EXHIBIT 18

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Save the Pine Bush, Inc. v. Albany

Court of Appeals of New York

April 29, 1987, Argued ; June 11, 1987, Decided

No Number in Original

Reporter
70 N.Y.2d 193 *; 512 N.E.2d 526 **; 518 N.Y.S.2d 943 ***; 1987 N.Y. LEXIS 17997 ****

In the Matter of Save the Pine Bush, Inc., et al., Appellants-Respondents, v. City of Albany et al., Respondents-Appellants

Prior History: [**1]** Cross Appeals, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered May 28, 1986, which modified, on the law, and, as modified, affirmed a judgment of the Supreme Court at Special Term (Edward S. Conway, J.), entered in Albany County in a combined declaratory judgment action and CPLR article 78 proceeding, *inter alia*, (1) declaring that the zoning change and site plan approval for defendant-respondent Anderson's proposed Madison Avenue office park is null and void, (2) enjoining any grading or construction on the Anderson property unless and until the requirement of the State Environmental Quality Review Act that an environmental impact statement consider the cumulative impacts of development proposals on the remaining Pine Bush within the City of Albany be complied with, (3) declaring that the Commercial-Pine Bush (C-PB) zone district in the Zoning Ordinance of the City of Albany is null and void, (4) declaring that section 6 of the Site Plan Review Ordinance of the City of Albany is null and void, and (5) granting a motion for reargument to the extent of considering the Statute of Limitations, **[****2]** and upon reargument declining to dismiss the first two causes of action on the ground that they were barred by the four-month Statute of Limitations (*CPLR 217*), and adhering to the court's original determination. The modification consisted of (1) deleting the decretal paragraphs which (a) enjoined grading and construction on the Anderson property, and (b) declared null and void the Commercial-Pine Bush zone district and section 6 of the Site Plan Review Ordinance, (2) dismissing plaintiffs-petitioners' second cause of action as untimely, and (3) dismissing plaintiffs-petitioners' first cause of action. The Appellate Division affirmed Supreme Court's declaration that the ordinance rezoning the Anderson property to Commercial-Pine Bush and approving the site plan was null and void because the Common Council of the City of Albany failed to address the cumulative environmental impact of pending projects in the Pine Bush.

Matter of Save the Pine Bush v City of Albany, 117 AD2d 267.

Disposition: Order modified, without costs, in accordance with the opinion herein and, as so modified, affirmed.

Core Terms

ordinance, bush, pine, site plan, zoning, cumulative impact, classification, vague, delegation of authority, commercial development, limitations period, overbroad, declaratory judgment action, cause of action, ecologically

Case Summary

Procedural Posture
Petitioner cross-appealed from an order of the Appellate Division of the Supreme Court in the Third Judicial Department (New York) dismissing two causes of action in their lawsuit alleging violations of the State Environmental Quality Review Act. Certain zoning changes and site plan approvals were declared null and void.

Overview
Petitioner, a non-profit corporation whose purpose was to promote the preservation of distinct environmental characteristics of its local area, commenced a combined declaratory judgment and N.Y. C.P.L.R. art. 78 proceeding alleging violations of the State Environmental Quality Review Act (SEQRA) in the enactment of certain zoning ordinances that opened the area to commercial development. Petitioner specifically

argued that one of the ordinances was vague and an overbroad delegation of authority. The court ruled that two of the challenges were untimely since they were not commenced within four months of their enactment, as required in a N.Y. C.P.L.R. art. 78 proceeding. The court rejected the argument that the remaining ordinance was vague and an overbroad delegation of authority, holding that there was no constitutional prohibition against the delegation of power, with reasonable safeguards and standards. However, the zoning authority's failure to consider the potential impact of other pending projects before granting a zoning change was arbitrary and capricious and constituted a violation of its obligations under SEQRA.

Outcome

The order was modified by reinstating so much of the first cause of action as sought a declaration that the ordinance was vague and constituted an overbroad delegation of authority and declaring that the ordinance was not invalid in these respects.

LexisNexis® Headnotes

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

Governments > Legislation > Overbreadth

Governments > Legislation > Statute of Limitations > Time Limitations

Governments > Local Governments > Claims By & Against

Governments > Local Governments > Ordinances & Regulations

HN1[] A proceeding alleging State Environmental Quality Review Act (SEQRA) violations in the enactment of legislation must be commenced within four months of the date of enactment of the ordinance. When an action with potential adverse effects on the environment is part of an integrated project designed to balance conflicting environmental goals within a subsection of a municipality that is ecologically unique, the potential cumulative impact of other proposed or pending projects must be considered pursuant to SEQRA before the action may be approved.

Civil Procedure > Judgments > Declaratory Judgments > General Overview

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

Governments > Legislation > Statute of Limitations > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN2[] In order to determine the statute of limitations applicable to a particular declaratory judgment action, the court must examine the substance of that action to identify the relationship out of which the claim arises and the relief sought. If the court determines that the underlying dispute can be or could have been resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs the declaratory judgment action.

Governments > State & Territorial Governments > Claims By & Against

Governments > State & Territorial Governments > Employees & Officials

Business & Corporate Compliance > Real Property > Zoning > Ordinances

Real Property Law > Zoning > Ordinances

HN3[] The general rule is that a N.Y. C.P.L.R. art. 78 proceeding is unavailable to challenge the validity of a legislative act such as a zoning. However, when the challenge is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an article 78 proceeding.

Administrative Law > Separation of Powers > Constitutional Controls > General Overview

Administrative Law > Separation of Powers > Legislative Controls > General Overview

HN4[] There is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards.

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN5[] See State Environmental Quality Review Act, N.Y. Comp. Codes R. & Regs. tit. 6, § 617.11(a).

Environmental Law > Natural Resources & Public Lands > National Environmental Policy Act > General Overview

HN6[] See State Environmental Quality Review Act, N.Y. Comp. Codes R. & Regs. tit. 6, § 617.15 (a)(1).

Headnotes/Summary

Headnotes

Limitation of Actions -- Four-Month Statute of Limitations -- Proceeding Alleging SEQRA [**3] Violations in Enactment of Legislation to be Commenced within Four Months of Enactment**

1. A proceeding alleging State Environmental Quality Review Act (SEQRA) violations in the enactment of legislation must be commenced within four months of the date of the enactment of the ordinance (CPLR 217). Accordingly, in a combined declaratory judgment action and CPLR article 78 proceeding commenced on March 5, 1985 in which plaintiffs-petitioners allege that violations of SEQRA should render invalid the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, plaintiffs-petitioners' second cause of action, challenging the creation of the Pine Bush Site Plan Review District by an ordinance approved on July 2, 1984, is untimely. Regardless of the form in which plaintiffs-petitioners have chosen to couch their action, the challenge primarily involves the City's failure to follow SEQRA and, therefore, was maintainable in an article 78 proceeding and should have been commenced within four months of the enactment of the ordinance.

Limitation of Actions -- Four-Month Statute of Limitations -- Proceeding Alleging SEQRA Violations [**4] in Enactment of Legislation to be Commenced within Four Months of Enactment**

2. A proceeding alleging State Environmental Quality Review Act (SEQRA) violations in the enactment of legislation must be commenced within four months of the date of the enactment of the ordinance (CPLR 217). Accordingly, in a combined declaratory judgment action and CPLR article 78 proceeding, arising out of the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, plaintiffs-petitioners' challenge to the alleged SEQRA violations in regard to the first ordinance, which was approved on March 5, 1984 and amended the zoning provisions of the City by providing for a new C-PB Commercial-Pine Bush classification, was untimely. The Albany Common Council's creation of this classification, with its concurrent announcement of a policy to commercially develop the Pine Bush in an ecologically sound manner, constituted an "action" within the meaning of SEQRA, in that it committed the City to future commercial development of the Pine Bush (6 NYCRR 617.2 [b] [2]), for which SEQRA review was required. Inasmuch as consideration of possible detrimental **[****5]** effects of this action should have been given at the earliest possible time (ECL 8-0109 [4]; 6 NYCRR 617.1 [c]), the time to complain of SEQRA violations in the enactment of this ordinance was within four months of the date of the enactment.

Limitation of Actions -- What Statute Governs -- Constitutional Challenge to Zoning Ordinance Based upon Vagueness and Overbroad Delegation of Authority Not Subject to Four-Month Statute of Limitations

3. In a combined declaratory judgment action and CPLR article 78 proceeding commenced on March 5, 1985, arising out of the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, plaintiffs-petitioners' constitutional challenge to the first ordinance, approved on March 5, 1984, which amended the zoning provisions of the City by providing for a new C-PB Commercial-Pine Bush classification, based upon its claimed vagueness and alleged overbroad delegation of authority to the Site Plan Review Agency, could not be maintained in a CPLR article 78 proceeding and, therefore, is not subject to the four-month limitation period. Thus, the cause of action alleging vagueness and an **[****6]** overbroad delegation of authority in the first ordinance is timely.

Constitutional Law -- Validity of Zoning Ordinance -- Vagueness -- Overbroad Delegation of Authority

4. In a combined declaratory judgment action and CPLR article 78 proceeding, arising out of the City of Albany's enactment of three ordinances which open the Pine Bush area of the City to commercial development, the first ordinance, which creates the classification C-PB Commercial-Pine Bush and defines the principal commercial use allowed as "[single-story] office

buildings or otherwise conforming to the land contour as determined by the appropriate Site Plan Review Agency", is not vague and does not constitute an overbroad delegation of authority. This ordinance merely added a classification to the list of possible classifications with which the Albany Common Council could label a particular zone. The Site Plan Review Agency was powerless to act pursuant to this ordinance until the second ordinance, creating the Pine Bush Site Plan Review District, was enacted. In the second ordinance, the Common Council enacted a specific framework of criteria to be considered by the Agency in passing upon an application. **[****7]** The criteria did not allow the unchecked discretion of the Site Plan Review Agency. Therefore, taken in context with the sections of the entire zoning ordinance and recognizing that the Site Plan Review Agency's discretion to allow office buildings higher than one story was limited by its examination of the land contour by the first ordinance, the first ordinance is neither vague nor an improper delegation of authority.

Environmental Conservation -- Environmental Quality Review -- Action which is Part of Integrated Project Designed to Balance Conflicting Environmental Goals within Ecologically Unique Subsection of Municipality -- Consideration of Potential Cumulative Impact of Other Proposed or Pending Projects

5. In a combined declaratory judgment action and CPLR article 78 proceeding, arising out of the City of Albany's enactment of three ordinances that open to commercial development the Pine Bush area of Albany, which has a number of distinct environmental characteristics worthy of protecting, the City violated its obligations under the State Environmental Quality Review Act (SEQRA) by failing to consider the cumulative impact upon the Pine Bush of other pending developments **[****8]** when it reviewed the environmental impact statement before approving defendant-respondent Anderson's application to change the zoning classification of 29.9 acres of undeveloped land within the Pine Bush to C-PB Commercial-Pine Bush enabling Anderson to construct a five-building, two-story office complex. Since the applications involved in this case are not separate, but related, they are subjects for mandatory study under 6 NYCRR 617.11 (a) (11) and (b). When an action with potential adverse effects on the environment is part of an integrated project designed to balance conflicting environmental goals within a subsection of a municipality that is ecologically unique, the potential cumulative impact of other proposed or pending projects must be considered pursuant to SEQRA before the action may be approved. Thus, under the special circumstances which exist here, the City of Albany's failure to consider the potential cumulative impact of other pending projects with the Anderson application upon the Pine Bush before granting the zoning change constituted a violation of its obligations pursuant to SEQRA. The determination to grant Anderson's application for a zoning change to C-PB **[****9]** Commercial-Pine Bush was, therefore, arbitrary and capricious and the ordinance enacted in connection with Anderson's application must be declared null and void.

Counsel: *Vincent J. McArdle, Jr., Corporation Counsel (Gary F. Stiglmeier* of counsel), for City of Albany, respondent-appellant. I. The SEQRA challenges to the enactment of the C-PB zone district and site plan review were untimely commenced. *(Matter of C. W. Assocs. v New York State Dept. of Transp., 116 AD2d 841*; Lai Chun Chan Jin v Board of Estimate, 101 AD2d 97; Solnick v Whalen, 49 NY2d 224; Matter of Brew v Hess, 124 AD2d 962; Bliek v Town of Webster, 104 Misc 2d 852; Huggins v City of New York, 126 Misc 2d 908.) II. The courts below have exceeded the available standard of review and abused their discretion by substituting their judgment for that of the Common Council of the City of Albany. *(Aldrich v Pattison, 107 AD2d 258*; *Matter of Acton v Wallace, 112 AD2d 581, 67 NY2d 953*; Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Matter of Environmental Defense Fund v Flacke, 96 AD2d 862; Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400; Coalition ***[****10]*** Against Lincoln W. v City of New York, 94 AD2d 483, 60 NY2d 805.) III. The enactments by the Common Council of the Commercial-Pine Bush (C-PB) site-plan review ordinances were made in complete compliance with the procedural and substantive requirements of SEQRA. *(Matter of Niagara Recycling v Town Bd., 83 AD2d 335, 56 NY2d 859*; Matter of Programming & Sys. v New York State Urban Dev. Corp., 93 AD2d 733, 61 NY2d 738; *Matter of Acton v Wallace, 112 AD2d 581, 67 NY2d 953*; Matter of Soule v Town of Colonie, 95 AD2d 979; Dewitt v Heimbach, 58 NY2d 925.) IV. The Common Council's enactment of the C-PB district did not constitute or contain an improper delegation of authority. *(* Matter of City of Utica v Water Pollution Control Bd., 5 NY2d 164; Matter of Levine v Whalen, 39 NY2d 510; Matter of Durante v Town of New Paltz, 90 AD2d 866; Dur-Bar Realty Co. v City of Utica, 57 AD2d 51.) V. The Common Council's enactment of the Anderson zone change did not constitute spot zoning. *(* Kravetz v Plenge, 84 AD2d 422; McBride v Town of Forestburgh, 54 AD2d 396;

Udell v Haas, 21 NY2d 463.), *Peter A. Lynch* for Willard T. Anderson, respondent-appellant. **[****11]** I. The courts below abused their discretion as a matter of law by holding that the Common Council of the City of Albany violated SEQRA in approving a zone change from residential to Commercial-Pine Bush (C-PB) for the proposed Madison Avenue office park due to the Council's failure to consider the cumulative impact of several "separate projects" pending in the Pine Bush area of the City of Albany. (Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Aldrich v Pattison, 107 AD2d 258; Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400; Coalition Against Lincoln W. v City of New York, 94 AD2d 483; Horn v International Business Machs., 110 AD2d 87.) II. The court below erred by holding that the failure to consider the cumulative impact of separate projects as a relevant area of environmental concern violated the "hard look" standard of review under SEQRA. (Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400; Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359; Matter of Environmental Defense Fund v Flacke, 96 AD2d 862; Kleppe v Sierra Club, 427 U.S. 390.) III. Petitioners-respondents' challenge to the **[****12]** ordinances creating the C-PB (Commercial-Pine Bush) zone classification and site plan review were untimely commenced. (Matter of Brew v Hess, 124 AD2d 962; Lai Chun Chan Jin v Board of Estimate, 101 AD2d 97; Huggins v City of New York, 126 Misc 2d 908; Regional Rail Reorganization Act Cases, 419 U.S. 102; Flanagan v Mount Eden Gen. Hosp., 24 NY2d 427.) IV. The Common Council's legislative act amending the City of Albany zoning ordinance by creating the C-PB (Commercial-Pine Bush) zoning district was made in full compliance with SEQRA. (*Matter of Badura v Guelli, 94 AD2d 972*; Dewitt v Heimbach, 58 NY2d 925; Matter of Soule v Town of Colonie, 95 AD2d 979; Matter of Niagara Recycling v Town Bd., 83 AD2d 335, 56 NY2d 859; Matter of Programming & Sys. v New York State Urban Dev. Corp., 93 AD2d 733, 61 NY2d 738.) V. The Common Council's legislative act amending the City of Albany zoning ordinance by adding new article 7-A thereto (site plan review) was made in full compliance with SEQRA. (Matter of Save the Pine Bush v Planning Bd., 96 AD2d 986; Matter of Niagara Recycling v Town Bd., 83 AD2d 335, 56 NY2d 859; Dewitt v Heimbach, 58 NY2d ***[****13]*** 925; Matter of Programming & Sys. v New York State Urban Dev. Corp., 93 AD2d 733, 61 NY2d 738.) VI. The amendment of the City of Albany zoning ordinance from R-1 to C-PB for the Madison Avenue office park was made in accordance with a well-considered plan and did *not* constitute spot zoning. (McBride v Town of Forestburgh, 54 AD2d 396; Taylor v Incorporated Vil. of Head of Harbor, 104 AD2d 642; Kravetz v Plenge, 84 AD2d 422; Udell v Haas, 21 NY2d 463.) VII. Creation of the C-PB zone classification was not an improper delegation of authority to the Site Plan Review Agency. (*Marshall v Village of Wappingers Falls, 28 AD2d 542*; Dur-Bar Realty Co. v City of Utica, 57 AD2d 51; Matter of Aloe v Dassler, 278 App Div 975, 303 NY 878; Matter of Shepard v Zoning Bd. of Appeals, 113 Misc 2d 413; Matter of Durante v Town of New Paltz, 90 AD2d 866; Matter of Levine v Whalen, 39 NY2d 510; Matter of Grinspan v Adirondack Park Agency, 106 Misc 2d 501.)

Lewis B. Oliver, Jr., and *Harriet B. Oliver* for appellants-respondents. I. The enactment of the ordinances creating the Commercial-Pine Bush (C-PB) zone and site plan review are timely challenged **[****14]** in a declaratory judgment action. (Matter of Barker v Switzer, 209 App Div 151, 238 NY 624; Matter of Kamhi v Planning Bd., 59 NY2d 385; FGL & L Prop. Corp. v City of Rye, 66 NY2d 111; McMinn v Oyster Bay, 66 NY2d 544; Northern Westchester Professional Park Assocs. v Town of Bedford, 60 NY2d 492; Robert E. Kurzius, Inc. v Incorporated Vil. of Upper Brookville, 51 NY2d 338; Marcus Assocs. v Town of Huntington, 45 NY2d 501; Matter of Overhill Bldg. Co. v Delany, 28 NY2d 449; Press v County of Monroe, 50 NY2d 695; Solnick v Whalen, 49 NY2d 224.) II. The ordinances enacting the C-PB (Commercial-Pine Bush) zoning district and site plan review are null and void because no environmental impact statement was prepared and the Common Council failed to take a hard look at the environmental impacts on the Pine Bush in violation of SEQRA. (Matter of Tri-County Taxpayers Assn. v Town Bd., 55 NY2d 41; Glen Head v Town of Oyster Bay, 88 AD2d 484; Bliek v Town of Webster, 104 Misc 2d 852; Matter of Tuxedo Conservation & Taxpayers Assn. v Town Bd., 96 Misc 2d 1, 69 AD2d 320; H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222; Natural ***[****15]*** Resources Defense Counsel v Callaway, 524 F2d 79; Essex County Preservation Assn. v Campbell, 399 F Supp 208, 536 F2d 956; Appalachian Mountain Club v Brinegar, 394 F Supp 105; Matter of Save the Pine Bush v Planning Bd., 96 AD2d 986.) III. The C-PB zone classification is void for vagueness and constitutes an impermissibly broad delegation of authority to the Site Plan Review Agency, and the zone change for the two-story buildings in the Madison Avenue office park is null and void. (Matter of Tandem Holding Corp. v Board of Zoning Appeals, 43 NY2d 801; Matter of Levine v Whalen, 39 NY2d 510; *Marshall v Village of Wappingers Falls, 28 AD2d 542*;

Matter of Shepard v Zoning Bd. of Appeals, 113 Misc 2d 413.)

Gary H. Gutchess for The New York State Builders Association, Inc., *amicus curiae*. I. The court below adopted an incorrect standard of review and misconstrued SEQRA regulations pertaining to cumulative impacts and generic impact statement procedures. *(H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222*; *Aldrich v Pattison, 107 AD2d 258*; *Matter of Jackson v New York State Urban Dev. Corp., 67 NY2d 400*; *Chinese Staff & Workers **[****16]** Assn. v City of New York, 68 NY2d 359*; *Webster Assocs. v Town of Webster, 59 NY2d 220*.) II. Even if a private applicant can be compelled to address cumulative impacts through a generic impact statement, or similar study of a different name, his obligations must be precisely defined. *(Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359*.)

Judges: Titone, J. Chief Judge Wachtler and Judges Kaye, Alexander, Hancock, Jr., and Bellacosa concur; Judge Simons taking no part.

Opinion by: TITONE

Opinion

[*200] [527] [***944] OPINION OF THE COURT**

The clash between the goals of environmental preservation and commercial development of the Pine Bush area of the City of Albany has given rise to this dispute. Plaintiffs-petitioners allege that violations of the State Environmental Quality Review Act (SEQRA) should render the City's enactment of three ordinances which open the Pine Bush to commercial development invalid and that the first of the ordinances is vague and constitutes an overbroad delegation of authority. First, we hold that ***HN1***[⬆] a proceeding alleging SEQRA violations in the enactment of legislation must be commenced within four months of the date of enactment **[****17]** of the ordinance. Thus, the SEQRA challenges to the first two ordinances are untimely. In addition, the cause of action alleging vagueness and an overbroad delegation of authority in the first ordinance, although timely, is not meritorious. We also hold, however, that when an action with potential adverse effects on the environment is part of an integrated project designed to balance conflicting environmental goals within a subsection of a municipality that is ecologically unique, the potential cumulative impact of other proposed or pending projects must be considered **[***945]** pursuant to SEQRA before the action may be approved. Without this consideration, approval of the third ordinance enacted **[**528]** by the City was arbitrary and capricious and must be declared null and void.

I.

The Pine Bush, partially within the City of Albany, contains the only remaining large pine barrens on inland sand dunes in the United States. Its unusual inland sand dune composition is the home of rare plant and animal species such as the endangered Karner Blue Butterfly (*ECL 11-0535*) which survives on the blue lupine, a plant indigenous only to the pine barren. The record establishes that **[****18]** the Pine Bush has a number of distinct environmental characteristics worthy of protecting.

Recognizing this need for preservation but also desiring to expand commercial development into the area, on March 5, **[*201]** 1984, the City of Albany Common Council approved the first ordinance challenged in this proceeding, which was "intended to define commercial development of the area of the City known as the Pine Bush by insuring that its ecological integrity is maintained" (ordinance Number 7.11.84 § 1). The ordinance amended the zoning provisions of the City by providing for a new C-PB Commercial-Pine Bush classification allowing "[single-story] office buildings or otherwise conforming to the land contour as determined and approved by the appropriate Site Plan Review Agency" (ordinance Number 7.11.84 § 3). No particular land was set aside for possible development under the ordinance. The second challenged ordinance, approved on July 2, 1984, created the Pine Bush Site Plan Review District encompassing approximately 550 acres of undeveloped Pine Bush land and delineated a site plan review process with specific criteria to be used by the Site Plan Review Agency in passing upon **[****19]** applications for certain uses within the district. The final challenge is to Common Council's approval of defendant-respondent Anderson's application to change the zoning classification of 29.9 acres of undeveloped land within the Pine Bush to C-PB Commercial-Pine Bush enabling Anderson to construct a five-building, two-story office complex. The City approved the change following consideration of a final environmental impact statement and a determination that any adverse environmental effects had been minimized to the

maximum extent practicable (*6 NYCRR 617.9 [c]*).

Plaintiffs-petitioners, a not-for-profit corporation whose purpose is to "promote the preservation of Albany's unique and beautiful pine barrens", several of the corporation's officers, local homeowners' associations and individual homeowners and taxpayers, commenced this combined declaratory judgment action and article 78 proceeding on March 5, 1985 alleging that various SEQRA violations in the enactment of the challenged ordinances rendered them illegal, that the zone change for Anderson's property constituted spot zoning, and that the creation of C-PB Commercial-Pine Bush zone involved an improper delegation of authority **[****20]** to the Site Plan Review Board. Special Term granted all the relief requested and declared the ordinances null and void. With respect to the Anderson property in particular, the court held that Common Council's failure to consider the cumulative impact of other pending developments in the Pine Bush when it reviewed Anderson's Environmental Impact Statement (EIS) violated the provisions of SEQRA. Upon reargument, the court adhered **[*202]** to its original decision and declined to dismiss the first two causes of action on the ground that they were barred by the four-month Statute of Limitations (*CPLR 217*). Special Term concluded that the ordinances challenged were purely legislative acts and that the applicable Statute of Limitations was six years (*CPLR 213 [1]*).

The Appellate Division modified. The Third Department agreed that the City's failure to address the cumulative environmental impact of pending projects in the Pine Bush was fatal to Anderson's application. However, the court held that the applicable statutory period for challenging SEQRA **[***946]** violations was four months and, thus, held that the second cause of action concerning the creation of the Pine Bush **[****21]** Site Plan Review District was time-barred. The **[**529]** court held that the first cause of action challenging the C-PB Commercial-Pine Bush classification was timely because it had not been ripe for review until the classification was applied to a particular piece of land. Nonetheless, the court declined to reach the substantive challenge as unnecessary.

II.

HN2[↑] In order to determine the Statute of Limitations applicable to a particular declaratory judgment action, the court must "examine the substance of that action to identify the relationship out of which the claim arises and the relief sought" *(Solnick v Whalen, 49 NY2d 224, 229)*. If the court determines that the underlying dispute can be or could have been resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs the declaratory judgment action *(Press v County of Monroe, 50 NY2d 695; Solnick v Whalen, supra, at 230; see, Koerner v State of New York, 62 NY2d 442, 446-447)*. Here, the question is whether the four-month Statute of Limitations period applicable to article 78 proceedings should be invoked.

HN3[↑] The general rule is that **[****22]** an article 78 proceeding is unavailable to challenge the validity of a legislative act such as a zoning ordinance *(Matter of Voelckers v Guelli, 58 NY2d 170, 176; Matter of Merced v Fisher, 38 NY2d 557, 559; Peekskill Suburbs v Morabito, 74 AD2d 843, affd 51 NY2d 941)*. However, when the challenge is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an article 78 proceeding *(Matter of Voelckers v Guelli, supra, at 177)*.

[*203] With the exception of the challenge to the first ordinance based upon vagueness and an overbroad delegation of authority, regardless of the form in which plaintiffs-petitioners have chosen to couch their action, their challenges to the three ordinances primarily involve the City's failure to follow SEQRA. As such, those causes of action were maintainable in an article 78 proceeding and should have been commenced within four months (*CPLR 217; Matter of Connell v Town Bd., 67 NY2d 896; Lai Chun Chan Jin v Board of Estimate, 101 AD2d 97, appeal dismissed 63 NY2d 675*; Weinberg, Practice Commentary, McKinney's Cons Laws of NY, Book 17 1/2, ECL C8-1019:6, at 79; **[****23]** *see, Matter of Tri-County Taxpayers Assn. v Town Bd., 55 NY2d 41; Matter of Niagara Recycling v Town Bd., 83 AD2d 335* [Hancock, Jr., J.], *affd 56 NY2d 859; Matter of Brew v Hess, 124 AD2d 962*). Accordingly, we agree with the Appellate Division that the second cause of action challenging the creation of the Pine Bush Site Plan Review District was untimely.

By the same reasoning, contrary to the view of the Appellate Division, the action attacking the alleged SEQRA violations in the classification of C-PB Commercial-Pine Bush was not commenced in a timely manner. Common Council's creation of this classification, with its concurrent announcement of a policy to commercially develop the Pine Bush in an ecologically sound manner, constituted an "action" within the meaning of SEQRA, in that it committed the City to future commercial development of the Pine Bush

(6 NYCRR 617.2 [b] [2]). SEQRA review was required before any specific applications were needlessly studied at great expense to both the City and the developers (6 NYCRR 617.1 [c]; *cf.*, Matter of Programming & Sys. v New York State Urban ***[***947]*** Dev. Corp., 61 NY2d 738). Inasmuch as consideration **[****24]** of possible detrimental effects of this action should have been given at the **[**530]** earliest possible time (ECL 8-0109 [4]; 6 NYCRR 617.1 [c]), the time to complain of SEQRA violations in the enactment of this ordinance was within four months of the date of the enactment.

III.

Plaintiffs/petitioners also raised a constitutional question based upon the claimed vagueness of the ordinance which created the classification C-PB Commercial-Pine Bush and its alleged overbroad delegation of authority to the Site Plan **[*204]** Review Agency. [1] As this challenge could not be maintained in an article 78 proceeding *(see,* Press v County of Monroe, 50 NY2d 695, 702, *supra)*, the four-month limitation period is inapplicable to this claim. On the merits, however, we hold that the ordinance is not vague and does not constitute an overbroad delegation of authority.

[**25]** The ordinance creating the classification of C-PB Commercial-Pine Bush defined the principal commercial use allowed as "[single-story] office buildings or otherwise conforming to the land contour as determined and approved by the appropriate Site Plan Review Agency." Plaintiffs/petitioners contend that this language improperly conferred legislative power on the Site Plan Review Agency. However, ***HN4***[⬆] "there is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards" *(* Matter of Levine v Whalen, 39 NY2d 510, 515; Matter of City of Utica v Water Pollution Control Bd., 5 NY2d 164, 169). This ordinance merely added a classification to the list of possible classifications with which the Common Council could label a particular zone. The Site Plan Review Agency was powerless to act pursuant to this ordinance until the second ordinance, creating the Pine Bush Site Plan Review District, was enacted. In the second ordinance, Common Council enacted a specific framework of criteria to be considered by the Agency in passing upon an application. [2] The criteria did not allow the **[*205]** unchecked discretion of the Site Plan Review Agency **[****26]** *(see,* Matter of Tandem Holding Corp. v Board of Zoning Appeals, 43 NY2d 801). On the contrary, the standards listed in the second ordinance, as well as the guideline in the first ordinance itself that the office buildings be single story or otherwise conform to the land contour, adequately bridle the discretion of the Agency. Therefore, taken in context with the sections of the entire zoning ordinance and recognizing that the Site Plan Review Agency's discretion to allow office buildings higher than one story was limited by its examination of the land contour by **[***948]** the first ordinance, the first ordinance is neither vague nor an improper delegation of authority.

[**27]** IV.

The next question is whether the City's failure to consider in the EIS for **[**531]** Anderson's project the cumulative impact of as many as 10 pending proposals covering 295.5 acres violated its obligations under SEQRA pursuant to 6 NYCRR 617.11 (a) (11) and (b) or 6 NYCRR 617.15 (a) (1). [3] Defendants-respondents

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[1] Plaintiffs/petitioners argue essentially that the ordinance was invalid because of an overbroad grant of legislative power to the Site Plan Review Agency.

[2] The criteria, contained in section 5 of the new article 7-A of the zoning ordinance, are as follows:

"1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.

"2. Overall impact on the neighborhood including compatibility of design considerations.

"3. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.

"4. The location and arrangement of off-street parking, delivery and loading areas.

"5. Adequacy and arrangement of pedestrian traffic improvements and overall pedestrian convenience.

"6. Adequacy of stormwater and drainage facilities.

"7. Adequacy of water supply and sewage disposal connections.

"8. Type and arrangement of trees, shrubs, fencing and any other improvements proposed as a visual and/or noise buffer between the subject parcel and adjoining lots.

"9. Adequacy of fire lanes and other emergency zones.

"10. Adequacy of exterior storage areas and their fencing or screening.

"11. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion."

[3] 6 NYCRR 617.11 (a) includes the following in its list of indicia

argue that analysis of cumulative impact is not mandatory when projects under consideration are separately owned. We disagree.

[**28]** While the regulations provide that the agency may choose, in its discretion, not to examine the cumulative impact of separate applications within the same geographic area (6 NYCRR 617.15 [a] [1]), the applications involved in this case **[*206]** are not separate, but related, and, thus, are subjects for mandatory study under 6 NYCRR 617.11 (a) (11) and (b). In Chinese Staff & **[**532]** Workers Assn. v City of New York (68 NY2d 359), we held that the City of New York had failed to fulfill its City Environmental Quality Review (CEQR) obligations by neglecting to examine the cumulative impact that the seven luxury apartment buildings contained in the City's plan for the Special Manhattan Bridge District would have on the displacement of low-income residents and on the character of the historic Chinatown district (id., at 367-368). We considered those projects related, thus requiring analysis of cumulative impact, not because of any commonality of ownership of the proposed buildings, but rather because they were all part of a plan designed to add to the City's housing stock while preserving the scale and character of the Chinatown community (id., at 367). Although **[****29]** the holding in that case rested upon a provision of CEQR which is not applicable here, the corresponding SEQRA provision, 6 NYCRR 617.11 (b) (1), is virtually identical.

As in *Chinese Staff*, the project at issue in this case is only a part of a larger plan designed to resolve conflicting specific environmental concerns in a subsection of a municipality with special environmental significance *(cf.,* Kleppe v Sierra Club, 427 U.S. 390). Where a governmental body announces a policy to reach a balance between conflicting environmental goals -- here, commercial development and maintenance of ecological integrity -- in such a significant area, assessment of the cumulative impact of other proposed or pending developments is necessarily implicated in the achievement of the desired result. Since "SEQRA mandates a rather finely tuned and systematic balancing analysis in every instance" (Matter of Town of Henrietta v Department of Envtl. Conservation, 76 AD2d 215, 223), the City should have considered each of the factors listed in ECL 8-0109 and 6 NYCRR 617.11, identified any factor upon which the proposed action might have a significant effect and taken a "hard look" at it *(Matter* **[****30]** *of* Jackson v New York State Urban Dev. Corp., 67 NY2d 400, 416-417). Thus, under the special circumstances which exist here, the City of Albany's failure to consider the potential cumulative impact of other pending projects with the Anderson application upon the Pine Bush before granting the **[***949]** zoning change constituted a violation of its obligations pursuant to SEQRA. The determination to grant Anderson's application for a zoning change to C-PB Commercial-Pine Bush was, **[*207]** therefore, arbitrary and capricious and the ordinance must be declared null and void (Chinese Staff & Workers Assn. v City of New York, supra, at 369; Matter of Tri-County Taxpayers Assn. v Town Bd., supra).

V.

We have examined the remaining contentions of plaintiffs-petitioners and find them to be without merit.

Accordingly, the order of the Appellate Division should be modified, without costs, by reinstating so much of the first cause of action as seeks a declaration that the ordinance is vague and constitutes an overbroad delegation of authority, and declaring that the ordinance is not invalid in these respects.

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of significant effects on the environment: **HN5**[↑] "(11) two or more related actions undertaken, funded or approved by an agency, no one of which has or would have a significant effect on the environment, but which cumulatively meet one or more of the criteria in this section."

6 NYCRR 617.11 (b) provides, in relevant part: "For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other simultaneous or subsequent actions which are * * * included in any long-range plan of which the action under consideration is a part".

6 NYCRR 617.15 (a) (1) states: **HN6**[↑] "A programmatic or generic environmental impact statement may be used to assess the environmental effects of * * * a number of separate actions in a given geographic area which, if considered singly may have minor effects, but if considered together may have significant effects".

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