Proceed***

Contact: Patricia B. Wild, Attorney for Plaintiffs (914) 834-3969 or  
Jeffrey P. Wiegand, Press Contact (914) 374-8320

NEW ROCHELLE, New York, October 13, 2008:

On October 7, 2008, the Appellate Division Second Judicial Department reversed Judge Donovan's dismissal of plaintiff dog owners' case against New Rochelle's Ward Acres ordinance (Local City Ordinance 21-2007) and granted plaintiffs' request for production of certain documents by the city. Oral argument of the appeal took place on September 15, 2008 when, among other things, the Presiding Judge advised the city to try to settle the case.

In its ruling, the court stated that in the absence of notice to the parties and a motion by the defendant, it was error for the trial court to dismiss the complaint. The lower court further erred in denying plaintiffs' request for documents from the city, particularly those requests pertaining to calculation of the costs of administering the Ward Acres ordinance. The case is remitted to the Supreme Court, Westchester County for further proceedings on the complaint. Statutory costs of the appeal (\$250) were also awarded to the plaintiffs.

The Ward Acres ordinance is unprecedented. It imposes a photo ID and a per dog fee of \$50 (residents) and \$100 (non-residents – originally \$250) on anyone who enters Ward Acres' state and county-funded open and natural parkland with a dog.

Plaintiffs and the Dog Federation of NY (who joined the case as *amicus curiae* "friend of the court" in support of plaintiffs' appeal) claim the ordinance

- discriminates against dog owners and non-residents,
- imposes an illegal dog tax and an impermissible public park admission fee, and
- usurps the uniformity of state dog licensing.

Plaintiffs and DFNY further challenge the city's use of police who randomly stop law-abiding dog owners walking in the park to demand production of their special Ward Acres photo IDs.

The case was originally filed on April 16, 2007, *Dennis C. During, Michael S. Friscia and Marci Malone vs The City of New Rochelle, New York* in New York State Supreme Court, Westchester Co., Hon. W.D. Donovan (Index No. 6561/07), dismissal appealed to the Appellate Division 2nd Department (Docket No. 2007-09271) on October 4, 2007. On February 15, 2008, a statewide association of dog owners, the Dog Federation of New York (Contact: Mahlon Goer 845-706-1116 [www.dogfederationofnewyork.blogspot.com](http://www.dogfederationofnewyork.blogspot.com)), appeared in the case as *amicus curiae* ("friend of the court") in support of plaintiffs' appeal.

Download a copy of the appeals court decision and learn more about Ward Acres, the Westchester dog-owning community and the real world impact of this unprecedented ordinance. Go to:  
[www.WeLoveWardAcres.net](http://www.WeLoveWardAcres.net)

For more community discussion, join:  
<http://groups.yahoo.com/group/FriendsofWardAcresPark/>  
<http://groups.google.com/group/FriendsofWardAcresPark>

END