

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

January 27, 2012 – 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Candace Ashmun, Sean Earlen, Paul E. Galletta, Edward Lloyd and D'Arcy Rohan Green (1st Alternate)

MEMBERS ABSENT: Leslie Ficcaglia and Rick Harris

OTHER COMMISSIONERS PRESENT: John Haas, Robert Jackson, and Richard Prickett (*None of these Commissioners voted on any matters.*)

STAFF PRESENT: Nancy Wittenberg, Stacey Roth, Larry Liggett, Susan Grogan, Ed Wengrowski, Paul Leakan, Chuck Horner, Rhonda Ward, John Bunnell, Donna Graham, Robyn Jeney, John Keyes and Betsy Piner

Chairman Lohbauer called the meeting to order at 9:35 a.m.

Ms. Roth noted the presence of a quorum of the Commission and read the Open Public Meetings Act Statement. She said that this Committee will take no formal action today but may make recommendations to the full Commission.

1. Adoption of minutes from the January 3, 2012 CMP Policy and Implementation Committee meeting

Commissioner Ashmun moved the adoption of the minutes of the January 3, 2012 CMP Policy and Implementation Committee meeting. Commissioner Galletta seconded the motion and all voted in favor with the exception of Commissioners Rohan Green who abstained.

Chairman Lohbauer stated that now that the Commission has its full complement of 15 members, he would be revising the Committee membership. Currently each of the two Committees has seven voting members and two alternates. This will increase the likelihood of having a full complement at Committee meetings but also the likelihood of exceeding the maximum attendance of seven Commissioners, resulting in a quorum of the *Commission*. He said that, temporarily, he would assign Commissioners Prickett and Jackson as Alternates to the P&I Committee; other decisions will be addressed at the February Commission meeting once he has had the opportunity to review assignments.

Ms. Roth asked that, based on these new assignments and the presence of 8 Committee members creating a quorum of the Commission, no alternates or non-Committee members vote today.

2. Executive Director's Report on Waterford Township Ordinance 2011-19, amending Chapter 176 (Land Use) of the Township's Code by establishing a simplified permitting system for development within the Haines Boulevard Environs Redevelopment Area

Ms. Grogan said that Waterford Township Ordinance 2011-19 provides for a streamlined alternative permitting system in a portion of the Township. She said some years ago, Waterford identified an area in need of redevelopment and adopted Ordinance 2001-30 designating the Haines Boulevard Environs Redevelopment Area. This Redevelopment Area is a 110 acre non-residential zone in the Regional Growth Area and is already substantially developed (albeit mostly vacant at this time). It permits commercial and industrial uses, is currently sewered and is located near the intersection of Routes 30 and 73. The Township is interested in encouraging development in this area and worked with staff to develop an alternative permitting process through which an interested redeveloper could make initial application directly to the Township Zoning Officer, rather than to the Commission. Waterford hopes that this alternative process will address the perception that development in the Pinelands is difficult, lengthy, etc.

Under the provisions of Ordinance 2011-19, the municipal Zoning Officer is authorized to review and make certain determinations regarding applications for development in this Redevelopment Area. If an application is for a permitted use within the Redevelopment Area, existing on sewer or proposed for sewer, meets local design and setback standards, etc. then the Zoning Officer will forward the application for site plan or subdivision approval by the Planning Board. Upon approval by the Planning Board, the application is submitted to the Commission for review to be sure that it is consistent with Pinelands standards. The process eliminates one step and the Township hopes that potential applicants will find that streamlined process an attractive feature.

Ms. Grogan noted that the CMP requires a monitoring program for alternative permitting programs. Staff will be reporting on this program in three years with a comprehensive description of what has occurred during that time. She also said that public comment had been received for which a detailed response is included in the report. She noted that one commenter expressed general concern about redevelopment area designation in the Pinelands, not specific to Waterford. Other concerns were raised regarding cultural and environmental standards. She said that a detailed up-front review of the area has been completed by Commission staff. As the Redevelopment Area already contains considerable development, staff is familiar with the area and both Mr. Horner and Ms. Ward were present today to respond to any questions. The environmental standards are not being waived; the up-front work has been done and staff has determined that there are no issues.

Ms. Grogan said that staff is comfortable recommending Commission certification of this ordinance and noted the good working relationship with Waterford and the current Zoning Officer.

In response to questions from Commissioners Ashmun and Rohan Green, Ms. Grogan and Mr. Horner responded that, upon receipt of the Planning Board approval, Commission staff has 30 days to review a preliminary approval and 15 days to review a final approval. In addition, to allay any concerns on the part of the Committee, he noted that staff would also be reviewing any information received during the municipal process. The Commission would not be giving up any rights through the review process. All standards are still in effect and if new information comes forth, e.g. at a public hearing, staff will verify such information and could require revisions to the application if necessary for consistency with the CMP.

Mr. Liggett added that the process of reviewing any new or additional information is part of the standard operating procedure for all applications. Ms. Roth confirmed and elaborated further on the process.

Commissioner Galletta said that he was pleased that this process was occurring. He was familiar with the site as it is an abandoned multiplex theater and thought this process was a good precedent. He thanked the staff for the good work.

In response to Commissioner Lloyd's question regarding the railroad track at the northern boundary of the Redevelopment Area and its eligibility for the National Register of Historical Places, Ms. Grogan said that Dr. Brady had spent a considerable amount of time in the area and he had identified an old motel as only site of interest. However, if new information came forth, of course the Zoning Officer would consult with Dr. Brady. The ordinance specifies that no cultural resource survey is required except at that motel site. The railroad track itself is not in the Redevelopment Area. Should an application be submitted which affects the track, a survey would be required.

Ms. Grogan said that there are other municipalities looking at Waterford's ordinance and may want to do something similar for their redevelopment areas and commercial zones.

Commissioner Prickett asked if this process would shift the burden from the applicant to the staff.

Mr. Horner confirmed Ms. Grogan's "yes and no" response and said that by doing all the field work and evaluations in advance, staff reduces the paper work involved further along in the process. He said that the amount of paperwork is not inconsequential.

Commissioner Prickett said that as the CMP allows for alternate permitting programs, he was concerned with the type, magnitude and complexity of the development under such programs.

Ms. Grogan responded that this was a good point in terms of proposals from other municipalities. Staff will need to address such concerns, particularly on forested parcels with no sewers where there will definitely be environmental issues. Also, some municipalities have much smaller redevelopment areas where the sanitary sewer component is very important. This is just one example of an alternate permitting

program and this is not a situation where one size fits all. Any program must be a benefit to the Commission as well as to the municipality.

Chairman Lohbauer said that this was a sensitive issue and that he believed that staff had dealt with it appropriately.

In response to questions from Commissioners Jackson and Prickett regarding the capabilities of the Zoning Officer and what would happen if a new, less qualified person were to fill that position, Ms. Grogan said that this has happened in the past with the Local Review Officer (LRO) program for single family dwellings. When this occurs, the municipality recognizes the limitations of that individual and the program can be suspended with review responsibilities returned to Pinelands until that individual receives appropriate training.

Mr. Liggett said that the amount of authority given to the LRO has varied over time. The Commission is in a strong position with this case because so much is known already about the site, e.g., it is in the RGA, it is sewerred, there are no wetlands, cultural review has been completed, etc.

Ms. Wittenberg said that this ordinance is intended to address an area of the municipality with commercial development and provide Waterford with more authority in order to encourage redevelopment. It is also intended to make the process easier for the staff.

In response to comment from Commissioners Rohan Green and Earlen, Ms. Grogan said that there are many opportunities for checks and balances during the application review process.

Commissioner Haas complimented the staff and said that this was a good effort to make use of our limited resources.

A discussion ensued when Commissioner Prickett asked about what information the staff had regarding concerns at the municipal level. Ms. Grogan said that normally the staff does not get involved with the hearing at that level as the municipality has different issues. The concern here is, does the ordinance comply with the CMP. When Commissioner Jackson asked about staff or Commissioners attending the local hearings, Ms. Roth cautioned that it would be inappropriate and a potential ethics violation and she advised that Commissioners not attend local hearings. Commissioner Prickett asked that the resolution reflect more specifically the public comment being provided.

Commissioner Galletta moved the recommendation to the Commission of certification of Waterford Township Ordinance 2011-19 with two modifications to the draft resolution, as proposed by Chairman Lohbauer. These included noting that the Commission considered only testimony presented at its own public hearing, not that from the municipal hearing, and emphasizing that should an unqualified individual become the Local Review Officer, suitable training would be available. Commissioner Earlen

seconded. By roll call vote, all regular members of the Committee (Commissioners Ashmun, Earlen, Galletta, Lloyd and Lohbauer) voted in favor.

3. Discussion of a proposed Memorandum of Understanding between the Pinelands Commission and the Department of Environmental Protection establishing the regulatory framework pursuant to which the Department's Water Quality Management Planning regulations will be administered in the Pinelands Area

Ms. Wittenberg said that she continues to work with DEP on a Memorandum of Understanding (MOU) related to the administration of Water Quality Management Planning in the Pinelands Area. The intent was to have a version to share with the Committee today but the Commission is awaiting its return from DEP. Ms. Roth said that there have been several iterations but now it is only five pages long. Roth stated that despite the belief by some that S.3156 (now PL2011, Ch. 203) would resolve Pinelands concerns, it does not. Ms. Wittenberg said that she'd be meeting with DEP Commissioner Martin next week and hoped to help advance the process.

In response to Commissioner Lloyd's question if it was known how many counties had submitted their plans, Mr. Liggett said that he did not know and, from the audience, Mr. David McKeon, Ocean County Planning Director, said that Ocean County had not.

4. Briefing on a proposed Memorandum of Agreement between the Pinelands Commission and Ocean County concerning the Robert J. Miller Airpark

Ms. Roth made a PowerPoint presentation (*Attachment A*) regarding a proposed Memorandum of Agreement (MOA) between the Pinelands Commission and Ocean County related to the Robert J. Miller Airpark (RMAP). She introduced Mr. Jon Donahue, consultant for Ocean County, and Mr. David McKeon, Planning Director, Ocean County.

Ms. Roth said that RMAP is a pre-existing nonconforming use and, since 1981, development has been approved by the Pinelands Commission throughout the property. It is a 955 acre parcel, split between Pinelands Preservation Area District (PAD) (585 ac.) and Pinelands Forest Area (FA) (237 ac.), although there is no clear demarcation on the ground identifying the border between the two management areas. During the course of her presentation, Ms. Roth said that the Commission had been working on a proposed Memorandum of Agreement (MOA) with Ocean County for the past three years for various improvements, the most significant of which is the Crosswind Runway which would allow a safer landing alternative for smaller aircraft during adverse wind conditions. Most of the existing airport facilities and the proposed projects are located in the PAD, where airports are not a permitted use. The Crosswind Runway has been in the plan for the airport since 1970 and the clearing of wooded areas to maintain early successional vegetation (through mowing), has been ongoing since 1992. Currently the County is awaiting final approval by the FAA of a revised airport layout plan.

Ms. Roth reviewed issues related to the impact of various proposed airport improvements on Threatened or Endangered (T/E) species, wetlands and wetlands buffers and concerns with development at the Airport exceeding the 50% expansion provision. She said that the County had hired ACGECI consultants to perform environmental studies. Such studies determined that nine T/E animal species would be impacted by the proposed development and an offset of suitable habitat will be needed. The one T/E plant of concern at the Airport, is the sickle leaved golden aster. Two of the proposed projects would have a direct impact on these plants amounting to roughly 0.5% of the total population at RMAP. Fortunately the County has an excellent success rate in successful transplantation of these plants and this and other measures will be taken to minimize impact. As for the wetlands, the wetlands and wetlands buffers are also areas of T/E species but only the *removal* of trees will impact the wetlands. The County has offered to top the trees in the vicinity of the runways manually using tree climbers; this will have only a temporary impact.

As for the 50% expansion, it is difficult to determine the status and if it has been exceeded as a result of development at the Airport. Rather than go through the process of analysis, the County has offered an environmental offset.

With regards to an offset for the T/E impacts associated with the proposed development, in nine years, the Pinelands has not accepted a 1:1 level of protection in exchange for the granting of an MOA. For this project, the proposal is for the deed restriction of 485 acres offsite. This is a 3:1 offset to the impact on critical habitat and a 1:1 offset for potential habitat. The original plans called for deed restricting lands on the airport property and the local FAA was very involved in the process. The D.C. FAA office, however, was concerned with the need for utilization of the lands to be deed restricted to address safety concerns. Thus, they didn't want a deed restriction on airport lands. Commission staff felt that FAA review was taking too long and was unlikely to satisfy and has asked Ocean County to acquire lands with suitable habitat elsewhere in proximity to RMAP. Staff has offered to help Ocean County identify suitable habitat.

In response to a question from Commissioner Galletta, if the Commission would get a better offset under the FAA analysis, Ms. Roth said that there needs to be an adequate nexus between the lands to be preserved and RJM; they should be in the same watershed.

In response to a question from Chairman Lohbauer if the Commission were to accept the 485 acres on site then would the FAA have the authority to over-ride that decision, Ms. Roth said that was her concern. She said that this is similar to the situation at the FAA facility at the Atlantic City Airport.

Commissioner Galletta asked if Ocean County, rather than deed restricting lands itself, could make a contribution to the Pinelands Conservation Fund as an offset. Ms. Roth responded that, with the exception of the Cape May County MUA and the Connective matter, the Pinelands Commission has not used this mechanism for a T/E offset in an MOA.

During the discussion of the offset, in response to Commissioner Ashmun's statement that the management areas on the airport property are designated by a legislatively established line, Ms. Roth said that the boundary between the FA and PAD is difficult to administer as it follows a squiggly watershed line.

Ms. Roth said that this is a buildout plan and with this MOA, the Commission is recognizing that the airport has reached buildout. She concluded by saying that she had merely wanted to give the Committee an overall briefing and bring them up to date on this ongoing process. No decisions were to be made today.

5. Update on the Commission's Alternate Design Wastewater Systems Pilot Program: continued participation by the Cromaglass Corporation

Mr. Wengrowski made a PowerPoint presentation (*Attachment B*) on the Pinelands Alternate Design Wastewater Treatment Systems Pilot Program. Following a brief overall review of the program, Mr. Wengrowski focused on the status of the Cromaglass System, noting that the Commission had suspended new installations of this system in 2009 when it became apparent that it was not functioning as anticipated (unable to meet the 14 mg/l Nitrate/nitrogen standard for effluent). He said that since that time, Cromaglass had instituted a research and retrofit program at its Pennsylvania facilities and, based on the results of that work, it appears that their systems might now be able to meet or exceed that standard. Mr. Wengrowski proposed that the Commission authorize a two-phase retrofit program to allow Cromaglass to retrofit the 56 systems already installed within the Pinelands followed by collection and analysis of effluent for evaluation. This would provide Cromaglass with the opportunity to demonstrate its improved results and, if successful, the suspension could be lifted. Mr. Wengrowski noted that Cromaglass would be liable for all costs associated with the retrofits and, if improved water quality can be achieved, the inclusion of Cromaglass would contribute to the competing technologies to provide enhanced treatment, a benefit to consumers and the environment.

Mr. Wengrowski provided further details of the retrofit process, noting that the first 28 systems are to be retrofitted by March 1, 2012 with first samples collected by April 1, 2012. The remaining 28 will follow. He cautioned that although Cromaglass is eager to prove itself, it is undergoing some financial difficulties currently.

Commissioner Prickett asked if Cromaglass became insolvent and was unable to complete the retrofits would other companies be available to complete the process. Mr. Wengrowski responded that because all the technologies are different, it would be difficult for another company to complete the retrofits.

Mr. Wengrowski closed by summarizing the status of the pilot program and noting that the Commission has organized an Onsite Water Protection Conference at The Richard Stockton College of New Jersey on March 30, 2012.

6. Public comment

Ms. Theresa Lettman, with PPA, asked about the status of various projects related to the Long Term Economic Monitoring Program.

Mr. McKeon, Ocean County Planning Director, thanked the Commission and staff for the work on the MOA. He said that a habitat management plan had been developed and the County was happy to help find answers to any of the Commission's concerns.

7. Other Items of Interest

Ms. Wittenberg said that staff was interested in sharing concerns about the clustering ordinances now that a number of them have been submitted.

Ms. Grogan said that next week (February 1, 2012), public hearings would be conducted on ordinances submitted by Buena Vista and Manchester Townships, necessitated by these municipalities modifying the model ordinance provided by staff. Also, Hamilton, Weymouth and Mullica Townships are preparing some changes to the model. She directed the Committee to the clustering provisions of the CMP, specifically the provision allowing municipal clustering ordinances to contain different standards than those set forth in N.J.A.C. 7:50-5.19(c) and (d) under certain circumstances, particularly that they not undermine the goals of the FA and RDA clustering program (*Attachment C*). She noted that the Commission would be acting on such ordinances in the months ahead.

Ms. Wittenberg noted that PPA has written to a number of municipalities expressing their own view of what the municipalities are authorized to implement.

In response to a question from Commissioner Lloyd, Ms. Grogan said that some ten to fifteen municipalities had adopted implementing ordinances responding to the clustering amendments.

The Committee adjourned at 11:45 a.m. (moved by Commissioner Earlen and seconded by Commissioner Lloyd).

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____

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SUMMARY

The Committee adopted the minutes of the January 3, 2012 meeting.

The Committee recommended that the Commission certify Waterford Township Ordinance 2011-19.

The Committee received the following updates:

- Staff continues discussion with DEP on a draft Memorandum of Understanding with DEP regarding water quality management planning;
and
- Staff presented an overview of a Memorandum of Agreement with Ocean County concerning the Robert J. Miller Airpark to allow the development of a Crosswind Runway and other improvements;

and
- Staff made a presentation on the Alternate Design Wastewater Treatment Pilot Program and a two part retrofit program to evaluate lifting the suspension on the participation of the Cromaglass technology in the program;

and
- Staff discussed the CMP provisions allowing municipalities to modify the clustering amendments based on local conditions provided that the goals and objectives of the clustering program are not undermined.

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