



March 19, 2021

Martha Sullivan Sapp, Chief
DEP, Green Acres Program
501 East State Street
Station Plaza Bldg. 5, Ground Fl.
Trenton, NJ 0860
Martha.Sapp@dep.nj.gov

Re: 20-year Unlawful Diversion of Block 437.02,
Lot 1 of Braddock Park for non-recreational use

Dear Ms. Sapp:

We are writing to you on behalf of the New Jersey Conservation Foundation (“NJCF”), the League of Women Voters of NJ (“LWVNJ”), the Sierra Club-NJ and “Save Braddock Park-Safe Schools,” an unincorporated membership organization whose members include North Bergen residents and taxpayers to submit our alternative analysis prior to the anticipated submission by North Bergen of its second pre-application. Since the holding of the August 11, 2020 scoping hearing, we have been investigating the education side of this diversion application. Attached hereto is a report written by Robert Walden, a member of Save Braddock Park-Safe Schools that sets forth our assertion that North Bergen has had sufficient time and financial resources to ensure that all its pre-school children would be housed in appropriate facilities, obviating the need to make this 2001 “major” diversion permanent. Not only has North Bergen bypassed alternative properties that it could have purchased, but once it purchased the Hi-Tech site, a review of North Bergen’s Long Range Facilities Plan (which was approved by the Department of Education in 2018) indicates that there will be sufficient room for all pre-school children in the existing elementary schools upon completion of the anticipated reorganization.

We understand that N.J.A.C. 7:36-26.1(a)(2) and 26.9(d)(2) set forth the Department’s rules governing the applicant’s alternative analysis. These rules provide that “the Department’s presumption [shall be] that there is a feasible, reasonable and available alternative...” and “[t]he applicant must rebut this presumption through the alternatives analysis....” N.J.A.C. 7:36-26.1(a)(2). In addition, “the analysis shall include each alternative which is feasible, reasonable and available....” N.J.A.C. 7:36-26.9(d)(2). In this case, the applicant may try to convince you

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there is no feasible, reasonable or available alternative. The applicant's alternative analysis will likely be limited to what properties are currently available for sale. However, in this case, we believe that the Department's analysis should not be so narrowly focused only on the current availability of alternative properties; primarily because the applicant has had a hand in creating the current situation in 2021 – twenty years after the proposed diversion actually commenced.

The Green Acres laws were not intended to allow a permanent diversion based on an alternatives analysis that ignores the applicant's own fault in creating the need for the diversion itself, as is the case here. Such a narrowly focused review would be against public policy and it would be a clear violation of the legislative intent behind the entire Green Acres Program. "In evaluating and determining whether to approve a diversion application, as part of its analysis, DEP must weigh the competing public interests presented by the proposed diversion against preservation of the parkland in its natural state." In re Dep't of Env'tl. Prot., No. A-2316-10T2, 2017 N.J. Super. Unpub. LEXIS 1935, at *37 (App. Div. July 31, 2017). In addition, "the same regulation appellants cite also requires DEP to 'carefully weigh the competing public interests presented by the project.'" Melvin v. Seaside Heights Borough (In re Seaside Heights Borough Pub. Beach), Nos. A-4585-15T3, A-5372-15T3, A-0557-16T4, 2018 N.J. Super. Unpub. LEXIS 1820, at *19 (App. Div. July 30, 2018). The public's interests in this matter weighs heavily against the applicant because it created its own hardship over the course of decades. The Department ordinarily denies hardship waivers when "...the difficulties were self-created..." Asdal Builders, LLC v. N.J. Dep't of Env'tl. Prot., No. A-2392-10T1, 2012 N.J. Super. Unpub. LEXIS 1487, at *20 (App. Div. June 25, 2012).

In light of these precedents, we believe that the analysis set forth in N.J.A.C. 7:36-26.1(a)(2) and 26.9(d)(2) has to be applied more broadly than is typically the case, given the length of time the proposed diversion has existed (i.e., since 2001) and the nature of the public use for which the property is proposed to be used on a permanent basis (i.e., education: pre-school facility). Specifically, the Department must evaluate North Bergen's reasons for insisting on diverting Braddock Park in light of several factors including the fact that they have had twenty-years to find an alternative site, the Department of Education ("DOE") requires the municipality to engage in long range facility planning, the number of children in the North Bergen school system has been declining, North Bergen has deliberately decided to bypass the opportunity to purchase various sites when they were available, and North Bergen made a commitment to the public and the DOE upon approval of the bond referendum authorizing the purchase of the Hi-Tech site to place all pre-school children in its existing elementary schools. These factors, among others, must inform the Department's evaluation of the applicant's alternative analysis, which cannot be limited to one point in time or even one-year. The general sentiment of the broader North Bergen and Hudson County community that the trailers must be removed should also be heeded. See Jersey Journal editorials urging the removal of the trailers from Braddock Park.¹

¹ <https://www.nj.com/opinion/2020/11/restore-field-in-park-do-better-than-old-trailers-for-preschoolers-jersey-journal-editorial.html>

<https://www.nj.com/opinion/2020/11/we-stand-by-our-editorial-on-pre-k-trailers-in-county-park-jersey-journal-editorial.html>

As indicated in the attached report, upon completion of the reorganization facilitated by the purchase of Hi-Tech, there will be sufficient room for number of pre-school children in the current elementary schools. Although the plan indicates that 50.08 pre-school children would remain “unhoused” after the realignment is completed, that number was projected based upon a projected enrollment of 383. However, enrollment in the North Bergen school system has been declining generally, and in the entire history of the pre-school program, enrollment has never even reached 300. In 2019-2020 there were 293 children; and in 2020-2021 there were 248 number of children enrolled.

Moreover, even if North Bergen were to persuade Green Acres that an additional facility must be created, there is no credible reason why North Bergen and its Board of Education (“BOE”) cannot work with the BOE’s property at 64th street, where an adjacent piece of property is currently for sale. In addition, there is a 2-acre property for sale adjacent to the Hi-Tech site located at 2100-2126-83rd St. that may also be used.

We understand that you have recently received North Bergen’s pre-application that Green Acres permitted it to re submit again despite the fact that this diversion process commenced over 6 years ago when the first scoping hearing was held on November 5, 2014. Upon review of that pre-application, we anticipate submitting additional comments on all matters implicated in the diversion process.

Respectfully

NEW JERSEY APPLESEED

/s/ Renée Steinhagen
Renée Steinhagen, Ex. Dir.

EASTERN ENVIRONMENTAL LAW CENTER

/s/ Daniel Greenhouse
Daniel Greenhouse, Sr. Atty.