

**Matter of New York Land Dev. Corp. v New York
State Dept. of Env'tl. Conservation**

2024 NY Slip Op 35271(U)

March 12, 2024

Supreme Court, Nassau County

Docket Number: Index No. 604535/2023

Judge: Eileen Daly-Sapraicone

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**SUPREME COURT – STATE OF NEW YORK
COUNTY OF NASSAU**

**PRESENT: HON. EILEEN C. DALY-SAPRAICONE,
JUSTICE OF THE SUPREME COURT**

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In the Matter of the Application of

**NEW YORK LAND DEVELOPMENT CORP.,
Petitioner,**

**TRIAL/IAS, PART 21
Index No.: 604535/2023**

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

-against-

**Motion Seq. No.: 001, 002
Motion Submitted: 12/19/23**

**DECISION AND ORDER
XXX**

**THE NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION
AND BASIL SEGGOS, AS COMMISSIONER
OF THE NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
Respondents.**

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The following papers were read on this motion

NYSCEF
DOCUMENT NUMBERS

Notice of Petition, Petition, Memorandum of Law, Affirmation, Affidavit, Exhibits	1 -- 33
Notice of Cross Motion, Memorandum of Law in Support, Affidavit, Exhibits	38 -- 41
Memorandum of Law in Reply	43
Memorandum of Law in Reply	44

Upon the foregoing e-filed documents, the proceeding on petition commenced by the Petitioner, New York Land Development Corp. (hereinafter, the Petitioner), for a judgment pursuant to Article 78 of the CPLR reversing the determination of the New York State Department of Environmental Conservation (hereinafter the DEC) dated, November 17, 2022, which denied an application for a “wetlands and tidal wetlands permit” (Motion Sequence #001), and the cross motion interposed by the DEC for an order pursuant to CPLR §§ 3211 (a) (2) and (5) dismissing

the within petition (Motion Sequence #002), are consolidated for disposition and determined as set forth below.

The Petitioner is the owner of a 2 acre parcel located at 7 Meudon Drive, Lattingtown, New York upon which it intends to build a single family home “adjacent to wetlands” [hereinafter the Parcel] (NYSCEF Doc No. 1 at ¶¶ 1,5,6). In connection therewith, the Petitioner filed an application (hereinafter, the First Application) seeking and successfully procuring the requisite permit from the DEC which was issued on October 23, 2020 (hereinafter, the Permit) (NYSCEF Doc No. 31 at ¶11). Subsequently, an Article 78 proceeding was commenced by adjacent landowners, Randolph and Michele Johnson, who challenged the DEC’s issuance of the Permit (*id.* at ¶12; NYSCEF Doc No. 24). In a decision entered on September 2, 2021, the Court (Sullivan, J.) held that the DEC “failed to demonstrate that there was a rational basis in the record” for approving the First Application, directed the DEC to vacate the Permit and remitted the matter “for a new hearing and determination” (hereinafter the Related Decision)(NYSCEF Doc No. 24).

On or about October 26, 2021, the Petitioner filed a new application (hereinafter the Second Application) which was “identical in all respects” to the First Application (NYSCEF Doc No. 31 at ¶13). On November 17, 2022, the DEC denied the Second Application (hereinafter the Denial) (NYSCEF Doc No. 5).

The Petitioner thereafter commenced the within proceeding demanding judgment reversing the Denial assailing same as arbitrary and capricious, an abuse of discretion and not supported by substantial evidence (Motion Sequence #001) (NYSCEF Doc No. 1 at ¶4). The Petitioner maintains that in issuing the Denial, the DEC failed to reconcile such determination with its prior approval of the First Application, which was identical in form and substance to the Second Application (*id.* at ¶¶97-102). The DEC cross moves seeking dismissal of the underlying petition (NYSCEF Doc No. 38).

The Court initially addresses the cross motion (Motion Sequence #002) interposed by the DEC which principally asserts that the petition must be dismissed due to the Petitioner’s failure to exhaust its administrative remedies (NYSCEF Doc Nos. 39,44). In opposition, the Petitioner concedes that while it “could” have sought “additional administrative remedies”, it was “not required to do so” as any resort thereto would have been both futile and function only to cause irreparable injury (NYSCEF Doc No. 43 at pp. 3-6).

“Generally, the doctrine of exhaustion of administrative remedies requires litigants to address their complaints initially to administrative tribunals, rather than to the courts and * * * to exhaust all possibilities of obtaining relief through administrative channels before appealing to the courts” (*Pantel v Workmen's Circle/Arbetter Ring Branch* 281, 289 AD2d 917, 918 [3d Dept 2001] [internal quotation marks omitted]; see *Young Men's Christian Assn. v Rochester Pure Waters Dist.*, 37 NY2d 371, 375 [1975]). “[A]bsent extraordinary circumstances, courts are constrained not to interject themselves into ongoing administrative proceedings until final resolution of those proceedings before the agency” (*Matter of Tahmisyany v Stony Brook Univ.*, 74 AD3d 829, 830-31 [2d Dept 2010] quoting *Galin v Chassin*, 217 AD2d 446, 447 [1st Dept 1995]). While the doctrine serves “the salutary goals of relieving the courts of the burden of deciding questions entrusted to an agency, [and] preventing premature judicial interference” (*Watergate II Apartments*

v Buffalo Sewer Auth., 46 NY2d 52, 57 [1978] [internal citation omitted], it is not impervious to certain exceptions and “the procedural precursors to judicial intervention need not be exhausted where irreparable injury would occur if pursued” (*Pantel v Workmen's Circle/Arbetter Ring Branch 281, supra* at 918) “or when resort to an administrative remedy would be futile” (*Watergate II Apartments v Buffalo Sewer Auth., supra* at 57).

As relevant here, the Denial issued by the DEC on November 17, 2022 specifically provided that pursuant to 6 NYCRR 621.10 (a) (2), which was the regulation in effect at that time, the Petitioner was entitled to “request a public hearing . . . in writing within 30 calendar days” of the date thereon (NYSCEF Doc No. 5). Additionally, by letter dated and mailed on January 18, 2023, the DEC again informed the Petitioner of its right to request a hearing in accordance with the governing regulation and extended the time in which to submit such a request to “an additional 30-day period from the date of this mailing” (NYSCEF Doc Nos. 40, 41). However, notwithstanding having been afforded two opportunities to request a hearing, the Petitioner elected not to do so (NYSCEF Doc No. 39 at pp. 1,5,6; NYSCEF Doc No. 44 at pp. 1,4).

Here, as the Petitioner never availed itself of admittedly available avenues of redress obtainable with the DEC it has failed to establish the futility thereof and to provide a basis upon which this Court may excuse the Petitioner’s neglect in exhausting an administrative remedy so as to justify judicial intervention (*Watergate II Apartments v Buffalo Sewer Auth., supra* at 57). Moreover, while the Petitioner contends it continues to suffer irreparable harm having been precluded from constructing and selling a home on the Parcel, a claim “of financial distress” is not sufficient “to serve as an exception to the exhaustion requirement” (*Matter of Schenectady Nursing and Rehabilitation Ctr., LLC v Shah*, 124 AD3d 1023, 1025 [3d Dept 2015]; *Baywood, LLC v Off. of Medicaid Inspector Gen.*, 188 AD3d 1193, 1196 [2d Dept 2020]). Further, the legal authority upon which the Petitioner principally relies in support of its claim of irreparable injury is comprised of cases wherein the various courts found such harm within the particular context of a movant’s application for a preliminary injunction pursuant to CPLR § 6301. Accordingly, such authority is not dispositive of the matters herein raised. Finally, to the extent the Petitioner asserts that the court “overlooked” certain facts in rendering the Related Decision, any such assertion is unavailing as said determination was neither reargued nor appealed.

Based upon the foregoing, it is hereby

ORDERED that the within proceeding on petition seeking a judgment pursuant to Article 78 of the CPLR reversing the DEC’s Denial dated, November 17, 2022, is **DENIED** (Motion Sequence #001); and it is further

ORDERED that the DEC’s cross motion for an order dismissing the petition due to the Petitioner’s failure to exhaust administrative remedies is **GRANTED** and the proceeding is dismissed (Motion Sequence #002); and it is further

ORDERED that any relief not specifically addressed herein is **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: March 12, 2024
Mineola, New York

ENTER:


HON. EILEEN C. DALY-SAPRAKONE, J. S. C.

ENTERED

Mar 12 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE