

Old Bridge (1987)

Newspaper Cut-out regarding wetlands

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School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

June 22, 1987

Stewart Hutt, Esq.
459 Amboy Avenue
Woodbridge, NJ 07095

Dear Stewie:

Nice quote, but why wasn't your picture
on the front page? And does this affect Woodhaven in
Old Bridge?

Very truly yours,

Court upholds Kean ban on wetlands developers

By KATHY BARRETT CARTER

Star Ledger
6/20/87

A state appeals court refused yesterday to issue a temporary restraining order against Gov. Thomas Kean's executive order that bans development in 300,000 acres of the state's freshwater wetlands.

The builders, who had asked for the court action to halt implementation of the executive order, immediately asked the state Supreme Court to review the matter and overrule the appellate court decision.

Late yesterday afternoon the Supreme Court agreed to decide on Tuesday during its regular conference meeting if it will hear the matter.

Despite contentions that the construction ban would cause builders to suffer "irreparable harm," a three-judge panel, without comment, denied the request of the New Jersey Builders Association to stay the Governor's order.

In a prepared statement, Kean said, "Today's court decision is an important step in highlighting the vital envi-

ronmental role played by the wetlands in maintaining clean water, providing flood control and protecting fish and wildlife.

"During New Jersey's economic renaissance of the past five years, commercial and residential construction has set new records every year. The state's commitment to environmental quality is a critical component in our continuing economic growth. I believe that the protection of the wetlands is not only of paramount importance to the state's quality of life, but that in the long run will further prove the compatibility of balancing growth with sound environment," the Governor added.

"It's great news," said Thomas Wells of the New Jersey Conservation Foundation. "It keeps the pressure on the Legislature to act."

But Stewart Hutt, counsel for the builders association, reiterated his contention that the Governor's order was a

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THE STAR-LEDGER, Saturday, June 20, 1987

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Appeals court upholds Kean ban on wetlands development projects

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"gross abuse of executive power."

If the case is not taken by the state's highest court, the builders could proceed in the Appellate Division of Superior Court on the merits of their case, Hutt said. Yesterday's decision by Appellate Division Judges Virginia Long, Warren Brody and William D'Annunzio did not address the merits raised in the case but rather involved only the request for a temporary restraining order to halt the moratorium while the legality of the Governor's action is argued in court.

As long as the moratorium is in effect, Hutt said builders would "absolutely" suffer "enormous problems."

Approximately 500 projects are affected by the order.

"There are loads of builders who are ready to start construction but awaiting permits. The order is: Don't issue any permits," Hutt said.

He said in a case where a builder is constructing 300 homes, the builder may need permits for some areas but, has not applied for them.

If the developer is unable to get the permits because of the moratorium, his ability to deliver homes that are already sold could be adversely affected, Hutt said.

As long as the moratorium is in place "jobs will come to a halt," Hutt said.

Explaining that existing maps are not precise and can be up to a quarter of a mile off, Hutt said even developers who do not have wetlands will be stifled while they wait and

see if, in fact, their property is considered wetlands. Hutt said the state Department of Environmental Protection (DEP) simply does not have the staff to do the delineations.

Frank Capece, an attorney for a large group of developers in Middlesex, Morris, Bergen and Union counties, said: "This is a unique situation. I've never seen a matter where action is being taken concurrently by three branches of government. I think that is the most significant aspect of this whole thing."

Mary Jacobson, a deputy attorney general, had urged the judges to deny the restraining order. The order would have halted implementation of the Governor's June 8 executive order prohibiting all state agencies from issuing permits to developers seeking to build in New Jersey's wetlands until wetlands protection legislation is approved by the Legislature.

She had claimed that without the moratorium there would be an "irretrievable loss" of a "fragile and critically valuable" resource which could result in damage to water quality and the state's flood control capacity.

Jacobson also maintained that under both the state constitution and law the Governor has the authority to issue the emergency order.

Also involved in the lawsuit were Murwin Development Corporation and Hollow Hill Associates.

Kean issued the moratorium in response to the Legislature's failure to pass acceptable legislation protecting the wetlands, which are considered vital for replenishing water supplies, filtering out contaminants and controlling floods.