

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

PROTECT THE ADIRONDACKS! INC.,

Petitioner,

-against-

DECISION, ORDER
AND JUDGMENT

NEW YOUR STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
and NEW YORK STATE ADIRONDACK
PARK AGENCY,

Index No.: 902978-24

Respondents.

APPEARANCES: Christopher A. Amato, Esq. and
Claudia K. Braymer, Esq.
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New York State Attorney General, *Attorney for Respondents*
By: Susan L. Taylor, Assistant Attorney General
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McGinty, A., J.: This is an action regarding the use of certain watercraft in and around Lake Saranac. Petitioner, Protect the Adirondacks! Inc., commenced this action against Respondents, New York State Department of Environmental Conservation (DEC) and New York State Adirondack Park Agency (APA) (collectively “the agencies”) seeking an order (1) directing the DEC to undertake and complete a carrying capacity study of the Saranac Lake Complex; (2)

enjoining the DEC and APA from issuing a permit or approval for any project that would result in additional docking, mooring, or use of additional motorized watercraft in the Saranac Lakes Complex pending completion of a carrying capacity study; (3) requiring the DEC and APA to consider the results of that study prior to issuing a permit or approval for any project that would result in additional docking, mooring or use of additional motorized watercraft in the Saranac Lakes Complex; and (4) awarding petitioner the costs, disbursements, and attorney fees incurred in connection with this proceeding.

The DEC and APA oppose the petition, seeking dismissal on the grounds that the petition fails to state a cause of action, petitioner's request for relief is time-barred, and that petitioner has failed to establish a clear legal right to the requested relief.

Background

The Adirondack Park Agency Act was enacted in 1972 and directed the APA, in consultation with the DEC, to develop a master plan for the management of state-owned lands within the Adirondack State Park for submission to the governor. Substantial tracts of land in and around Saranac Lake are within the Adirondack State Park. The purpose of the plan was to classify state-owned lands according to their characteristics and capacity to withstand use, and to provide general guidelines for the management and use of the lands based on their respective classifications. Once the master plan was approved, the APA, in consultation with the DEC, was required to develop individual management plans for the units of lands classified in the master plan. The individual management plans were required to conform to the guidelines and criteria established by the master plan. Taken together, the individual management plans and the unit management plans would guide the development and management of state-owned lands within

the Adirondack State Park. In 2019, the DEC finalized the unit management plan for the Saranac Lakes Wild Forest (SLWF). Petitioner participated in and contributed to the drafting of the SLWF unit management plans before its 2019 finalization.

Petitioner's Argument

In support of the requested relief, Protect the Adirondacks! Inc. submitted the affirmations of Chad Dawson, Ph.D. (former member of the Board of the Adirondack Park Agency), Peter Bauer, Executive Director of Protect the Adirondacks! Inc., Christopher Amato, Conservation Director and counsel for Protect the Adirondacks! Inc., and Walter Linck, (former staff member of respondent Adirondack Park Agency).

Dr. Dawson was a board member of the Adirondack Park Agency when the unit management plan for the SLWF was finalized in 2019. Peter Bauer is Executive Director of Protect the Adirondacks! Inc., and states that his organization was involved with management issues concerning the SLWF for many years and participated in drafting the SLWF's 2019 unit management plan. Dr. Dawson and Mr. Bauer both assert that the master plan requires the DEC and the APA to conduct a carrying capacity study of waterbodies in the Adirondack Park. Dr. Dawson points to the master plan which states, in part, "A comprehensive study of Adirondack lakes and ponds should be conducted by the [DEC] to determine each waterbody's capacity to withstand uses, particularly motorized uses, and to maintain biological, natural and aesthetic qualities." (Master Plan at p. 4; Dawson aff ¶14). Dr. Dawson states that although this directive has been in place since 1972 when the Adirondack Park Agency Act was enacted, a carrying capacity study has never been conducted.

Walter Linck worked at the Adirondack Park Agency for twenty years, including the time when the unit management plan was finalized in 2019. Mr. Linck states that the unit management plan did not include a carrying capacity analysis because its inclusion would have significantly delayed the adoption and implementation of the plan, however completion of the study was an expectation of the APA staff when they advised the APA board to determine that the SLWF unit management plan was compliant with the master plan. (Linck aff ¶¶ 9-11).

Christopher Amato is Conservation Director of Protect the Adirondacks! Inc. He states that on September 1, 2023, he submitted a Freedom of Information Law (FOIL) request to the DEC and APA seeking all records from April 5, 2019 to September 1, 2023 related to any actions taken to assess the carrying capacity of lakes and ponds in the SLWF. (Amato aff ¶ 3). Both the DEC and APA answered the FOIL requests, stating that a diligent search revealed no records responsive to the requests. (Amato aff ¶¶ 4-5). Mr. Amato interpreted this as confirmation that the agencies had not taken any steps to complete a carrying capacity study.

Protect the Adirondacks! Inc. states that although the master plan requires, and includes, the SLWF unit management plan for implementation of physical projects, such as construction of new trails, parking lots, fishing access sites and campsites, it does not include a specific schedule for completion of the carrying capacity study of the SLWF waterbodies, (Pet. Br. at 24 n 5). Protect the Adirondacks! Inc. contends that because the schedule for the 2019 SLWF unit management plan calls for management actions to be completed within five years, petitioners expected a carrying capacity study to be conducted at some point in the same time period.

Protect the Adirondacks! Inc. sent a demand letter to the DEC and APA on October 25, 2023, stating in part, “. . . PROTECT demands that the Department promptly respond to this

letter setting forth the timetable for completion of the required carrying capacity study.” (Pet. Ex.

“C”). On December 5, 2023, the DEC replied, stating in part:

DEC continues to evaluate options for conducting VUM [Visitor Use Management] or related carrying capacity studies for Forest Preserve Waterbodies including those within the Saranac Lake Wild Forest. DEC regularly consults with the Adirondack Park Agency to clarify the role of each agency in this effort as well as to ensure ongoing conformance with the Adirondack Park State Land Master Plan. (Pet. Ex. “D”).

Interpreting this response as the agency’s refusal to set forth a timetable for completion of the study, Protect the Adirondacks! Inc. filed the proceeding that is now before the Court seeking relief pursuant to CPLR 7801 and 7803(1). Protect the Adirondacks! Inc. argues that this article 78 proceeding was timely begun because it was filed within four months of the agencies’ refusal to commit to a carrying capacity study in response to the demand letter (Pet. Br. at p. 25).

Respondents’ Argument

The agencies argue that neither the master plan nor the unit management plan for the SLWF impose an obligation to complete a carrying capacity study of the SLWF waterbodies. In support of this position, the agencies direct the Court’s attention to the introduction to the master plan which states in part that, “A comprehensive study of Adirondack lakes and ponds should be conducted by the [DEC] to determine each waterbody’s capacity to withstand uses, particularly motorized uses, and to maintain biological, natural and aesthetic qualities.” (Master Plan at p. 4). The agencies argue that the plain meaning of “should” is properly understood as a suggestion, rather than a mandatory obligation to complete a carrying capacity study. They argue that the requirement in the APA Act is for the unit management plans to comply with the “general guidelines and criteria” in the master plan as provided in Executive Law § 816(1). As such, the

agencies contend that the unit management plan is a discretionary planning document, not a list of requirements which may be judicially compelled. Regarding Mr. Linck's assertion that the DEC's alleged commitment to undertake a carrying capacity study of the SLWF waterbodies was integral to the APA staff's recommendation to the APA board that the SLWF unit management plan be approved, the agencies argue that the APA acts by majority vote of its board, not from staff commentary and the resolution which approved the SLWF unit management plan does not require, nor has it planned or scheduled, a carrying capacity study of the SLWF unit management plan.

The agencies additionally argue that if the master plan imposed a mandatory duty (which the agencies do not concede), it gives the DEC discretion in the execution of any alleged duty by recommending that it place its emphasis on major lakes and ponds surrounded by state lands, which excludes several of the most prominent waterbodies in the SLWF (Master Plan at 4).

The agencies oppose Protect the Adirondacks! Inc.'s request for any injunctive relief. The agencies assert that Protect the Adirondacks! Inc. failed to establish it is entitled to injunctive relief, as the agencies have a statutory duty to review and approve applications for projects on privately-owned park lands that they would be unable to carry out if injunctive relief were granted.

Finally, the agencies assert that if Protect the Adirondacks! Inc. has stated a cause of action, their delay in demanding performance bars relief. The agencies argue that Protect the Adirondacks! Inc. was required to make its demand within a reasonable time after the right to make it occurred or after Protect the Adirondacks! Inc. was aware, or should have been aware, of the facts giving rise to petitioner's claim for relief. Specifically, the agencies argue that in this case, the APA Act was enacted in 1972 and updated in 2019, the same year, the DEC finalized

the SLWF unit management plan. Protect the Adirondacks! Inc. delayed issuing a demand letter until October 2023, more than fifty years after passage of the APA Act and more than four years after finalization of the SLWF unit management plan. The agencies argue that this delay makes this action time barred. Protect the Adirondacks! Inc. explanation that they delayed demanding completion of a carrying capacity study of the SLWF waterbodies because they expected the DEC to undertake the study “at some point” during the plan’s five-year lifespan is rejected by the agencies. The agencies assert that Protect the Adirondacks! Inc. delay was patently unreasonable, particularly given their participation in the development and finalization of the SLWF unit management plan in 2019.

Mandamus Relief

Mandamus is an extraordinary remedy which is only available to compel an officer or body to perform a duty enjoined by law which is mandatory and ministerial, rather than discretionary, *Matter of O’Sullivan v. New York City Dept. of Bldgs.*, 226 AD3d 686 (2d Dept. 2024); *New York Civ. Liberties Union v. State of New York*, 4 NY3d 175 (2005); CPLR §7803(1)(3). Where this threshold has been met, petitioner must show a “clear legal right” to the requested relief to succeed in mandamus, and the petition must be denied if the right to performance is clouded by “reasonable doubt or controversy,” *Matter of Assn. of Surrogates & Supreme Ct. Reporters within City of NY v. Bartlett*, 40 NY2d 571, 574 (1976). Here, Protect the Adirondacks! Inc.’s allegation that the agencies have a non-discretionary duty to conduct a carrying capacity study of the waterbodies in the SLWF is conclusory and unsupported by the authority contained in the 1972 master plan (Master Plan at 4), and the 2019 SLWF unit management plan (Unit Management Plan pp. 93-113). The master plan, having been approved

by the governor, has the force of a legislative enactment, *McCulley v. New York State Dept. Envtl. Conservation*, 52 Misc.3d 1216(A) (Sup. Ct. Essex County 2106) footnote 3; *Matter of Adirondack Mtn. Club Inc., v. Adirondack Park Agency*, 33 Misc.3d 383 (Sup. Ct. Albany Cnty. 2011). The master plan states in part “A comprehensive study of Adirondack lakes and ponds should be conducted by the [DEC] to determine each water bodies capacity to withstand uses, particularly motorized uses, and to maintain biological, natural and aesthetic qualities.” (Master Plan at p. 4). “A fundamental rule of statutory construction is that the legislature is presumed to mean what it says,” *McLean v. City of Kingston*, 57 AD3d 1269, 1271 (3d Dept. 2008). Accordingly, when a statute is unambiguous, a court should construe it so as to give effect to its plain meaning. Here, the master plan clearly states that a comprehensive study of the Adirondack lakes and ponds should be conducted, not that it must be conducted.

As Protect the Adirondacks! Inc. failed to establish the agencies have a mandatory duty to conduct a carrying capacity study of waterbodies in the SLWF, I find that relief in the nature of mandamus to compel is unavailable.

Timeliness of Relief Requested

A CPLR Article 78 proceeding must be commenced within a specified period after the challenged determination to be reviewed becomes final and binding, *Matter of Village of Westbury v. Department of Transp.*, 75 NY2d 62, 72 (1989). An administrative determination becomes final when the petitioner is given notice of the determination, *Matter of Biondo v. New York State Bd. of Parole*, 60 NY2d 832 (1983).

CPLR §217(1) provides that unless a shorter time is provided, the law authorizing a proceeding against a body or officer must be commenced within four months after the

determination to be reviewed becomes final and binding upon the petitioner. Executive Law § 818(1) provides that any act, order or omission of the Adirondack Park Agency or of any officer or employee thereof may be reviewed by a CPLR article 78 action commenced no later than 60 days from the effective date of the order or the date when the act or omission occurred.

Accordingly, I find that a 60-day statute of limitations applies in this action.

Protect the Adirondacks! Inc.'s argument that this proceeding was timely commenced because it was filed within four months of respondent's refusal of the October 25, 2023 demand letter fails for two reasons. First, Protect the Adirondacks! Inc. cannot indefinitely extend the statute of limitations by delaying the filing of a demand letter, *Matter of McKenzie v. Comptroller of State NY*, 268 AD2d 828 (3d Dept. 2000). In this case, Protect the Adirondacks! Inc.'s time to make a demand began when the SLWF unit management plan was adopted in 2019. A demand was not made until October 2023, more than four years later. Even if the Court deemed Protect the Adirondacks! Inc.'s demand letter timely, the petition in this action was filed more than 60 days after the agencies' refusal of the demand, *Matter of Wechsler v. New York State Adirondack Park Agency*, 85 AD3d 1378 (3d Dept. 2011); Executive Law § 818(1).

Here, as Protect the Adirondacks! Inc. participated in drafting the SLWF unit management plan, they were aware it was adopted in 2019. Protect the Adirondacks! Inc.'s submissions indicate they were also aware that the SLWF unit management plan did not contain either a mandate for the agencies to complete a carrying capacity study nor a schedule for a carrying capacity study of waterbodies in the SLWF. (Linck aff ¶10; Pet. Br. at 24 n 5). Based on this record, I find that the 2019 finalization of the SLWF unit management plan triggered the 60-day statute of limitations. As Protect the Adirondacks! Inc. failed to bring this proceeding within 60 days of the agency's adoption of the SLWF unit management plan, the petition must be

dismissed as time barred, *Matter of Westchester v. New York State Adirondack Park Agency*, 85 AD3d 1378 (3d Dept. 2011).

Conclusion

For the reasons described above, the petition is dismissed in its entirety and the relief requested therein is in all respects denied. To the extent petitioner raises other issues or seeks alternate relief, those issues have been considered and relief is denied.

This is the decision, order, and judgment of the Court.

Dated: April 21, 2025
Albany, New York

ENTER:



Hon. Anthony McGinty
Acting Supreme Court Justice

Papers considered:

1. Notice of petition, verified petition, affirmation of Chad Dawson, Ph.D., and exhibits "A-D") filed March 28, 2024.
2. Notice of motion and brief in support of respondent's motion to dismiss the petition filed on May 16, 2024.
3. Petitioner's memorandum of law in opposition to respondent's motion to dismiss filed on June 14, 2024.
4. Affirmation in opposition to respondent's motion to dismiss filed June 14, 2024.
5. Affirmation of Walter Linck in opposition to respondent's motion to dismiss filed June 14, 2024.
6. Respondent's reply brief in support of motion to dismiss the petition filed July 17, 2024.