

N.J. appeals court turns down challenges to protective Highlands planning

Monday, August 15, 2011

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The Record

A state appeals court upheld the validity of the master plan for North Jersey's water-generating Highlands region in decisions Monday that were hailed by environmental advocates as a boon for the protection of land and water resources.

In the decisions, the Appellate Division of the Superior Court struck down appeals by affordable housing advocates that challenged how the overseeing Highlands Council adopted its Regional Master Plan, and appeals by developers over the plan's constitutionality.

The plan was created as a guide for land use in the 860,000-acre Highlands region that includes mountainous portions of Bergen, Passaic and Morris counties and generates water for millions of state residents. About half the region, including West Milford, Ringwood and Kinnelon, is subject to intensive state protection against development, with the other half left to the jurisdiction of local planners.

"We're very pleased at what happened today," said Eileen Swan, executive director of the Highlands Water Protection and Planning Council. "It really affirmed the work that we have done and how we have done it."

In one case, the Fair Share Housing Center had asked the court to invalidate the Highlands Council's plan, arguing that group didn't give proper public notice while crafting its regulations.

In the appeals court decision Judge Stephen Skillman said that the Council, created by the Highland Act of 2004, was governed by a different set of rules than state agencies. Skillman noted that the Council did publicize its hearings and gave opportunities for public comment.

But advocates for affordable housing said the ruling was a setback for the state's efforts to make more homes available to low-income families. Kevin Walsh, a spokesman for Fair Share Housing Center — an affordable-housing advocacy group — said the decision would reduce the amount of affordable housing that towns need to provide under the Fair Housing Act and allow the Council to operate away from public scrutiny.

The decision also upheld the Highland Council's requirement that towns in the Highlands region provide affordable housing in an environmentally sensitive manner, Swan said.

In another case, a developer argued that the Highlands Council's Transfer Development Program — which allows property owners to profit by transferring development rights from protected Highlands areas to areas where growth and development is encouraged — was flawed. The developer of a 150-acre property in Wanaque argued that the Highlands Act did not provide enough growth areas to receive the development credits and, in that regard, did not conform to the state's own Transfer of Development Rights Act.

But the court rejected that argument, noting that a municipality's participation in the program was voluntary and that the master plan did not have to strictly conform with the state act.

In two other cases, developers Toll Brothers and Bocina Homes Corporation argued that their development plans, in Pohatcong and Far Hills, were thwarted by the Highlands master plan. But the court ruled that the arguments had to be advanced on the municipal level, instead of arguing that the whole plan was illegal.

Julia Somers, executive director of the New Jersey Highlands Coalition, said the decisions gave “great deference to the Highlands Council” and she hoped it would end individual claims that people's land had been taken unconstitutionally.

“It's an affirmation of the importance of the Regional Master Plan and the Highlands Act for agencies making land-use decisions,” Somers said.

Jeff Tittel, director of the New Jersey chapter of the Sierra Club, said the rulings reaffirmed the master plan as a land-use tool and supported the notion that affordable housing had be considered in the context of environmental preservation and not in a vacuum.

Tittel, who has criticized Governor Christie's handling of appointments and funding to the Highlands Council, said the decision also reinforced the agency's role.

“It's a real victory for the Highlands, and it shows the Highlands plan is working,” he said.

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