

RECENT COURT OF APPEALS RULING COULD SPAWN MORE SEQRA LAWSUITS

On October 27, 2009, the Court of Appeals held in *Save the Pine Bush, Inc. v. Common Council of the City of Albany* that standing to challenge the environmental impact of a proposed development need not be confined to residents or neighbors of the proposed project location, but can be extended to anyone who can "prove that he or she uses and enjoys a natural resource more than most other members of the public."

The case involved the proposed construction of a 124-unit hotel on commercially-zoned property in Albany County near the Pine Bush reserve. In affirming the Third Department's ruling, the Court rejected the City's position that the plaintiffs, the closest of whom resided a half-mile from the Pine Bush Reserve, had to either live within or adjacent to the protected wildlife habitat. While granting standing to the project opponents, the Court ruled that, on the merits, the City of Albany had complied with its obligations under the State Environmental Quality Review Act ("SEQRA").

On the standing issue, the Court emphasized that the landmark decision in *Society of Plastics Industry, Inc. v. County of Suffolk*, 570 N.Y.S.2d 778 (1991) "does not hold, or suggest, that residence close to a challenged project is an indispensable element of standing in every environmental case." In *Society of Plastics*, the Court held that for standing purposes, a plaintiff has to show it "would suffer direct harm" and an injury that is in "some way different from that of the public at large." Plaintiffs therefore had to show that they were sufficiently close to a proposed development to be "specially harmed" by such factors as light, noise, traffic or water runoff. Since 1991, this subjective standard has been the subject of somewhat conflicting decisions and a clear judicial test has been elusive.

The *Pine Bush* Court concluded that a residency rule "would be arbitrary, and would mean in many cases that there would be no plaintiff with standing to sue, while there might be many who suffered real injury." The New York State Department of Environmental had urged in an *amicus curiae* brief that the *Society of Plastics* ruling has been interpreted too narrowly and in a manner that has barred SEQRA claims by plaintiffs with bona fide environmental interests.

While all seven judges joined the *Pine Bush* decision, Judges Pigott and Read issued a concurring opinion objecting to what they considered to be an overly broad interpretation of the "special harm" requirement. The two judges noted that the plaintiff's alleged loss of recreation and enjoyment were not specific to the petitioners nor different from that of the general public.

In a state already beleaguered by land use litigation, the Court of Appeals ruling in *Pine Bush* could make it easier for environmental and citizens groups to sue for alleged SEQRA violations by state agencies and local governments. Strict adherence to this highly procedural statute therefore remains an essential ingredient of any project implementation plan.

If you have any questions regarding the decision outlined in this alert, please contact **Steven J. Ricca** at 716.843.3887 or sricca@jaeckle.com.

A copy of the decision can be accessed [here](#).

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