STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY

In the Matter of

TOWN OF PALM TREE, NEW YORK, et. al,

Petitioner,

-against-

DECISION & ORDER
Index No.: 907000-23

THE CLIMATE JUSTICE WORKING GROUP OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, et. al

Respondent(s).

Supreme Court, Albany County
Present: Hon. Kevin R. Bryant, J.S.C.

Appearances:

Petitioner:
John Joseph Henry
Molly Delarm Parlin
Attorneys for Town of Palm Tree, New York, Village of Kiryas Joel, New York Mayor Abraham Wieder, Village Administrator Gedalye Szegedin Village Trustee Moses Goldstein, Village Trustee Jacob Freund Village Trustee Samuel Landau, Village Trustee Jacob Reisman, each in their individual capacities and in their capacities as Trustees of the Village of Kiryas Joel
WHITEMAN OSTERMAN & HANNA LLP
One Commerce Plaza
Albany, NY 12260

Respondent(s):
Abigail Everett Katowitz
Attorney for The Climate Justice Working Group of the New York State Department of Environmental Conservation, The New York State Department of Environmental Conservation
28 Liberty Street Fl 19
New York, NY 10005

Bryant, K.:

On or about July 26, 2023, a Petition was filed by the Town of Palm Tree, New York, the Village of Kiryas Joel and others (hereinafter referred collectively to as "Petitioners") requesting, *inter-alia* that this Court declare as arbitrary, capricious and without any rational basis, a decision rendered by the Climate Justice Working Group of the State of the New York State Department of Environmental Conservation and the State Department of Environmental Conservation (hereinafter referred collectively to as "Respondents"); and

A Notice of Motion having been filed by Respondents requesting that this Court dismiss the action based upon a lack of standing; and

Further submissions having been received by this Court in opposition to the motion and in support of the motion to dismiss.

NOW, it is hereby

ORDERED that, for the reasons set forth below, the motion to dismiss is hereby denied[1].

Findings of Fact

The Climate Leadership and Community Protection Act was enacted in 2019. As part of the act, the Climate Action Counsel (hereinafter referred to as "CAC") and the Climate Justice Working Group (hereinafter referred to as "CJWG") were created and charged with developing recommendations and a plan to identify and address Green House Gas and co-pollutant emissions limits. THE CJWG was specifically charged with developing criteria to identify "disadvantaged communities" (hereinafter "DAC"), defined as "communities that bear burdens of negative public health effects, environmental pollutions, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentration of low and moderate

[1] In rendering this decision, the Court has considered the documents specifically cited herein as well as all other documents electronically filed in this matter as appearing on NYSCEF.

income households, as identified pursuant to section 75-001 of [the Environmental Conservation Law]"[2]. According to ECL §75-0117, "state agencies . . . shall, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve a goal for disadvantage communities to receive forty percent of overall benefits of spending on clean energy and energy efficiency programs, projects or investments in the areas of housing, workforce development, pollution reduction, low income energy assistance, energy, transportation and economic development, provide however, that disadvantaged communities shall receive no less than thirty-five percent of the overall benefits of spending".

As noted above, Petitioners argue herein that they were wrongfully excluded from the list of disadvantaged communities. They challenge the process followed by Respondents in making determinations regarding criteria for disadvantaged communities and further challenge the specific determinations regarding Petitioners' status. These challenges range from general notice of public hearings and other procedural issues to the final determinations that were made as to applicable criteria and the weight given to specific factors. Petitioner further argues that Respondent failed to comply with SEQRA in numerous ways. Petitioner therefore requests that Respondents should be enjoined from promulgation of the list of disadvantaged communities. Petitioners further request that this Court annul Respondents' determination that excluded Petitioners from the Disadvantaged Community List and a further Order directing their inclusion.

Respondents argue herein that Petitioners do not have standing in that they have not alleged an injury in fact but rather speculate regarding a funding decision that has not yet occurred. According to Respondents' argument, insofar as Petitioners have not actually been denied funding, and rather "claim that it will be denied funding in the future because the Village

[2] ECL §75-001

does not contain any communities identified as disadvantaged . . . is speculative because the Climate Act and the Bond Act do not restrict funding to disadvantaged communities . . . [i]nstead, [the acts] provide that disadvantaged communities . . . will receive a roughly proportionate share – 35 to 40 percent – of funding". According to Respondent's argument, "[t]he Village will have a non-speculative injury-in-fact only if it does not receive funding that it would have received if it contained a community identified as disadvantaged . . . The petition does not allege that this has happened"[3].

Petitioners argue that the instant motion is an improper attempt to "erect an impenetrable barrier to judicial review of the action of NYSDEC and the CJWG in order to avoid the consequences of the race-based determinations inherent in the DAC criteria". Petitioners continue that "Respondents created a list of communities that would benefit from inclusion on the list and then excluded Petitioners from that list" and disagrees with Respondents' assertion that the DAC does not create a preference in the allocation of funds[4]. Petitioners reiterate that the CLCPA mandates that a significant portion of overall benefits are dispersed to disadvantaged communities and that the unavailability of these funds to Petitioner constitutes an injury in-fact that is sufficient for the purpose of standing. Petitioners cite to the United States Supreme Court holding in Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023) wherein the Court held that when a benefit is provided to certain individuals that is not provided to others, the former group is necessarily advantaged at the expense of the latter.

Applicable Law

"A party challenging governmental action must meet the threshold burden of establishing that an injury in fact has been suffered and that the injury asserted falls within the zone of

[3] NYSCEF doc. 19, page 13
[4] NYSCEF doc. 22, page 8

interests or concerns sought to be promoted or protected by the statutory provision under which the government has acted" (Matter of Stevens v. NYS Div. of Criminal Justice Servs., ____ A.D.3d ____, 2022 NY Slip Op 03062 (2nd Dept., 2022))[5]. "Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access \ to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria" (Association for a Better Long Is., Inc. v. NYSDEC, 23 N.Y.3d 1 (2014)). "[A] litigant must establish standing in order to seek judicial review, with the burden of establishing standing being on the party seeking review" (Matter of 61Crown St., LLC v. NYS Office of Parks, Rec. & Hist. Preserv., 207 A.D.3d 837 (3rd Dept., 2022)).

While standing rules should not be heavy handed and serve to shield particular government actions from judicial review, in order to proceed, "[i]n land use matters . . . petitioner must show that it would suffer direct harm, injury that is in some way different from that of the public at large" (Society of Plastics v. County of Suffolk, 77 N.Y.2d 761 (1991))". See also, Piagentini v. NYS Board of Parole, 176 A.D.3d 138 (3rd Dept., 2019); Matter of Brennan Center for Justice v. NYS Board of Elections, 159 A.D.3d 1299 (3rd Dept., 2018). In determining whether a party has standing, the Court must "deem the allegations in the petition/compliant to be true and construe them in the light most favorable to the petitioners in assessing whether a sufficiently precise injury has been articulated" (Matter of Village of Woodbury v. Seggos, 154 A.D.3d 1256 (3rd Dept., 2017)).

It is well established that "an organization can establish standing in several ways . . . it may demonstrate associational standing by asserting a claim on behalf of its members, provided that at least one of its members would have standing to sue . . . .Alternatively, an organization

[5] Internal citations, quotations and punctuation omitted in all quotations contained herein.

can demonstrate standing in its own right . . . from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy" (Matter of Mental Hygiene Legal Serv. v. Daniels, 33 N.Y.3d 44 (2019)). Under this option, an organization – just like an individual – must show that it has suffered an injury in fact and that its concerns fall within the zone of interests sought to [f]or an organization to have standing, it must establish that at least one of its members would have standing to sue, that is representative of the organizational purposes it asserts and that the case would not require the participation of other members" (Matter of CSEA v. City of Schenectady, 178 A.D.3d 1329 (3rd Dept., 2019)).

Discussion/Conclusions

This Court has considered the facts and circumstances, the controlling law cited by counsel and outlined above, and the arguments presented by counsel. It is the finding of this Court that contrary to Respondents argument, Petitioners have standing to proceed in this matter. With-regard-to actual harm, this Court agrees with Petitioners that inclusion on the list of disadvantaged communities creates a benefit for certain communities to the detriment of communities such as Petitioners that are excluded. As argued by Petitioners, the "1,736 census tracts that have been identified as DAC's will compete over $1.47 billion, all 4918 census tracts across New York State will compete over the remaining $2.73 billion . . . This means that a non-DAC faces greater competition in securing Bond Act funding, and therefore is considerably less likely to be awarded such funding"[6].

Respondents have not presented any persuasive argument to counter this seemingly obvious assertion. Under the circumstances, this Court agrees that Petitioners have alleged a

[6] NYSCEF doc. 22, page 6

907000-23

harm-in-fact sufficient to confer standing. This Court also agrees that denying Petitioner's standing would create an impenetrable barrier to the judicial review of the issue raised herein.

For the foregoing reasons, the Motion to Dismiss is denied and the matter is scheduled for a virtual conference via Microsoft TEAMS before this Court on January 10, 2024, at 2:30 p.m. to address further scheduling.

This shall constitute the Decision and Order of the Court. The original Decision and Order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: December 26, 2023
Kingston, New York

ENTER,

Kevin R. Bryant

HON. KEVIN R. BRYANT, J.S.C.

12/28/2023