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SEQRA Standing

Zoning & Land Use

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When individuals or organizations challenge a local government's zoning or land use decisions under the State Environmental Quality Review Act, or SEQRA,[1] they have the burden of establishing standing.

The decision by the Court of Appeals setting forth a carefully balanced approach to SEQRA standing remains the governing standard today and continues to be applied by courts on Long Island and throughout the state.

The Society of Plastics case stemmed from a decision by the Suffolk Legislature to conduct public hearings beginning in September 1987 in an effort to reduce nonbiodegradable materials entering the solid waste stream and to facilitate a comprehensive recycling program. The legislature, acting as the lead agency under SEQRA, submitted an environmental assessment form for review to the Council on Environmental Quality. In October 1987, the council recommended the issuance of a negative declaration, finding no need to prepare an environment impact statement prior to enacting the law.

After the Legislature adopted the Plastics Law on March 29, 1988, the Society of the Plastics Industry, Inc. (SPI), a nationwide nonprofit trade organization of more than 2,000 members with offices in Washington, D.C., and one SPI member from Suffolk County, which was a company that produced a variety of plastic products, challenged the law in court. They argued that the Legislature,

as lead agency under SEQRA, had failed to conduct an adequate environmental review before enacting the law.

At the trial level, Supreme Court sustained the SEQRA challenge, holding that SPI and its Suffolk County-based member had standing because they had "alleged possible serious environmental injuries which will consequentially result in serious economic injuries." The court also determined that the Legislature had violated SEQRA by failing to take a "hard look" at the environmental effects of the Plastics Law, and stayed its implementation pending preparation of an environmental impact statement.

The Appellate Division affirmed the trial court's holdings, but went even further by nullifying the Plastics Law for noncompliance with SEQRA. The dispute then reached the Court of Appeals.

In its decision, the state's highest court pointed out that standing was a threshold determination, resting in part on policy considerations, that a plaintiff or petitioner should be allowed access to the courts to adjudicate the merits of a particular dispute. The Court of Appeals also noted the counterargument that the mere fact that an issue might be one of "vital public concern" did not automatically entitle a party to standing.

After observing that the provisions of SEQRA did not identify the class of persons entitled to seek judicial review, the Court turned to the case law on standing. It explained that courts can act only when the rights of the party requesting relief were affected.

The Court added that the existence of an injury in fact—an "actual legal stake in the matter being adjudicated"—ensured that the party seeking review had some concrete interest in prosecuting the action.

In addition to this "essential principle of standing," the Court said, was a "crucial test for standing in the administrative context" that the interest or injury asserted be within the "zone of interests" protected by the statute.

Simply stated, the Court declared, a party must show that the in-fact injury of which it complained was within the "zone of interests," or concerns, sought to be promoted or protected by the statutory provision under which the agency acted.

The Court then observed that in land use matters especially, it had "long imposed" the limitation that the plaintiff, for standing purposes, must show that it would suffer direct harm, injury that was in some way different from that of the public at large.

As the Court next explained, these standing principles applied whether the party seeking relief was one person or an association of persons. It then noted that in the area of associational or organizational standing, the applicable principles were embodied in three requirements.

First, if an association or organization was the petitioner, the "key determination" to be made was whether one or more of its members had standing to sue; standing could not be achieved merely by multiplying the persons a

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group purported to represent.

Second, an association must demonstrate that the interests it asserted were germane to its purposes so as to satisfy the court that it was an appropriate representative of those interests.

And third, it must be evident that neither the asserted claim nor the appropriate relief required the participation of the individual members.

Applying the Test

The Court then applied the standard to the facts in this case. It found that SPI was asserting its members' rights to be free of any adverse effects a local law might have on their own immediate environment. Such claims were personal to SPI's members and had no relation to the industrywide purposes represented by the association, the Court ruled.

Protecting member companies from local conditions, such as the quality of their air and traffic congestion on their roads, was not germane to the purposes of this nationwide trade organization, the Court held. Accordingly, it found that SPI did not have standing to challenge the Suffolk County Legislature's SEQRA compliance because it had not demonstrated that the interests it asserted in the litigation were germane to its purposes.

The Court then considered whether the Suffolk County member of SPI—the only named party with a presence in the county—had standing. It noted that the company alleged that it had an office in the county and employees, and that it manufactured fiberglass products. The Court stated that the question was whether, by tendering a corporate address in Suffolk County, the company had established its standing to challenge the legislature's issuance of a negative declaration. It concluded that, "based on the tenuous assertion of harm it would suffer," the company failed to qualify for standing to maintain the SEQRA claim.

The Court found that the various allegations of the company's threatened environmental harm came down to these: that the greater volume and weight of paper substitutes in Suffolk County would increase trucking traffic to and from disposal sites, with attendant noise, congestion and emissions, and that paper substitutes would increase waste in landfills, with attendant effects including possible hazardous leachate seeping into the aquifer. It then concluded that the company, having failed to allege any threat of cognizable injury it would suffer, different in kind or degree from the public at large, lacked standing to maintain an SEQRA challenge.

Recent Rulings

Recent Long Island-based cases continue to apply *The Society of Plastics* rationale for standing. For example, earlier this year in *East End Prop. Co. No. 1 LLC v. Town Bd. of the Town of Brookhaven*,[3] the petitioners sought to invalidate a resolution of the Brookhaven Town Board approving a proposed 350 megawatt electrical generating plant to be constructed in the town.

The court observed that, to demonstrate standing, the petitioners had to show that they would suffer a harm that was in some manner different than the harm the public might generally suffer, and that their alleged injuries fell within the zone of interest sought to be promoted or protected by the statute under which the municipality acted.

It then noted that the status of "neighbor" did not automatically entitle one to standing for judicial review in every instance,[4] and that courts have ruled that petitioners were not entitled to an inference of injury because they lived within about one-third of a mile, one-half mile, or between 832 feet to 2,519 feet from the subject property.[5]

The court concluded that petitioners, none of whom lived closer than one-half mile and were not within the required notification area for special permit applications pursuant to the town code, did not demonstrate they were within the zone of interest, nor that they would suffer an injury different than the public at large, and therefore lacked standing to challenge the town board's resolution.

Two months ago, in *MYC NY Mar., LLC v. Town Bd. of the Town of E. Hampton*,[6] the owners of several parcels of property totaling approximately 49 acres on Star Island in Lake Montauk in the Town of East Hampton challenged the town board's resolution enacting a zoning change. As part of its defense, the town raised the issue that petitioners lacked standing to challenge the change of zoning.

The court observed that a property owner whose land was subject to a zoning change had a "legally cognizable interest" in assuring that the government had satisfied SEQRA before any rezoning occurred.

Moreover, it explained, ownership of property adjacent to or very close to the rezoned property generally were entitled to a presumption of standing because it was "reasonable to assume that an owner located in the immediate vicinity of a rezoned area will suffer an injury different from the community at large and thus be brought in to the zone of interest."

Therefore, the court held, by virtue of their status as property owners, and by reason of their nearby location to the rezoned parcel, the petitioners' interests were clearly "in some way different from that of the public at large" and thus they had standing to challenge the rezoning changes.

Conclusion

Although there have been recent efforts to liberalize standing in SEQRA cases to allow any citizen to challenge SEQRA determinations, *The Society of Plastics* ruling remains the standard.

In that case, the Court of Appeals recognized the significant adverse impact that would result from easing the standing rules when it noted that allowing "everyone to seek review could work against the welfare of the community by proliferating litigation, especially at the instance of special interest groups, and by unduly delaying final dispositions."[7]

Certainly, citizens have an interest in efficient governmental action as well as an interest in adequate environmental review. The courts have concluded that the requirement that there be a direct and different injury from the public at large for standing purposes strikes the proper balance.

1. ECL Article 8.
2. 77 N.Y.2d 761 (1991).
3. 15 Misc 3d 1138 (Sup. Ct. Suffolk Co. 2007).
4. See, e.g., *Sun-Brite Car Wash v. Board of Zoning & Appeals of the Town of North Hempstead*, 69 N.Y.2d 414 (1987).
5. See, e.g., *Oates v. Village of Watkins Glen*, 290 A.D. 2d 758 (3rd Dept. 2002); *Concerned Citizens for Open Space v. City of White Plains*, 2003 WL 22283389 (N.Y. Sup.Ct. 2003); *Olish v. Heaney*, 2003 WL 21276342 (N.Y. Sup. Ct. 2003).
6. 2007 NY Slip Op 27403 (Sup. Ct. Oct. 1, 2007).
7. 77 N.Y.2d at 779.