

Disclaimer

These minutes reflect the actions taken by the Commission during its June 10, 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 20, 2011.

PINELANDS COMMISSION MEETING¹
Richard J. Sullivan Center
Terrence D. Moore Conference Room
15 Springfield Road
New Lisbon, New Jersey

MINUTES

June 10, 2011

Commissioners Present

William Brown, Leslie Ficcaglia, Richard L. Harris, Robert Jackson, Judith Y. Link, Ed McGlinchey, John A. Haas, 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

Edward Lloyd and Paul E. Galletta

Acting Chairperson Ashmun called the meeting to order at 9:35 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.

Minutes

Acting Chairperson Ashmun presented the May 13, 2011 Commission meeting minutes (open and closed sessions). Commissioner Ficcaglia moved the adoption of the minutes. Commissioner Jackson seconded the motion.

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.

The minutes of the May 13, 2011 meeting were adopted by a vote of 9 to 0.

Acting Chairperson Ashmun presented the May 27, 2011 Commission meeting minutes. Commissioner Ficcaglia moved the adoption of the minutes. Commissioner Link seconded the motion.

Commissioner Jackson referenced page PC2-52, paragraph 4, and his comments regarding a potential project utilizing artificial wetlands as a means of treating the STP effluent, and stated that he had not been encouraging a massive \$500,000 spending project. Rather he was just hoping for some modest effort to allow the wastewater to have contact with the earth/vegetation, rather than just traveling through a pipe.

The minutes of the May 27, 2011 meeting were adopted by a vote of 9 to 0.

Committee Chairs and Executive Director's Reports

Personnel and Budget Committee

Commissioner Haas reported on the May 23, 2011 Personnel and Budget Committee meeting as follows:

The Committee adopted the minutes of the March 21, 2011 and April 26, 2011 meetings. The Committee recommended Commission approval of a resolution authorizing the Executive Director to continue to expend funds for FY 2012 at the same level of expenditures as FY 2011 until the adoption of the FY 2012 Budgets. This is a standard resolution done every year to keep the office running until the budget is adopted. Ms. Wittenberg reviewed the draft FY 2012 operating budget and explained some items in more detail. The Committee reviewed the check registers, Electronic Funds Transfer Disbursements and employee actions from April 2011. Ms. Wittenberg indicated that Mark Ruderman will no longer serve as the Commission's labor attorney and it was noted for the record that he had done an excellent job for the Commission. There was no comment from the public and no closed session was required.

Policy and Implementation Committee.

Commissioner Ashmun reported that, at its May 27, 2011 meeting, the P&I Committee had adopted the minutes of the April 29, 2011 meeting, had discussed the Work Plan and had received a presentation on water quality management plans and how some municipalities are utilizing them to make zoning changes.

Commissioner Ashmun also reported that there had been a realignment of Committees resulting in there now being only the Personnel and Budget and the Policy and Implementation Committees. She distributed the Committee membership list and schedule.

Public and Governmental Programs Committee

Mr. Horner reported on the Public and Governmental Programs Committee meeting of May 23, 2011 as follows:

Michael Catania and Anne Heasley of Conservation Resources, Inc. (CRI) gave a presentation providing an overview of the Pinelands Conservation Fund (PCF) project funding. During closed session, the Committee approved an extension until July 31, 2011 to complete certain requirements for a project in Burlington County.

Over the past few years, the Commission has provided \$15,000 annually to NJDEP, Green Acres, for administration funding for the Limited Practical Use (LPU) acquisition program. The money helps cover approximately half of their administrative costs. This program purchases small parcels (less than 50 acres) in the Pinelands that have a "limited practical use." NJDEP, Green Acres, has requested \$16,000 in funding from the Commission for the next fiscal year. The Committee unanimously recommended the matter to the full Commission for its consideration as part of the FY12 budget.

A public hearing for the MOA Amendment was held on May 16, 2011. The Executive Director's report, including the written comments, was included in the packets for the May 27, 2011 full Commission meeting. As part of the MOA Amendment, the Buena Borough Municipal Utilities Authority (BBMUA) proposed to upgrade the existing wastewater treatment plant with membrane bioreactor technology. The MOA Amendment would allow the continued discharge of treated wastewater to the stream. The Amendment would also allow the plant to increase its flow from 400,000 gallons per day (gpd) to 600,000 gpd. The increase in flow would be permitted only once 24 consecutive months of data were available demonstrating that the plant was functioning successfully.

Executive Director's Report

Ms. Wittenberg reported on the following:

She noted that since the last regular monthly meeting, two public hearings had been conducted, one for proposed amendments to the BBMUA MOA on May 16, 2011 and the other for the solar rule proposal on May 19, 2011. She asked Mr. Leakan to provide an overview of the annual Pinelands orientation for newly elected/appointed officials.

Mr. Leakan said that the event had been conducted jointly with the meeting of the Pinelands Municipal Council on May 25, 2011. He said that some 50 officials had been in attendance making it one of the most successful sessions ever.

Ms. Wittenberg said that she had met with members of the NJ Builders Association to start a dialogue regarding their issues. Also in response to the interest of many towns that are looking for economic development, she and staff had met with the Mayor of Maurice River Township to discuss options and opportunities for their municipality. She said that the Agricultural Advisory Committee had met to discuss the solar rules. She also noted

their continuing interest in DEP's regulations regarding pesticide permitting and indicated that for now, EPA's rule on the matter is on hold. Also, she said that she had delivered a presentation about land-use planning and farming in the Pinelands during a New Jersey Agricultural Leadership Development Class at Rutgers University where, once again, representing their respective regional planning agencies, both she and Highlands Commission Executive Director, Eileen Swann, served on the panel.

Ms. Wittenberg said that she was pleased to share with the Commission an acknowledgement of staff expertise. She read a letter from Dr. Walter Bien, Drexel University, thanking and complimenting John Bunnell for spending a recent Saturday educating his students about Pinelands fish.

Finally, Ms. Wittenberg said that Mr. Bunnell had been on a DEP field trip to learn about the devastation caused by the Southern Pine Beetle and that later today there would be a presentation on the matter.

Other Staff Reports

Mr. Horner said that, expanding upon Ms. Wittenberg's report, Maurice River Township would like to develop an Off-Road Vehicle (ORV) park. The Project Review office is reviewing their submission and providing guidance. In response to a question from Commissioner Ficcaglia, he said yes, it does appear that the Township is narrowing the potential sites to one in particular, one that they do not now own.

Mr. Horner said that the Commission often receives applications from the megabase (Joint Base McGuire-Dix-Lakehurst) and he noted that they can opt out of the application process if it is for a project vital to national defense as determined by the Base commander. The Commission has received several such requests recently.

In response to questions from Commission members, Ms. Grogan clarified that the Joint Land Use Study is a separate project; it focuses on the impacts of the base upon the surrounding area outside the base. Ms. Roth added that currently the base is working on a master plan for the entire base. She said that two consultants have been engaged and staff has been dealing with one of them.

Mr. Horner continued his report noting that a project that had been approved some time ago, the paving of Cedar Avenue in Woodland Township in the Preservation Area south of Route 72, has remained somewhat controversial as it appears that the paving has encroached beyond the silt fence defining the area to be paved, thus violating the terms of the approval. Out of its continuing concern for T/E species, The Pinelands Preservation Alliance (PPA) has been monitoring the site and reported this violation. Ms. Karen Young and Mr. Ernie Deman had met with Township officials on the site on Thursday and the issues have been resolved. Mr. Horner noted that Woodland Township was very cooperative and he was pleased that the process had worked.

Ms. Roth announced that the closed session would be conducted prior to the presentation by DEP in order to be sure that the Commission was able to maintain a quorum.

Ms. Reilly noted that this was an exception to the required procedure and that the members of the public would be advised of the approximate length of time the closed session would require for those who wanted to attend the open session that would follow.

Public Development and Other Permit Matters

Mr. Horner presented a public development application for a project in the Town of Hammonton involving the demolition of a building to be replaced with a parking lot.

Commissioner Ficaglia moved the adoption of a Resolution Approving With Conditions an Application for Public Development (Application Number 1983-5328.002). (See Resolution #PC4-11-18). Commissioner Haas seconded the motion.

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

Mr. Horner said that the next resolution related to a potable water line in Monroe Township and a street widening in Egg Harbor City. He said that the associated report related to Monroe Township included a non-substantive error that would be corrected and a revised report with a new date would be issued.

Commissioner Brown moved the adoption of a Resolution Approving With Conditions Applications for Public Development (Application Numbers 2006-0496.002 & 2010-0069.001). (See Resolution #PC4-11-19). Commissioner Link seconded the motion.

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

Resolutions Relating to Municipal Ordinances

There were no resolutions relating to municipal ordinances.

Public Comment on Agenda Items

There was no public comment at this time.

Miscellaneous Resolutions

Commissioner Ashmun presented a resolution related to the budget.

Commissioner Haas moved the adoption of a Resolution To Authorize the Executive Director to Continue to Expend Funds for Fiscal Year 2012 at the Same Level of Expenditures as Fiscal Year 2011 until the Adoption of the Fiscal Year 2012 Budgets. (See Resolution #PC4-11-20). Commissioner Witt seconded the motion.

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

Commissioner Ficcaglia noted that this authorization was standard practice each year.

Ordinances Not Requiring Commission Action

Commissioner Ashmun stated that no action was needed on ordinances submitted by Hammonton Town and Monroe Township as described in Ms. Grogan's packet memo.

Resolution to Retire into Closed Session

DAG Reilly read a resolution to retire into closed session to discuss litigation matters at 10 a.m. She noted that the litigation matters to be discussed included a pending OAL matter and an action regarding a stipulation of settlement. She said that the closed session was being conducted prior to the end of the meeting, necessitated by fear of the loss of a quorum. She indicated that the closed session was anticipated to last for some 15 to 20 minutes and she asked that Ms. Piner record the time in the minutes.

Commissioner Jackson moved to retire into closed session. Commissioner Link seconded the motion. The Commission agreed to retire into closed session by a vote of 9 to 0.

As the members of the public left the meeting room, Ms. Piner announced that the time was 10:02 a.m.

Return to Open Session

Acting Chairperson Ashmun reopened the public portion of the meeting at 10:20 a.m. *(The Closed Session had lasted 18 minutes which was within the range anticipated by Ms. Reilly.)*

Ms. Reilly stated that, in closed session, the Commission had discussed matters related to an appeal by the applicant of the final decision by the Commission related to D.D. Residential as well as an amendment to the January 2005 Stipulation of Settlement involving the Sanctuary development.

Commissioner Link recused herself and left the room at 10:22 a.m.

Ms. Roth explained that likewise, Commissioner Link had recused herself from today's closed session related to D.D. Residential.

Ms. Reilly noted that although Commissioner Jackson had recused himself from earlier discussions when the matter was before his personal friend, Administrative Law Judge Bruce M. Gorman, there was no need for him to recuse at this time as the case has moved beyond the Office of Administrative Law (OAL).

Ms. Roth said that in its appeal of the Commission's Final Decision, the appellant sought to exclude documents that were filed as part of the Statement of Items Comprising the Record on Appeal (SICRA) to the Commission's motion for summary decision before the OAL as well as to add one document that had been excluded. Ms. Roth said that she was recommending that the Commission deny the request to settle the record as the documents were indeed a part of the record and the omission of a document has since been corrected.

Commissioner McGlinchey moved the adoption of a Resolution Denying Petitioner/Appellant D.D. Residential Limited Partnership's Motion to Settle the Record in D.D. Residential L.P. v. New Jersey Pinelands Commission, Docket No. A-1464-10T3. (See Resolution #PC4-11-21). Commissioner Brown seconded the motion.

The motion carried by a vote of 8 to 0 with Commissioner Link not present.

Commissioner Link returned to the meeting.

Ms. Roth reviewed matters related to the stipulation of settlement for the Sanctuary project. She said that as a result of Samost acquiring certain lots related to snake hibernaculum and the interest in not constructing a certain section of Georgia O'Keefe Trail as confirmed by Evesham Township, she was recommending that the Commission amend the original Stipulation of Settlement as this would close the matter.

She noted that she would tighten the language and would amend the resolution provided to the Commission as some documents had not yet been received and, although she expected that they would be received very shortly, she recommended that the Executive Director not sign the settlement until said documents were received.

Commissioner Haas moved the adoption of Resolution Authorizing the Executive Director to Execute a First Amended Stipulation of Settlement in the Case Brought Before the United States District Court For the District of New Jersey Entitled Ivelin, L.P. and Iva Samost v. State of New Jersey, The Pinelands Commission et al., (Docket No. 03-CV-6110). (See Resolution #PC4-11-22) as amended. Commissioner Ficaglia seconded the motion. The motion carried by a vote of 9 to 0.

Several Commissioners offered congratulations to Ms. Roth and DAG Reilly for bringing this matter to a conclusion.

Commissioner Ashmun stated that the Public Comment portion of the meeting would occur following the presentation in order to provide the public with an opportunity to address issues raised regarding the Southern Pine Beetle (SPB).

Other Agenda Items

Ms. Wittenberg introduced Mr. Michael D'Errico, DEP Supervising Forester who said that he oversees the State's urban forestry program.

Mr. D'Errico introduced his five colleagues (Dave Johnson, Todd Wyckoff, Bob Cartica, Greg McLaughlin and Rosa Yoo), each of whom represented a different aspect of the state forestry program. Mr. D'Errico made a PowerPoint presentation on the damages inflicted by the SPB, noting the speed with which damage occurs and the beetle travels. He said that the "cut and leave" suppression program seems to be the most effective way to stop the infestation from spreading. He said that the State Forest Service wants to partner with the Commission as emergency action is needed to expedite the review and permitting practices to deal with the SPB.

At the conclusion of the presentation, Commissioner Jackson said that the Commission had called an emergency meeting last month to deal with the Buena Borough MUA matter. This infestation is of such critical importance that it might warrant a special meeting also.

Commissioner Ashmun said that staff will meet with DEP to develop a proposal that the Forestry Advisory Committee can review.

Several Commissioners expressed interest in having the process move as quickly as possible.

Ms. Wittenberg said that there have already been discussions with the DEP and that a meeting would be scheduled within a week.

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

Mr. Jay Mounier, Franklin Township resident, noted that at the end of May, Pinelands Development Credit (PDC) Bank Executive Director Guil Vivas has retired. He said that as the Bank is a critical component of land preservation in the Pinelands, he believed that the Commission should take action to correct the loss of staff. He also said that he thought it would be useful to have today's presentation on the Pine Bark Beetle posted on the Commission's web site and he encouraged the Commission to move quickly.

Mr. Russell Juelg, speaking as a private citizen (noting that he was no longer with PPA), spoke regarding the paving of Cedar Lane with the near mishap of endangered plants. He thanked the staff for their quick response but said that the Commission still doesn't have the regulations in place to protect roadside plants. He said that the Commission had accepted the reports of the consultant on the road project and special instructions were given to the applicant. However, the applicant replaced the native cover with non-natives. He said there were concerns with the fill material used to bring the shoulder level to the newly paved road edge. He said that often such fill material has a higher pH and higher nutrient levels than native fill. He said that there is no Pinelands native seed

mix and that the fill material will promote non-natives. He said that his concern was that future road maintenance will bring about more non-native plant species.

Mr. Horner responded to the comment noting that the Commission staff did not accept the consultant's report that there were no T/E species present but staff felt that by limiting the paving to the already cleared area and installing the silt fence to prevent further encroachment, any plants that were there should be protected. Mr. Horner said that he agreed that ideally the fill and seed mixtures should be native but the Commission had no regulations to require that. He said that the Commission's letters impose conditions and make recommendations but there are not always regulations to cover those recommendations.

In response to Commissioner Harris' question regarding soil sources, Mr. Juelg said that it was indeed the soil more than the seed mix that was important.

Mr. Carleton Montgomery, Executive Director of PPA, said that he felt the "cut and leave" approach to deal with the SPB was appropriate; that PPA objected to the Sanctuary settlement as it was yet another case where it resulted in development being allowed through a settlement; that, in the case of the Woodland Road project the Commission had accepted a report from an incompetent consultant and, that the process did not work because there was no follow-up by staff to make sure that the conditions of the approval were being met. He said that there should be consequences and he wanted to organize a field trip with Commission members to view the road project. He said that the Commission was making decisions based on false premises.

In response to Commissioner Ficcaglia's question if the Commission had the right to determine the reliability of certain consultants and accept/reject accordingly, Ms. Roth said that the Commission has no standards by which to deny consultants. To do so, standards and a testing program would have to be developed. The development of a process had been discussed some months ago but it was not within the Commission's resources. Staff is skeptical in evaluating field work and questions submittals but has no legal authority to deny certain consultants. In addition, one must be careful of slander accusations and impacting a consultant's ability to earn a living.

In response to Commissioner Harris' question if the Commission had the authority to tell the contractors that staff would do the assessments, Commissioner Ashmun said that escrow accounts had been considered but not pursued.

Ms. Roth cautioned that escrow accounts are to be used to address those issues that are beyond the routine. Besides, there are only a handful of consultants available in the Pinelands and conflict of interest issues make it unlikely that they would want to be deprived of making their living in the private sector.

Mr. Horner stated that staff spends much time qualifying consultants, requesting educational backgrounds, etc.

Commissioner Haas said that the road in Woodland Township was paved out of concern for the school buses. He said that the problems with this project arose from day 1. Fortunately only a very small percentage of applications reach this level of concern.

Mr. Horner concluded this portion of the discussion by saying that the applicant was requesting paving an existing maintained road. He said that he recalled that the T/E snake issues were known but that he did not believe that staff had been aware of plant issues.

Mr. Fred Akers, with the Great Egg Harbor Watershed Association, said that he appreciated all the information on the SPB. He said that the devastation of trees reminded him of the historical removal of trees in part for the furnace. Referencing the DEP Water Quality Management Plan, he cautioned that allowing DEP to remove wetlands from RGA in determining sewer service areas was like playing "buffer roulette."

Ms. Jaclyn Rhoads, with PPA, said that sedimentation and soil control enforcement was a matter for the County Soil Conservation Districts. Regarding the SPB, she asked how ecological burning was used to address the problem and finally she said that one must use the right tools to promote healthy forests.

Ms. Theresa Lettman, with PPA, said that the road paving project in Woodland Township was within the Preservation Area District thus PPA did not feel it was a normal application. Now that the road has been paved, no-mow zone signs should be posted to protect the native plants

In response to Commissioner Jackson's question why, if there are no regulations requiring use of specific seed mixtures, can't the applicant be asked to use a specific seed mixture, Mr. Horner said that the Commission agrees and often requests same.

Adjournment

Commissioner Witt moved to adjourn the meeting. Commissioner Jackson seconded. The Commission agreed to adjourn at 12:10 p.m.

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____