

Adopted February 26, 2016

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
January 29, 2016 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Sean Earlen (Commission Chairman), Candace Ashmun, Paul E. Galletta, Mark Lohbauer, Ed Lloyd, Richard Prickett, Joe DiBello (1st Alternate) and Ed McGlinchey (2nd Alternate)

STAFF PRESENT: Executive Director Nancy Wittenberg, Susan R. Grogan, Charles Horner, Stacey Roth, Robyn Jeney, Brad Lanute, Paul D. Leakan, and Betsy Piner. Also present was Amy Herbold with the Governor's Authorities Unit.

Committee Chairman Lohbauer called the meeting of the Policy and Implementation (P&I) Committee to order at 9:34 a.m.

Ms. Wittenberg read the Open Public Meetings Act statement due to the presence of a quorum of the Commission. *(As Alternates to the Committee, Commissioners DiBello and McGlinchey were ineligible to vote)*

1. Adoption of minutes from the October 30, 2015 CMP Policy & Implementation Committee meeting

Commissioner Ashmun moved the adoption of the October 30, 2015 meeting minutes. Commissioner Prickett seconded the motion. The minutes were adopted with all Committee members voting in the affirmative except Commissioner Earlen who abstained.

Commissioner Lohbauer, noting he had served 4½ years as Chairman, thanked his fellow Commissioners, staff and members of the public for their support and patience. He congratulated Commissioner Sean Earlen who, last night, was designated by the Governor as Commission Chairman. Commissioner Lohbauer said that he would continue to serve as a Commissioner and would conduct today's P&I Committee meeting.

2. Briefing on affordable housing

Mr. Liggett made a presentation *(Attachment A to File copy of these minutes and posted on the Commission's web site at [1](http://www.nj.gov/pinelands/home/presentations/Affordable%20Housing%20-</i></p></div><div data-bbox=)*

%20P&I%20Meeting%20Jan%2029%2015%20(Final).pdf) that had been prepared jointly with Ms. Stacey Roth, who was unable to attend today's meeting. His presentation reviewed the history of affordable housing in New Jersey including the various analyses and wide-ranging assigned units for the Pinelands municipalities. He noted various reasons why meeting these numbers was nearly unachievable due to lack of sewer service, lack of vacant land, inconsistency with zoning, etc.

Members of the Committee asked what involvement the staff had with assisting the Pinelands municipalities in meeting their fair share obligations.

Mr. Liggett responded that some ten municipalities have contacted staff for assistance and it is being offered when requested. He added that affordable housing is a constitutional right in New Jersey, the only State where this applies.

Ms. Grogan noted some of the difficulties the municipalities are having. She said the fair share numbers are for an entire municipality and do not distinguish between inside/outside Pinelands Area. She also noted a specific example, that of Mullica Township, for which an obligation of 104 units has been assigned by the Fair Share Housing Council. The Township has responded that it cannot absorb that large number because it has a non-sewered Village and a large Forest Area. On the other hand, she said, Econsult has determined its obligation to be only 18 units. The municipalities are preparing their plans and petitioning the courts for the lower numbers. She added that most of the Pinelands municipalities are familiar with their zoning plans and CMP restrictions so staff is not seeing fair share plans that are inconsistent with Pinelands rules.

Commissioner Galletta noted that the Superior Court judges have full dockets and are understaffed.

Commissioner Lloyd said the Commission needed to get ahead of the process and provide input to the courts. He said this is a constitutional right and the municipalities cannot use zoning to exclude affordable housing. He said there needs to be a Pinelands-wide plan to prevent the seven different courts from developing seven different plans.

In response to Commissioner McGlinchey's question if any municipalities were yet before the court, Ms. Grogan said that Moorestown is before Judge Bookbinder and a Master has been hired.

Commissioner Ashmun said the Commission needs to take action quickly to protect the Pinelands municipalities from builders remedy lawsuits.

Ms. Grogan responded that such vulnerability has been in place for 30 years because some municipalities have not done their plans; now they are before the Court, instead of before COAH.

Commissioner Lohbauer said he believes the Commission needed to get out in front of the issue but asked where the staff is to do it.

Ms. Wittenberg responded that this is a resource issue. She said the staff can write a letter and offer to assist the courts and towns but cannot gather new data and do extensive research.

Chairman Earlen said he agreed that a letter is appropriate.

Commissioner Ashmun said the Commission should look for money to take care of the problem and Commissioner Lloyd added that foundation or State funding might be available.

Mr. Liggett said COAH staff are located at the Department of Community Affairs but are not actively working on fair share housing issues.

Mr. Liggett said staff believed it would be good to look at the draft PDC enhancements rules that were proposed in 2009. He said the sliding scale (reducing the PDC obligation for higher density development), eliminating PDC obligations for affordable units, etc. could help municipalities to accommodate more affordable housing.

Commissioner Lohbauer said he agreed that taking action on the PDC rules will be helpful.

3. Update on Plan Review Recommendations

Ms. Grogan made a presentation to update the Committee on the Plan Review Recommendations that had been included in the October 2014 Report (*Attachment B to File copy of these minutes and posted on the Commission's web site at:*

<http://www.nj.gov/pinelands/home/presentations/Plan%20Review%20Recommendations%20Jan%202016.pdf>).

Ms. Grogan stated that a number of minor recommendations had led to CMP amendments in 2014, including the extension of the duration of Letters of Interpretation from two years to five, and expanding the list of application exemptions. She said there were a number of rule proposals that had been drafted and discussed with the P&I Committee in 2013. Those issues related to revised application fees and escrows, efficiency and administrative improvements, definitions, CMP notification procedures (including the elimination of newspaper advertisements) and expiration dates for certain approvals. The next steps for these items would be to resubmit them to the Governor's office, in some case with revisions.

She said some new recommendations related to the protection of the Black Run watershed in Medford and Evesham townships, as endorsed by the P&I Committee in April 2015, codification of the new Enduro application procedures, enhancements to the Pinelands Development Credit (PDC) program and, perhaps, making some changes to the PDC Bank. Ms. Grogan noted that Mr. Liggett has spent the last year reviewing potential changes to the PDC program with various parties. She said staff will update the Committee in the spring and prepare a rule proposal for review by the Committee and the Governor's office.

Ms. Grogan said other projects related to water supply planning based on the Kirkwood-Cohansey Aquifer study although staff is not ready to prepare rules until additional information is gathered.

Mr. Liggett said that he'll continue to discuss the project and try to coordinate with the State although the State Water Supply Plan is currently on hold.

In response to Commissioner Lohbauer's question if the Commission could take action absent any by the State, Mr. Liggett said that currently there are not many new wells being proposed.

Ms. Grogan said that the Memoranda of Agreement (MOA) Policy Advisory Committee made a few changes to its process document, which will be shared with the members prior to being advanced to the full Commission. She said none of the recommendations will require CMP amendments and that any substantive changes to the MOA provisions will be discussed by the P&I Committee.

She said Ms. Roth had been reviewing the process used by other State agencies in dealing with OPRA requests relative to survey results for threatened and endangered species and cultural resources and determining if CMP amendments are necessary.

Among other issues being addressed by staff are digital signs, Ms. Grogan said, reminding the Committee that the Planning Office's intern had completed a study of the impact of digital signs in 2015 and staff will provide some options for the Committee's review this spring. Also, she said, staff has continued its ongoing evaluation of possible improvements to public comment procedures, protection of roadside habitat, and native vegetation standards.

Ms. Grogan said that Ms. Jeney was working with the Counties on roadside conditions, mowing, etc., with a goal of making the use of native vegetation a requirement, rather than a guideline.

As shown on the presentation slides, additional recommendations may lead to presentations to the Committee throughout 2016 for its review, including an open public meeting to gather specific suggestions as to how the CMP could be amended to address climate change.

Commissioner Lohbauer said that he had attended the Pinelands Research Series presentation by the State Climatologist (*Dr. David A. Robinson on November 18, 2015*) and felt it would benefit the full Commission if it could be repeated prior to an open meeting.

Mr. Liggett responded that staff had taped the presentation and Mr. Leakan added that Dr. Robinson, as well as another Rutgers staff person, would be making presentations at the Pinelands Short Course on March 12, 2016 at Stockton University.

Ms. Grogan said another issue needing evaluation is recreational uses in the Agricultural Production Area in response to recent legislation. She said the Commission will need to determine if it wishes to amend the CMP to deal with activities on agricultural lands rather than establishing a pilot program for such uses.

Commissioner Ashmun offered the staff congratulations and said that the presentation demonstrated that Plan Review was not futile.

In response to a question from Commissioner Ashmun, Ms. Grogan said staff needed to look at the provisions of the recently adopted Rural Microenterprise bill allowing non-agricultural activities to occur on preserved farms and evaluate any impacts on Pinelands rules.

Also in response to Commissioner Ashmun's question, Ms. Grogan said the current roadside MOA is with the counties, not municipalities. She said the agreements could be expanded to municipalities but further education and implementation work with the counties need to be done first.

4. Discussion of DEP's Motorized Access Plan for Wharton State Forest

Commissioner Lohbauer said that following his presentation before the Commission at its January 15, 2016 meeting, Richard Boornazian, NJDEP Assistant Commissioner for Natural and Historic Resources, had asked for the Commission's input on any new Motorized Access Plan (MAP).

Ms. Wittenberg said staff had received input from various advocacy groups. She said several municipalities had taken action and she was aware that NJDEP had sent a follow-up email to Commission members. She said NJDEP will take the lead on any road closure plan but the Commission will provide input. She said staff was unable to find the 1982 Wharton road map and NJDEP was trying to develop a map based on its historical aerial maps. She said the CMP gives the Commission the authority to close roads periodically in consultation with NJDEP but the Commission has never done so.

Chairman Earlen said NJDEP had withdrawn the MAP so currently there is nothing to which the Commission can respond. As such, he said he would reserve comment until there is a new plan.

Chairman Lohbauer noted the large number of members of the public who were here to speak regarding the MAP and invited them to present their comment at this time, rather than waiting until the general Public Comment opportunity. He said he would ask first for comment from Commissioners. He said that everyone knew this is a contentious issue and it was his intent to formulate a recommendation for the full Commission to pass along to NJDEP.

Commissioner Ashmun stated that the Commission does not have veto power over a Wharton road Plan.

Commissioner Lloyd said he believed the Commission has the power to over-rule any NJDEP designation.

Commissioner McGlinchey asked if the same destruction occurring in Wharton State Forest was occurring elsewhere in other state forests.

Chairman Lohbauer responded that one is seeing destruction in many State parks. The Commission has the responsibility for all lands under its jurisdiction.

Commissioner Galletta, referencing comments made by Dr. Emile DeVito at the January 15, 2016 Commission meeting, stated that he agreed that the problem was not with the hunters but with the renegades. He said he thought enforcement was the answer, particularly on weekends and nights. He said a map will not stop destruction; what was needed was more enforcement and less mapping.

Commissioner McGlinchey stated that Assistant Commissioner Boornazian believed that local authorities will assist with enforcement. However, he did not believe that was going to occur.

Commissioner Prickett said this is a big management issue. He said there needs to be cooperation among all the groups that use Wharton to preserve the Pinelands. He said that education and enforcement were needed. He said he believed most interested parties want what is best for the forest but have various points of view. Wharton needs to be left for future generations in a more passive way.

Commissioner Lohbauer said the issue is a matter of balance; there is an obligation to preserve while allowing access. He called upon the public to comment on this agenda item.

Mr. Jason Howell, with the Pinelands Preservation Alliance (PPA), said he came from a long time Pinelands family with connections to Martha Furnace, Pleasant Mills and other sites. He said he found the damage inflicted upon Wharton State Forest to be distressing personally and culturally. He read a letter and distributed (unidentified) photographs (*Attachment C-(letter only; photographs are attached to File copy of minutes)*) of locations within Wharton State Forest showing a variety of pristine and damaged areas. (*Subsequent to the meeting, maps and a list of locations were submitted and are also attached to the File copy of these minutes*)

Mr. Joe Springer, a resident of Southampton Township and member of the East Coast Enduro Association (ECEA,) said that he had listened to Assistant Commissioner Boornazian's comments at the January 15, 2016 Commission meeting by regarding the decision to withdraw the MAP. He said he had been encouraged by the Commission's interest in being a stakeholder in further consideration of the accessibility issue. He said the Commission recognizes some 561 miles of Enduro trails based on the permits issued and he encouraged the Commission to become a stakeholder in NJDEP's discussions regarding the road closure issues. On another note, referencing the earlier Plan Review discussion, he invited the Commission to look at Southampton Township's standards for water quality.

Mr. Steve Salisbury, with the 200,000 member American Motorcycle Association, distributed an excerpt (*Attachment D*) from the June 2014 edition of *American Motorcyclist* regarding the Trail Ambassador Program. He said he had been involved with the Tread Lightly program to train motorcyclists throughout the country on the importance of caring for trails and minimizing the impact from motorized vehicles.

Mr. Tom Hedden, the liaison to the Pinelands Commission for ECEA and Chairman of the New Jersey Trails Coalition (NJTC), said he had organized labor parties for Wharton State Forest Superintendent Rob Auermuller. He noted that signs in the forest do nothing but serve as marks

of merit for the scofflaws who ignore them or remove them. He said enforcement is the only way to protect the forest and the NJDEP has an abysmal record of doing so.

Mr. Chris Jage, with the New Jersey Conservation Foundation (NJCF) and resident of the Town of Hammonton, thanked Commissioner Lohbauer for his guidance as Chairman and welcomed Commissioner Earlen to his new position. Mr. Jage said the off-road vehicle park in Woodland Township that was a joint venture amongst NJCF, Woodland Township and NJDEP, had been the result of an MOA amongst the parties as such activities are not permitted in the Preservation Area. He said the experiment had not been successful. Mr. Jage said NJCF manages some 23,000 acres across the State and it requires enforcement to prevent trespassing and vandalism. He said NJDEP maintains the roads within Wharton under a (expired) MOA with the Commission; That MOA says NJDEP must apply to the Commission for activities within wetlands areas. He said the majority of the closed roads under the MAP were in such sensitive areas.

Mr. Rocco Spano, with ECEA, said eight municipalities adopted resolutions against the MAP and many members of the public oppose closing the roads.

Mr. Tom Turlish, with the NJ Sporting Dog Association, said that the loss of access to the forest will put his (foxhunting) hounds at risk. He said the current popularity of setting snares to catch coyotes has endangered the dogs that can become entangled. If the foxhunters cannot access their dogs, the closure of the roads will ruin this historic activity. He asked that his group be considered as part of the culture of the Pinelands.

Ms. Apolonia (Pola) Galie, a resident of Medford, NJ, said she is President of the 150,000 member NJ Federation of Sportsmen's Clubs and Secretary of Open Trails New Jersey (OTNJ). She said her groups care about the trails in New Jersey and were concerned that their stakeholder interests were not represented in the development of the MAP. She said there had been no maintenance of the roads at Wharton for years and that she was disappointed that Assistant Commissioner Boornazian's presence at the Commission meeting had not been announced in advance. She said hunters use the roads in many ways and she asked that the Commission become involved with the road closure plan and to provide transparency to the process.

Mr. Joseph Duble, a resident of Winslow Township, displayed a map of roads within Wharton with those that were accessible under the MAP highlighted. He said responsible users had been blindsided by the MAP. He said that \$600,000 in federal funds for trail maintenance had been misused, and that reasonable criteria should be used for closing roads. He said only active preservationists had a seat at the table in developing the MAP and he objected to the blanket closure of roads. As a retired state trooper, he offered to share his enforcement options, including real time trail cameras.

Mr. Joe McNamee said the trails should be kept open; there is no reason to close the roads.

Ms. Jen Dickson, with OTNJ, said the Commission has said it is not their role to be involved in the road closures. She said she has been an active geocacher for the past ten years and she found that the roads are being destroyed from lack of maintenance. She said trails should be marked

with the type of permitted vehicular access. She also objected to the State favoring “for profit” groups that offer tours within Wharton.

Mr. Tony Tancini said he was currently an attorney but, in 2007-2008, had served as a watershed ambassador assessing the Rancocas. He said he had witnessed the damage cause by off-road vehicles and that any unauthorized use creates non-point source pollution from oil, antifreeze and gasoline. He said habitat destruction must not be allowed and that the Commission has been charged to “preserve and protect” and should listen to scientists, such as Dr. Walter Bien (of Drexel University). He said fallen trees add to potential forest fire threat, and that unauthorized use of roads threaten the Pinelands.

Mr. Arnold Fishman, a resident of Medford Lakes and practicing attorney for some 50 years, said that one cannot successfully prosecute unless there is signage. Signage is an integral part of enforcement.

Mr. Bill Caruso, former Chief of Staff to Congressman Rob Andrews, congratulated Commissioner Lohbauer for his service. He said the MAP was a “hot mess”. He himself is a kayaker and member of OTNJ. Although he personally did not like the sound of vehicles, he believed that everyone should share the forest and that he appreciated all users if their activities were appropriate. He said OTNJ was working with NJDEP as a volunteer group to help design barricades. He proposed impounding any vehicles that are violators and he asked the Commission to serve as a catalyst to protect Wharton.

Mr. Jim Justnes said that he started enjoying the Pinelands in 1990 when he discovered it to be the back yard he never had. He said the Jeep Jamboree is an annual event and he enjoyed bringing first timers to the off-roading experience and teaching safe and responsible use of the trails. He said responsible user groups are needed to educate participants in this permitted activity.

Ms. Marianne Clemente, a resident of Barnegat Township, said she had been impressed by the level of responsibility of the off-road groups that have spoken this morning. She said she was disappointed to see Commissioner Lohbauer is no longer Chairman and said he had been effective and respectful of the public. She said she wishes Chairman Earlen the best. Regarding other matters, she asked, “Why not just assign affordable housing units based upon a percentage of buildable lots?” She also stated that eliminating newspaper legal notices seemed unreasonable, that the CMP presentation should be posted on the website, that she thought the Commission was going to look at large projects and determine which would qualify for approval by the Executive Director and that she thought the Commission should write a letter supporting solar panels on the parking at Great Adventure, rather than clear-cutting to accommodate them.

Chairman Lohbauer responded that Great Adventure lies outside the jurisdiction of the Commission.

Mr. John Druding said he agreed that this is an important issue but disagreed with the heavy handed imposition of the MAP and the closing of Wharton roads. He said there are historical

road maps available and that OTNJ members can leverage volunteers to find practical solutions that don't involve closing the roads.

Mr. Fred Akers, Administrator of the Great Egg Harbor Watershed Association, says that no one had considered the carrying capacity of this block of land. With no limits on the volume of off-road vehicles, the land cannot sustain an infinite amount of traffic.

Ms. Margo Pellegrino, a resident of Medford Lakes, said she was sorry to see Commissioner Lohbauer leave the Chairmanship position and that he had been the voice of reason. Referencing the affordable housing issue, she said this was an opportunity to minimize the housing footprint by retrofitting foreclosed homes for high density affordable housing; that she had maintained data on water contaminants and could make it available; and, that she wanted access to streams but believed the roads should be closed where necessary.

Mr. Bill Wolfe, a resident of Bordentown, said the CMP provides the Commission with jurisdiction over road closures, that off-road vehicles are inherently destructive and that given how badly the NJDEP bungled the MAP project, it becomes the burden of the Commission to protect the forest. He said, in deference to the professional staff, he had been a critic and noted that the chronology of the map and the NJDEP was not unlike that of the Commission and South Jersey Gas. There needs to be transparency.

Commissioner Lohbauer responded that the Commission understands its role and has been asked to make a recommendation to NJDEP. The Commission does have independent authority regarding the use of the forest.

Mr. Jeff Tittel, President of the NJ Sierra Club, said the Commission has the responsibility to make sure lands are managed and used in a way that protects the Pinelands. This natural resource is held in trust for all of us and if a resolution can come from the Wharton Forest road closing, perhaps it can be used as a model for Brendan Byrne and all other state forests. There needed to be an open transparent process and this is a test for the Commission to "get it right." He closed by saying just because a trail was used in the 1970's and 1980's doesn't mean that it was legal to do so.

Dr. Jaelyn Rhodes, with PPA, presented two maps (*Attachment E*) with recommendations that the Commission undertake a restoration project at each. She said these were at or near Natural Heritage Priority sites of high value according to the Commission's own Ecological Integrity Assessment (EIA) data.

Ms. Tiffany CuvIELlo, referencing the discussion of affordable housing, said she is working with Mullica, Buena Vista, Galloway and Upper Townships and the boroughs of Woodbine and Buena to coordinate housing numbers. She said she had worked with staff to navigate the process, not to stop affordable housing, but to direct it appropriately.

Commissioner McGlinchey left the meeting during the discussion of the Wharton MAP project.

Seeing that there was no more comment on this subject, Chairman Lohbauer opened the meeting to general public comment.

5. Public Comment

Mr. Bill Wolfe, referencing the discussion of affordable housing, said he was troubled to hear that the Commission was going to take a wait and see approach. He said the Commission needed to get out in front of the issue. Also, he said the Commission needed to be more stringent than NJDEP when dealing with environmental issues. Finally he said although he had been a critic, he felt Commissioner Lohbauer had been reasonable and hoped his successor would serve in the same manner.

Commissioner Lloyd thanked the members of the public for their input this morning and recognition of the need to protect the Pinelands. He said the Commission would be transparent on this issue going forward. Finally he thanked Commissioner Lohbauer for his service and leadership and welcomed Chairman Earlen and pledged any assistance he could offer.

In response to Commissioner Prickett's question as to what were the Commission's next steps, Chairman Lohbauer said he believed it should be up to the Committee. He noted that he thought today's public comment period had provided some of the most productive information he had heard. He said the Committee should digest the information and come back with a recommendation. Members may want to go out and see the sites in person.

Commissioner Ashmun said she wanted to hear more from the forest fire service.

Chairman Earlen said that it was too bad NJDEP had not reached out to the Commission at the beginning of the process since this agency needs to be among the stakeholders. He thanked Commissioner Lohbauer for his 4-1/2 years of leadership.

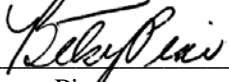
Commissioner Lohbauer pledged his support and said that the Commission works best when it works together.

Commissioner Ashmun thanked Commissioner Lohbauer for his service.

6. Other Items of Interest

There being no other items of interest, the meeting adjourned at 12:40 p.m. (moved by Commissioner Prickett and seconded by Commissioner Lloyd).

Certified as true and correct:



Betsy Piner,
Principal Planning Assistant

Date: February 9, 2016