



JON S. CORZINE
Governor

State of New Jersey

Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



JOHN R. WEINGART
Chairman

EILEEN SWAN
Executive Director

Contact: Craig Garretson, Manager of Communications
(908) 879-6737 ext. 105 or craig.garretson@highlands.state.nj.us

FOR IMMEDIATE RELEASE
December 9, 2008

Highlands Act Upheld by Supreme Court

CHESTER, N.J. – The state Supreme Court issued a ruling today upholding the constitutionality of the Highlands Act, affirming an earlier decision by the Appellate Division and a trial court. Today's unanimous ruling, and the August 2007 decision by the Appellate Division, fully affirmed the trial court decision issued in November 2005 by Superior Court Judge Theodore Bozonelis.

The plaintiff, OFP, L.L.C., had sought to subdivide a 93-acre tract of undeveloped forested land in Washington Township, Morris County, into 26 residential lots. The proposed subdivision, which is entirely within the Preservation Area of the Highlands Region, was subject to the Highlands permitting review program because the owner did not receive a permit for a potable water supply from the Department of Environmental Protection until after the Highlands Act was introduced in the Legislature on March 29, 2004.

In its complaint, OFP alleged the Highlands Act violated the protections in the New Jersey and United States Constitutions regarding due process, equal protection and taking of property without just compensation, and that the Highlands Act was being retroactively applied as OFP had filed its application with DEP before the law was passed. In addition, OFP argued that the Preservation Area boundary was arbitrary.

The state Supreme Court did not issue a written opinion in today's ruling, which upheld the Appellate Division finding that "the trial court correctly held that OFP's taking claim should not be entertained because OFP failed to avail itself of the administrative remedy of a hardship waiver." Under the Highlands Act, a property owner can request a hardship waiver to avoid a taking without just compensation. The Appellate Division also rejected OFP's claim that the retroactive application of the Highlands Act was "manifestly unjust," concluding "the evident legislative purpose in providing for limited retroactive application of the Highlands Act was to prevent a rush by landowners to obtain development approvals." The Appellate Division also rejected the claim that inclusion of the property in the Preservation Area was arbitrary.

Previous court rulings also have upheld the constitutionality of the laws that created the Hackensack Meadowlands Development Commission (now known as the New Jersey Meadowlands Commission) and the New Jersey Pinelands Commission.

“Today’s unanimous ruling by the Supreme Court is a ringing endorsement of the regional planning approach for protecting the water supply for millions of New Jersey residents,” Highlands Council Chairman John Weingart said.

“The court has sent a clear message that the Legislature already accounted for instances of true hardship by building the waiver process into the Highlands Act,” Executive Director Eileen Swan said.