

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 13, 2011

Commissioners Present

Leslie Ficcaglia, Paul E. Galletta, Richard L. Harris, Robert Jackson, Judith Y. Link, Ed McGlinchey, John A. Haas, and Acting Chairperson Candace Ashmun. Also present were Executive Director Nancy Wittenberg and Deputy Attorney Jean Reilly. Authorities Unit Liaison Brandon Minde attended by telephone conference call.

Commissioners Absent

William Brown, Daniel M. Kennedy, Edward Lloyd, and Francis A. Witt

Acting Chairperson Ashmun called the meeting to order at 9:40 A.M.

Ms. Reilly read the Open Public Meetings Act Statement.

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

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

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.

Minutes

Acting Chairperson Ashmun presented the April 8, 2011 Commission meeting minutes (open and closed sessions). Commissioner Ficcaglia moved the adoption of the minutes. Commissioner Link seconded the motion.

The minutes were adopted by a vote of 8 to 0.

Committee Chairs' and Executive Director's Reports

Personnel & Budget Committee

Commissioner Ficcaglia reported on the Committee meeting of April 26, 2011 as follows: The Committee discussed FY 2012 preliminary financial projections. Donna Connor reviewed the preliminary financial projections for the operating budget. It was explained that this is the base budget, and accordingly, does not include discretionary items. She noted that a draft work plan is being developed and will be discussed with the committees next month. A draft operating budget will be discussed at the next meeting which will allow for the proposed budget to be discussed at the June meeting. The Committee reviewed the check registers, electronic funds transfers, and employee actions. Ms. Connor reported that the application fees received are slightly over the budgeted amount but the amount fluctuates each month. She also stated that the fieldwork for the FY10 audit is almost complete and that uncollateralized bank balances will be discussed further with management and the Audit Committee. Michelle Russell stated that the Commission will be participating in Bring Your Child to Work Day. Finally Donna Connor discussed an option for covering the shortfall in the Reserve for Unemployment compensation.

Commissioner Ficcaglia moved the transfer of \$15,000.00 from the Reserve for Retirees' Health Benefits to the Reserve for Unemployment Compensation. Commissioner McGlinchey seconded. The motion passed by a vote of 8 to 0.

Policy and Implementation Committee

Commissioner Haas reported that the Committee met on April 29, 2011 at which time they adopted the Minutes of the February 25, 2011 meeting, and recommended Commission approval of a resolution extending the date by which 25 municipalities must respond to CMP amendments related to septic system management for alternate design systems. Also, the Committee received presentations by staff on:

- The Long-Term Economic Monitoring Program and two special projects
- Existing Wastewater Policy
- T-Mobile Plan Amendment to the PCS Plan ("cell towers")
- Pinelands-Wide Emergency Communications Facilities Plan

Public & Governmental Programs Committee

Commissioner Galletta reported on the Committee meeting of April 26, 2011 as follows:

Proposed Concepts for Pinelands Exhibits in the Richard J. Sullivan Center

Several years ago, the Commission obtained \$50,000 in funding from the National Park Service for proposed educational exhibits at the Richard J. Sullivan Center. The Commission utilized a portion of the funding to complete an exhibit assessment in partnership with the National Park Service. On January 14, 2011, the Commission voted to hire Content Design Collaborative to complete the exhibit planning and design process. The proposed exhibits would be placed in the current lobby and technical center room of the Richard J. Sullivan Center. Ed Malouf, a representative of Content Design Collaborative, reviewed the draft exhibit design with the Committee. Staff anticipated presenting the final plan to the Committee in August or September.

Pinelands Conservation Fund (PCF): Land Acquisition

Michael Catania and Anne Heasley of Conservation Resources, Inc. (CRI) gave a presentation providing an overview of the PCF project funding. Michael Catania explained that of the three 2010B Round projects that had signed grant agreements and were proceeding to closing, two of those projects had requested funding prior to closing. Both were scheduled to close at the end of April 2011. The Committee unanimously recommended awarding the two projects funding prior to closing.

Michael Catania indicated that CRI recommended awarding the Nature Conservancy \$12,154.50 for the one acre Dolly parcel in Dennis Township, Cape May County. The Committee unanimously recommended forwarding the Nature Conservancy project to the full Commission for review.

Continued Discussion Regarding Buena Borough Wastewater Disposal

An MOA between the Commission, Buena Vista Township and the Buena Borough Municipal Utilities Authority (MUA) was established to eliminate the discharge of treated wastewater to Deep Run Stream. The MOA authorized the use of a 61 acre recharge site located in a Pinelands Agricultural Production Area where it was not otherwise permitted. Therefore, an MOA was required to permit a deviation from CMP standards. Subsequently, US Geological Survey (USGS) determined that the proposed 61 acre recharge site was unsuitable for the proposed recharge facility. Therefore, Commission staff and Buena Borough MUA reviewed alternatives to resolve the stream discharge issue.

Commission staff gave a presentation regarding a proposed MOA Amendment. The draft MOA Amendment proposed to continue stream discharge and upgrade the wastewater treatment plant using advanced wastewater treatment technology to improve the quality of the treated wastewater. The draft MOA Amendment included language that would permit new sewer connections only if the monthly monitoring reports demonstrated that the upgraded plant was effectively treating the wastewater for a period of not less than 24 months.

The Committee unanimously recommended that the Executive Director hold a public hearing on the proposed MOA Amendment.

MOA Update: Regarding the proposed Robert Miller Airpark MOA, Commission staff indicated that it anticipated that the matter would be back to the Committee in May.

Executive Director's Report

Ms. Wittenberg reported that the Commission continued working with DEP on the Forestry MOA. She said that she, Mr. Horner and Ms. Roth had met with Amy Cradic, Assistant Commissioner for Natural and Historic Resources, and believed that they are developing a process to meet everyone's needs. Commission staff will be included, along with those representing the Forest Fire Service, Threatened and Endangered Species, Forest Management, etc. in DEP's initial meetings at which comprehensive evaluations are done for forestry activities on public lands. By having everyone together, concerns can be addressed early in the process.

In response to Commissioner Ashmun's interest in having the Pinelands Forestry Advisory Committee (FAC) evaluate the re-drafted MOA, Ms. Wittenberg said that she had already been in contact with FAC Chairman, Michael Catania, in that regard.

Ms. Wittenberg said that she, Ms. Roth and Mr. Liggett had also met this week with DEP regarding an MOA for Water Quality Management Plans. The meeting went well and Ms. Roth will continue the discussion. DEP has agreed that they will recognize the Pinelands boundaries and zoning.

In response to Commissioner Jackson's question if DEP would be available for enforcement, Ms. Roth responded that this MOA is a planning document. The Commission is asking DEP to recognize the validity of the CMP.

Ms. Grogan noted that, in their meetings with the Counties, some municipalities are using the opportunity to request an increase in their sewer service area to provide for more growth, bypassing the Commission. Staff has learned of this after the fact.

Ms. Wittenberg said that she continues her meetings with Pinelands mayors. Since the last meeting she's met with the mayors of both Pemberton and Waterford Townships. Both want increased commercial development and would like to have pre-approved areas to streamline the process. She said that she has also met with the Mayor of Estell Manor at the site of the landfill. Estell Manor is interested in closing the landfill without a cap. Ms. Wittenberg said that she met with the mayors of Corbin City, and Buena Vista and Tabernacle Townships over dinner. Finally, she met with the Ocean Township mayor who came to the office to discuss the installation of solar energy facilities at the Township's landfill.

Ms. Wittenberg said that the public hearing for an Amendment to the 2007 Memorandum of Agreement amongst Buena Vista Township, the Buena Borough Municipal Utilities Authority, and the Pinelands Commission, was scheduled for 9:30 a.m. on Monday, May 16, 2011. In addition, the public hearing for the proposed CMP amendments related to the siting of solar energy facilities was scheduled for 7 p.m. on Thursday, May 19, 2011. Also, on Wednesday, May 25, 2011, the Commission would be holding its annual orientation for newly elected/appointed officials jointly with the meeting of the Pinelands Municipal Council.

Mr. Leakan noted that some 30 officials have signed up to attend and he anticipated that there would be additional attendees.

Finally, Ms. Wittenberg said that yesterday, she and other staff members had attended the Barnegat Bay State of the Bay conference at which Dr. Procopio was one of the presenters. The Science Office will be assisting DEP in monitoring one of the designated sites within the Pinelands Area along a feeder stream to the Bay; unfortunately this is not one of the Commission's current monitoring sites.

Other Staff Reports

Mr. Liggett said that the Agricultural Advisory Committee was meeting on Tuesday, May 17, 2011. Also, he said that the Commission is working to help the Buena Borough MUA meet its tight deadline for application for federal funding. The public hearing on the Amended MOA is scheduled for Monday, May 16, 2011. The final document will be prepared for a Special Commission meeting on Friday, May 27, 2011 at 9:00 a.m. Finally, Mr. Liggett said that Mr. Wengrowski was looking for new alternate design septic systems to add to the pilot program. Of the original five technologies, one was never installed in the Pinelands, two have "graduated" out of the pilot program and two are still under review.

Mr. Horner expanded upon Ms. Wittenberg's report. He said that the redevelopment area of interest to Pemberton Township is the downtown Browns Mills area; the Township would like to deal with stormwater on an overall basis, not site by site. For Waterford Township, the area of interest is the site of the theater complex in the vicinity of the White Horse Pike/ Route 73 intersection. The Township would like to do some commercial development and is requesting some advance approvals. Staff does not believe that there are wetlands or T/E issues; the area can be sewerred. It would be helpful to the Commission, as well as to the Township, if a developer could secure approvals from the Township prior to coming to the Commission. Ocean Township has been deciding if it wishes to request an MOA with the Commission to site solar facilities on its landfill or wait for the adoption of the new CMP amendments. It is likely that they will wait for the latter.

In response to a question from Commissioner Jackson as to why it would be advantageous for the Commission not to be involved with Waterford's commercial development project until the end of the process, Mr. Horner said that it appears that the

property is in RGA and that there are few Pinelands issues other than stormwater management. Safeguards would be in place and staff would do site visits and help develop an appropriate ordinance for the process.

Mr. Horner continued with his report and said that he had met with Atlantic County representatives regarding some road improvements for Mill and Fire Roads at the Pinelands boundary. There are stormwater issues and this may be a case where off-site mitigation, as permitted by the local Pinelands-certified ordinance, may be required. Next week staff will be meeting with Hammonton officials regarding the expansion of their airport, located in APA north of the White Horse Pike and East of Route 206. This is a pre-existing airport and expansion is limited to that of the 1981 parcel. Hammonton is interested in using additional lands. Mr. Horner noted that there had been much in the news lately about the Southern Pine Bark Beetle. He said that only a nominal number of trees have been removed to fight the infestation and clearing of less than 1,500 square feet does not require an application to the Commission. Mr. Horner said that there had been much in the media about the question of when do agricultural activities need to apply to the Pinelands Commission, particularly as related to the siting of solar facilities. Mr. Horner said that if an activity is exclusively for agriculture, then no application to the Commission is required. For instance, a 20,000 square foot barn in which tractors are to be stored requires no application. However, if the same building is to be used for storing tractors in one half and operating a retail farm market in the other half then an application is required. A solar facility to serve solely agriculture would not require an application but if it is to be used partially for a commercial use, an application is required.

Mr. Horner confirmed Commissioner Galletta's statement that even though an agricultural activity is exempt from an application, it must still meet CMP standards.

Mr. Horner said that Burlington County has two road improvement projects of interest. He said that the widening of County Route 530 along the span east of Route 206 to Pemberton Borough from two lanes to four is one that has been under discussion for some time. The second project is on Taunton Road near Kings Grant. There are many environmental issues to be addressed.

Commissioner Galletta complimented the staff on the concept of streamlining development at the former movie theater site in Waterford. Mr. Horner stated that Ms. Wittenberg deserves credit for the idea.

Ms. Roth thanked all the Commission members for filing their disclosure forms in a timely matter, noting that all had complied with the filing requirements.

Public Development and Other Permit Matters

Mr. Horner presented a public development resolution.

Commissioner Galletta moved the adoption of a Resolution Approving With Conditions Applications for Public Development (Application Numbers 1981-1833.060, 1981-1833.061, 1986-0122.020 & 2010-0047.001). (See Resolution #PC4-11-13). Commissioner Haas seconded the motion.

The Commission adopted the resolution by a vote of 8 to 0.

In response to Commissioner Jackson's question if any of the Counties maintained a soil "bank" (a site where excavators could deposit soil for use by others requiring fill), Mr. Horner said that although the issue has been raised before, he was unaware of such an arrangement. Staff has met with representatives with the Soil Conservation Districts regarding the development of rules regarding the use of fill and prevention of non-native seeds in the Pinelands.

Ms. Reilly said that the State Soil Conservation District has jurisdiction over such matters. They met this past Monday and discussed these issues, particularly as related to fill/seeds under solar panels.

Mr. Horner noted that Ms. Katherine Fling, Director, Office of Project Management and Construction, NJ Department of Human Services, was present in the audience today.

Commissioner Ashmun thanked Ms. Fling for attending because she always provides the Commission with the facts.

Resolutions Relating to Municipal Ordinances

There were no resolutions relating to municipal ordinances.

Other Resolutions

Ms. Grogan presented a resolution to continue the certified status of municipal master plans and land use ordinances while municipalities work on their responses to the septic management amendments to the Comprehensive Management Plan. If adopted, the resolution would provide the 25 affected municipalities with an opportunity to combine their responses to the septic management amendments and those related to the Alternate Design Treatment Systems Pilot Program into one ordinance amendment and submit that ordinance to the Commission no later than October 18, 2011. This will result in time and cost-savings for the municipalities, as well as for the Commission.

Commissioner Haas moved the adoption of the Resolution To Continue the Certified Local Land Use Standards and Development Review Procedures in Certified Municipalities That Are Working to Revise Their Ordinances to Conform with Amendments to the Pinelands Comprehensive Management Plan. (See Resolution #PC4-11-14 attached). Commissioner Jackson seconded the motion.

The Commission adopted the resolution by a vote of 8 to 0.

Ms. Grogan said that the subject municipalities will be notified of the process and advised of the date.

Commissioner Ashmun stated that a portion of the Pinelands Conservation Fund (PCF) must be spent in Cape May County and it has been difficult to find suitable projects. The Public and Governmental Programs Committee has recommended the purchase of a property in Dennis Township

Ms. Grogan, noting that the PCF funding can be used only for projects in the Pinelands *Area*, made a brief PowerPoint presentation (Attached) regarding the Dolly property in Dennis Township, Cape May County, for which The Nature Conservancy (TNC) has applied to the PCF for partial acquisition funding. She noted that the property is only one acre and devoid of trees but is surrounded entirely by protected lands; TNC wishes to add this inholding to its Eldora Nature Preserve. The property could qualify for one dwelling unit (with the deed restriction of 24 acres of noncontiguous lands) through the Township's density transfer program and Ms. Grogan stated that the appraiser had done a good job of evaluating the property and recognizing that potential. The Public & Governmental Programs Committee reviewed the project in detail at its April 26, 2011 meeting and determined that it has sufficient merit to warrant funding. Because the parcel is located outside the pre-approved acquisition locations, the full Commission must determine whether funding for the project should be awarded.

In response to a question if TNC would restore the land, Ms. Grogan said that she believed that it was the intent of TNC to reforest the property and manage it as part of the Eldora Nature Preserve; the deed restriction will allow certain restoration activities.

Commissioner Ficcaglia moved the adoption of the Resolution To Award Pinelands Conservation Fund Monies for the Acquisition of a Parcel in Dennis Township Located Outside the Pre-Approved Acquisition Locations. (See Resolution #PC4-11-15 attached). Commissioner Jackson seconded the motion.

The Commission adopted the resolution by a vote of 8 to 0.

Ms. Grogan said that staff will send TNC a letter notifying them of this approval.

Public Comment on Agenda Items

There was no public comment at this time.

Miscellaneous Resolutions

There were no miscellaneous resolutions.

Public Comment on Agenda Items

There was no public comment at this time

Ordinances Not Requiring Commission Action

There was no discussion of Ms. Grogan's No Substantial Issue packet memorandum regarding ordinances submitted by Egg Harbor City and Hamilton Township.

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

Mr. Fred Akers, Administrator, Great Egg Harbor Watershed Association, said that he felt that the staff had done a good job on the Buena Borough Municipal Utilities Authority (BBMUA) issues, given the circumstances. He said that now that he served on the Board of the Atlantic County Utilities Authority, he had a broader picture regarding sewer service areas. He said that around 1978, community wastewater treatment systems proved to be a failure as evidenced by the pollution of shellfish beds and since that time not every municipality has agreed to participate in a regional system. He said that at the P&G meeting there had been discussion of the rate history for the BBMUA wastewater treatment plant; he wanted to see a rate comparison of those customers in a regional system vs. those in a local system. Also, he expressed concern with the fact that some of the conditions of the previous MOA had not been met, e.g., the MUA did not implement the land application of treated wastewater; would they now build the membrane system required by the current amended MOA? He said that at the last Commission meeting he had distributed documents related to water quality standards and that he believed that the anti-degradation policy of the Pinelands Commission must be improved. Referencing the widening of the Garden State Parkway, Mr. Akers said that the new stormwater features are striking; they are sizeable and will effectively filter and get the water into the ground. He summarized by saying that he wanted to see the Commission's conditions be successful.

Ms. Theresa Lettman, with the Pinelands Preservation Alliance referenced the discussion of an expedited application process in Waterford Township. She stated that there is a public component and the public needs to be involved early in the process.

Mr. Joseph Bernardino, with PlanLand, provided an update on the Sanctuary project in Evesham Township. He said that, consistent with the 2004 agreement with the Pinelands Commission, his firm has acquired the lots containing the pine snake nest and an adjacent lot and are ready to deed restrict it to be maintained by the homeowners' association. In addition, his firm had been successful in obtaining approval from Evesham Township to vacate Georgia O'Keefe Way.

Ms. Roth said that if the homeowners' association didn't want the land, DEP manages much land in that area and might be inclined to include those lots. She said that a back-up deed restriction can be added.

Closed Session Resolution

DAG Reilly read a resolution to retire into closed session to discuss litigation matters (1. a potential settlement of a pending Office of Administrative Law matter involving the denial of a waiver of strict compliance to subdivide an existing parcel and construct another single family dwelling on septic on the newly created lot and 2., the current status of the Sanctuary) at 10:40 a.m..

Commissioner Haas moved to retire into closed session. Commissioner Ficaglia seconded the motion. The Commission agreed to retire into closed session by a vote of 8 to 0.

Ms. Piner noted that Commissioner Lloyd would be joining the closed session by telephone.

Return to Open Session

Acting Chairperson Ashmun reopened the public portion of the meeting at 10:55 a.m.

Ms. Roth stated that, in closed session, the Commission had discussed matters related to a stipulation of settlement for an OAL matter involving the denial of a waiver of strict compliance for a subdivision and construction of a second single family dwelling. She said that staff recommended that the Commission approve the settlement. The Commission also discussed matters related to the Sanctuary project.

Commissioner McGlinchey moved the adoption of the Resolution Authorizing the Executive Director to Execute a Stipulation of Settlement in the Administrative Matter Before the Office of Administrative Law Entitled Alex Schneider v. New Jersey Pinelands Commission (OAL Docket No. EPC 12266-09, Pinelands Application No. 1985-1104.003). (See Resolution #PC4-11-16 attached). Commissioner Link seconded the motion.

The Commission adopted the resolution by a vote of 9 to 0.

Adjournment

Commissioner McGlinchey moved to adjourn the meeting. Commissioner Jackson seconded. The Commission agreed to adjourn at 11:00 a.m.

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____