

Westchester Dog Owners and City Settle Ward Acres Case

Settlement Grants Primary Objective of Lawsuit – Elimination of Special License and Fees to Walk Dogs in Public Park – Park Remains Free

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

NEW ROCHELLE, New York, December 23, 2008:

Plaintiff dog owners and the city of New Rochelle have settled the lawsuit arising from the Ward Acres ordinance enacted by the city on January 16, 2007 (effective April 1st and amended on December 11, 2007). In the settlement, the city agreed to amend the ordinance to eliminate the fees and special licensing required to walk a dog in Ward Acres' open parkland and to calculate the fee charged to use the 3 acre fenced-in dog run on a household rather than per dog basis. The ordinance remains otherwise unchanged.

Accordingly, New Rochelle City Council amended the ordinance at its Regular Legislative Meeting on December 9, 2008 and a Stipulation of Settlement and Dismissal was signed by Judge Donovan on December 12, 2008.

Dog owners welcome this agreement as an affirmation of New York's long-standing tradition which assures free access to municipal parks and hope this settlement will inaugurate a new era of cooperation with city officials to enhance everyone's use and enjoyment of Ward Acres.

Learn more about Ward Acres and the Westchester dog-owning community. Go to:
www.WeLoveWardAcres.net.

For more community discussion, join:
groups.yahoo.com/group/FriendsofWardAcresPark/

Ward Acres Litigation Time Line:

CASE FILED

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).

THE CLAIMS

The Ward Acres ordinance (City Code § 224-9 Animals, as amended) was unprecedented. It imposed a photo ID and a per dog fee of \$50 (residents) and \$250 (non-residents) on anyone who entered Ward Acres' state and county-funded open and natural parkland with a dog.

Plaintiffs claimed the ordinance discriminated against dog owners and non-residents, imposed an illegal dog tax and an impermissible public park admission fee, and usurped the uniformity of New York state dog licensing.

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

CASE DISMISSED, DOG OWNERS APPEAL

On July 23, 2007, Hon. W. Denis Donovan, with no notice to plaintiffs and very little explanation, denied plaintiffs' discovery enforcement motions and dismissed the complaint on the ground that it failed to state a cause of action. The order of dismissal was entered on September 10, 2007.

October 4, 2007, plaintiffs filed their Notice of Appeal and Request for Appellate Division Intervention in the Second Judicial Department, Docket No. 2007-09271.

CITY AMENDS ORDINANCE

December 11, 2007, the city of New Rochelle amended the ordinance to reduce the non-resident fee to \$100 per dog from \$250 and to provide for the construction of an about 3 acre dog run in Ward Acres.

DOG FEDERATION OF NEW YORK JOINS CASE

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), appeared in the case as "amicus curiae" (friend of the court) in support of plaintiffs' appeal.

Oral argument of the appeal took place in Brooklyn on September 15, 2008 when, among other things, the Presiding Judge Hon. William F. Mastro advised the city to try to settle the case.

PLAINTIFFS WIN APPEAL, CITY MUST PRODUCE DOCUMENTS

On October 7, 2008, the Appellate Division reversed Judge Donovan's dismissal of plaintiffs' case and granted plaintiffs' request for production of certain documents by the city, particularly those documents pertaining to calculation of the costs of administering the Ward Acres ordinance. The case was remitted to the Supreme Court with costs of the appeal awarded to plaintiffs.

SETTLEMENT

On December 12, 2008 the case was settled upon the city's agreement to eliminate fees and special licensing to walk dogs in Ward Acres' open parkland and to calculate the fee charged to use the 3 acre fenced-in dog run on a household rather than per dog basis.

END