



New Jersey Court Decision Upholds State Planning Commission Designation of Centers

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In the March 3, 2006, opinion of the Appellate Division of Superior Court of New Jersey in the cases of *In Re New Jersey State Planning Commission Resolutions No. 2003-03* and *No. 2003-04*, Docket No. A-6589-02T36589-02T3 and *In Re New Jersey State Planning Commission Resolutions No. 2003-08* and *No. 2003-09*, Docket No. A-1629-03T3, the court upheld the actions of the State Planning Commission in designating centers in four municipalities in Sussex County. The approval of the centers was challenged by the New Jersey Chapter of the

Sierra Club, which maintained that the criteria contained in the State Development and Redevelopment Plan (the "State Plan") for the designations of centers were mandatory, and since all the criteria were not met the center designations should be reversed.

BACKGROUND

The four municipalities involved are Sandyston, Montague, Sparta and Vernon. In 1998, each municipality submitted petitions to the State Planning Commission (the "commission") to amend the New Jersey State

Plan Policy Map (the "State Plan map") and formally designate areas within each municipality as "centers" under the State Plan. The petitions sought approval for Layton Village Center and Hainesville Village Center in Sandyston, Montague Town Center, Sparta Town Center and Vernon Town Center.

The State Plan was adopted by the commission in accordance with the State Planning Act (the Act), *N.J.S.A. 52:18A-196 to -207*. The State Plan, inter alia, created the State Plan map, which identified areas for growth, limited growth, agriculture, open space, conservation and embodied other appropriate designations. The State Plan map identifies five planning areas, distinct geographic and economic units within the state that share common characteristics: metropolitan (planning area 1); suburban (planning area 2); fringe (planning area 3); rural and rural/environmentally sensitive (planning areas 4/4B); and environmentally sensitive and environmentally sensitive/barrier islands (planning areas 5/5B). The municipalities involved in this appeal are in planning areas 4, 4B and 5.

The State Plan's approach to managing growth is through the designation of centers to identify areas for development and redevelopment. Centers are defined in the State Plan as "ecologically designed compact forms of development and redevelopment that are necessary to assure efficient infrastructure and protection of natural resources." Lands within designated centers are where development and supporting infrastructure are planned to occur while the adjoining lands are to be protected to maintain their agricultural or environmentally sensitive characteristics.

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Centers range from hamlets to urban centers. The State Plan identifies the criteria for each type of center. The case involved only town and village centers. The State Plan's criteria for town centers provide for "a population of more than 1,000 but less than 10,000; ... a gross population density of more than 5,000 persons per square mile; ... a minimum gross housing density of three dwelling units per acre; ... a land area of less than two square miles; and ... a jobs-to-housing ratio of 1:1 to 4:1." A town center should be "served by an arterial highway and/or public transit." The State Plan's criteria for village centers provide that they should have "land area[s] of less than one square mile; ... a minimum gross population density of 5,000 people per square mile ... and a minimum gross housing density of three dwelling units per acre; and [that] existing and [projected to] 2020 populations should not exceed 4,500 people[.]" The State Plan provides that a village center should be in reasonable

proximity to an arterial highway.

The State Plan embodies a plan endorsement process for the designation of centers. If a municipality's plan is endorsed, it will be eligible for certain priority assistance and incentives. Each municipality sought to design its proposed centers to conform to the standards of the State Plan and where such conformance was not possible sought to justify a departure from those standards. After receiving the petitions, OSG worked with several other state agencies and the municipalities to modify the initially proposed center boundaries to be more consistent with the State Plan. In addition each municipality and OSG agreed to a planning and implementation agenda to ensure that implementation of the designated centers by both the municipality and the state agencies would be consistent with the State Plan. The commission then approved the designation of each modified center with the agreed upon planning and implementation agenda.

The Sierra Club challenged each of the four approvals contending that the criteria in the State Plan for the designation of village or town centers are mandatory requirements having the force and effect of administrative rules or regulations. Since none of the approved centers met all of the criteria in the State Plan, the Sierra Club contended that the commission's approval of each center should be reversed. The commission maintained that the criteria were flexible guidelines to be applied at the discretion of the commission.

APPELLATE DIVISION DECISION

The Appellate Division noted that it has repeatedly held that the State Plan has no regulatory effect and that neither it nor the State Plan map should be referenced or applied in that manner. Rather, the Court decisions have held that the State Plan is a policy guide for state and local agencies to use when exercising their delegated authority. It is a tool for furthering the goal of planning consistency and helping to coordinate planning at all levels of government.

The decision notes that the State Plan itself acknowledges that it is not a regulation, but a policy guide. The decision quotes the State Plan stating that it is "a set of recommendations to the people of New Jersey and their elected representatives." The decision also notes that the State Plan states that it "creates a vision or design for the future that is based on the mandates of the State Planning Act. The provisions of the plan and its supporting documentation constitute an agenda and guide for the state to make the vision or design become a reality." The decision further notes that the State Plan states that it "is not a substitute for functional state agency plans or local master plans ... [It] provides a context, a vision and a process within which these more specific plans can be developed and implemented to achieve commonly derived goals." The Court stated that the State Plan also provides that the criteria for designating centers are a general guide that are to be applied flexibly taking into account local conditions and the planning

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area in which the proposed center is located. The Court further noted that each of the approval resolutions adopted by the commission required that the municipality implement its plan consistent with the goals, strategies and policies of the State Plan.

In challenging the commission's actions, the Sierra Club argued that the approvals of the centers must be invalidated because they violated the State Plan criteria. Since the

designations of the centers at issue here did not meet all criteria of the State Plan, the case was whether the departures that occurred require invalidation of the agency action.

The Court held that reviewing courts should give substantial deference to the interpretation given to a statute by the agency charged with enforcing it and to the agency's expertise in cases involving technical matters within its special competence.

It relied on the following provisions of the State Planning Act, among others, to support its determination that the State Planning Commission acted well within its discretion in approving the proposed centers. It stated that the State Planning Act directs the commission to develop the State Plan "for use as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation." *N.J.S.A. 52:18A-196c*. The Act vests the commission with the power to adopt the State Plan, "which shall provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the state and its regions and which shall identify areas for growth, agriculture, open space conservation and other appropriate designations[.]" *N.J.S.A. 52:18A-199a*. The Act requires the State Plan to be "designed to represent a balance of development and conservation objectives best suited to meet the needs of the state." *N.J.S.A. 52:18A-200*. Among other things, the State Plan is to "[p]rotect the natural resources and qualities of the State . . . [and] [p]romote development and redevelopment in a manner consistent with sound planning[; c]onsider input from state, regional, county, and municipal entities[; and] [i]dentify areas for growth, limited growth, agriculture, open space conservation and other appropriate designations that the commission may deem necessary[.]" *N.J.S.A. 52:18-200a to d*.

Based on this language in the State Planning Act, the Court determined that the criteria were not intended to be inflexibly applied. They were designated as guidelines only, as is the State Plan. As a result, the Court upheld the centers as approved by the State Planning Commission stating that in deferring to the expertise of the State Planning Commission, it must recognize the State Plan's concept of planning for development organized around centers and its rationale that the result will likely be lower public service costs, more efficient use of infrastructure, greater community cohesion and identity, and protection and reduced consumption of natural resources.

IMPLICATIONS OF THE COURT DECISION

There are an increasing number of state agency regulatory and funding programs that are basing decisions in part on the State Plan map designation of the area in which the property is located. Most of these programs are classifying designated centers as being smart-growth areas. While obviously not all areas can be designated as centers, the ability of a municipality which contains substantial lands in Planning Areas 4, 4B and 5, to designate one or more centers provides an opportunity for those municipalities to have some growth. The Court's decision in this case allows the State Planning Commission to be flexible in the application of the criteria in the State Plan in reviewing petitions for plan endorsement, including those seeking to designate centers or make other changes in the State Plan map.

This flexibility makes it important for interested persons participating in the plan endorsement process. This includes urging towns that are not currently participating in the process to participate if there is justification either for a center designation or for a planning area change. In addition to participating in the development of the petition for plan endorsement locally, an interested person should continue to participate with the State Planning Commission when the petition is submitted to it. In addition to the municipalities in the coastal area regulated by the Department of Environmental Protection that have submitted petitions for plan endorsement that were discussed in the March issue,

there are some regional groupings of municipalities, as well as a few other municipalities, that are currently pursuing plan endorsement. In these municipalities, interested persons should both participate locally in the development of the petition as well as participating in the State Planning Commission plan endorsement process.

The Office of Smart Growth is required to post the status of all petitions for plan endorsement on its website (www.nj.gov/dca/osg/) as well as posting notice of all meetings of the Plan Implementation Committee that reviews petitions for plan endorsement and of the State Planning Commission. In addition, copies of the submitted petitions are available on the OSG website. The Office of Smart Growth makes a recommendation as to whether the State Planning Commission should approve, approve with required changes or deny the petition. That recommendation and the petition are then presented to the Plan Implementation Committee for review. The meetings of the Plan Implementation Committee are open to the public, and there is an opportunity provided for public comment. The petition is then presented to the State Planning Commission for action. Again, the meetings of the State Planning Commission are open to the public with an opportunity for public comment. In general, it is more effective to raise concerns with the petition as early as possible in the process.

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