

Guest Editorial: SPOT ZONING

by R. William Potter, a practicing attorney in Princeton, New Jersey

Recently the Princeton Regional Planning Board voted to approve, "in concept," an overlay ordinance to permit "market rate" housing for seniors—those over the age of 62, truly youthful seniors by modern standards—on land previously studied and declared unsuitable for high density use, because it is fragile, outlying, and best left as close to natural as the law allows.

The seniors who will move to these new projects on the Princeton Ridge or Mount Lucas Road are not objects of charity. This is "market rate" housing—it will cost whatever the market will bear. This overlay zone will be for people of a certain age who can afford costly homes on land that was previously studied and declared unsuitable for intensive development of any kind, whether for senior housing or anything else.

The practice of spot zoning has become a trend in New Jersey: known as an "overlay ordinance," it is better dubbed an "override ordinance" because it overrides the carefully-crafted zones established by law, pursuant to a community's master plan.

Why is this happening? Because of the classic response of local politicians to accommodate a pressure group that is perceived to have clout. Will local officials awaken to what they are doing or will they enact these override ordinances and leave it to the courts to strike them down?

All communities work best when they work together, and that's what the comprehensive planning process does; no single group should get a "veto" to override the public interest—or the zoning

ordinances enacted from a comprehensive Master Plan.

When a town council yields to a special interest and rezones land to allow a development project otherwise prohibited by the "underlying" zone, it ignores countless hours spent in devising a comprehensive plan for the community. The courts call that spot zoning and it's illegal because it violates one of the core principles of zoning.

This is the mandate that a town divide land into "zones" in accordance with a "comprehensive plan" for the entire community. Comprehensive planning in turn depends on months of hard work: Inventories of the land and waters. Studies of the "carrying capacity" of roads and sewers. Consultation with the entire community. Public hearings. It is a thoughtful process of "bottom up" planning leading to the land use policies which are then enshrined in the zoning code, as the finished product.

All that is discarded when the overlay ordinance arrives, literally to "override" the planning process with new zones tailored for specific developments on one or more sites. Hence the judicial pejorative "spot zoning." The overlay has become the favorite tool of elected officials bent on opening up some of the last and most fragile land to intensive housing "age-restricted" for senior citizens only, and not simply the low-income, but the wealthy, too.

Overlay ordinances should be rejected; they are spot zoning by another name.

(The views expressed are Mr. Potter's; not those of his firm or clients).

Conservation Action needed to Save a Piece of Morris County

by Jeff Derwin, member of Friends of Pyramid Mountain

The Friends of Pyramid Mountain, a conservation group in Morris County, want to protect a 34-acre wetland property that sits directly between Pyramid Mountain Natural Historical Area (a Morris County Park) and the Butler Reservoir (a public drinking water supply).

Since May, 2001, the group has been making pleas to local and State agencies to protect this "ecological wonderland" which consists of streams, wetlands, forests, rare geological formations, wildlife, and hiking trails. The property abuts Pyramid Mountain Natural Historical Area and is a critical link in the NJ/NY trail system, which is a main reason why the Morris County Park Commission wants to see it annexed to the Park.

The Morris County Open Space Trust Fund property appears destined for devastation, since a developer is close to

receiving permits to build a housing development on it.

The New Jersey Conservation Foundation, the Morris Land Conservancy, the Morris County Park Commission, and the Boroughs of Kinnelon and Butler, in conjunction with the Friends of Pyramid Mountain, are now making a public appeal to help save the property from destruction.

An exciting website with photographs, maps, and other details has been created to help expand public awareness and promote a call to action, for support of this highlands conservation project named the Pyramid Mountain Park Extension. Please view it at <http://www.kinnelon.com> (click the Pyramid Mountain banner), or call 973-492-8048 for more information. Time is running out!

Outings Report: REVIVAL OF THE ESSEX COUNTY ENVIRONMENTAL CENTER

by Joyce Haddad, Outings Chair of the Chapter Singles Section

Last November 2001, the Sierra Singles Section, in conjunction with Dave Ogens of the Essex County Group and the Master Gardeners of Essex, led a "clean-up" of the Environmental Center in Roseland. Thirty volunteers, along with NJIT Water Watch students, cleared trails, chopped dead trees, cleared the children's jungle gym area, and removed much of the garbage that littered the site. In the process, an obstacle course, climbing apparatuses, a dinosaur fossil display, and many overgrown trails were uncovered. Coffee and donuts were donated by Starbucks and Dunkin Donuts.

One of the intentions of the clean up was to publicize the neglected Center's closure ten years ago, due to budget con-

straints. We hope to revive it to its former glory. In its heyday, this Center was used to teach school children about the environment and biology. Currently this site languishes without staff - although the County Parks Department maintains its buildings. Sadly, Essex County is the only county in New Jersey that doesn't have its own Environmental Center. School buses transport children all the way out to the Great Swamp in Morris County or Sandy Hook for field trips. Those Centers are presently functioning at overcapacity. We believe that with enough support our endeavors will be fruitful.

The Environmental Center, located on the southern edge of Hatfield Swamp, is uniquely positioned on the Passaic River surrounded by hardwood forest to the

Chair's Message: SEVERE DROUGHT IN NEW JERSEY

by Tina Schvejda, Chapter Chair

New Jersey and the Mid-Atlantic States have been in the grip of a drought for several years. Hurricane Floyd gave us a "break" a few years ago, but the drought has continued. Precipitation in the state in October, November and December 2001—4.30 inches—was the lowest end-of-year total since records began in 1895.

NJ has received only 66% of normal precipitation in 2001. The dry conditions in January and February, 2002, did not help the problem.

These are extremely important issues and facts that face everyone who resides along the northeastern seaboard. The Mid-Atlantic region has been hit the hardest, and our most-densely populated state is in a critical position. There are too many people, without direction from state government, trying to use water as if there were still plenty to spare.

North Jersey receives its drinking water through surface percolation into lakes, streams and reservoirs. The Highlands region is the watershed for more than 3 million people. Land left in its natural state slows and filters water running into lakes, thus helping to insure the future health of this natural system. With increased building in the region, land lost to development and more impermeable surfaces with pavement and roads, water is lost to reservoirs.

According to the latest soil moisture deficit statistics from the Climate Prediction Center, northern New Jersey requires 5.47 inches of rainfall to end the current drought. Coastal New Jersey requires almost 10 inches of rainfall to end the drought that ranks in the top 5% driest mid-winter seasons on record. The long-term Palmer Drought Index rates the New Jersey soil moisture condition as moderate to severe drought.

Southern NJ obtains water from aquifers. People are drinking 30,000-year-old water from deep within the earth. Surface water quickly runs out to sea. With the entire building bonanza over the last couple of decades the ever demanding and increasing needs for water are rapidly dwindling fixed water supply.

The NJ Chapter of Sierra Club feel that the DEP needs to take a much closer, and broader, look at water supply issues in many of its permitting programs. It must do far better, especially in coastal zone areas where consumptive use and loss of recharge is a major long run, and in some places immediate, problem.

Due to continued dry weather and declining reservoir and stream flow levels, DEP Acting Commissioner Bradley M. Campbell expanded the existing regional drought warning to several more counties. "Water supplies are at alarmingly low levels for this time of year," said Campbell. "We need everyone to take common-sense steps to reduce water use and avoid water waste."

Bill Wolfe, NJ Chapter's Policy Director, stated, "Unless a drought emergency is declared by Governor McGreevey, the DEP's powers to manage the problem are limited, particularly DEP's ability to restrict water use."

Wolfe further suggested the following-

- 1) DEP should stop issuing new water allocation permits;
- 2) DEP should limit new well drilling permits to only those wells that replace existing wells that have gone dry;
- 3) DEP should review and limit any extension of existing water supply infra-

east and wetlands to the west. It provides a wonderful learning environment for students to study these three distinct ecosystems. We anticipate involving the local colleges and universities to study wildlife habitat and the environment. The site includes 23 acres and several structures. The main building, Garibaldi Hall, houses a Rutgers' Cooperative Extension office and has a large meeting hall, several smaller offices, a kitchen



structure/water lines

4) DEP needs to reconsider existing water allocation permits to prevent the permit holders from increasing their current actual water use to their permitted use without DEP approval;

5) DEP should consider the ecological and water quality impacts of inter-basin transfers of water during the emergency. DEP has already reduced minimum river/stream passing flows - if low flow conditions persist during warm temperatures, high nutrient and pollutant levels will create very bad ecological and water supply conditions;

6) DEP should work with major users to mandate water conservation,

7) DEP must better protect wetlands because they store huge amounts of water.

After the emergency is over, DEP should:

1) develop mandatory and enforceable water budgets for each watershed;

2) revise/update the 1994 Consumptive Use Report and implement its recommendations;

3) revise/update the 1996 Water Supply Master Plan and implement its recommendations;

4) develop a planning and permit review process for water line extensions similar to the current waste water infrastructure process;

5) develop and promulgate revised water allocation regulations,

6) develop a program that limits development and new water allocation permits and sewer line extensions (Treatment works Approval permits, or Water Quality Management Plan approvals) in deficit watersheds,

7) develop a program that mandates storm water recharge,

8) develop a program that mandates beneficial reuse of certain wastewaters in certain areas, especially in the coastal plain,

9) greatly limits golf course and other frivolous intensive uses,

10) ratchets down on the pollution dischargers above water supply intakes,

11) protects water supply watershed streams and reservoirs.

If we don't implement and enforce more stringent, stricter laws and permits in NJ, our State will be unable to provide residents with an adequate water supply for the rest of 2002 and into the future.

This article was written February, 2002, when we were experiencing a severe drought throughout most of the State. Perhaps by the time you read this commentary the situation will have gotten better.

For information on how to conserve water, go to <http://sierraactivist.org/> website or DEP's drought web site at <http://NJdrought.org> or call 1-800-4-ITS-DRY. The site also links to the USGS web page and that of the Delaware River Basin Commission.

and public bathrooms. The Singles Section uses the meeting hall for Movie Nights and other socials. There is a large garage where the canoes that the Sierra Club uses for their trips are housed. A few smaller structures are used for storage. The Master Gardeners recently rebuilt the greenhouse on the property that was financed through their fundraising and grant monies.

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