

ML - Morris County Fair Housing Council
vs. Boonton

1983

- Hanover

Letter Brief submitted in support of plaintiffs' motion to
dismiss defendant Hanover Township's challenge to
the State Development Guide Plan

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State of New Jersey

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September 13, 1983

Honorable Stephen Skillman
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, NJ 08903

Re: Morris County Fair Housing Council, et al. v.
Boonton Township, et al., Docket No. L-6001-78 P.W.

Dear Judge Skillman:

This letter brief is submitted in support of plaintiffs' motion to dismiss defendant Hanover Township's challenge to the State Development Guide Plan* (hereinafter SDGP).

Hanover Township, a municipality mapped entirely in the SDGP growth area, challenges the Guide Plan in two respects. First, it claims that certain unspecified areas in Hanover itself should be remapped outside the growth area. Second, it claims that certain unnamed municipalities which are now mapped entirely outside the SDGP growth area should be remapped into the growth area. Hanover seeks to have these challenges to the SDGP adjudicated prior to trial on the merits of the case and invokes the special procedure established by the Court's order of July 13, 1983. Hanover is the only party in this case making such a challenge.

The July 13 order states in pertinent part:

1. Any party which intends to challenge the designation in the SDGP of a municipality as lying wholly outside any "growth area," the hence having obligations under Mount Laurel II which are limited to its resident poor who now occupy dilapidated housing, or as lying wholly or partly within a "growth area," and hence having an obligation for a "fair share" of "regional need," shall file its challenge to such designation no later than

* All references to the State Development Guide Plan are to the 1980 revised editions.

August 26, 1983. Any challenge to a SDGP designation not filed by August 26, 1983 shall be deemed waived for purposes of this litigation.

2. The papers in support of such challenge shall include complete reports from any experts whose opinions will be relied upon in support of such challenge, complete affidavits from any fact witnesses who will be presented in support of such challenge and a legal memorandum setting forth the basis for the challenge.

3. Any responding papers shall be filed no later than September 26, 1983 and shall follow the same requirements set forth in paragraph 2.

The special procedure created by this order for early determination of challenges to the SDGP has three distinctive characteristics. First, it is available only for the limited purpose of deciding challenges to the Guide Plan that might result in a municipality's being remapped from entirely outside the SDGP growth area to at least partially within the growth area or alternatively from partly or entirely within the growth area to entirely outside the growth area. These types of challenges, which may result in a shift in a municipality's constitutional status from one having no obligation to meet regional housing needs to one having such an obligation, or vice versa, are qualitatively different from other types of challenges, which at most affect the amount of a municipality's regional obligations.

Second, the procedure sets out specific and tight timetables: a challenge must be made clearly and unequivocally by August 26, 1983, or else it is deemed waived; it must be responded to by September 25; and hearings are to be conducted in early October.

Third, consistent with the Court's expressed intent that the entire direct case be laid out in writing in expert reports and affidavits, the challenge must include all the supporting evidence that a proponent will present, including complete expert reports and affidavits of fact. This manner of proceeding is entirely consistent with the Court's interest in ensuring that each party's

direct case be laid out in writing in expert reports and affidavits.

The challenge made by Hanover Township satisfies neither the substantive nor the procedural requirements established by the Court in the order of July 13, 1983. The defects in Hanover's challenge are so fundamental that the challenge must be dismissed.*

A. The challenge to the SDGP insofar as it concerns Hanover Township, is not authorized under the July 13, 1983 order.

Defendant is not seeking to have Hanover Township remapped entirely outside the SDGP growth area. It is seeking merely to have some unspecified portions of the municipality mapped as nongrowth areas. This challenge is not authorized under the July 13 order, which is limited to challenges that remove a municipality entirely from the growth area. Nor is it consistent with the underlying purpose of that order, since the proposed remapping would not eliminate Hanover's regional housing obligation. The challenge should, therefore, be dismissed.

B. Hanover Township's challenge to the SDGP, insofar as it concerns other unspecified municipalities, is too vague and generalized.

While Hanover's claim that some municipalities now mapped entirely in nongrowth areas should be remapped into SDGP growth areas is of a type permitted by the July 13 order, the challenge is so vague and generalized that it does not meet the requirements of that order. The challenge neither identifies the municipalities which Hanover claims should be remapped nor states the facts which would justify such action. The challenge is little more than a generalized expression of Hanover Township's dissatisfaction with the State Development Guide Plan. It states no claim that any other party could defend against or that the Court could adjudicate. In the absence of a clear and specific challenge to the SDGP, any claim that Hanover might have made under the July 13 Order must be deemed to have been waived. On this ground too, the challenge should be dismissed.

* Plaintiffs do not question that Hanover Township may make this challenge as part of the trial on the merits, provided the other provisions of the Order of July 13 are met. Because of the critical conflicts of defendant's challenge with the Order of July 13, it may not invoke the special procedures set forth in that Order to have

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C. The challenge is incomplete and violates the requirements of the July 13 order.


The July 13 order contemplates that the proponent of any challenge to the SDGP will lay out its full case in expert reports and affidavits. Hanover's challenge is, by its own admission, facially incomplete. It characterizes its expert report as "preliminary" and "in the process of being supplemented". The report does not state the specific areas of Hanover sought to be remapped, the facts that justify the remapping of Hanover, the other municipalities sought to be remapped, or the facts justifying the remapping of any other municipality. The report is so incomplete that it cannot be said to state a claim at all. Moreover, Hanover has filed no legal memorandum in support of its challenge as required by paragraph 2 of the July 13 order.

This incompleteness is not merely a technical defect, since it prevents any other party from making a timely response. On this ground alone, the challenge should be dismissed.

In sum, Hanover Township's attempt to invoke the special procedure set forth in the order of July 13, 1983, in challenging the State Development Guide Plan is substantively and procedurally inadequate. For the reasons stated above, the Township's challenge should therefore be dismissed.

Respectfully submitted,

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SE/cat
cc: All Counsel