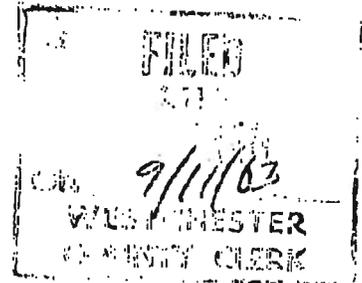


Dispo

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
SAVE OUR STORES ASSOCIATION and HARVEY GOLDMAN, as President of the SAVE OUR STORES ASSOCIATION,

Decision,  
Order &  
Judgment

Petitioner(s),

-against -

Index No.  
5285/03

YONKERS INDUSTRIAL DEVELOPMENT AGENCY, YONKERS BASEBALL, INC., a/k/a YONKERS BASEBALL DEVELOPMENT, INC., MAYOR JOHN SPENCER as Chairman of YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND YONKERS BASEBALL, INC., DEPUTY MAYOR PHILIP AMICONE as Board Member of YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND YONKERS BASEBALL, INC., ED SHEERAN as Executive Director of YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND YONKERS BASEBALL,

Respondent(s).

-----X  
LaCAVA, J.

This is a special proceeding in which petitioners seek a judgment pursuant to CPLR Article 78 and Article 6 of the Public Officers Law (the Freedom of Information Law; "FOIL").

This Decision & Order follows the Court's Decision & Order of June 9, 2003 wherein, among other things, the Court particularized the relief requested, set forth the history of the case, and, upon review of various documents submitted to the Court for its in camera examination ordered the full disclosure of certain records and disclosure with permitted redactions as to others. The Court

also denied petitioner's application for reasonable attorneys fees.

The case was then adjourned, for control purposes, to June 18, 2003, for counsel to advise the Court as to whether or not there were any open issues to be litigated or conferenced.

Following further correspondence and conference calls, counsel were directed to submit memoranda of law on certain extant issues including petitioner's assertion that respondents had not yet fully complied with FOIL, despite respondents' position to the contrary. Finally, all agreed that the Court now needed to rule on whether Respondent Yonkers Baseball Development Inc. ("Yonkers Baseball") is an agency under FOIL.

Upon review of the papers submitted in support of and in opposition to this issue, including the Court's review and consideration of the April 4, 2003 advisory opinion of the State of New York Department of State Committee on Open Government, the Court concludes that respondent Yonkers Baseball Development Inc. is an "agency" within the meaning of section 86(3) of the Public Officers Law for, among other things, the reasons stated therein. This includes, but is not limited to, the fact that (1) Yonkers Baseball was created by and is totally owned by the Yonkers Industrial Development Agency ("YIDA"), which itself is an "agency" under FOIL, and (2) Yonkers Baseball has as its Chairman, Vice-Chairman and Executive Director the Mayor and Deputy Mayor of Yonkers and the Vice Chairman of YIDA, respectively. The Court takes further note that the initial funding for Yonkers Baseball came as an interest free \$670,000 loan from YIDA.

Upon consideration of the merits of the proceeding as currently postured, the Court finds that a material portion of the allegedly outstanding FOIL requests flow from petitioner's review of already disclosed records. In addition, such requests were not sufficiently identified or particularized so that their production, if existing, should have been anticipated during the original administrative FOIL request. As such, petitioner has failed to exhaust its administrative remedies. Were the Court to allow a process to continue whereby rounds of reviews of disclosed documents continue to lead to allegations that respondents have not complied with FOIL because the disclosed documents hint at or reveal other documents which petitioner claims should have been disclosed, the current proceeding will likely continue without end and, certainly, without order.

The most intelligent, efficient, and direct way to proceed at this stage is to direct petitioner to file one final, particularized FOIL request to the records access officer of the appropriate agency or agencies, in response to which the agency or

agencies will herein be directed to respond within fifteen days with petitioner retaining all rights to seek redress via a separately filed CPLR Article 78 proceeding, if necessary and so advised. Petitioner may wish to couple its FOIL requests with the basis upon which it believes any further records exist. This will assist respondents in responding to the FOIL requests by being better able to identify and locate the requested or to explain to petitioner that they do not exist or that they are exempt from disclosure, as the case may be. This procedure will avoid further piecemeal litigation and will allow the parties a more convenient forum in which to finalize matters, subject, of course, to appropriate Court intervention, if warranted.

Based upon the foregoing, it is hereby

ORDERED, that, except to the extent previously granted or otherwise consented to, this CPLR Article 78 proceeding is dismissed without prejudice to petitioner's filing of one final, particularized FOIL request to the records access officer of the appropriate agency or agencies; and, it is further

ORDERED, that the agency or agencies shall respond to the FOIL requests within fifteen days; and, it is further

ORDERED, that the relief granted herein is without prejudice to petitioner bringing a separately filed CPLR Article 78 proceeding, if necessary and so advised, to challenge respondents' response to the FOIL demands; and, it is further

ORDERED, that the records submitted to the Court for its in camera examination are being filed under seal.<sup>1</sup>

The foregoing constitutes the Opinion, Decision, Order, and Judgment of the Court.

The following papers were considered in determining this Decision, Order and Judgment:

- 1A. Order to Show Cause, dated April 8, 2003;
- 1B. Petition, Affirmation with Exhibits, dated April 8, 2003;
2. Answer to Petition, dated April 22, 2003;
3. Affidavit in Opposition with Exhibits, dated April 22,

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<sup>1</sup> All submitted records are being filed under seal since the disclosure of some records was denied, in toto, while the disclosure of other records was permitted with redactions and the Court only has unredacted copies in its possession.

2003;

- 4. Memorandum of Law, dated April 22, 2003;
- 5. Reply Affirmation with Exhibits, dated April 28, 2003;
- 6. Respondents' Memorandum of Law, dated August 19, 2003;
- 7. Petitioners Memorandum of Law, dated August 15, 2003; and
- 8. Collectively, various correspondence numbered 8(a) - 8(11).

Dated: White Plains, New York  
 September 18, 2003




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HON. JOHN R. LA CAVA, J.S.C.

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To commence the 30 day statutory time period for appeals as of right (CPLR 5513(a)), you are advised to serve a copy of this order, with notice of entry, upon all parties

FILED AND INDEXED ON 9/11/03 WESTCHESTER COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER

-----X  
SAVE OUR STORES ASSOCIATION and HARVEY GOLDMAN, as President of the SAVE OUR STORES ASSOCIATION,

SEAL ORDER

Petitioner(s),

Index No.  
5285/03

-against -

YONKERS INDUSTRIAL DEVELOPMENT AGENCY, YONKERS BASEBALL, INC., a/k/a YONKERS BASEBALL DEVELOPMENT, INC., MAYOR JOHN SPENCER as Chairman of YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND YONKERS BASEBALL, INC., DEPUTY MAYOR PHILIP AMICONE as Board Member of YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND YONKERS BASEBALL, INC., ED SHEERAN as Executive Director of YONKERS INDUSTRIAL DEVELOPMENT AGENCY AND YONKERS BASEBALL,

Respondent(s).

-----X  
LaCAVA, J.

These papers have been filed with the Westchester County Clerk under SEAL pursuant to the Court's Decision & Order of September 9, 2003, and may not be unsealed absent COURT ORDER.

Dated: White Plains, New York  
September 10, 2003

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HON. JOHN R. LA CAVA, J.S.C.