Matter of O'Brien-Dailey v Town of Lyonsdale

[*1] Matter of O'Brien-Dailey v Town of Lyonsdale 2009 NY Slip Op 52753(U) [26 Misc 3d 1228(A)] Decided on December 23, 2009 Supreme Court, Lewis County McGuire, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on December 23, 2009
Supreme Court, Lewis County

In the Matter of the Application of Nancy O'Brien-Dailey, For a Judgment Pursuant to CPLR Article 78 and CPLR 3001, Petitioner,

against

Town of Lyonsdale and THE TOWN BOARD OF THE TOWN OF LYONSDALE, , Respondents.

CA2009-000293

Pro Se (Nancy O'Brien-Dailey), as Petitioner.

Hrabchak, Gebon & Langone, P.C., Watertown (Mark Gebo of counsel), for Respondents.

Joseph D. McGuire, J.

Petitioner has commenced this hybrid Article 78 (CPLR 7803) proceeding and declaratory judgment action (CPLR 3001) requesting that the Court:

(1) declare as null and void the Respondent Town's 2009 Local Law No. 1 that opened certain town roads to all terrain vehicles (ATVs), and made those roads part of a countywide trail system; (2) direct the Respondent Town Board to follow Vehicle and Traffic (V & T) Law §2405 criteria regarding the opening of roads to ATV traffic;

(3) direct the Respondent Town Board to prepare an Environmental Impact Statement (EIS) or a Generic Environmental Impact Statement (GEIS) as Petitioner claims is required by the State Environmental Quality Review Act (SEQRA);

Petitioner also mentions in her Notice of Motion that the Court should impose a [*2]permanent injunction preventing ATV use of the subject Town roads and award Petitioner costs, disbursements and attorney's fees, although these remedies were not detailed in the Petition.

BACKGROUND
In January 2009 the County of Lewis ("County") adopted a Final Generic Environmental Impact Statement (FGEIS) and findings related to a proposed county-wide system of all-terrain vehicle (ATV) trails, including county reforestation areas, roads, and facilities; as well as town roads and facilities. Subsequently, on February 17, the County passed Local Law No. 2-2009 establishing a county-wide ATV trail system, consisting of 33 parcels of county reforestation lands, including such lands in the Town of Lyonsdale ("Lyonsdale"). The Draft GEIS proposed town roads in the southwestern portion of Lyonsdale be part of the trail system.

In January 2009 the Town Board of the Town of Lyonsdale (the "Board") scheduled a public hearing for a proposed local law

opening certain Lyonsdale roads to ATV use. The hearing was held on February 10, 2009 and, on the same date, the Board issued a short form Environmental Assessment Form (EAF) with a negative declaration regarding any potential environmental impacts from passage of the local law.

Also on February 10, 2009, the Board adopted Local Law Number 1 of 2009 opening all or portions of seven (7) of its Town roads, for a total of over ten (10) miles of road, to use by ATVs. The names of those roads are: (1) Fowlerville Road, (2) Fowler Road, (3) Lowdale Road, (4) Pennysettlement Road, (5) North-South Road, (6) Holmes Road, and (7) Wildcat Road. Approximately 5.3 miles of the roads that were opened to ATV use are paved. None of the roads opened to ATV use by the local law were roads preliminarily proposed for the county-wide trail system according to the County's Draft GEIS.

There are three issues raised by this proceeding/action.
1. Does Petitioner have standing to contest the Town's local law?
2. If Petitioner has standing, did the Town properly meet its obligations of review under the Vehicle and Traffic Law?
3. If Petitioner has standing, and if the Town met its review obligations under the Vehicle and Traffic Law, did the Town complete a proper environmental review of its proposed action before adopting the local law?

STANDINGApplicable Law

There is a two part test to determine if a moving party has standing to challenge an action by a governmental entity.

"First, a plaintiff must show "injury in fact," meaning that plaintiff will actually be harmed by the challenged administrative action. As the term itself implies, the injury must be more than conjectural. Second, the injury a plaintiff asserts must fall within the zone of

interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted." (New York State Assn. of Nurse Anesthetists v Novello, 2 NY3d [*3]207, 211 [2004].)

The Petitioner has the burden of establishing standing, which is evaluated by application of common law rules in the absence of language regarding same in the statute under review. (See Soc'y. of Plastics Indus. v County of Suffolk, 77 NY2d 761 [1991]). "For generations, New York courts have treated standing as a common-law concept, requiring that the litigant have something truly at stake in a genuine controversy." (Saratoga County Chamber of Commerce, Inc. v Pataki, 100 NY2d 801, 812 [2003].)
Petitioner "must demonstrate that [she] will suffer . . . injury in fact (i.e., an injury that is different from that of the public at large) and that the alleged injury falls within the zone of interest sought to be promoted or protected by the statute under which the governmental action was taken." (Heritage Coalition v City of Ithaca Planning & Dev. Bd., 228 AD2d 862, 864 [3rd Dept 1996] [internal citations omitted] lv denied 88 NY2d 809; see also McCartney v Dormitory Auth., 5 AD3d 1090 [4th Dept. 2004] lv denied 3 NY3d 603.)
"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" (Socy. of Plastics Indus., 77 NY2d 761, 772).
Even though the standing test has been liberalized (see Dairylea Coop., Inc. v Walkley, 38 NY2d 6, 10-11 [1975]), it nonetheless remains an important issue that requires a definite showing of injury in fact (see New York State Assn. of Nurse Anesthetists , 2 NY3d 207, 214). Usually the Court first must decide if Plaintiff has sustained an injury; and if so, then the Court must decide whether Plaintiff is in the "zone of interest" the statute seeks to protect. (Mahoney v Pataki, 98 NY2d 45, 52 [2002].)
However, the Court notes that in State Environmental Quality Review Act (SEQRA) challenges, "...parties whose property is

either the subject of the challenged administrative determination or lies in close proximity to the subject property are beneficiaries of a presumption that they are adversely affected by the alleged SEQRA violation and, accordingly, need not allege a specific harm." (Long Is. Pine Barrens Soc'y. v Planning Bd. of the Town of Brookhaven, 213 AD2d 484, 485 [2nd Dept 1995] citing Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency, 76 NY2d 428 [1990].) Proximity may, in some instances, result in an inference of adverse effect or aggrievement without a requirement to plead and prove special damage. (See, e.g., Sun-Brite Car Wash, Inc., v Bd. of Zoning & Appeals of the Town of North Hempstead, 69 NY2d 406 [1987].)Petitioner's Contentions

Petitioner is a resident of the Respondent Town, and also a member of the Respondent Town Board. Petitioner owns approximately 60 acres of land fronting on the Wildcat Road, which is unpaved in front of her property and in the portion opened to ATV use, although the portion of that road traveling along her property is not open to ATVs.

Petitioner's road frontage lies approximately 0.24 miles west of a segment of the Wildcat Road opened to ATV use under the challenged local law. Petitioner claims to experience injury different from the public at large due to her proximity along the roadway, [*4]as well as the fact that her land abuts a portion of a county-owned reforestation area that has trails for ATV use. Petitioner alleges she has witnessed dangerous and illegal ATV use on the Wildcat Road, as well as damage to the road and to her own property due to ATV use causing erosion of sandy embankments. She also alleges a fear for her personal safety, the safety of her family, and her property.

Petitioner claims trespass and vandalism from ATV traffic on her property, including littering and a broken gate around a cell phone support tower on her property. Plaintiff provided a copy of a Sheriff's report, dated May 3, 2009, referencing past ATV activity in the area of the cell tower. She alleges a fear of losing income from the cell phone tower tenancy due to vandalism caused by

ATV riders that gain access to her land from the adjacent county reforestation lands, although she admits the adjacent reforestation area does not contain any designated trails. Petitioner claims that the Town's action in opening the Wildcat Road to ATV traffic encourages increased ATV use in proximity to her property, which confers standing.Respondents' Contentions
Respondents argue that the impact of the local law on Petitioner is no different than that of the public at large, as regards noise, dust, or any other problems associated with ATV use. Respondents do not believe that Petitioner's land is situated within sufficient proximity to the roads that were opened to ATV use to confer standing. Respondents further argue that Petitioner's specifically alleged injuries arise from illegal activities of trespass and vandalism that are not caused by the Respondents' passage of the local law at issue.Discussion
At the outset, the Court notes that Petitioner's status as a member of the Town Board does not convey standing to bring this action. (See Silver v Pataki, 96 NY2d 532, 539 [2001]; see also Maisano v Spano, 5 AD3d 774 [2nd Dept 2004].)
Petitioner does not reside at her property on the Wildcat Road, but she does reside in the Town. Petitioner's status as a landowner within the Town, and the 0.24 mile proximity of her road frontage that lies nearest the portion of the Wildcat Road opened to ATVs under the challenged law, is undisputed.
In order to rely upon a "close proximity" claim for standing that does not require showing of "injury in fact," Petitioner needs to establish sufficient closeness to the subject property to obtain the benefit of the presumption that she is "adversely affected by the alleged SEQRA violation." (Long Is. Pine Barrens Socy. v Planning Bd. of the Town of Brookhaven, 213 AD2d 484, 485.)
The Court holds that the approximately one-quarter mile distance separating the segment of the Wildcat Road opened to ATV use under the local law and the portion of that road fronting Petitioner's property establishes sufficiently close proximity to afford Petitioner the presumption she is adversely affected by the alleged

SEQRA violation.
Additionally, were the Court to find there was not the requisite close proximity, [*5]Petitioner's claim of eroded sand banks on her own road frontage, and the claim of vandalism to the portion of her land where a cell tower is located, would provide sufficient support for a claim of injury that is different from the public at large in any event. Although these injuries may be the result of illegal or inappropriate ATV use outside of the scope of the local law, the Court does not find Plaintiff's claim that the Town's action, in opening the Wildcat Road to ATV traffic one-quarter mile from Petitioner's property, results in an increase of ATV traffic in the general area and a higher likelihood of incidence of damage, whether intended or unintended, by ATV riders who may stray intentionally or unintentionally from the open portion of the Wildcat Road to be merely conclusory. The Court perceives that such increased potential for ATV traffic in proximity to Petitioner's property gives rise to injury different than that to the public at large.
VEHICLE AND TRAFFIC LAWApplicable Law
As pertinent here, the Vehicle and Traffic Law provides:
"No person shall operate an ATV on a highway except as provided herein [with respect to crossing highways, or in accordance with highways designated and posted for ATV use]." (Vehicle and Traffic Law §2403[1].)
...
"[A] governmental agency with respect to highways, including bridge and culvert crossings, under its jurisdiction may designate and post any such public highway or portion thereof as open for travel by ATVs when in the determination of the governmental agency concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway. Such designations by ... any municipality other than a state agency shall be by local law or ordinance." (Vehicle and Traffic Law §2405[1].)The logical interpretation of this section is that it sets out two criteria for a governmental agency with jurisdiction over a highway to consider

in order to designate a highway as open for travel by ATVs. First, the agency must determine that the use of the highway is necessary (i.e., it is "otherwise impossible") for ATVs to gain access to an area or trail open to ATV use. Second, the agency must determine that the area or trail open to ATV use is adjacent to the highway. Where these criteria were not considered, or such determinations not made or documented, similar local laws have been held invalid. (See Krug et al. v Town of Leyden, Sup Ct, Lewis County, September 5, 2008, Joseph D. McGuire, J. Index No. CA2008-00138; see also 2005 Ops Atty Gen Informal Opinion No. 2005-21, citing Brown v Town of Pitcairn, Sup Ct, St. Lawrence County, August 19, 2003, David Demarest, J. Index No. 114295; Brown v Town of Pitcairn, Sup Ct, St. Lawrence County, March 13, 2003, David Demarest, J. Index No. 113023; Hutchins v Town of Colton, 2004 NY Slip Op. 51889[u] [Sup Ct, St. Lawrence County, August 31, 2004, Demarest, J.]; and Santagate v Franklin County, Sup Ct, Franklin County, January 28, 1999, John A. Lahtinen, J., Index No. 99-23.)[*6]Petitioner's Contentions

Petitioner claims that if the Town Board properly applied Vehicle and Traffic Law §2405, then its decision was arbitrary and capricious, an abuse of discretion, and affected by error of law. Specifically, Petitioner says the Town exceeded its authority under Vehicle and Traffic Law §2405 because the town roads opened to ATV use under the local law are more than supplemental; more than open for only short segments; and there was no requisite determination by the Board that it is "otherwise impossible" for ATVs to gain access to areas or trails adjacent to the opened highways.

Petitioner argues the local law improperly allows use of Town roads as a primary area for ATV riding, and she cites the length of roads opened to ATV use in support of this argument. Petitioner further contends that Respondents' purported claim of safety issues relating to ATV off-loading belies the fact that there are four parking areas for vehicles and trailers in Lyonsdale to provide access to the County reforestation lands that Lyonsdale purportedly

is providing safe access to, and that the claimed safety concerns were not an issue of discussion for the Board during its deliberations, but rather a convenient rationale for the Board's action after the present proceeding was commenced. Respondents' Contentions

Respondents correctly point out there are no length restrictions under Vehicle and Traffic Law for segments of road that may be opened to ATV use. While admitting the minutes of the Board's meeting could have been "more complete," and that a combination of some of the road segments opened under the local law result in one lengthy stretch running generally north and south for approximately seven miles, Respondents' counsel argued these road segments nevertheless were opened under a proper finding of necessity, or the equivalent of the statutory "otherwise impossible" standard, to access trails or areas open to ATV use on county reforestation lands.

Respondents contend, specifically, that the finding of "impossibility" under the Vehicle and Traffic Law properly includes consideration of the safety of the access. Counsel refers the Court to the Affidavit of a Town Councilman, and to an undated, unsworn letter written by the Town's Highway Superintendent, discussing the Town's consideration of the safety issues.

The councilman's Affidavit states that the County reforestation areas opened to ATV use "did not have ready parking areas or staging areas at the time the law was adopted where ATV riders could leave their vehicles and trailers and unload." The councilman states that the Lyonsdale roads adjacent to the County reforestation areas were too narrow and had insufficient shoulders to allow safe unloading and parking areas for ATV riders; and that such parking and off-loading at the County areas "would become a traffic hazard substantially narrowing the road. It would make it impossible for two cars to pass on the road and would significantly restrict emergency vehicle access."

Finally, the councilman indicates that the segments of road opened

were chosen specifically to provide access to the areas the County was opening to ATVs "with the [*7]understanding that if these roads were not open, there would be no practical way in which to access those sites with ATVs. The only alternative would be for people to drop their ATVs off, drive in some cases miles away to find a suitable place to leave their vehicle and trailer and then walk back to their ATV."

Respondent also argues the Town's open roads are not a part of the trail system but, rather, the Town is only providing a means to access trails or areas open to ATV use.Discussion

At the outset, the County's description of the ATV trail system being evaluated by its GEIS process indicates that it does include town roadways as part of that trail system. This conflicts with Respondents' stated position in this action that the town roads opened to ATV use by the Local Law were not intended to be part of the County's trail system. Reference to a Figure 2 labeled "Proposed Trail System" indicates it was part of the Draft GEIS, and shows town roads open to ATV use in Lyonsdale that were not opened as part of the Local Law at issue. There appears to be an inherent inconsistency for Respondents to say, on one hand, that the town roads are not part of the County ATV trail system but, on the other hand, they are relying on the County's GEIS for the county-wide trail system as the environmental review for the Town's actions.

Turning to the merits, the Town's record does not show that it considered the necessary criteria or made the necessary determinations under the Vehicle and Traffic Law before deciding to open the designated roads, or portions of roads, to ATV use. The substance of the Affidavit of the Town Councilman is discussed above. The letter of the Town's Highway Superintendent does not reference the safety of off-loading ATVs, but rather the general safety of ATVs traveling on the road segments proposed to be opened. The letter merely indicates that the proposed road segments to be opened are not "unsafe," and suggests a 35 mile per hour speed limit for ATVs due to the seasonal nature of some of

the roads.
The minutes from the Board's meeting of February 10, 2009 reflect a variety of comments in favor of, and against, the Town opening the proposed road segments to ATV use. Searching the minutes of the Board's deliberation following the close of the Public Hearing, the Court finds no discussion, or even mention, of the required finding of impossibility for ATV riders to access the County's designated ATV trails or areas lying adjacent to the segments of the Town highways proposed to be opened to ATV use. The only mention of actual road segments is a discussion of roads that were not being considered to be opened and needed to be removed from the Environmental Assessment Form. Further, the meeting minutes are completely devoid of any discussion of the ATV off-loading or vehicle and trailer parking safety issues propounded so adamantly by the Town in this proceeding.
Even if the Court were: (1) to accept Respondents' argument that the ATV off-loading and parking safety concerns were legitimate concerns under the Vehicle and Traffic Law, (2) [*8]to assume such safety considerations had been sufficiently documented, and (3) to ignore the undisputed claim by Petitioner that there are four parking areas providing sufficient space for ATV off-loading and parking on the County's reforestation areas in Lyonsdale, there is no record of a review by the Town to resolve the safety concerns in a coherent, site-specific manner.It is the Court's view that the Vehicle and Traffic Law's criteria of "otherwise impossible" requires Respondents, at a minimum, to look at each ATV trail or area and to determine how distant from each particular County reforestation area one or more of the adjacent roads would need to be opened to find a safe off-loading or parking location for ATV riders to gain access to the respective reforestation area. The Respondents' rationale about the safety issues lacks any discussion of how or where any particular open road segment provides a sufficiently safe width for off-loading and parking to access any particular reforestation area.
Taking all the Respondents' arguments as true would not lead

logically to consecutive segments of roadways being opened to ATV use so as to make a continuous route, beginning at the intersection of the Wildcat Road and the Moose River Road, traveling north along the North-South Road, west on Pennysettlement Road, and continuing North on the Fowlerville Road to the Lyonsdale town line. It strains credulity to accept the notion that the afore-described stretch of town roads must be open to ATV traffic so that it is made possible for ATV riders to access the County reforestation areas safely. There is absolutely no explanation why any segments of roads north of the Holmes Road/North-South Road intersection, or south of the Fowler Road/Fowlerville Road intersection must be open to provide safe access to ATV riders. It defies logic that ATV riders seeking to use the North and South Holmes trail area might need to travel as far north as the Town of Greig trail area to safely off-load and park, while the Town of Greig trail area riders might need to travel as far south as the North and South Holmes trail area to safely off-load and park. The only way to uphold the opening to ATVs the entire length of roads is to find there is only one safe segment of road to park on that lies approximately mid-way between the two trail areas. No such explanation or proof has been offered.

As another example, on the northern border of Lyonsdale there is a reforestation area with road segments open to ATV riders on both the area's west (Lowdale Road) and east (Fowlerville Road) sides, and a third open road segment (Fowler Road) connecting these two open road segments on their southerly ends. The open segment of the Fowler Road is not adjacent to the county reforestation area except on its easternmost end. Again, there is no proof that the only safe area to off-load and park is somewhere at the mid-way point of this connected, three-road segment.

Where ATV use is prohibited on highways except in limited circumstances, and where a municipality's discretion to open highways to ATVs within its jurisdiction is limited to an "otherwise impossible" standard, the Court must strictly construe the Vehicle and Traffic Law. Issues about whether ATV use is a

desirable or undesirable stimulant of local economies; whether convenience of access between different County reforestation areas [*9]would assist in encouraging tourism; or whether there is any other controversial or laudable goal for upholding ATV use of highways in general, are not part of the required findings under the Vehicle and Traffic Law.

In order to support its safety rationale under the Vehicle and Traffic Law, the Board should have, at a minimum, documented specifically where the roads adjacent to each County reforestation area were too narrow to safely accommodate ATV off-loading and parking, and why the Board concluded each of the opened segments of road (for the entire length of each opened segment) had to be opened to provide safe access to the County reforestation areas that would have been otherwise impossible. The Board also would need to demonstrate it selected the shortest possible segments of road to open in order to provide the claimed safety afforded by opening the roads.

On this record before the Court, the Court is without discretion, and must find that the Town did not properly follow the strictures of the Vehicle and Traffic Law with regard to designating highways for travel by ATVs. (See State v Town of Horicon, 46 AD3d 1287 [3rd Dept 2007].)

The Court need not and does not rule herein regarding the Petitioner's undisputed claim of parking areas having been provided for ATV riders at four locations in Lyonsdale. It appearing that such areas may have been developed after the Board passed its local law, such areas likely would require consideration as possibly mitigating, or even resolving, the Board's claimed concerns about safe access being "otherwise impossible."

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)Applicable Law

"SEQRA's fundamental policy is to inject environmental considerations directly into governmental decision making; thus the statute mandates that [social], economic, and environmental factors shall be considered together in reaching decisions on

proposed activities' [internal citations omitted] ... Under SEQRA and its implementing regulations, a lead agency is defined as the governmental entity principally responsible for carrying out, funding or approving' the proposed action (ECL 8-0111[6]; 6 NYCRR 617.2[v]). It is this agency that must initially determine whether a proposed action may have a significant effect on the environment (ECL 8-0109[2], [4]; 6 NYCRR 617.2 [v]). If no significant effect is found, the lead agency may issue a "negative declaration," identifying areas of environmental concern, and providing a reasoned elaboration explaining why the proposed action will not significantly affect the environment (6 NYCRR 617.6[g]) [further citations omitted])."(Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d 674, 679-680 [1988]).

"SEQR requires a lead agency to consider all reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent [*10]actions which are: (i) included in any long range plan of which the action under consideration is part; (ii) likely to be undertaken as a result thereof; or (iii) dependent thereon.'" (Scott v City of Buffalo, 16 Misc 3d 259, 267 [Sup Ct, Erie County 2006] [internal citations omitted]; see also, Sun Co. v Syracuse Indus. Dev. Agency, 209 AD2d 34 [4th Dept 1995].)

The SEQRA regulations classify proposed actions into three categories: Type I, which are most likely to require the preparation of an EIS; Type II, which have been determined not to have a significant impact on the environment; or Unlisted, which are neither Type I nor II (6 NYCRR §617.4; §617.5). An agency, including the Board, is prohibited from funding or moving forward on a Type I or Unlisted action until either a Negative Declaration has been issued, or a draft EIS has been completed or accepted (6 NYCRR §617.3). An agency is directed to use an Environmental Assessment Form [EAF], which is designed, "... to assist it in determining the environmental significance or non-significance of actions. A properly completed EAF must contain enough information to describe the proposed action, its location, its

purpose and its potential impacts on the environment." (6 NYCRR §617.2[m]).

"In determining whether an agency properly carried out its review of the environmental impact of a project ... ... the record must show that [the lead agency] identified the relevant areas of environmental concern, took a "hard look" at them [citations omitted] and made a "reasoned elaboration" of the basis for its determination [citation omitted]'." (Mobil Oil Corp. v City of Syracuse Indus. Dev. Agency, 224 AD2d 15, 21 [4th Dept. 1996] aff'd 76 NY2d 428, citing H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222, 232 [4th Dept 1979].) "It is well settled that judicial review of the SEQRA process is limited to whether " 'a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion' ... [I]t is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively" ... "[n]othing in the law requires an agency to reach a particular result on any issue, or permits the courts to second-guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence.' "

(Matter of City of Rye v. Korff, 249 AD2d 470, 471-472 [2nd Dept 1998], quoting Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 416-417 [1986].)

Furthermore, a court's SEQRA compliance "inquiry is tempered in two respects. First, an agency's substantive obligations under SEQRA must be viewed in light of a rule of reason [in not requiring identification by an agency of every conceivable impact, mitigating measure or alternative]. ... Second, the Legislature in SEQRA has left the agencies with considerable [*11]latitude in evaluating environmental effects and choosing among alternatives." (Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 417 [1986] [internal citations omitted].) At the same time, Courts have made clear on many occasions that strict, not substantial, compliance with SEQRA's procedural

requirements is necessary to ensure there is meaningful environmental review. (See, e.g. King v Saratoga County Bd. of Supervisors, 89 NY2d 341, 347-348 [1996].)

Where unlisted actions are involved, the lead agency must, at a minimum, use a short form Environmental Assessment Form (EAF); or it may choose to use a full EAF to determine the significance of the proposed unlisted actions. (6 NYCRR §617.6[3].) An agency is allowed to treat a draft EIS as an EAF "for the purpose of determining significance." (6 NYCRR §617.6[4].)

Where, as here, a GEIS was prepared to assess the environmental impacts of a county-wide ATV trail project, SEQR regulations (6 NYCRR §617.10) state, in part: "(c) Generic EISs and their findings should set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQR compliance. This may include thresholds and criteria for supplemental EISs to reflect specific significant impacts, such as site specific impacts, that were not adequately addressed or analyzed in the generic EIS.(d) When a final generic EIS has been filed under this part:(1) No further SEQR compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the generic EIS or its findings statement; (2) An amended findings statement must be prepared if the subsequent proposed action was adequately addressed in the generic EIS but was not addressed or was not adequately addressed in the findings statement for the generic EIS; (3) A negative declaration must be prepared if a subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action will not result in any significant environmental impacts; and (4) A supplement to the final generic EIS must be prepared if the subsequent proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action may have one or more significant adverse environmental impacts.With regard to SEQRA "findings:"

a "Findings statement means a written statement prepared by each involved agency, ... after a final EIS has been filed, that considers the relevant environmental impacts [*12]presented in an EIS, weighs and balances them with social, economic and other essential considerations, provides a rationale for the agency's decision and certifies that the SEQRA requirements have been met."
(6 NYCRR §617.2[p].)
Therefore, an agency must issue findings only where an EIS has been prepared. Regulations (6 NYCRR §617.11[d][5]) also require that findings "certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent possible by incorporating as conditions to the decision those mitigative measures that were identified as practicable."Petitioner's Contentions
Petitioner argues a failure by Respondents to properly follow SEQRA requirements before enacting the local law at issue. Specifically, she says it was improper for Respondents to use a short EAF; Respondents' negative declaration was improper because it lacked the required documentation and reasoning, and failed to identify relevant areas of environmental concern; Respondents had an independent responsibility to comply with SEQRA, and not to rely solely on the county's GEIS, because the Town was not identified by Lewis County as an involved agency in the County-wide trail system; and, alternatively, that if the Town was an involved agency, it was required to issue findings (6 NYCRR §617.11) after the county issued its FGEIS.
Petitioner also argues that the County's DGEIS states that future trail segments proposed for inclusion in the County's trail system will undergo site-specific environmental evaluations if considered for addition to the existing trail system. Finally, Petitioner alleges the Town improperly segmented under SEQRA (6 NYCRR

§617.7[c]) because the Town roads are being made part of the County trail system without addressing overall County action or adverse impacts from the Local Law, and that regulations (6 NYCRR §617.3[g]) require review of the whole action by the Town.Respondents' Contentions

Respondents argue that the County's GEIS included an evaluation of town roads and facilities, including a section specifically on Lyonsdale, and it considered impacts caused by towns that open their roads to ATV use.

Respondents cite regulations regarding actions taken subsequent to an FGEIS (6 NYCRR §617.10[d][1]) to support its claim that Lyonsdale did not need to undertake any further environmental review. Respondents argue the short form EAF was more than they were required to do.Discussion

The Board apparently prepared two (2) EAF's in connection with the adoption of the [*13]Local Law at issue. The first EAF was submitted by Lyonsdale as Exhibit Q to the Record on Appeal. This EAF does not have any signature in Part I, which is to be completed by the project sponsor. The impact assessment in Part II of this unsigned form has notations in subsections "C1" and "C3" that reference to various portions of the County's FGEIS. Subsections "C2" and "C4" - "C7" contain brief statements regarding impacts that do not reference the County FGEIS. Part III of the first EAF does not have a box checked regarding a determination of significance or a signature of a lead agency "responsible officer."

The second EAF, which was accepted as part of the record at oral argument on consent of the parties, also did not contain a signature in Part I. Its Part I was completed with the same responses as the first EAF with the exception that three of the roads listed in subsection 4 were crossed out; these three roads (Davis Bridge Road, Kosterville Road, and Shibley Road) were not included in the Local Law. Part II of the second EAF contains the answer of "None" in each of the subsections "C1" through "C7" of the impact assessment. Part III does not have a box checked regarding a

determination of significance, but there is a signature of the Town Supervisor as the lead agency "responsible officer." The signature is dated February 10, 2009.

The Board's meeting minutes of February 10, 2009 document a limited discussion of the Board's environmental process, with the following points being made: Lyonsdale is the lead agency; Lyonsdale's attorney filled out a short form EAF and one of the councilpersons "felt more information should be included on the form and filled it in himself"; and that the Board would not vote on the proposed Local Law "until the Short Environmental Form had been corrected." It is not clear from the minutes what "correction" was viewed by the Board as being required. The next notation in the minutes indicates one of the councilpersons located "a form with the original information filled in by" Lyonsdale's attorney. Finally, there is a notation on a vote of 4-1 to "accept the Short Environmental Assessment Form with Shibley and Davis Bridge roads removed."

There is nothing in the minutes indicating a discussion amongst the Board members of the substance of the Impact Assessment portion (Part II) of the EAF, or any of the seven subsections of Part C. The version of the form that contained entries other than "none," as discussed above, provide no indication that any of the road segments actually had been visited or reviewed by the Board members, or anyone else on their behalf, to screen for possible impacts resulting from opening these roads to ATV use. Assuming, arguendo, that the Board members had personal familiarity with these road segments, there is no evidence of a discussion among them of the habitats or neighborhoods along the road segments proposed to be opened to ATV use, or any other documentation that the Board conducted a site-specific review of potential impacts.

The minutes regarding the vote do not indicate specifically that a negative declaration was being issued, and neither of the EAF's submitted to the Court document a negative declaration in Part III. However, given the Board's subsequent action in passing the Local

Law without further environmental process, and the sworn and uncontroverted statement of [*14]a councilman that the Board "made a negative declaration prior to passing the Local Law," the Court will assume that the Board intended to check the box in Part III of the signed EAF determining that adoption of the Local Law would not result in any significant adverse environmental impacts. In addition, for purposes of the Court's review, the Impact Assessment (Part II) on the unsigned EAF will be viewed as the Board's assessment of potential adverse impacts of the proposed Local Law. The Court notes that there are no attachments to either of the two EAF forms, and there have been no separate findings submitted to the Court by Petitioner or Respondents.

Section 5.0 of the County's Statement of Findings indicates it sent a notice of intent to proceed as lead agency to "all of the involved agencies on August 1, 2007, and again on December 4, 2007 following some revisions to the Trail Plan and identification of additional potentially involved agencies." The County's FGEIS, Part I, response to "General Comment 4" also refers to "several involved agencies." There is no indication, however, in either the findings or the FGEIS who the involved agencies were.

The Court does not review the record to assess if the Board's determinations under its SEQRA review were the "correct" ones, but rather the Court must assess if the Board truly took the required "hard look" at the proposed project in reaching its determination of "Negative Declaration." (Jackson v New York State Urban Dev. Corp., 67 NY2d 400). Concurrently, the Court must apply the rule of strict, not substantial, compliance with SEQRA procedural requirements. (King v Saratoga County Bd. of Supervisors, 89 NY2d 341.)

Respondents allege that reliance upon the County's FGEIS, in combination with their own EAF, resulted in the requisite "hard look" demanded by SEQRA. In fact, Respondents believe the FGEIS, alone, was a sufficient review and the Board's EAF process was unnecessary. Specifically, Lyonsdale opines that the County's SEQRA process anticipated and encompassed the

subject, subsequent action of the Board in passing the Local Law, and that "[u]nless the actions of the Town of Lyonsdale fall outside of the County's study, the Town has no independent obligation to assess those [impacts] again."

The Court must determine which portion of the regulation governing GEIS's, as set forth above (6 NYCRR §617.10[d]), applies to this matter. Respondents contend that subsection [1] applies, but that the Board took the extra step of issuing a negative declaration under subsection [3].

The Court finds that subsection [1] of the GEIS regulation is not applicable because the "conditions and thresholds established" for subsequent proposed actions in the GEIS, as it pertains to the opening of Town roads, anticipates further, site-specific environmental review. Review of Respondents' "Exhibit L," which consists of the County's Resolution and Findings Statement indicates that the lead agency in preparation of the FGEIS was the County. The description of the action was "development of an ATV trail system to be administered by the County in cooperation with the Towns and Villages contained therein." [*15]Location of the trail system was described as "various County-owned lands, privately owned parcels and County and town roadways within Lewis County" and refers to a Figure 2 of the FGEIS for a map. Section 3.0 of the County's Statement of Findings indicates "[t]he DGEIS and FGEIS evaluated the overall environmental impacts of a County-wide ATV trail system. Future trail segments proposed for inclusion into the County's trail system (whether privately or publicly owned) will undergo a site-specific environmental review if considered for addition to the existing trail system. A description of the scope of such review is included in Section 11.0 of the DGEIS." Similar statements are contained in Part I of the County's FGEIS, in response to "General Comment 2" and "General Comment 3."

Petitioner submitted, as Exhibit L to the Petition, the referenced Section 11.0 of the DGEIS. This one-paragraph section states, in part, the GEIS process "has been selected to assess the current

proposed system's impacts and establish a template for future environmental review of new trail segments as they are identified. New trail segments proposed for addition to the system will be assessed for the same issues covered in this GEIS on a site-specific basis; such site-specific reviews will be appended as a supplement to this document. The future review of additional trail segments will build on the work contained in this GEIS to identify the individual attributes of each proposed new segment and assess the cumulative effects of these segments in conjunction with the rest of the trail system."

The Court's understanding of Appendix B to the FGEIS, entitled "Trail Evaluation Checklist and Description of Required Studies", is that it was intended by the County to be a modification to Section 11.0 of the DGEIS, to "more clearly explain the process for future review of proposed new trail segment additions." (See FGEIS, Response to General Comment 3, p 4.) Appendix B provides a checklist for use in considering new trails for inclusion into the County's trail system. There is no indication that municipalities opening roads to ATV use were either required to use the checklist, or exempt from using the checklist. There is no record of the Respondents being aware of the checklist or having a reasoned discussion over whether they were obligated to use it during their SEQRA process in order to be in compliance with the County's FGEIS.

The Court is constrained to find that the roads opened to ATV use by Lyonsdale's Local Law are "new trail segments" with respect to the County's GEIS, because none of the roads opened by the Local Law appear to have been proposed as part of the County-wide trail system at the time the GEIS was being prepared. As such, the County's Statement of Findings and Section 11 of the DGEIS call for a site-specific review to be appended to the GEIS that "identif[ies] the individual attributes of each proposed new segment and assess[es] the cumulative effects of these segments in conjunction with the rest of the trail system." There is no evidence that the anticipated, site-specific review was conducted by the

Town in connection with the Local Law.
Subsection [2] of the GEIS regulation applies where the subsequent proposed action was adequately addressed in the GEIS, but was either not addressed or not adequately [*16]addressed in the findings statement for the GEIS. For the same reasons stated before, the Court must find that the GEIS did not adequately address Respondents' subsequent action of opening portions of the seven (7) selected town roads to ATV use, for a total of over ten (10) miles of road, none of which were proposed at the DGEIS or FGEIS stage to be included in the County's trail system, making subsection [2] inapplicable.
Subsection [3] of the GEIS regulation applies where a subsequent proposed action was not addressed, or was not adequately addressed, in the GEIS, and requires completion of an environmental review resulting in a negative declaration. The Court holds that this is the regulation applicable to Respondents' actions, and that the Board's preparation of a short form EAF resulting in a negative declaration would satisfy the regulation as long as the requisite "hard look" was completed. This also would satisfy the "conditions and thresholds established for [subsequent proposed] actions in the generic EIS or [the County's] findings statement" (6 NYCRR §617.10[d][1]), as discussed above.
Review of the record shows, however, that the Respondents failed to take a hard look. The only documentation of a purported environmental review is found in Part II of the unsigned EAF. Subsections C-1 and C-3 show no evidence of an independent review, but refer only to the County's FGEIS. Furthermore, the portions of the County's GEIS proffered by Respondents as evidence of an environmental review covering the Town of Lyonsdale are a discussion of the trails within the county reforestation areas only.
Even had the County's GEIS purported to review impacts of opening the town roads to ATV use that Respondents ultimately did open under its Local Law, the Court notes that the Town would not be absolved of its duties under SEQRA, as the statute "is

transgressed when the initial determination of the significance of the environmental effect of a project is removed from the ambit of the agency principally responsible for approving the proposal." (Coca-Cola Bottling Co. v Board of Estimate, 72 NY2d 674, 682; see also Matter of Pyramid Co. of Watertown v Planning Bd. of Town of Watertown, 24 AD3d 1312 [4th Dept. 2005] lv to appeal dismissed 7 NY3d 803.)

The entries in the other subsections of Part II of the EAF are perfunctory and conclusory. For example, there is: no discussion of projected or expected volumes of ATV traffic; no indication of site visits or reviews along any portions of the approximately 10 miles of town roads opened to ATV's; no indication whether any of the state or federal databases or maps of sensitive resources were consulted, especially for those portions of the town roads that do not abut a County reforestation area, as the County's GEIS did not review Town of Lyonsdale road segments outside the immediate vicinity of its reforestation areas. Regarding any potential social impacts, there is no description of the nature of the development, or lack of development, or any neighborhoods along the various stretches of town roads opened to ATV use.

The Court can perceive that, depending upon projected volumes of ATV traffic and the nature of the habitats and neighborhoods on these road segments, adding ATV use to existing roadways may, very well, result in a negative declaration under the SEQRA process. [*17]However, considering the record as a whole, it appears that Respondents failed to "identif[y] the relevant areas of environmental concern, [failed to take] a 'hard look' at them, and [failed to provide] a 'reasoned elaboration' of the basis for its determination" (Matter of Pyramid Co. of Watertown v Planning Bd. of Town of Watertown, 24 AD3d 1312, 1313-1314 [internal citations omitted] appeal dismissed 6 NY3d 844).

The Court finds Petitioner's segmentation argument unavailing, as the County FGEIS was prepared for the purpose of considering a county-wide ATV trail system that may include future trail segments. The GEIS identified a process for the addition of trails

to the system and, as discussed above, a framework for site-specific environmental review for any proposed trail additions.

CONCLUSION

Based upon the foregoing it is hereby

ADJUDGED AND DECLARED , that Local Law Number 1 of 2009 of the Town of Lyonsdale opening all or portions of seven of its Town roads to ATV use is null and void; and it is further

ADJUDGED AND DECLARED, that the action of Respondents in adopting Local Law Number 1 of 2009 of the Town of Lyonsdale was in violation of lawful procedure as set forth in the New York State Vehicle and Traffic Law; and it is further

ADJUDGED AND DECLARED, that the action of Respondents in adopting Local Law Number 1 of 2009 of the Town of Lyonsdale was in violation of lawful procedure as set forth in the New York State Environmental Quality Review Act and the regulations thereunder; and the foregoing are

SO ORDERED.

The foregoing is the Decision/Judgment/Order of the Court.

ENTERDated: December 23, 2009_____

Lowville, NYJoseph D. McGuire, J.S.C.