

Disclaimer

These minutes reflect the actions taken by the Commission during its July 8, 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 July 15, 2011.

PINELANDS COMMISSION MEETING¹

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

MINUTES

July 8, 2011

Commissioners Present

William Brown, Leslie Ficaglia, John A. Haas, Robert Jackson, Edward Lloyd, Mark S. Lohbauer, Ed McGlinchey, Gary Quinn, D'Arcy Rohan Green, Francis A. Witt and Acting Chairperson Candace Ashmun. Also present were Executive Director Nancy Wittenberg, Deputy Attorney General Jean Reilly and Authorities Unit Liaison David Reiner.

Commissioners Absent

Paul E. Galletta and Richard L. Harris

Acting Chairperson Ashmun called the meeting to order at 9:34 a.m. and she welcomed new gubernatorial appointments, Mr. Mark S. Lohbauer, Honorable Gary Quinn, Lacey Township Mayor and Ms. D'Arcy Rohan Green.

DAG Reilly read the Open Public Meetings Act Statement.

DAG Reilly administered the Oath of Office to Commissioner Ashmun (who was reappointed to the Commission), Ms. Rohan Green, Mr. Lohbauer, and Mayor Quinn.

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.

Ms. Wittenberg called the roll and announced the presence of a quorum. (There were eleven Commissioners present.)

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

Minutes

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

The minutes of the June 10, 2011 meeting were adopted by a vote of 8 to 0. Commissioners Lohbauer, Quinn and Rohan Green abstained.

Committee Chairs' and Executive Director's Reports

Personnel and Budget Committee Meeting

Commissioner Haas reported on the June 27, 2011 meeting of the Personnel and Budget Committee as follows:

The Committee adopted the minutes of the May 23, 2011 meeting. Following discussion of the budgets, the committee recommended that the Commission adopt the budgets presented on today's agenda. Donna Connor reviewed the equipment deletion list and the Committee approved all deletions. The Committee reviewed the check registers, electronic funds transfer disbursements, application fees and employee actions. Donna Connor reported that the FY10 Audit report will be released in mid July and will include a finding which has since been resolved. There was no public comment and no closed session necessary.

Executive Director's Report

Ms. Wittenberg provided the following report:

She said that she, Mr. Horner, and Mr. Bunnell had met with DEP (on June 23, 2011) on the Southern Pine Beetle infestation issue. Following receipt of as much specificity as DEP could provide, she has granted an approval for the "cut and leave" approach on some 300 acres of public lands on an emergency basis.

Mr. Horner noted that Ms. Wittenberg's June 28 letter had granted the approval through the end of September and that the Commission anticipates receipt of an application for review prior to that time. A meeting of the Forestry Advisory Committee (FAC) will be

held to discuss this issue and obtain their recommendation. In addition, the staff is working on a plan to address infestation on private lands as the letter authorizes DEP activity only on State lands. Mr. Horner said that a copy of the June 28 2011 letter was available to members of the public. (*Attachment to Minutes*)

In response to a question from Commissioner Jackson, Mr. Horner said that staff envisions that the FAC comments will be incorporated into the report that would be issued regarding DEP's application.

Ms. Wittenberg noted that Mr. Michael Catania, Chair of the FAC, had also participated in the June 23, 2011 meeting with DEP.

Ms. Wittenberg said that the Commission is in the process of formalizing the public comment procedure for public development applications and that this meeting, and perhaps the next meeting or so, will constitute a transition period as staff must meet existing regulatory deadlines while accommodating the public process. She said that Buena Vista Township had granted her request for deferred action on its public development application to allow comment and that this application will be before the Commission at its next meeting.

Ms. Wittenberg noted that the Executive Director of the PDC Bank had retired and no replacement has been named. She said that the secretary at the Bank does not have the authority to fill certain functions and that there is some question as to how/where the Bank should function in the future; currently and legislatively it is within the Department of Banking and Insurance. The PDC Bank Board is considering having the Commission staff administer the program in the interim until some final determination is made. Staff is in the process of updating the agreement that was made under similar circumstances several years ago when, absent an Executive Director, the PDC Bank Board assigned the position to the Commission temporarily. The Board is meeting in late July and is expected to support such an arrangement.

In response to Commissioner Haas' request for an update on the function of the PDC Bank, Ms. Grogan reviewed the responsibilities of the Bank, that of facilitating the severance, sales and redemption of certificates. She noted that, in the past, promoting the program has been a large part of the Bank's function as well as conducting auctions when necessary. She said that the Bank processes the paperwork for matters such as severances, redemptions, and title processing and it is these day-to-day transactions to which Ms. Wittenberg was referring as needing some authorized oversight.

Commissioner Ashmun said that the Bank was established by separate legislation and any changes in the status would require legislation. She said that the Bank had lost a lot of the outreach element and that its functions are hugely important to the work of the Commission.

In response to Commissioner Lloyd's question if the PDC Bank Board is authorized to designate an agent, Ms. Grogan said that yes, it had been done previously but no arrangements have been made at this time.

In response to Commissioner Jackson's question regarding the Bank's fee to applicants, Ms. Grogan said that there are no fees involved.

Commissioner Ashmun said that the Bank's original operating funding has run out.

Ms. Wittenberg said that if the Commission were to take on the Bank's temporary responsibilities, it would be without additional staff or funding.

Ms. Roth said that the legislation allows the Board to enter into an agreement to fulfill its function; under a proposed agreement, the Commission would become the Bank's agent. In the long term, legislative changes would be needed.

Ms. Wittenberg concluded her report by saying that the annual audit had been completed. She said that one issue was noted related to custodial credit risks and that the problem has been cured.

Other Staff Reports

Mr. Liggett said that DEP has offered to have the Commission write the County chapters on the water quality management plans for the Pinelands Area. He said that Winslow Township is seeking permanent closure of its landfill and he has been meeting on that matter. He said that last month Mr. Horner had mentioned Hammonton's interest in expanding its airport; because it is within the Agricultural Production Area (APA), it will likely require a rezoning. The matter will go before the Policy and Implementation Committee. He said that an expediting MOA for development projects at The Richard Stockton College of New Jersey has been drafted and is soon to be shared with the College. He said that the BBMUA amended MOA project will be before the Commission again at its September meeting as a public development approval as the MUA seeks to secure federal funding. Finally, much comment was received on the solar rules and that issue will be before the P&I Committee at its July or August meeting.

Mr. Horner said that on Monday morning, staff would be meeting with the State Soil Conservation Committee regarding their rule proposal on soil erosion and control. He said that Hammonton is interested in constructing a hangar at its airport and next week he would be meeting with the mayor. Finally, he said that later in the meeting he would be making a brief presentation.

Ms. Wittenberg praised the work of Mr. Leakan, noting that he had facilitated some good publicity for the Commission in the form of a positive editorial regarding the Commission's public process for comment on public development publications. In addition, Mr. Leakan had arranged for a press conference regarding the release of the Commission's end of the year report and that had generated some positive coverage.

Public Development Projects and Other Permit Matters

Mr. Horner said that the two public development resolutions on today's agenda involve a parking lot expansion at a Pemberton Township school and a sewer line extension in Hamilton Township.

Commissioner Witt moved the adoption of a Resolution Approving With Conditions an Application for a Public Development (Application Number 1986-0479.004). (See Resolution #PC4-11-23). Commissioner Lloyd seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0 with Commissioners Quinn and Rohan Green abstaining.

Commissioner Lloyd moved the adoption of a Resolution Approving With Conditions an Application for a Public Development (Application Number 2008-0080.002). (See Resolution #PC4-11-24). Commissioner Witt seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0 with Commissioners Quinn and Rohan Green abstaining.

Resolutions Relating to Municipal Ordinances

There were no resolutions relating to municipal ordinances.

Public Comment on Agenda Items

There was no public comment on agenda items.

Miscellaneous Resolutions

Commissioner Ashmun presented a resolution related to the budget.

Commissioner Haas moved the adoption of a Resolution To Adopt the Pinelands Commission's Fiscal Year 2012 Budgets for the Operating Fund, the Kirkwood Cohansey Aquifer Assessment Study Fund, the Pinelands Conservation Fund and the Pinelands Development Credit Purchase Program Fund. (See Resolution #PC4-11-25). Commissioner Ficaglia seconded the motion.

Ms. Wittenberg made a brief PowerPoint presentation on the FY 2012 budgets, noting that in a meeting with new Commissioners Rohan Green, Lohbauer and Quinn yesterday, she had briefed them on the matter.

Ms. Connor noted that some costs would be incurred to provide public access to application-related information. She also said that the resolution authorizes the Executive

Director to pay certain budgeted amounts beyond the \$36,000 threshold in order to expedite routine payments.

Mr. Bunnell said that payment will be due for 15% of the final two reports from USGS related to the Kirkwood-Cohansey study. Once all the contracts have been paid, then all remaining costs for that project will be the salaries of Commission staff as they work to finalize the study and develop policy.

Commissioner Haas said that this was a good budget with no staff cuts and no furlough days. The expenditure of \$4 million for land acquisition was a very good thing.

Commissioner McGlinchey said that he did not like to go through the budget process while (union) negotiations have not been resolved. He said that he believed that this was a good budget but with the level of understaffing and the fact that Commission employees are not paid at the same level as other state employees, he felt that absent wage increases, a cost of living increase might be appropriate. He said that he recognized that these are difficult times and that we are all doing more with less. Finally he said that the Pinelands Conservation Fund should be evaluated again as perhaps some of those funds should be freed to spend on other things.

Commissioner Ashmun said that, for the benefit of the new Commissioners, the Pinelands Conservation Fund has three components, the most important of which is acquisition. She said that she agreed that the Fund should be evaluated again. Furthermore, the Commission must spend some time discussing various issues related to the budget. She said that the Commission is not a civil service organization, that there are staff members holding multiple positions and it was important that the Commission's mission not be disrupted.

The vote occurred. The Commission adopted the resolution by a vote of 9 to 0 with Commissioners Quinn and Rohan Green abstaining.

Ordinances Not Requiring Commission Action

Commissioner Ashmun stated that no action was needed on ordinances submitted by Ocean, Plumsted and Waterford Townships as described in Ms. Grogan's packet memo.

Presentation on Woodland Township Road Project

Mr. Horner said that based on the public comment that had been received last month regarding a road project in Woodland Township and concerns with T/E species, he would do a brief presentation. He said that there have been various applications over the past six years for improvements to Cedar Avenue.

He said that he, Ms. Young and Mr. Deman had visited the site following last month's meeting and he provided slides showing the areas of the road paving with roadside

vegetation at various locations in order to give the Commissioners some perspective of the affected area. He said that he understood that there was a tour scheduled for the area.

Commissioner Ashmun said that the Commission would not be taking the tour.

Mr. Horner also noted that the next item on the agenda would be that of public comment and he wanted to brief the Commissioners on one of the applications for which much comment was anticipated.

Mr. Horner said that "Sawmill Park" is located in Richland Village, Buena Vista Township and the Commission has received an application involving off-street parking, sidewalks and gazebos. He said that the improvements were completed in 2006 and the application will resolve a violation.

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

Mr. Mark Demitroff provided the Commission with a PowerPoint presentation on Buena Vista Township's application, noting that this was the first and only time that the public has had an opportunity to speak on this application. He expressed concerns related to stormwater, historical surveys and contaminants. Mr. Demitroff also provided written comment on the application. His presentation was incomplete as it exceeded the allotted five minutes per speaker.

Ms. Theresa Lettman, with the Pinelands Preservation Alliance, said that she objected to the agenda as the public had no knowledge that the Sawmill Park application was on the agenda. She said that now that the Public and Governmental Programs Committee has been dissolved, the public no longer has that venue for comment and five minutes at a Commission meeting is insufficient. She said that she believed that the CMP must be changed to permit opportunities for public comment. She also said that she did not see how the Sawmill Park application met CMP standards and that she had only today on which to comment on the application and has not been shown any site plans. Her final comment related to the No Substantial Issue ordinance memorandum in today's meeting packet. She expressed concerns with Ocean Township's overlap area in the Forest Area and public service infrastructure.

Mr. Fred Akers, with the Great Egg Harbor Watershed Association, said that he appreciated the opportunity for public comment at the Commission meeting but agreed with Ms. Lettman that others might not know ahead of time which applications were subject to comment. He said that the stormwater problems in Richland Village are ongoing and he had addressed them in the past. He provided a history of the development of the stormwater rules stemming from the 2004 EPA requirement for stormwater plans and the Commission's hiring of Princeton-Hydro to merge the DEP and Pinelands rules. He said that the new CMP rules give the municipalities the authority to waive the rules. He said that problems of the past such as the English Creek flooding in Egg Harbor Township in 1997 and the problems at the Hamilton Mall/racetrack area stemmed from

multiple property owners merging their stormwater without responsibility to control it. He said that for Sawmill Park, the Township developed the property perhaps believing that it had the right to waive the stormwater requirements.

Ms. Jaclyn Rhodes, with PPA, said that she wanted to clarify that her invitation to the Commission members today to visit the Woodland Township paving project was offered as an educational opportunity. She said that PPA was working with the State Soil Conservation Committee regarding soil disturbance and wanted to better inform the Commission members. She stated that she did not see how an educational opportunity should be controversial.

Commissioner Ashmun said that the Commission appreciated the invitation but would follow up by initiating some exploration of the matter on its own.

Mr. Demitroff interjected that there is written comment that the Commission has not yet seen regarding Sawmill Park.

Mr. Horner said that the Commission has received the written comment in question.

Ms. Roth stated that there was a misperception regarding public comment. She said that written comment would be accepted through the close of business today; the oral comment that is received at today's meeting will be summarized and included in the report on the application along with any written comment..

Mr. Horner said that upon receipt of an application, it is posted on the website; the Sawmill Park application has been posted for some 6 months. In addition, the website was updated when the public notice was published in the newspaper. He agreed that the transition has been less than smooth but said that written comment has already been received.

Commissioner Jackson said that the greatest threat to change is education and that he was open to education. He said that he appreciated the efforts of PPA but that he felt it was a personal conflict. He said that he didn't want anyone to think that he could be swayed by PPA.

Ms. Roth concurred and said that it was indeed the appearance of conflict. This educational opportunity has a potential appearance of impropriety.

Commissioner Quinn said that he too was interested in being educated and he looked forward to learning more but always referred to the advice of counsel. He said that he was honored to have been given this appointment.

Commissioner. Rohan Green echoed those sentiments and said that it was an honor and a privilege to serve as a Pinelands Commissioner. She could see that there was a lot to learn and a lot to do. She commended the staff and thanked them for the work they do.

Mr. Lohbauer concurred with the comments of Commissioners Quinn and Rohan Green and said that he gave the staff a lot of credit. Based on the budget history he could see that they are very committed. He also thanked the members of the public for their passion and commitment in offering information to the Commission.

Commissioner Ashmun suggested that the new Commission members attend both the Personnel and Budget and the Policy and Implementation Committee meetings in order to see the issues with which they will deal and to help them decide on which Committees they would like to serve.

She announced that there was no need for a closed session today.

Adjournment

Commissioner Ficcaglia moved to adjourn the meeting. Commissioner Jackson seconded. The Commission agreed to adjourn at 11:10 a.m.

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____