

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

2015-010666
EL

EA
10/15/15
E

PRESENT: ALEXANDER W. HUNTER, JR.

Justice

PART 33

PERSON, CARL E.

INDEX NO. 100484/15

MOTION DATE _____

NYC Dept. of Transportation

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) _____

Answering Affidavits — Exhibits _____ | No(s) _____

Replying Affidavits _____ | No(s) _____

Upon the foregoing papers, it is ordered that this motion is

Decided in accordance with the Decision and Judgment annexed hereto.

RECEIVED
OCT 15 2015
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

FILED
OCT 29 2015
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 10/15/15

AWH
ALEXANDER W. HUNTER, JR. J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X
In the Matter of the Application of

CARL E. PERSON,

Index No.: 100484/2015

Petitioner,

Decision and Judgment

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

NEW YORK CITY DEPARTMENT OF
TRANSPORTATION,

Respondent.

-----X
HON. ALEXANDER W. HUNTER, JR.

The application by Carl E. Person (“petitioner”), acting pro se, for an order pursuant to C.P.L.R. Article 78: (1) declaring that all changes in traffic lanes, pedestrian plazas, pedestrian safety areas, bicycle lanes, bicycle stations, floating parking, cameras at photo-enforced intersections, reduction in maximum speed, 2015 changes in timed lights in one-way avenues, contracts to implement such changes, plans for imposing congestion-related tolls on NYC bridges and tunnels and the Department of Transportation policy, rules and regulations concerning traffic congestion to the County of New York (the “DOT Plan”) are in violation of Environmental Conservation Law (“ECL”) § 8-0109 for failure to prepare and file an Environmental Impact Statement (“Impact Statement”) for a Type I activity, which as part of an overall plan, “may have a significant effects on the environment” and are, as a result invalid; (2) directing and compelling respondent the New York City Department of Transportation (“NYCDOT”), its officers and employees to undo and seize already made or pending changes under the DOT Plan, and after such changes are undone to prepare and file an Impact Statement dealing with all changes sought for the County of New York, which may have changes on the environment; (3) enjoining respondent, its officers and employees from receiving or making payments under any existing contract relating to the DOT Plan and from executing, entering into or renewing any contracts relating to the DOT Plan; and (4) requiring the respondent to commence a lawsuit against such individual or individuals who are responsible for the violation of ECL § 8-0109 to recover the costs incurred in the activities in violation of ECL § 8-0109 and the costs of restoring New York County to the condition it enjoyed prior to the violations of law, is denied. The cross-motion pursuant to C.P.L.R. 3211(a)(3), (5), (7), 7804(f) and 217, dismissing the petition on several grounds, including lack of standing to sue, is granted.

Petitioner resides in New York County, and maintains an office located at 225 East 36th Street; Suite 3A. On April 22, 2007, the City of New York (“City”) released *PLANYC: A Greener, Greater New York*, a comprehensive plan that sought to address the City’s long-term

challenges, including an expected increase in residents by 2030. The original plan included sixteen transportation initiatives, including to “pilot congestion pricing” in the Manhattan Central Business District and to “promote cycling” by accelerating the implementation of the City’s 1,800-mile bike lane master plan. That year, the United States Department of Transportation awarded the City a \$354.5 million grant to implement the City’s transportation plan, but was forfeited because the New York State Assembly opposed congestion pricing. See, http://www.nyc.gov/html/planyc/downloads/pdf/publications/full_report_2007.pdf

In 2008, the NYCDOT issued *Sustainable Streets*, in order to provide for the safe, efficient, and environmentally responsible movement of people and goods in the City and to maintain and enhance the transportation infrastructure crucial to the economic vitality and quality of life of City residents. The stated goals of this program were to: (1) provide safe, efficient, and environmentally responsible movement of pedestrians, goods, and vehicular traffic on the streets, highways, bridges, and waterways of the City’s transportation network; (2) improve traffic mobility and reduce congestion throughout the City; (3) rehabilitate and maintain the City’s infrastructure, including bridges, tunnels, streets, sidewalks, and highways; (4) encourage the use of mass transit and sustainable modes of transportation; and (5) conduct traffic safety educational program. See, <http://www.nyc.gov/html/dot/html/about/about.shtml>

In 2013, the NYCDOT issued a progress report titled, *Sustainable Street: 2013 and Beyond*. The progress report tracks the NYCDOT’s project and program and provides data analysis on how these programs have contributed to a decline in citywide traffic fatalities, faster bus service, improvements in bridge conditions, and creation of new public space. Since 2007, the DOT Plan has: (1) implemented safety designs on 137 street corridors and 113 intersections; (2) installed 772 new traffic signals and 241 all-way stop controls; (3) implemented leading pedestrian intervals at 100 intersections to give pedestrians extra time and visibility when crossing the street; (4) repurposed 39 acres of road for plazas, public seating, refuge islands, painted extensions, medians, and bulb outs; (5) implemented or planned 29 slow speed residential zones; (6) reduced speed zones at 189 schools; and (7) added red light cameras at 50 intersections and new speed radar cameras at 20 location. See, <http://www.nyc.gov/html/dot/downloads/pdf/2013-dot-sustainable-streets-lowres.pdf>

Petitioner commenced this Article 78 to challenge the policies and initiatives by the NYCDOT pursuant to the ECL § 8-0109 for failure to prepare and file an Impact Statement. Specifically, the petitioner alleges that the NYCDOT congested-related activities, contrary to the data in the progress report, have resulted in increased congestion in New York County causing damages to individuals and business and additional costs for insurers, medical facilities and providers of social services including: (1) the loss of valuable time caused by transportation delays; (2) injuries caused by unnecessary emissions of pollutants into the air causing adverse physical and sometimes mental conditions for individuals; (3) increased transportation costs resulting from delays; (4) increased parking costs; (5) denial of use of public property put to illegal private use by the respondent; (6) subjecting petitioner and other motorists to increased hazards while driving, and other risks to pedestrians; and (7) increased insurance costs associated with the increased risks.

Respondent cross-move pursuant to C.P.L.R. 3211(a)(3), (5), (7), 7804(f) and 217, to dismiss the petition on the grounds that the petitioner lacks standing to sue, and his claims are time barred by the applicable statute of limitations.

C.P.L.R. 3211(a) (3) provides that a party may move to dismiss one or more causes of action against it on the ground that the party asserting the cause of action does not have legal capacity to sue. In deciding a motion to dismiss pursuant to C.P.L.R. 3211, the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994). The complaint should be liberally construed in favor of the plaintiff. Robinson v. Robinson, 303 A.D.2d 234, 235 (1st Dept. 2003).

The purpose of the New York State Environmental Quality Review Act, (“SEQRA”) is to “encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.” Environmental Conservation Law § 8-0101. To that end, ECL § 8-0109 requires that “agencies shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment.” See, Environmental Conservation Law § 8-0109.

“Whether a person seeking relief is a proper party to request an adjudication is an aspect of justiciability which must be considered at the outset of any litigation.” Dairyalea Coop., Inc. v. Walkley, 38 N.Y.2d 6, 9 (1975). It has been settled that the core requirement for standing is “the existence of an injury in fact—an actual legal stake in the matter being adjudicated—ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute ‘in a form traditionally capable of judicial resolution.’” Soc’y. of Plastics Indus., Inc. v. County of Suffolk, 77 N.Y.2d 761, 772 (1991). In addition, “a party must show that the in-fact injury of which it complains falls within the ‘zone of interests,’ or concerns, sought to be promoted or protected by the statutory provision under which the agency has acted.” Id. at 773. In land use matters, in order to maintain standing, the petitioner must show that he “would suffer direct harm, [or] injury that is in some way different from that of the public at large.” Id. at 774.

“To qualify for standing to raise a SEQRA challenge, a party must demonstrate that it will suffer an injury that is environmental and not solely economic in nature.” Mobil Oil Corp. v. Syracuse Indus. Dev. Agency, 76 N.Y.2d 428, 433 (1990). A review of the record reveals that the crux of the petitioner’s alleged damages are not environmental but economic in nature, and thus insufficient to qualify for standing. The petitioner’s sole alleged injury that is environmental in nature, is his claim that the unnecessary emission of pollutants will cause adverse physical and mental conditions. Specifically, he asserts that since he is 79 years of age, he will have the *probable* need for ambulance service and the traffic delays may result in the unnecessary loss or shortening of his life (emphasis added). This claim however is speculative and insufficient to establish injury in-fact, as “petitioner’s own description of the injury negates the presumption of direct harm.” Widewaters Rte. 11 Potsdam Co., LLC v. Town of

Potsdam, 51 A.D.3d 1292, 1295 (3rd Dept. 2008); Rent Stabilization Ass'n of N.Y.C., Inc. v. Miller, 15 A.D.3d 194 (1st Dept. 2005). It is also noted that the petitioner has failed to show how his injuries are different in degree and in kind from that of the public at large. Socv. of Plastics Indus., Inc., 77 N.Y.2d at 778. Based on the aforementioned standard, this court find that the petitioner has failed to show an injury in-fact and thus lacks standing pursuant to SEQRA.

This court will not consider the remainder of the respondent's arguments as they are moot.

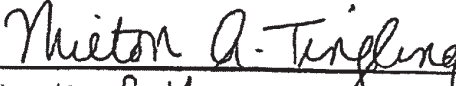
Accordingly, it is hereby

ADJUDGED that the application by the petitioner for an order pursuant to C.P.L.R. Article 78 is denied and the petition is dismissed without costs and disbursements to either party. The cross-motion by the respondent to dismiss the petition, is granted.

Dated: October 15, 2015

ENTER:


 ALEXANDER W. HUNTER, JR.


 CLERK of the COURT

FILED
 OCT 29 2015
 COUNTY CLERK'S OFFICE
 NEW YORK