

PC2-23

Disclaimer

These minutes reflect the actions taken by the Commission during its March 11, 2011 meeting. Although these minutes have been approved by the Commission, no action authorized by the Commission during this meeting, as reflected in these minutes, shall have force or effect until ten (10)\* days, Saturdays, Sundays and public holidays excepted, after a copy of these minutes has been delivered to the Governor for review, unless prior to expiration of the review period the governor approves same, in which case the action shall become effective upon such approval. These minutes were delivered to the Governor on March 23, 2011.

PINELANDS COMMISSION MEETING<sup>1</sup>

Richard J. Sullivan Center  
Terrence D. Moore Conference Room  
15 Springfield Road  
New Lisbon, New Jersey

Minutes

**March 11, 2011**

Commissioners Present

Leslie Ficcaglia, Paul E. Galletta, Richard L. Harris, Robert Jackson, Judith Y. Link, Edward Lloyd, Ed McGlinchey, Francis A. Witt, John A. Haas, and Acting Chairperson Candace Ashmun. Also present were Executive Director Nancy Wittenberg, Authorities Unit Liaison David Reiner and Deputy Attorney Jean Reilly

Commissioners Absent

William Brown and Daniel M. Kennedy

Acting Chairperson Ashmun called the meeting to order at 9:32 a.m.

Ms. Roth read the Open Public Meetings Act Statement.

Ms. Wittenberg called the roll. There were ten Commission members present.

The Commission and public in attendance pledged allegiance to the Flag.

Presentation of Awards

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<sup>1</sup> Please note that all attachments are maintained with the original minutes, but are not attached to copies. For information about attachments, please contact the office.

Acting Chairperson Ashmun presented 10-year employee service plaques to Mr. Ernest Deman and Ms. Deborah Tietze and thanked them for their service.

### Minutes

Acting Chairperson Ashmun presented the February 10, 2011 Commission meeting minutes (open and closed sessions). Commissioner Ficcaglia moved the adoption of the minutes. Commissioner Jackson seconded the motion.

The Commission adopted the minutes by a vote of 10 to 0.

### Committee Chairs' and Executive Director's Reports

#### CMP Policy & Implementation Committee

Commissioner Ashmun reported that at its February 25, 2011 meeting, the Committee adopted the minutes of the November 30, 2010 meeting, endorsed a research proposal presented by the Science Office and discussed municipal violations and the Commission's enforcement limitations.

Ms. Wittenberg reported the following:

She stated that she had met with the mayor of Waterford Township and other local officials regarding their interest in some economic development, hoping to work with the Commission on the timely processing of any applications. She noted that she felt that there was a general increase in an interest for economic development and stated that she hoped that was a positive sign for an improving economy.

She noted that she and Mr. Horner had met with DEP representatives regarding the forestry MOA for activities on State lands. She said that DEP has requested some changes to the MOA and staff would be working on that. She said that she had met with DEP Commissioner Martin who was pleased that the forestry MOA was moving ahead. She stated that Ms. Roth had met recently with Senator Smith regarding forestry issues.

In response to Commissioner Ashmun's question if these changes to the MOA will require action on the part of the Commission, Ms. Roth said that the retooling of the language will require that it be returned to the Public and Governmental Programs for approval before advancing to the Commission.

Ms. Wittenberg said that she had met with CWA representative Ms. Janelle Blackmon and that negotiations on the contract will begin shortly.

Ms. Wittenberg said that she had participated on a redevelopment panel for New Jersey Future for the Highlands, Pinelands and Meadowlands Commissions. She said that she found it interesting that each planning agency has distinct regulatory authority and said that all three agencies will be collaborating in the future.

Ms. Wittenberg said that Governor Christie had conditionally vetoed the Whelan solar legislation so that is off the table for now. The Commission has proposed its own rules that will accomplish what is needed for the Pinelands.

Ms. Roth said that Senate Bill S2666 modifies the process for contested case hearings by the Office of Administrative Law (OAL) for certain designated agencies with regard to telephone and video conferences, delegation of final decision authority, oral decisions, checklist decisions, electronic filings, and settlements. She noted that although DEP is identified as one of the designated agencies, she did not believe that the provision that the decision of the Administrative Law Judge is final (as opposed to a *recommendation* upon which the Commission could act as is currently the case) applied to the Pinelands Commission. She said that A2722 is the companion bill; it has been passed in the Assembly and is now before the Senate.

Commissioner Ashmun said that the Commission had determined long ago that there was no practical way for it, a 15-person panel, to conduct hearings effectively which is why they are sent to OAL so that a proper formal hearing could be conducted with a recommendation submitted to the Commission for its decision.

Ms. Wittenberg noted that her final item to report was the letter received from the Southern Regional School District (Ocean County) complimenting Mr. Joel Mott on his recent presentation before a seventh grade class. She stated that that she thought the sorts of outreach programs that Joel does are among the most effective things that the Commission can do and she looked forward to sharing other such letters with the Commission in the future.

#### Other Staff Reports

Mr. Horner reported that he had attended a recent meeting in Trenton with the Mayor of Woodbine and the Chairman of the Woodbine Port Authority along with officials from the Department of Transportation and DEP to expedite development at the Woodbine Airport. He noted that the Port Authority has long expressed an interest in extending one runway but has decided to bifurcate the issues and, for now, set aside the interest in pursuing an MOA for the runway.

Mr. Horner also announced that revisions to the policies for the 10-day public comment period appeared to be going well; that the signed streamlining MOAs had been received from Burlington, Camden and Ocean Counties; and that he and staff had met with Egg Harbor City officials on February 23, 2011 regarding numerous projects including road

improvements, subdivisions for redevelopment and boardwalks and will continue to work with the City on such projects.

Mr. Liggett reported on the Buena Borough MUA MOA noting that they have determined that the land application facility will not work. They are looking for other solutions and this issue will be before the Public and Governmental Programs Committee at its next meeting.

Mr. Liggett stated that he and Dr. Procopio had reviewed the state water supply plan and Dr. Procopio had attended an all day workshop. He said that there are concerns that the Commission not get into a Catch-22 situation and that the State and Commission be in sync with their calculations. He noted that the State is using low flow estimates of water demand while the Commission is using average flows and these differences need to be reconciled early in the process.

Mr. Liggett also reported that during meetings with solar developers it has been submitted that Atlantic City Electric Company has few distribution lines thus making the likelihood of entities selling energy to the grid less certain. Also, staff met with representatives of OIT and the Office of Homeland Security regarding the need for a master plan for communications facilities. Finally, T-Mobile has agreed to pay the escrow fee that will allow staff to process the radiofrequency information they have submitted with their amendment to the cellular facilities plan.

In response to Commissioner Ashmun's question as to the status of the widening of Route 530 east of Route 206, Mr. Horner said that the Commission has received a plan from Burlington County and is now reviewing their revised submission. He said that, for those who are unfamiliar with the project, the County had deed restricted a farm along the edge of the road and now wishes to widen the road, taking some of these deed restricted lands. The issue is how the deed restriction can be modified.

In response to a question from Commissioner Galletta regarding the land recharge site for the Buena Borough MUA project, Mr. Liggett said that the MUA had purchased the land upon the recommendation of their engineer. However, when USGS became involved, their test probes indicated site problems and the MUA engineers now agree that the site will not work. The MUA is now proposing a higher level of treatment so that they might be allowed to continue to discharge into the stream.

In response to Commissioner McGlinchey's question if this will jeopardize their grant funding, Mr. Liggett said that they must move quickly to save the grant.

#### Public Development Projects and Other Permit Matters

Mr. Horner presented one resolution related to two public development projects at Stockton College.

Commissioner Ficcaglia moved the adoption of the Resolution Approving with Conditions Applications for Public Development (Application Numbers 1981-1833.044 and 1981-1833.059). (See Resolution PC4-11-09). Commissioner Jackson seconded the motion.

Commissioner McGlinchey said that the Stockton College Master Plan had been approved shortly after he had joined the Commission. He said that within 24 hours of that approval, the Commission discovered that the College had constructed a parking lot without appropriate approvals.

Commissioner Galletta said that he too was concerned as this had put the Commission in a difficult situation and he was concerned that Stockton was being shown favoritism.

Commissioner Haas said that he concurred.

Commissioner McGlinchey said that he was not directing his concerns to the staff or the Commission, but to the College.

Commissioner Jackson said that without any enforcement ability, the process operates as an honor system. He said that he thought an apology would be a great first step; the trust in the College has been fractured.

Commissioner Lloyd said that he had felt that Stockton shared the Commission's environmental concerns.

Commissioner Ashmun said that she understood that the College is now requesting an expediting MOA for future development projects.

Mr. Horner suggested that, should the Commission approve this resolution, his cover letter could express deep concern and request assurance from the College that they make a commitment not to repeat such an action.

Commissioner Ashmun stated that she thought it would be helpful for the College to see the record of today's discussion.

In response to Commissioner Witt's statement that he wanted to know when the parking lot was installed, Mr. Horner said that he would include that question in his cover letter.

Commissioner Haas said that he thought that all present felt that it was important that Stockton move forward.

The Commission adopted the resolution by a vote of 8 to 2 with Commissioners Link and McGlinchey voting No.

Commissioner Witt stated that the Commission needed to institute a fine of some sort.

Ms. Roth responded that the Commission does not have enforcement authority or the ability to assess civil penalties. She said that the Commission has been successful in having DEP assess penalties when there are areas of overlapping authority.

Commissioner Jackson stated the frustration he felt of trying to get to the truth.

Commissioner McGlinchey stated that if today's resolution had been defeated, the College would be forced to pay attention.

Commissioner Haas said to Mr. Horner that he assumed he knew how the Commission felt and that all this should be squared away before proceeding with the expediting MOA.

Commissioner Lloyd asked if the Commission could use a history of violations as a basis of denying an application.

Mr. Horner responded that the history of an applicant is not used in determining the approval of an application.

Ms. Roth said that one can look only at the application and its consistency with the CMP. However, an expediting MOA is strictly at the discretion of the Commission.

#### Public Comment on Agenda Items

Mr. Joseph Darby, Stockton College Project Manager, expressed his apologies on behalf of the College and President Herman Saatkamp for the parking lot violation. He stated that the College had hired a consultant to design a paved parking lot for Field 4 and then decided not to install it although ultimately it was constructed at the site of a soccer practice field. He said that he believed it was procedural error on the part of the College and that there had been no malicious intent. He said that the College believed it was a matter of just notifying the Commission. He extended a public apology to the Commission and said that in no way did the College wish to tarnish its reputation.

#### Municipal Ordinances

In response to a question from Commissioner Ashmun, Ms. Grogan responded that there were no ordinances for the Commission's consideration this month.

#### Public Comment on any Matter Relevant to the Commission's Statutory Responsibilities

Mr. Mark Demitroff stated that he had three items related to his ongoing concerns with Richland Village in Buena Vista Township. He said although initially the Township had indicated they had no materials to review, today he will be reviewing documentation related to Sawmill Park in Richland Village as he has presented them with a copy of the public notice advising of the availability of same. Additionally, he thanked the Commission for providing some 103 documents in response to an OPRA request noting that the Township provided no documents in response to the identical request. Finally he

said that in 2006, the Township had installed a football field in wetlands and had been found in violation by the Commission. He said that as a Richland Village resident he would continue to do all he could to maintain his power of place.

Mr. Fred Akers noted that with the recent flooding, he could recall Harry Monesson, a former frequent attendee of Commission meetings, and his use of the term, "drowned lands." He said that he remains concerned with water quality and DEP's meeting schedule for sewer service expansions. He said that the Commission needed to take another look at mandatory oversight of private septic systems and the obligation of the municipalities to protect water quality. He said that there seemed to be a pretense at the municipal level that it is too expensive to administer yet the cost of sewer systems far exceeds the cost of maintaining individual septic systems. He said that there is a need for water quality protection in the Pinelands.

Mr. Joseph Bernadino, with PlanLand, LLC, said that he represented the applicant of Application 1982-9233.001 (The Sanctuary). He said that he wanted to address the Commission regarding the 2004 settlement agreement related to threatened and endangered species as the applicant wanted to build out the rest of the project. He said that the agreement stipulates that box culverts are to be installed to protect snakes but now the applicant is seeking to amend the agreement by allowing the road to revegetate and return to a natural state. In addition, Plan Land wishes to deed restrict lots that contain pine snake nests.

Commissioner Jackson, in response to comments made by Mr. Akers, said that there is a misconception that it is cheaper to have public sewer. He said that the Commission needs to pursue the education component of septic maintenance.

Commissioner Ashmun said that several organizations have run huge maintenance education programs and that the Commission's had been one of the best.

#### Closed Session Resolution

DAG Reilly read a resolution to retire into closed session to discuss litigation matters (Cloverdale Bank, DeMesquita, D&D Residential, O'Brien, and The Sanctuary) at 10:40 a.m. She noted that her resolution was particularly lengthy and explained that, in accordance with new law, there must be specificity as to why a closed session is being conducted and it must occur at the end of the meeting

Commissioner Jackson moved to retire into closed session. Commissioner Haas seconded the motion. The Commission agreed to retire into closed session by a vote of 10 to 0.

#### Return to Open Session

Acting Chairperson Ashmun reopened the public portion of the meeting and announced that the Commission had taken no action in closed session. DAG Reilly stated that the

Commission had received updates on items related to litigation for Cloverdale Bank, DeMesquita, D&D Residential, O'Brien, and The Sanctuary. She said that Commissioners Jackson and Link had recused themselves from the discussion of D&D Residential. Although Commissioner Lloyd had recused himself from earlier litigation discussions regarding the Sanctuary, there was no need for Commissioner Lloyd to recuse himself from today's discussion.

Adjournment

Commissioner Galletta moved to adjourn the meeting. Commissioner Jackson seconded the motion. The Commission agreed to adjourn the meeting at 11:46 a.m.

Certified as true and correct:

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Betsy Piner, Principal Planning Assistant

Date: \_\_\_\_\_