

CLEAN WATER COUNCIL
Meeting Highlights
May 11, 2004

Location:

NJ Environmental Infrastructure Trust, Building 6, Suite 201, 3131 Princeton Pike, Lawrenceville, NJ

Attendees:

Pat Matarazzo, Dan VanAbs, Pat Pittore, Carmen Valentin, Russ Furnari, Amy Goldsmith, Ferdows Ali, Pamela Goodwin, Kerry Kirk Pflugh, Lou Mason Neely, Ray Zabihach, Ellen Gulbinsky, Association of Environmental Authorities (AEA), Karen Nowicki, AEA, Rick Kropp and Ursula Montis.

Highlands Water Protection and Planning Act Powerpoint Presentation by Ray Zabihach

Ray is with the Morris County Planning Department and is very active in the Watershed Management planning aspect. Requests were made by the Council members for more information on the Highlands Bill, so Ray graciously put together this presentation for them. The powerpoint presentation will be e-mailed as an attachment to the minutes so that all members can view the presentation in its entirety. The following are comments and or questions generated by the presentation. The Highlands Bill is 100 pages long with 97 pages of amendments which have not been adopted yet (still in committee) and which you have to cross reference in order to understand what is going on.

Ray - Right now the Bill is in legislative limbo for about a week until things can get ironed out and deals made. There are certain southern legislatures that are negotiating changes to the bill in order to obtain more funding. It should be released out of the committees by next Monday. The initial response to the contents of the Bill from private homeowners, farmers and builders was that of concern. Since the amendments, there has been less concern. On the surface it appears that single existing homes will be exempt, however, there are still exceptions that would involve homeowners. The Bill defines the NJ Highlands Region. Lafayette, Andover Twp., and Andover Borough were taken out, leaving 88 municipalities in the Highlands. The Bill gives NJDEP approval authority over activities, probably a lot more DEP control in terms of permitting than exists in the Pinelands. The Bill allows for some development in the preservation area, but it will be rigorously permitted by DEP to make sure there is very little environmental impact. The Bill itself is written for the preservation area and the planning area. There will be an establishment of a Highlands Water Protection and Planning Council. It will be within DEP, but independent of DEP. The Governor will appoint 15 members with the advice and consent of the Senate: eight residents of the seven Highlands counties, five of them elected municipal officials and three of whom are elected county officials, with at least one resident from each county; seven residents of the State. The latest change, is that the county with the most population in the Highlands, will get two representatives (one county and one municipal) Also it was stated that there should be four republicans and four democrats comprising those eight representatives. There will be seven residents of the State, all of whom have to be

experts in water resources, preservation, etc.; all of the things that are relevant to the Highlands. It will be a five year term without compensation. The Governor will appoint the chairperson. He can veto any action taken by the Council, even though the Council is independent. This can be viewed as controversial.

Ellen Gulbinsky - asked if this were true of the Pinelands as well.

Group response - It is true of most state Authorities.

Ray - The regional master plan for the Highlands, which will cover both the planning and preservation areas, will be revised and updated at least once every six years.(amendment changed time period from 5 years) In the preservation area there are still a tremendous amount of forested land in private hands that are available for development. Previously in the plan, farmlands had been mentioned. Now in the amendments, there is specific language dealing with farmlands. The only caveat to the farmland activities is that they must adhere to the intent of the Highlands. There is a strong intent to prohibit or limit future construction. And if there is, it should be compatible with the goals of the preservation area. That will be tough. Within the planning area of the Highlands there will have to be a very strong coordination with the State Plan. The Regional Master Plan mandatory components are: a resource assessment, a financial component, a local government and public component and a coordination and consistency component (see attachment for further explanations) In the new amendments they created a transportation component. The caveat being that it will not increase through traffic.(no increase of lanes) The amendments have also added a smart growth component, which is rather extensive, that relates with the State Plan. The land capacity, mapping and policies of the preservation area has also been put into the Smart Growth new component. Within the preservation area, they are going to create a preservation zone which will become the forbidden zone.(no growth) Within 9-15 months (amendment changed the original 6 months time period) of the Council's adoption of the Plan, the counties and municipalities are required to revise their master plans and development regulations to comply with the regional plan. Local governments must submit the revisions to the Council for approval. If the county or municipality does not conform its plans and regulations to the regional plan, the Council will have the authority to overrule local decisions to enforce the regional plan and development standards. The Council is required to develop a Transfer of Development (TDR) program for the Highlands Region in accordance with current law. But in the TDR section of the Bill, there was no provision for a receiving area. The TDR bill that was adopted in March requires that if a municipality decides to do TDR, they have to identify both receiving and sending areas. The Bill says that this must be consistent with that, but does not create a receiving area. The latest set of amendments states that in the Regional Master Plan, the Council, with the municipality's cooperation, must choose at least one area within the planning area of each municipalities, to create a receiving area. It will be done under voluntary cooperation. Otherwise, TDR will not work because it will not be consistent with the Plan.

There is also a new provision that states if planning communities do five units per acre, they will be offered financial rewards. The amendments also indicate for the first time, that receiving areas can be designated in the counties that are next to the Highlands. If you are in the preservation area, the Council would review all capital projects. If the project creates disturbance or increases impervious area, then the Council has jurisdiction. State agencies can override the Council's decisions based on public health, safety or welfare. Within ten days of the enactment of this act, the DCA, in consultation with NJDEP, must provide guidelines to local government on the processing, review and enforcement of the development applications before the adoption of the Regional

Plan within the preservation area. NJDEP will be able to regulate immediately after the Bill is signed. The intent of the Highlands is to keep the area in its natural state as much as possible. This creates a definition that is very restrictive, which has gotten a lot of the people upset. The new amendments basically say that we are not after the existing residential unit. The original amendments also stated that all natural or manmade water bodies (which could include swimming pools) on your property would have to have a 300 foot buffer. The latest version lists the manmade water bodies but specifically takes out swimming pools, but includes manmade ponds on your property. A deck is considered impervious surface. The intent is to not regulate existing development but to regulate new development. It will not prohibit new development, but new development will be regulated.

Municipalities and counties with conforming master plans and development regulations shall qualify for all the benefits available for Plan endorsement. (see #20 on attachment)

The first bullet in window # 22 in the attachment beginning with the "NJDEP has the right of first refusal" has been eliminated from the Bill. The Bill gives DEP stronger authority to regulate permits for development in the Preservation Area.

The Bill directs NJDEP to develop and enforce two permitting programs and standards in the Preservation Area: Phase I will take effect immediately upon enactment of the Bill and will be in effect for 9 months. All major development will be required to receive a Highlands Preservation Area approval based on standards in this Bill. Phase II directs NJDEP to adopt the second and permanent permitting program, the Highlands Permitting Review Program, within nine months of the enactment of the Bill and will be in effect for one year. After one year, the rules and regulations will be adopted pursuant to the requirements of the "Administrative Procedures Act".

NJDEP Phase I standards (Highlands Preservation Area Approval) - basically all waters in the Preservation Area will become like C1 stream waters with the 300 foot buffer. The quality of all Highlands waters are to be maintained, restored or enhanced, with no degradation. (C1 category protection) DEP will have an enhanced permitting role. There will be conflicts with existing projects. The Highlands requirements will supercede all others, but they will take into consideration the health and safety features. There will be a zero net fill for flood hazard areas, which is aimed at industrial and public water supply systems. To keep further disturbance of a site to a minimum, no more than 3% impervious coverage is allowed on the land area of an existing lot. Development on steep slopes of 20% or more is prohibited, except for roads. Development of upland forested areas is prohibited.

NJDEP Phase II standards (Highlands Permitting Review Program) - see list in # 28 in the attachment.

Highlands Permitting Review Program Exceptions - provides for special treatment of certain single family dwellings. Within a week there will probably be additional language in the amendments to deal with single existing residential development. The Program authorizes NJDEP to issue general permits, charge an application fee, and impose penalties for certain violations. All proposed sewer plan areas will be eliminated. DEP is working on new water quality rules, which should be applicable shortly. Billboards are now going to be regulated in the Preservation Area. There is now expanded language in the new amendments which recognizes brownfield sites and provides more leeway in dealing with them. The land appraisal process expiration date, has been extended to read ten years, rather than the five years noted previously.

There will be an appropriation bill added to the Bill for monies to cover the list in #35 of the attachment.

Lou Neely - asked if they could tax the water users.

Ray - At this point, the sponsors of the Bill say there will be no consideration about creating a water tax for the water users.

Ferdows Ali - Will they lose the hi tech methods, like low impact designs for building houses?

Ray - When DEP reviews, they will make that a major concern. What I sense at this time, is that when there is development in the planning areas, you will see development fitting in with the land and the environment. DEP has made low impact development a major component of the stormwater management rule which will get the development underway in an area where there are preconceived notions.

Pat - Do you see any expansion of the Core Area?

Ray - Towns can opt in on a voluntary basis.

Dan - They opt into the Regional Plan. The planning area does allow for the identification of what is equivalent to the State Plan's critical and environmental sites. A municipality can go through the process and nominate large areas that are not contiguous to the Core Area, but are environmentally sensitive, to the Council. The Council can then agree whether they are critical sites. These sites can also have priority for preservation through acquisition programs, TDRs, etc. So there are ways of nominating similar areas without actually expanding the Core Area. Think of this as an implementing mechanism for the State Plan.

Ray - As a planner, the next step I see that would make this really work, other than DEP regulation, would be the tax reform that the Governor is proposing at the Convention. If there is legitimate tax reform, and we can get education off the back of municipal taxation as a source, planning decisions will be totally different. Municipal officials will not look at development as a burden.

Pat Matarazzo, as the chairman of the Rockaway Township environmental commission, wrote a letter on the Highlands for the Star Ledger. It will probably be published next week. Copies of the letter were brought in by Pat for the members..

