

OPINION

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PRESERVING THE HIGHLANDS

Chairman must ensure public access to process



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This Thursday the New Jersey Highlands Council will hold a meeting. On the agenda is whether the council's committees — the groups of individual members who meet to discuss and recommend specific policy proposals — will meet in public or in private. The council should make those committee hearings public, especially considering the record of its chairman.



DAILY RECORD FILE PHOTO

John Weingart, chairman of the New Jersey Highlands Council, presides over a meeting in December 2004.

The significance of the council's work, and the authority it possesses, cannot be overstated. The Highlands statute that was rammed through the Legislature last year gives to an unelected body of 15 people effective control over the planning and zoning decisions for about one sixth of the state's land mass and 1 million New Jersey residents. For North Jersey families, the law threatens to destroy the value of land, dramatically increase property taxes and undermine the authority of hundreds of elected representatives from Somerset to Bergen.

With a law like that, one would expect that the governing body in which so much power resides would naturally open its entire decision-making process to full public view. But some on the council, including Weingart, do not want to allow public access to the council's committee hearings. As the chairman put it, he believes "there is such a thing as too much public participation."

On the weighty issues regarding the Highlands, there cannot be too much public participation and oversight. That goes double when Weingart is the leader of the council.

That is not to say Weingart is unfit for

public office. By all accounts he is a gentleman whose integrity is unquestioned. But over his decades-long career as a bureaucrat, Weingart's actions indicate that he holds a point of view toward government power that makes his appointment as chairman of the council concerning.

In the past, when given the power to regulate, Weingart has placed too much reliance on the role of unelected administrators, and not enough trust in the elected representatives of the people, or even the people themselves. In the Highlands Council, Weingart has hit the mother lode of regulatory authority, and for that reason especially, the council's actions — all of the council's actions — deserve public scrutiny.

In the late 1980s and early 1990s, as the assistant commissioner of the Department of Environmental Protection for regulation, Weingart was responsible for the development of the DEP's rules on wetlands, waterfront, coastal area and stream area development. His tenure was remarkable for its disregard of the ownership rights of small-property owners.

For example, as assistant commissioner, Weingart issued regulations that defined wetland buffer areas in excess of the limits expressly provided by the enabling statute. The court's properly struck down those regulations. During that time, he also tried to implement coastal development rules that would have regulated such mundane matters as the elevation of a single-family home to protect it from floods and the placement of decks, patios and small gardening projects in and around single-family homes. Those proposals were retracted by the DEP only after the Legislature began override proceedings that forced

Weingart to admit the proposed regulations exceeded the clear intent of the enabling statutes.

To top it off, Weingart implemented rules that prohibited small residential docks from being built anywhere a clam lived — even if the area was one in which people did not harvest clams.

Weingart's love of mollusks, and his corresponding disdain for property rights, became so infamous in Trenton that when Gov. Christie Whitman sought to make him the director of the Department of Consumer Affairs in 1995, Republican senators refused to approve him and convinced the governor to find another, less influential, government position for him.

Until last month, Weingart had said all of the right things about public participation and the Highlands Council. In November 2004, he said, "I hope we can have a process that gives everyone a chance to be heard, and to contribute." On Dec. 16 Weingart said, "I know that

all of the members look forward to working with the residents and officials of the Highlands to create a plan that will be of benefit to the region."

The chairman's position has changed dramatically, however. Could it be that the public participation about which Weingart theorized is now in conflict with the authority he seeks to exercise in practice?

Last September, as Gov. James E. McGreevey announced he was naming Weingart council chairman, the governor stated that the goal of the council was to "achieve that delicate balance between environmental protection and smart growth." But on Jan. 27, 2005, behind closed doors and in the company of a friendly group of Sierra Club members, Weingart said the Highlands law is not about balancing preservation with property development, but about preservation alone.

"I wish he would say that at the council meetings!" gushed a fellow traveler who was at the meeting.

So do I.

Given his record of bureaucratic overreach, Weingart is not the man who should be running the Highlands Council. That decision is, so to speak, water over the dam.

Nevertheless, going forward, Weingart and the council must perform all of their duties in the bright light of day. That way, if the chairman attempts to replicate in the Highlands his regulatory excesses of the past, at least the rest of us will know.

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