

Adopted 11/30/12

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Library - Batsto Visitors Center
31 Batsto Road
Washington Township, New Jersey

October 26, 2012 – 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Leslie Ficcaglia, Robert Jackson, Richard Prickett, Candace Ashmun (1st Alternate) and D'Arcy Rohan Green (2nd Alternate)

MEMBERS ABSENT: Paul E. Galletta

STAFF PRESENT: Executive Director Nancy Wittenberg, Susan Grogan, Robyn Jeney, and Betsy Piner

Chairman Lohbauer called the meeting to order at 9:37 a.m.

1. Adoption of minutes from the September 28, 2012 CMP Policy and Implementation Committee meeting

Commissioner Jackson moved the adoption of the minutes of the September 28, 2012 CMP Policy and Implementation Committee meeting (open and closed sessions). Commissioner Rohan Green seconded the motion and all voted in favor.

2. Executive Director's Reports

Ms. Grogan said that today the Committee will be discussing responses to the CMP amendments from three municipalities. She said that all have done a good job in applying the rules in creative and useful ways.

Manchester Township December 2011 Master Plan Amendments and Ordinances 11-025 and 12-015, amending Chapter 245 (Land Use and Development) of the Township's Code in response to amendments to the Pinelands CMP related to forestry, wetlands management, and residential cluster development in the Pinelands Forest Area

Ms. Grogan said even before the adoption of the CMP amendments, Manchester Township had been working for many years on a density transfer program (DTP) in its Forest Area (FA) with development receiving areas, PFA-S (which recognize an existing subdivision with lots slightly larger than one acre) and large sending areas (PFA-R) protecting much of the FA. She said that years ago staff had asked the Township if they were interested in making some changes to their DTP program because, although it had been set up well, it was not functioning as anticipated. With the implementation of the clustering rules, Manchester has merged its DTP with the clustering rules in hopes of improving the program.

Ms. Grogan summarized the various changes to Manchester's clustering ordinance.

In order to prevent re-subdivision of the existing subdivision, Manchester has made a slight change to the lot size requirements in the cluster receiving area (PFA-R Zone) to reflect existing 44,000 sq.-ft. lots (vs. the 43,560 sq.-ft. [1-acre] lots required by the CMP, albeit with some flexibility). The corner lots in this

subdivision are as large as 65,000 sq. ft. Neither the Commission nor the Township is interested in changing the size of these lots in recognition of the existing pattern and local conditions; such a deviation from the CMP is *specific to the municipality*, the key to acceptable municipal flexibility provisions.

Manchester has made a number of changes related to the bonus density, again reflecting local conditions. If development occurs in the PFA-R (receiving zone) the developer is eligible for the full bonus but, for the PFA-S (sending zone), the bonus density applies only if the units are located in the adjacent receiving zone. This is to encourage development in the receiving zone and contain the development to a small area and is a further incentive to encourage development based on the existing DTP. In addition, Manchester has made changes to its DTP by eliminating some of the FA receiving areas due to environmental constraints or municipal ownership. They have designated some new receiving areas in the vicinity of Roosevelt City. All are fairly small but there is much interest in one of these receiving areas. A landowner is pursuing an active project and the public has expressed concern regarding threatened and endangered species (T/E), notably Pine snakes and Rattle snakes.

Ms. Grogan said that staff is aware of the presence of these animals. The developer had done thorough T/E species surveys and staff believes that the best site has been selected. Approximately 45 new units are proposed which will result in the protection of some 600 acres to be permanently preserved. She said that staff believes that this is a good outcome with a small number of new units clustered adjacent to the Pinelands Town of Whiting along a road. Based on public comment, she said that staff understands that the neighbors like the idea of maintaining existing open space but, if the development is not clustered, the alternative will result in a scattering of houses through the FA.

Ms. Grogan noted that Manchester's Master Plan amendment discusses some other zoning changes to be done in the future but they are not part of the ordinance before the Committee today, even though they are mentioned in the public comment.

Commissioner Rohan Green moved the recommendation to the Commission of certification of Manchester Township's December 2011 Master Plan Amendments and Ordinances 11-025 and 12-015. Commissioner Jackson seconded.

In response to questions from Commissioner Ashmun regarding the map provided in the report (Exhibit 1), Ms. Grogan noted that the staff has based its review on Manchester Township's adopted zoning map that was certified by the Commission years ago. She noted that sometimes the Commission approves maps and then minor changes are made by others without the Commission's knowledge until some conflict appears. These subtle differences might occur when someone moves a line to reflect lot lines or for some other reason that they believe justified. She said that she has many maps of Manchester Township in her office, with variations prepared by others including the Township and Commission staff when working on other projects. However, the staff is consistent in trying to use only those maps that have been certified by the Commission.

Chairman Lohbauer said that he was glad to know that the Commission is consistent with the maps it uses as he noted that a lot line in Exhibit 1 appears to show three lots within the PFA-R Zone encroaching upon the Preservation Area District.

Ms. Grogan responded that the line runs along the back of the lots and she could not characterize it as an encroachment. She said that she was satisfied that the Township ordinance will not allow development in the PAD, only in the FA. She said that this is a pre-existing subdivision. She said that the Pinelands Protection Act designated the Preservation Area boundary and that in this area, the boundary did not

recognize the lot lines. Instead, the Act specifies that the boundary should follow the ridge line or watershed boundary.

In response to Commissioner Prickett's question as to what latitude there is to change the Pinelands Preservation Area boundary, Ms. Grogan said that there is none. She said that although there are some relief mechanisms in the CMP, e.g., waivers, cultural housing, etc., they do not deal with the boundary.

Commissioner Ficcaglia asked about the maps provided by the Pinelands Preservation Alliance (PPA) as part of its written comment.

Ms. Grogan responded that PPA submitted a number of different maps, some prepared by the Township and some by Commission staff over the years. She said that this is why she had noted the range of different maps she has in her office, many of which depict (uncertified) changes.

Commissioner Rohan Green said that Ms. Grogan had taken great effort to demonstrate that the Commission uses only certified maps.

Ms. Grogan said that maps and the watershed line are difficult issues as they are both subject to interpretation. She said that for example, recently Manchester Township had provided Ocean County with a map for wastewater management planning purposes. That map has different PAD lines from those of the certified map and thus is unusable by the County.

In response to concerns expressed by Chairman Lohbauer about the three lots at the boundary, Ms. Grogan said that the boundary with the PAD is on the other side of the lot lines and that when cluster development occurs, the houses will be built in the FA. The scale of the map may be part of the difficulty in viewing the boundary. She said that she would provide an additional map to the Commission detailing the management area boundary with respect to these lots.

In response to Commissioner Ficcaglia's question regarding the reports prepared by Herpetological Associates, Inc. (HA) (*as submitted by PPA as part of their public comment*) indicating the presence of T/E snakes on the property, Ms. Grogan said that staff confronts survey issues on a daily basis. She said that the property owner had done a survey and found no snakes. Staff relies on the Science and Project Review staff to determine the acceptability of the reports submitted. They work to assure that the survey is the best that can be done. She said that snakes are known to be present in the area. The intent of the clustering rules is to prevent the property owner from developing units scattered throughout the FA and affecting large areas of habitat.

In response to further comment by Commissioner Ficcaglia stating her concern with the HA reports, Ms. Grogan said that the dilemma for staff is what should be the response. The Commission needs to protect critical habitat and is relying on the full survey that was done by the applicant.

Chairman Lohbauer said that it is a battle of consultants. He said that this is a matter of balancing competing interests and clustering will help resolve the differences. He asked about PPA's suggestion that the developer could declare a receiving area elsewhere.

Ms. Grogan responded that staff have looked and did not believe that there are any development areas large enough elsewhere in the FA that would not have similar environmental issues. The interest is in having the receiving areas near existing development (Beckerville and Whiting) and along an existing road. As most of the lands are under common ownership, staff feels that this presents a unique opportunity to find the best cluster development site for this project. She said that she would provide the

Commission with a map to help them visualize how the cluster ordinance will be implemented for this project.

Chairman Lohbauer called for the vote. The motion passed by a vote of 4 to 2 with Commissioners Ficcaglia and Prickett voting against the motion.

Mullica Township Ordinance 7-2012, amending Chapter 144 (Land Development) of the Township's Code in response to amendments to the Pinelands CMP related to forestry, wetlands management, and residential cluster development in the Pinelands Forest and Rural Development Areas

Ms. Grogan said that Mullica Township Ordinance 7-2012 implements the provisions of the clustering amendments with two changes to reflect Mullica's own situation. Bonus density will be allowed only for projects in which there is documented evidence of the acquisition of additional lands after the effective date of the CMP clustering amendments. In addition, Mullica has a large FA and, over the years, the Commission has worked with Mullica to designate receiving areas. The clustering ordinance recognizes the existing DTP program receiving areas and encourages cluster developments to occur near these receiving areas and Pinelands Villages. Development is eligible for bonus density if it occurs near these existing development areas. Small clusters may be permitted elsewhere in the FA, but they will not be eligible for bonus density.

Commissioner Rohan Green moved the recommendation to the Commission of certification of Mullica Township Ordinance 7-2012. Commissioner Ficcaglia seconded the motion. There was no discussion by the Committee and all voted in favor.

Mullica Township Ordinance 8-2012, amending the Township's Zoning Map by revising the boundaries of the FAR (Forest Area Residential), EVC (Elwood Village Center) and EV (Elwood Village) zoning districts

Ms. Grogan directed the Committee to the maps accompanying the report on Mullica Township Ordinance 8-2012. She said that staff had been working with Mullica Township for some time regarding two areas of land to be rezoned under the Ordinance. She noted that most of the land to be rezoned from PV to FA is Township-owned, contains small lots and, due to environmental constraints, is unlikely to be developed. She said that the rezoning of lands from FA to PV is an appropriate expansion of the Village of Elwood as the Township is trying to recognize existing development along the White Horse Pike and include the shell of a large building that was never completed. It hopes to promote some limited commercial development in this area.

Commissioner Ficcaglia moved the recommendation to the Commission of certification of Mullica Township Ordinance 8-2012. Commissioner Rohan Green seconded and all voted in favor.

Weymouth Township January 2010 Master Plan Land Use Element, July 2011 Master Plan and Ordinance 503-2012, amending Chapter 155 (Land Use) of the Township's Code in response to amendments to the Pinelands CMP related to forestry, wetlands management, and residential cluster development in the Pinelands Forest Area

Ms. Grogan said that Weymouth Township has responded to the CMP amendments and that, as nearly all of Weymouth is within the FA, there has long been a concern with development potential. The Township became concerned that a particular developer would exercise an option on significant acreage for a large residential development and so wanted to consider cluster development. Now that clustering is mandatory under the CMP, the Township has done a good job in implementing the clustering provisions.

Ms. Grogan identified the various exhibits to the Executive Director's report noting the maps showing layers of wetlands, soils, habitat, existing development, subdivision patterns EIA data, etc. She said that, as a result of all that mapping, two development areas have been identified that are free of wetlands and environmental constraints. The adopted ordinance will allow minor subdivisions (2-4 units) to occur anywhere in the FA but projects of five or more units must occur in one of these two designated areas and only development in these designated areas can qualify for bonus units.

Ms. Grogan said that Weymouth did not want development to occur near their Pinelands Village for fear that it would interfere with the character of the Village of Dorothy.

Chairman Lohbauer said that he wanted to commend Weymouth for their thoughtful development of this ordinance. Ms. Grogan concurred and said that the Township was really committed to having the best possible outcome.

Commissioner Ficcaglia moved the recommendation to the Commission of certification of Weymouth Township's January 2010 Master Plan Land Use Element, July 2011 Master Plan and Ordinance 503-2012. Commissioner Rohan Green seconded and all voted in favor.

3. Pinelands Conservation Fund

Mr. Michael Catania, with CRI (Conservation Resources, Inc.), the Commission's consultant for Pinelands Conservation Fund (PCF) land acquisition projects, made a power point presentation (*Attachment A-Open Session*). He said that the Wollman/YMCA Camp Ockanickon should be closing today and he said that, for the 2012 Round, he would be presenting four projects on five tracts of land. He said that CRI has been handling the Cape May fund applications on a case-by-case basis.

At 11:02 a.m., Commissioner Jackson moved that the Committee meet in closed session for the purpose of discussing land acquisition matters. Commissioner Prickett seconded the motion and all voted in agreement. Members of the public left the meeting room.

At 11:30 a.m., the Committee returned to open session.

Mr. Catania summarized the closed session by saying that the Committee had approved allocations for three projects, two in Ocean County and one in Burlington County. (A fourth project was not recommended.) The applicants must complete appraisals, obtain certification of fair market value and have signed contracts with the landowners by April 1, 2013. Provided those projects proceed to closing, all PCF funds will be exhausted with the exception of those dedicated to the Garden State Parkway parcel and Cape May funds. Also one project is scheduled to close today and another by the end of the year. He said that he believed that this has been an extremely successful program.

Chairman Lohbauer thanked Mr. Catania for the terrific service as did other Committee members.

4. Public comment

Ms. Theresa Lettman, with the Pinelands Preservation Alliance (PPA), said that any maps that she had submitted as part of PPAs comment on Manchester Township's clustering ordinance had been prepared by Commission staff and that she did not make any maps. She also said that in all the years of monitoring the Pinelands, she had never seen a question if the Preservation Area line can be changed.

Ms. Grogan said that she had not implied that PPA had made up the lines on the map and Commissioner Rohan Green added that Ms. Grogan had made it clear on several occasions that there have been multiple versions of maps provided by the Township and that this had been a difficult issue to address.

Mr. Fred Acres distributed the cover and conclusion pages of a report entitled: *The Great Egg Harbor River Watershed Management Area: A Report to the Pinelands Commission on the Status of Selected Aquatic and Wetland Resources (Pinelands Commission Long-term Environmental Monitoring Program – 2005)*. He highlighted the conclusion by noting the degradation of the Great Egg Harbor River and scarcity of characteristic Pinelands streams within the watershed. He said that some of the finest watershed research has been done by Pinelands Commission staff and he noted the challenges in delineating watershed boundaries. He also expressed concern with the expansion of the Buena Borough wastewater treatment plant as it will allow further degradation of Pinelands waters.

Mr. Jay Mounier, Franklin Township resident and a rate-paying customer of Atlantic City Electric Company, noted that the accomplishments of the PCF were paid for by the utility customers.

Mr. Chris Jage, with the NJ Conservation Foundation (NJCF), thanked the Committee for its support today of one of the PCF projects submitted by NJCF, noting that the associated PDCs had been severed from the property. He said that the PDC program has not been effective because there is no monitoring of PDC deed restrictions. He noted that off-road vehicles, timber pirating and littering are common occurrences. He said that NJCF will be able to monitor and patrol the subject property for the ultimate protection of rare species and habitat. He said that he recognized the limited resources of the Commission and DEP but monitoring must occur to protect these lands. He noted that, on PDC deed restricted lands, Enduros are not a permitted use and therefore allowing routes through these protected areas constitutes a violation by the landowner.

Commissioner Prickett noted that he thought that the discussion on Manchester Township's clustering ordinance had been very effective.

5. Other Items of Interest

Chairman Lohbauer invited all to visit the Worldwide Water Monitoring Day event being conducted today by Commission and DEP staff at Batsto Lake.

There being no additional items of interest, the meeting adjourned at 11:52 a.m. (moved by Commissioner Rohan Green and seconded by Commissioner Ficaglia).

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____

Adopted by the CMP Policy & Implementation Committee at its meeting of November 30, 2012

/CS15A