

Residents divided on Highlands lawsuit

By LARRY HIGGS
Staff Writer

Freeholders are adamant, but how do Hunterdon County residents feel about plans to sue the state to overturn the Highlands Preservation Act?

At issue is the freeholders' contention that the law violates the state constitution by taking control of local development in towns designated as being in the Highlands preservation area. The law would give that power to a 15-member regional council appointed by the governor. Only towns have the constitutional power to zone land and reg-

ulate its use, the freeholders contend.

The view from the street, though, is as diverse as the law itself, an informal poll this week shows.

Residents interviewed in Clinton Town, at a nearby Wal-Mart and in Flemington, support the purpose of the Highlands law — to preserve land around the headwaters of streams that supply drinking water to millions of New Jerseyans. Of 12 people interviewed, four support a suit, seven oppose legal action or favor a compromise and one was undecided.

To some residents, the question comes down to whom they trust more — a

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is a long shot. Page A-8**

state board or local officials.

"I personally like the idea of local people having control on how they use the land in town," said Sue Chatterlee of Bethlehem Township, who supports a lawsuit. "When you bring it to the state level, you have less say."

Chatterlee said local plans and desires for development might not mesh with what the state wants. "It's best left in local hands," she said.

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Highlands

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Melissa Downey of Califon said she used to live in Essex County and knows the importance of having good drinking water.

"The water there is bad; I came to my parents' house in Alexandria to get bottles of water," Downey said. "I don't think they should sue."

While she recognizes the issue of local control over development, Downey said the emphasis on preservation or building can vary by who's in office.

"Everyone is politically motivated," Downey said. "Having a state council would provide a central place for people to address their concerns. Local officials might not have a cohesive plan."

Robert Hannon of Clinton Township said preservation and controlling development is the primary issue for him.

"I can see the point about losing local control of development, but they (freeholders) should be for preservation of land," Hannon said.

Brian Johnson of Bloomsbury

said he'd like to see a compromise worked out between the state and county positions on the Highlands law and local control over development.

"I understand Hunterdon County's concerns and New Jersey's," said Johnson, who was among people interviewed at the Wal-Mart in Clinton Township. "It makes sense to find a better way. I don't know whether it (a lawsuit) is appropriate."

Johnson said he believes the local control issue could be addressed if conscientious local representatives are appointed to the Highlands council.

Like most longtime Hunterdon residents, Dawne Reigel of High Bridge said she doesn't want any more development in the county.

"It's sad to see it built up," Reigel said. "They should come to a compromise rather than go to court."

Chris Nuhn of Milford agreed. "Negotiate or find an alternate method," Nuhn said. "Suing isn't necessary. They should find another way to work it out."

But suing may be the only alternative, said Leslie Balogh of Glen Gardner.

"They should sue. They towns should decide," she said. "It should lay with each town."

Balogh said she is also concerned that the members of the Highland Council would be solely appointed by the governor and she agreed with freeholders that members should be elected to the council.

John Walz of Bethlehem said he supports suing and said he's all for limiting government power.

"It's an incorrect use of state power," Walz said. "Council members should disclose their finances. It's a ripe area for corruption."

Derwyn Holder of Lebanon Township said he is not in favor of a lawsuit.

"I feel that water for all is more important," Holder said. "I live on the Raritan River and its' drinking water looks worse every year."

But Martha Orlando of the Annandale section of Clinton Township said the public needs to have the last word before the freeholders file suit.

"I can see the pros and cons on both sides, but they should hold a public hearing," Orlando said.

Freeholder Director Marcia Karrow said she agrees with residents and would like to compromise with the state. But she said state officials failed to listen to the county's concerns during hearings on the Highlands bill.

"Everyone would like a compromise, no one wants to make attorneys rich," Karrow said. "But there was no compromise and dialogue. The state shut the door on having a dialogue on the issue way before the bill was introduced."

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CENTRAL JERSEY VOICES

Should Hunterdon County freeholders sue New Jersey to overturn the Highlands law?



"I think they should sue. The theory is good — to protect water supplies. Unfortunately, the theory doesn't always work in reality."

DONNA LIPYANEK,
Alexandria



"It's an incredibly bad idea. The measures that the state took is to protect the environment and the water supply."

PHILIP CARTELLI,
Milford



"I personally like the idea of local people having control on how they use the land in town."

SUE CHATTERLEE
Bethlehem Township



"I can see the point about losing local control of development, but they (freeholders) should be for preservation of land."

ROBERT HANNON,
Clinton Township

Legal experts say lawsuit a long shot

By **LARRY HIGGS**
Staff Writer

NEWARK — Legal experts at Rutgers School of Law give Hunterdon County freeholders poor odds of winning their proposed lawsuit challenging the constitutionality of the Highlands Preservation Act.

The Highlands bill, signed by Gov. James E. McGreevey in August, seeks to protect drinking water by banning development on land around headwaters of streams. It designates nearby, less-sensitive areas as locations for development.

Two law professors were asked to respond to the county's presumed legal contentions:

ARGUMENT:

The Highlands law violates the state constitution by infringing on the right of municipalities to regulate development and zoning. The freeholders contend that the Highlands law will require towns in the

preservation area to accept a regional master plan for development to be written by a 15-member Highlands council to be appointed by the governor. In addition, the freeholders contend that council preempt town officials from deciding on some applications to build in the Highlands region.

■ **Thomas A. Borden, Esq., associate clinical professor of law, Rutgers Environmental Law Clinic.**

"The Pineland and Meadowlands acts, which are similar to the Highlands Act and the Coastal Area Facilities Review Act, all have survived constitutional challenges on taking away home rule from towns.

"The way the New Jersey constitution is set up is that the concept of home rule isn't embedded in the constitution the way that towns think it is. New Jersey protects land use through various mechanisms where towns are delegated protection of land use. But the state retains

the authority to regulate land and does it through various measures.

"I'd say the law is well established that the state has the authority and responsibility to enact regional solutions where necessary and the constitution ultimately provides authority to regulate land use with the state and not the municipalities. The precedent is the Pinelands and the Meadowlands acts."

■ **John Payne, professor of law, Rutgers University Law School, Newark.**

"In New Jersey, you have the Coastal Area Facilities Review Act, the Meadowlands and Pinelands acts. All have been tested in various ways and upheld. The Highlands Act is patterned on these previous laws.

"This is not a substitute for careful, legal analysis, but I think the chances of it being found unconstitutional on that ground is not very likely.

"The specific authority will remain with the municipality,

but it must conform its local choices to the overall master plan. The way these programs work is the regional authority sets the guidelines and the local zoning could be anything the local government chooses, so long as it's not in violation of the regional master plan."

ARGUMENT:

The Highlands Council — a 15-member body appointed by the governor that will make development-related decisions in the Highlands development area — won't adequately represent Hunterdon County. Moreover, members should be elected or at least made to disclose their finances, like elected officials.

■ **Borden:** "When establishing a regional entity nothing in the New Jersey constitution requires mandatory participation. They (council members) are serving at pleasure of the governor.

"The Coastal Area Facilities

Review Act covers a broad area of land and that authority is given to the Department of Environmental Protection and to one (Department of Environmental Protection commissioner appointed by the governor. It would be a difficult attack. The state government has the ultimate authority to regulate land use. The governor has that power to determine that this particular part of New Jersey is so worthy of protection that a special council be created and be appointed by the governor."

■ **Payne:** "I don't think those are constitutional issues, those are political. That's a choice the legislature made, I can't see a court upset about the constitutionality of that. By definition, the more control local mayors have over it, the more home rule is respected and the happier local government will be. One reason why New Jersey looks the way it does today is so many local jurisdictions are making decisions about land use."