

Disclaimer

These minutes reflect the actions taken by the Commission during its May 13, 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 June 7, 2011.

PINELANDS COMMISSION MEETING¹

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

MINUTES

May 27, 2011

Commissioners Present

William Brown (via telephone conference call), Leslie Ficcaglia, Paul E. Galletta, Robert Jackson, Judith Y. Link, Edward Lloyd, Ed McGlinchey, John A. Haas, Francis A. Witt and Acting Chairperson Candace Ashmun. Also present were Executive Director Nancy Wittenberg and Deputy Attorney Jean Reilly. Authorities Unit Liaison David Reiner attended by telephone conference call.

Commissioners Absent

Richard L. Harris

Acting Chairperson Ashmun called the meeting to order at 9:10 a.m.

Ms. Reilly read the Open Public Meetings Act Statement indicating that this special meeting had been advertised on May 19, 2011.

Ms. Wittenberg called the roll and announced the presence of a quorum.

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

Commissioner Ashmun announced that the record was closed on the matter of an amendment to the 2007 Memorandum of Agreement (MOA) amongst the New Jersey Pinelands Commission, the Buena Borough Municipal Utilities Authority and the Township of Buena Vista.

¹ 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.

Mr. Liggett noted that staff had provided copies of a revised amended MOA reflecting changes made by DAG Reilly. Mr. Liggett reviewed those changes as highlighted on the draft copy, noting that for the most part they were to clarify certain provisions of the MOA including: the Commission's authority under the CMP to enter into the MOA; a new statement that the March 2007 MOA and this amendment will more than provide an equivalent level of protection to the Pinelands resources than is provided through a strict application of CMP standards; a recognition that solar energy generating facilities can be developed on a parcel of land purchased for a then-proposed I/P facility if authorized by future CMP amendments (noting that the Commission has proposed CMP amendments relating to the siting of solar facilities); that the BBMUA will advise DEP in its NJPDES permit application for increased flow at the BBMUA sewage treatment plant (STP), and the necessary Water Quality Management Plan (WQMP) amendment, of its obligations under this MOA and that said obligations will be incorporated into these documents; and additional provisions related to downstream flooding, a monetary contribution of \$25,000 to assist Buena Vista Township in abating existing flooding conditions contingent upon the Commission's satisfaction of the Township making certain efforts related to nutrient runoff, the filing of the deed restriction for the I/P facility parcel and certain typographical errors.

Mr. Wengrowski distributed a handout (*attachment to file copy only*) that he reviewed identifying pH and conductance sampling information above, at, and below the outfall of the STP. He said that he and Dr. Procopio had walked the Deep Run Creek and sampled points along the stream noting a high pH of 7.30 above the STP, attributed to agricultural activity, 6.08 at the outfall, and a reduction to pristine Pinelands stream levels of 4.62 by the time it reached Weymouth. The stream has a natural ability to return to a natural pH, picking up Pinelands soils along the way. He said that every STP has a unique pH obligation and that, for those that need to acidify the treated water, generally sulfuric acid is added, not an appropriate remedy for the Pinelands environment.

In response to a question from Commissioner Lloyd, Mr. Wengrowski said that the membrane bioreactor technology that the BBMUA will be utilizing will not adjust pH.

In response to a question from Commissioner Jackson regarding, perhaps a partnership with Rutgers University to look at artificial wetlands and the effect of vegetation to help reduce the pH, Mr. Wengrowski said that staff would be supportive of such a project (and he volunteered to administer such a project should it develop). Mr. Wengrowski noted that he'd recently spoken with an expert from New Mexico on artificial wetlands and learned that some \$500,000 would be needed for a project to treat the full 400,000 to 600,000 gallons per day anticipated by the expanded BBMUA STP. This was beyond the fiscal ability of the BBMUA. (*Please see amended comments by Commissioner Jackson, p. PC1-57, Minutes of June 10, 2011 meeting.*)

Commissioner Ashmun stated that there is nothing in this MOA that would preclude anything in the future; that is important to today's discussion.

Ms. Roth concurred and said that a potential joint project with Rutgers' would need to come before the Commission and could raise regulatory issues.

In response to a question from Commissioner McGlinchey as to why the Commission would make a commitment to correct an existing flooding problem on a municipal street, Mr. Liggett said that this is in return for Buena Vista Township's efforts to clean up the stream through sewerage the Buena Vista campground and dealing with the algal bloom in the drainage ditches at the Buena Vista Country Club golf course. He said once the MOA is signed, Buena Vista will start addressing the golf course issues right away. The sewerage of the campground can be addressed once there is increased capacity at the STP.

Commissioner Jackson said that he felt a good faith effort from the golf course would be a good first step.

In response to a question from Commissioner Haas regarding Buena Vista Township's record of noncompliance, Mr. Liggett said that Mayor Chiarello is working through the Commission's concerns issue-by-issue and that Ms. Wittenberg was involved.

In response to a question from Commissioner Ashmun regarding the enforcement mechanism should the obligations of the MOA not be met, Ms. Roth said that funding would not be available; with no upgrade to the STP, there would be no increased sewer service. She said that the Commission is looking for Buena Vista to utilize "best" efforts but of course this is subjective.

Mr. Liggett stated that staff has also approached Atlantic County to help deal with the road improvements to resolve the flooding issues.

Ms. Roth said that the Commission has had good experience with NJPDES permits and that there will be a contractual obligation with DEP. If the BBMUA does not meet their obligations, they cannot get additional flow.

Commissioner Ficcaglia said that she believed that there were lots of checks and balances within the MOA.

Ms. Wittenberg noted that both the Buena Vista Country Club and DEP are referenced in the agreement but are not signatories.

Mr. Liggett said that DEP likes the approach that the Commission is taking.

In response to Commissioner Jackson's question if there were some way to improve the relationship with the golf course and the recognition that one saves money by reducing pesticide and fertilizer use, Mr. Liggett said that there had been little experience with them other than discussion some years ago about beneficial reuse of wastewater. Ms. Wittenberg said that staff could write to both the golf course and DEP.

Commissioner Ashmun expressed concern about the deed restrictions on the parcels that served as the offset for the original MOA.

Ms. Roth said that the deed restrictions have been filed and that Buena Vista Township is required to add the parcels to its ROSI. Any lifting of the deed restriction would need to go before Green Acres and, ultimately the Commissioner of DEP. If the deed restriction were to be lifted, the Commission would seek other parcels as a replacement.

Mr. Liggett said that the parcels are treated as permanently protected lands in the Commission's permitting and GIS systems.

Commissioner Ficaglia moved the adoption of the Resolution Authorizing the Executive Director to Enter into a First Amendment of the March 27, 2007 Memorandum of Agreement Amongst the New Jersey Pinelands Commission, the Buena Borough Municipal Utilities Authority and the Township of Buena Vista Concerning, Among Other Items, the Elimination of the Buena Borough Municipal Utilities Authority's Obligation to Construct the Infiltration/Percolation Facility on Block 106, Lot 6, Authorizing the Continued Discharge of Treated Wastewater from its Sewage Treatment Plant into a Tributary of the Deep Run and Requiring the Installation of Best Available Wastewater Treatment Technology at its Treatment Plant (*See Resolution PC2-11-17*).

Commissioner Lloyd seconded the motion.

Commissioner Ashmun asked for a roll call vote. Ms. Wittenberg called the roll. All (including Commissioner Brown, via telephone) voted Aye, the motion carried by a vote of 10 to 0.

Public Comment

Mr. Fred Akers, with the Great Egg Harbor Watershed Association made four points: 1. he said that he felt that the public process on this MOA had been done very well and that the public had ample opportunity to comment despite the fast track; 2. he said that he was losing confidence in the ability of science and technology to preserve the Pinelands and was disappointed that the land application failure had not been identified earlier. Similarly he noted the failing basins at the fire house in Richland Village and at the Buena Vista Middle School despite their relatively recent construction; 3. under the Clean Water Act, Pinelands streams are defined by a 5.5 pH limit; and 4. despite the claim by some that farmers are good stewards of the land, the pollution attributed to agriculture upstream from the Buena Borough STP would indicate otherwise.

Ms. Theresa Lettman, with the Pinelands Preservation Alliance referenced the deed restricted lands that Buena Vista Township was supposed to have placed on the ROSI list. She said that in order to receive ROSI protection, the Township must get funding from Green Acres and that is unlikely to happen within six months. She said that Buena Vista Township and the Buena Borough MUA will get their increased development but

the public will not have the deed restricted lands that will provide an equal level of protection.

Other Item of Interest

Ms. Wittenberg said that she, Ms. Roth and Mr. Horner had worked to resolve issues concerning the opportunity for the public to comment on public development applications and waivers. She said that under a new procedure, staff will determine when an application is complete and ripe for public comment. The new process will be announced via a press release and each application will be noticed via a posting on the website and using a Listserve announcement. The public will be able to review the application and related materials and then comment at a Commission meeting; written comment would be submitted by the close of that meeting day. Staff will then prepare its recommendation and the Commission will take action at the next meeting. The process may extend the process by some 30 to 60 days. The public will not have the benefit of the staff determination when they make their comment but this process will address the concern expressed by some members of the public that the Commission should hear their concerns.

Commissioners were supportive of this new procedure and felt it would be useful.

In response to Commissioner Galletta's question about the impact on pending public development applications, Ms. Wittenberg said that staff will be educating the counties and municipalities so that they will understand the process.

In response to a concern expressed by Commissioner Link as to what would happen if public comment could not be heard at a single meeting, Ms. Roth said that anything rising to that level would be something that staff would need to evaluate further in any case. Commissioner Ficcaglia said that such has never been the case in the past.

Commissioner Ashmun said that this puts more responsibility on the members of the public.

Adjournment

Commissioner Lloyd moved to adjourn the meeting. Commissioner Jackson seconded. The Commission agreed to adjourn at 10:05 a.m.

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____