

Adopted April 27, 2012

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

March 30, 2012 – 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Candace Ashmun (by telephone), Sean Earlen, Leslie Ficcaglia, Edward Lloyd, D'Arcy Rohan Green (1st Alternate), Ed McGlinchey (2nd Alternate) Robert Jackson (3rd Alternate) and Richard Prickett (4th Alternate)

MEMBERS ABSENT: Paul E. Galletta and Richard Harris

OTHER COMMISSIONER PRESENT: John Haas

STAFF PRESENT: Executive Director Nancy Wittenberg, Stacey Roth, Larry Liggett, Susan Grogan, Paul Leakan, John Bunnell and Betsy Piner

Chairman Lohbauer called the meeting to order at 9:40 a.m. Noting the presence of a quorum of the Commission, Ms. Roth read the Open Public Meetings Act Statement and then called the roll. She said that Commissioner Ashmun would be joining the meeting by telephone. Until that time, Commissioners Rohan Green, McGlinchey and Jackson could vote; once Commissioner Ashmun joined the meeting, Commissioner Jackson could not vote. All Commissioners could participate in discussion.

1. Adoption of minutes from the February 24, 2012 CMP Policy and Implementation Committee meeting

Commissioner Ficcaglia moved the adoption of the minutes of the February 24, 2012 CMP Policy and Implementation Committee meeting. Commissioner McGlinchey seconded the motion and all voted in favor.

2. Pinelands Conservation Fund

Mr. Michael Catania and Ms. Anne Heasley (with Conservation Resources, Inc., the Commission's consultants for the Pinelands Conservation Fund acquisition program) updated the Committee on current projects. (*See Attachment A for PowerPoint slides*) and noted that two items would require discussion in closed session.

At 9:41 a.m. Commissioner Lloyd moved that the Committee meet in closed session. Commissioner Jackson seconded and all voted in favor. Ms. Roth noted, in accordance with the OPMA, that the Committee would be discussing acquisition matters. Commissioner Earlen and members of the public left the room.

Closed session: consideration of allocation and extension requests

At 10:05 a.m. the Committee resumed the open meeting.

Mr. Catania said that, in closed session, the Committee was advised that Ocean County is allowing a grant agreement for a 9.7 acre project in Ocean Township to expire pending the resolution of some outstanding issues. The County would like to reserve the right to pursue this project in a future round. In addition one Round 2010B project in Atlantic County was granted an extension of its allocation until May 31, 2012 to complete negotiations and execute a contract with the landowner. Mr. Catania said that some \$1.892 million remains in the PCF, some of which is restricted to Cape May County or Turnpike Authority projects. The Committee will await the expiration of the May 31, 2012 deadline of the Atlantic County project before determining if another grant round is warranted.

Commissioner Earlen returned to the room and Commissioner Ashmun joined the meeting by telephone.

3. Executive Director's Report

Egg Harbor Township Ordinance 37-2011, adopting requirements for the provision of affordable housing in the Pinelands Area

Ms. Grogan said that Egg Harbor Township Ordinance 37-2011 is the Township's affordable housing ordinance. It takes a similar approach to those approved by the Commission for some other municipalities. In the Pinelands portion of Egg Harbor Township, all of which is in a Regional Growth Area (RGA), the ordinance adopts an inclusionary provision for low and moderate income housing for all new residential development. It requires a set-aside of 20% affordable housing in all of its five residential zones. It has chosen to meet its affordable housing obligation without changing the permitted density within the RGA; affordable housing will be accommodated in the existing zones. The maximum build-out has not changed and the set aside raises no issue with Pinelands standards. She said that the Pinelands Protection Act precludes the Commission from considering affordable housing obligations in its deliberations. However the Commission is looking at the impact on Pinelands standards including the Pinelands Development Credit (PDC) Program. She noted that Egg Harbor Township has exempted affordable units from PDC obligations. The CMP does not exempt affordable housing from requiring PDCs but staff worked with the Township to guarantee the reasonable use of PDCs by requiring their use for 25% of the market-rate units (1 unit out of every 4 will incur a 0.25 PDC obligation).

Ms. Grogan said that Medford Township had used this same approach several years ago to deal with several affordable housing projects scattered throughout its RGA. She also stated that the current low cost of PDCs means that the developer will not have as hefty a financial obligation as would have been incurred several years ago.

Ms. Grogan said that staff was comfortable in recommending the ordinance as being consistent with the CMP once the provisions related to the PDC obligations are adopted for the five residential zoning districts (*as described in Attachment A to the report*).

Ms. Grogan said that the public hearing had been well attended and that the Builders League of South Jersey had concerns related to the affordable housing component. They do not feel the densities are high enough and would like to see more apartments and townhouses. Although there may be merit to some of the builders' concerns, these are not CMP issues and thus not addressed by the Commission.

Commissioner McGlinchey moved the recommendation of conditional certification of Egg Harbor Township Ordinance 37-2011. Commissioner Ficcaglia seconded the motion.

In response to Commissioner McGlinchey's question regarding the other municipalities and their use of PDCs, Ms. Grogan said that some years ago, the Commission had gone through an extensive analysis and drafted rules calling for the use of PDCs on a sliding scale (the higher the density, the smaller the PDC obligation). The P&I Committee (*November 30, 2009 meeting*) had recommended the proposal to the Commission but it was never advanced. She said that there may be an interest in considering revisions to the PDC program during Plan Review.

Commissioner Rohan Green asked about the relationship between this ordinance and the Council on Affordable Housing (COAH) rules since they are ever-changing.

Ms. Grogan responded that, in this case, Egg Harbor Township was responding to A500 (legislation requiring the 20% affordable housing set-aside in the Pinelands Area). That is neither a Commission nor a COAH rule. If COAH adopts rules that are ultimately upheld, the municipality will have to respond and, at that time, the Township may come back to the Commission with a revised ordinance.

In response to Commissioner Lloyd's question if Egg Harbor Township had a certified COAH plan, Ms. Grogan said that for 20 years the Township has maintained that it has an excess of affordable housing but they have not prevailed and are now facing a builders' remedy lawsuit.

Chairman Lohbauer noted that it is not often that the Commission receives such extensive comment from the public. He said that it was well written but the opponents to the ordinance have an argument with the Township, not the Commission.

The vote occurred with all voting in the affirmative except Commissioner Jackson who abstained.

4. Review of a Draft Memorandum of Agreement between the Pinelands Commission and Ocean County Regarding Robert Miller Airpark

Ms. Roth provided a PowerPoint presentation (*Attachment B*) and reviewed the draft MOA with Ocean County regarding the Robert Miller Airpark (RMAP) that had been included in the packet. She introduced Ocean County officials including Planning Director Dave McKeon, Jon Donahue, engineering consultant for the project, and Ms. Lynn Brass Smith, with Amy S. Green Environmental Consultants, Inc. (ASGECI) who had performed various T/E surveys on the Airpark property.

Ms. Roth said that the RMAP property consists of one lot for the airport and then some additional lots with ancillary uses. She reviewed the history of the County's interest in a number of projects including developing a crosswinds runway and new hangars, shifting THE RUNWAY road 500' from County Route 530, and topping trees for site line access, as well as reserving some five acres for development of future projects. As the Committee had discussed earlier, an appropriate offset for this project must be determined and she described the rationale for a proposed 485 acre offset as well as some other environmental offsets. She noted the FAA's concern with deed restricting the lands adjacent to the airport property out of concern for future safety issues

Commissioner Ashmun said that because the Airpark is in the legislatively designated Preservation Area, the equivalent level of protection offered in this MOA must be very tight. She stated that the offset must be purchased with new funds, not Ocean County's existing Open Space funds. Also, the land must be purchased before the projects are begun.

Ms. Roth said that the County needs this MOA to address T/E issues, and development in wetlands and wetlands buffers for this pre-existing nonconforming use. Also there are questions related to the 50% expansion provision because of multiple projects over the years and the questions related to application of the 50% provision to an airport. However, staff believes, and the County agrees to accept, that, with the projects included under the MOA, this is a build-out analysis. She said that this MOA is discretionary on the part of the Commission and she responded to questions from the Committee as follows:

- The topping of the trees is likely to have minimal impact at ground level.
- There are seasonal restrictions on mowing for the protection of birds and snakes.
- Much of the proximate lands in the vicinity of the airport are already public lands
- The offset lands to be acquired should be mostly uplands to accommodate the impacted animal species except for the Pine Barrens tree frog which needs property with a pond
- The County is hopeful that it can receive FAA funds in this funding year. However they must bid on the project in June. The funds are only for airport activity, not for funding an offset
- Staff recommends that the County be given three years in which to acquire the offset lands; the cross-wind runway will probably be completed in that time.
- The Reptile Habitat Management Area that the County has proposed as part of its offset should be developed on lands to be purchased, not at the active airport property.
- In the past, the Commission restricted a municipality (Stafford Township) from using Open Space funds to pay for an offset, but no such restriction has been placed on a County.

Commissioner Lloyd said that if the County is using Open Space funds, that is not an equivalent offset. As a policy matter, he saw no difference between a municipality and a county in that regard.

Commissioner Jackson said that, at some point, the Commission has to stop agreeing to MOAs; they whittle away at the Pinelands. He said that he believed that the Commission should not accept the use of existing Open Space funds to purchase the offset; new projects should require new money. He said that he hadn't seen any lands being contemplated for purchase.

Ms. Roth said that this prospective purchase of land is no different from the project with the Turnpike Authority and that Ocean County has been very active in pursuing acquisition. She said that the next step is to move to a public hearing. Following that, staff would analyze the public comment and present it to the P&I Committee. The MOA could be revised, if necessary, and then, upon recommendation of the Committee, advanced to the Commission.

Commissioner Prickett said that he felt the MOA provided 10 pages regarding the development and only one page discussing the offset. He asked if the new runway would increase activity at the airport.

Ms. Roth said that the development that is proposed at the RMAP is not for economic development but for safety. From the audience, Mr. Donahue said that the airport is already operating 24/7.

Commissioners Jackson and Ficcaglia said that the MOA needs to stipulate that the offset must be with new money.

Commissioner Lloyd said that he felt the MOA did not provide the Commission with the powers it needs. There is no money put forth with which to protect lands.

Ms. Roth said that the Turnpike Authority (TA) agreement provided a five year window in which to acquire lands to offset the secondary impacts of the widening of the Garden State Parkway. The TA put aside funds for the purchase of lands and, after 10 years, any remaining funds are returned to the TA. Ms. Roth indicated that an escrow type arrangement could be used for the MOA.

Chairman Lohbauer stated that the issue appears to be the source of the funding for the offset and the proximity of lands to the airport.

Ms. Roth said that staff would assist the County with locating appropriate privately held lands. The County would need to acquire suitable characteristic habitat in a large enough area to be sustainable. She said that if the MOA required that the land be a certain distance from the airport, it might not be adequate for locating appropriate and available lands. She said that staff would look at lands in Lacey, Berkeley, Manchester, and Jackson Townships.

Commissioner Prickett said that staff needed to look at ecological value of the offset lands, not just proximity. Much of the land around the airport is already protected. Only those lands characterized by the Ecological Integrity Assessment (EIA) of at least 80% should be considered. Ms. Roth indicated that staff was using the EIA to identify lands of high ecological value.

Commissioner McGlinchey said that, at this point, the Committee members were negotiating amongst one another. He said that open space is a good thing and the land should be acquired now.

Mr. McKeon said that Ocean County has been in discussion with the Commission for five years and wants to demonstrate transparency and justify each project at the RMAP. He said that he would prefer that the Commission identify the suitable properties for the County to purchase and was confident that the taxpayers would find such purchase consistent with

Open Space funding. He said that the County had no willing sellers at this time and has actively purchased important lands in the recent past and did not hold them to use for an offset for this MOA. He said there was a time frame and there were FAA safety concerns.

Commissioner Lloyd said that the Commission had to look at an equivalent level of protection.

Commissioner Hass noted that the RMAP serves a number of public entities including the State police, the military, and, until two years ago, the Forest Fire Service. He said that he was focused on acquiring land in the PAD for the offset; there was still plenty of open space in Ocean County. He noted that the County could choose to spend its Open Space funding outside the Pinelands.

Mr. McKeon said that the funds for open space have been collected but not targeted. The FAA has the funding allocated to start the project but the County needed to let them know by May. In response to a question from Commissioner Prickett, he said that the runway does not go into the wetlands and the 500' shift of the road is required by the FAA for safety concerns.

Commissioner Rohan Green asked if it were within the Commission's authority to determine the funding source.

Commissioner Earlen said that the Commission should be looking at the preservation of land and not care about the source of the funding.

Chairman Lohbauer said that there is no doubt that the County needs the project for safety reasons but the issues to be reconciled include:

- the source of the funding for the offset;
- the amount of time needed to acquire the land for the offset; and
- the evaluation of lands for ecological value as the County has deferred to Commission staff to determine specific habitats.

Ms. Roth said that she needed direction from the Committee and noted that the Garden State Parkway project had included the escrow of acquisition fund based on a price of \$10,000/acre for offset lands.

Ms. Grogan said that staff had much of the information needed related to acquisition by Ocean county through the Pinelands Conservation Fund and the associated costs.

Commissioner Ashmun asked that the MOA make it clear that its purpose is for safety reasons. Ms. Grogan said that such a statement would be appropriate in the resolution.

Commissioner Lloyd moved that the MOA be amended to indicate that the County would provide quarterly reports on its progress with acquisition, be required to acquire the lands within three years with funding to be limited to non Open Space funding and would need to establish an escrow fund for purchase of any remaining lands at the end of the three year period. The staff would assist in determining appropriate lands. Commissioner Ficcaglia seconded the motion.

Commissioner Earlen said that he was not in favor of requiring an alternate source of funding as the County might lose its opportunity for the project.

Commissioner Lloyd said that, without funding other than Open Space, there will not be an equivalent level of protection.

Commissioner Rohan Green asked if the Commission couldn't require the County to use its funding inside the Pinelands Area. She said that she was concerned with the fiscal piece as she was unsure that any additional money could be raised.

Ms. Roth said that the notice of the public hearing could indicate that the funding source for the offset could be either existing Open Space funds or new money; comment could be offered on both.

Chairman Lohbauer asked if Commissioners Lloyd and Ficcaglia would be willing to amend their motion to ask that Ocean County make its "best effort" to seek other funding.

Commissioner Ficcaglia said that she found this a huge loophole.

Ms. Roth said that the process requires a public hearing. If comment is received on the County's obligation to use either Open Space or non Open Space money, then a recommendation can be developed and presented to the Commission for its consideration.

Commissioners Lloyd and Ficcaglia agreed to the modification to their motion.

Ms. Roth clarified that, following public hearing, the MOA would return to the P&I Committee. For purposes of the public hearing the dollar amount for the escrow funding would be \$10,000/acre.

By roll call vote, the motion carried by a vote of 5 to 2 (Commissioners Ashmun, Ficcaglia, Lloyd, Lohbauer, and Rohan Green voted in the affirmative; Commissioners Earlen and McGlinchey voted No. Commissioners Jackson and Prickett did not vote.

At 11:50 a.m., Commissioner Ashmun disconnected from the meeting.

5. Update on the proposed Memorandum of Understanding between the Pinelands Commission and the Department of Environmental Protection establishing the regulatory framework pursuant to which the Department's Water Quality Management Planning regulations will be administered in the Pinelands Area

Ms. Wittenberg said that consensus has been found and that the Memorandum of Understanding between the DEP and the Commission is ready to be signed for issues related to Water Quality Management Planning regulations in the Pinelands Area.

6. Public Comment

Mr. Carleton Montgomery, with the Pinelands Preservation Alliance (PPA), said that he found ambiguity with the Commission's vote. He said that it needs to be clear that the

Commission is considering two approaches. He said that he felt that this had been one of the best discussions of a substantive matter in the past five years. He said that the MOA contains items that are not related to safety. There is no FAA requirement for a crosswinds runway. He said that the lands surrounding the airport have been removed from the County's ROSI list. He said that he felt that this MOA allowing development in the PAD was breaking a barrier. He said that using Open Space funds as the source of the funding for the offset was inappropriate and that the (private) users of the facility should be considered as a funding source. He said that the only current public use is by a helicopter and it requires no runway. He said that just because the FAA is offering money, there is no reason for the Commission to accommodate this development. Furthermore, he said that there was no mechanism to see that this was indeed a "build-out" plan. He said that the Woodbine landfill, Stafford Business Park and Stockton College were all examples of final plans that were amended later for increased development.

In response to Commissioner Lloyd's question if he was saying that the FAA does not require the crosswinds runway, Mr. Montgomery responded, yes. He said that it may be a safety issue but PPA believes that this will increase the capacity of the airport.

Mr. Donahue, with CS Engineering, said that he had been involved with the project for 8 years and the crosswind runway is needed for safety reasons. It will not increase the size of the aircraft using the airport but will allow the light aircraft to land safely when the use of the main runway is constrained by winds. *(Editor's Note: the new cross-wind runway will be shorter than the main runway; thus, it will not enable larger planes to land.)*

In response to a question from Commissioner Jackson, Mr. Donahue said that 90% of the project funding will come from the FAA and the remaining 10% will be local funds. Ocean County Airport is publicly owned and accessible to the public. There is no landing fee but there are parking and tie-down fees. The operator of the fuel facility pays the County a fee.

Ms. Theresa Lettman, speaking as an Ocean County resident, said that she was involved with the establishment of Ocean County's Natural Lands Trust in 1998 and the ballot question at the time was clear that the purpose of the funds was to stop development, not to be used for development. She said that every time the Commission has a discussion of a project, there is always a deadline and a rush to make a decision. She said that the 75 acre offset for 50% expansion in the PAD was disgraceful.

Dr. Emile DeVito, Manager of Science for the NJ Conservation Foundation, referencing the offset with Reptile Habitat Management Areas, said that no one knows how to manage reptiles. There was no point of having Ocean County create such areas. He cited work by Joanna Burger and Walter Bien for the Wal-Mart project in CAFRA. He said that it is the frequency of nearby high traffic areas that is the limiting factor of snake populations. Protecting land is the only way to protect the endangered species that are the subject of this MOA. He said that Open Space funds can be used for parks, nature trails, endangered species habitat, etc., but it cannot be used to satisfy permit requirements.

Mr. Fred Akers said that he echoed Mr. Montgomery's sentiments that this had been a good discussion. He also congratulated Pinelands staff on the stunning success of the 23rd Annual Pinelands Short Course (*March 24, 2012*). He said that he had been privileged to make a presentation on wild and scenic rivers. Also, he expressed concern with jeopardizing the

PDC program and discussed the sewerage of Richland Village. He referenced the mandatory clustering on 1-acre lots and referenced a lawsuit by a developer in Egg Harbor Township. He said that he was concerned with losing PDC opportunities.

Ms. Grogan clarified that the mandatory clustering is for the Forest and Rural Development Areas where there is no PDC obligation. She said that the project referenced is in the Regional Growth Area.

Ms. Wittenberg said that there are no plans to sewer the Pinelands Villages. Mr. Liggett noted that zoning in the Villages was capped and cannot be changed to permit high density.

7. Other Items of Interest

There being no other items of interest, the Committee adjourned at 12:20 p.m. (moved by Commissioner Ficcaglia and seconded by Commissioner Earlen).

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____
April 18, 2012

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING
Richard J. Sullivan Center / Terrence D. Moore Lecture Hall
15C Springfield Road
New Lisbon, New Jersey
March 30 2012 – 9:30 a.m.

SUMMARY

The Committee adopted the minutes of the February 24, 2012 meeting.

The Committee received an update from Conservation Resources, Inc. regarding the Pinelands Conservation Fund, including a closed session. The Committee was advised that Ocean County is allowing a grant agreement to expire for one project. Also, the Committee granted a final extension for a project in Atlantic County until May 31, 2012

The Committee recommended conditional certification of Egg Harbor Township Ordinance 37-2011.

The Committee reviewed a draft Memorandum of Agreement between the Commission and Ocean County for the Robert Miller Airpark. Staff was directed to modify the MOA:

- to require quarterly reports on the County's progress in land acquisition for an offset;
- to recognize that, based on public comment, the County might be using Open Space funds to acquire these offset lands or might be seeking another funding source;
- to require that Ocean County, should it not acquire all the offset lands needed within three years, establish an escrow fund; and
- to revise the proximity language related to offset lands.

Staff will be scheduling and conducting a public hearing