

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

MINUTES

May 12, 2017

Commissioners Present

Alan W. Avery Jr., Bob Barr, Paul E. Galletta, D'Arcy Rohan Green, Jane Jannarone, Mark Lohbauer, Ed McGlinchey, Richard Prickett and Gary Quinn. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Lisa LeBoeuf and Deputy Attorney General (DAG) Bruce Velzy.

Commissioners Participating by Phone

Bill Brown and Ed Lloyd.

Commissioners Absent

Candace Ashmun, Giuseppe Chila and Chairman Sean Earlen.

Vice Chairman Galletta called the meeting to order at 9:34 a.m.

DAG Velzy read the Open Public Meetings Act Statement.

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 11 Commissioners who participated in the meeting.)

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

Minutes

Vice Chairman Galletta presented the open and closed session minutes from the April 7, 2017 Commission Meeting. Commissioner Avery moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes of the April 7, 2017 Commission Meeting were adopted by a vote of 10 to 0, with Commissioner Quinn abstaining.

Other

Staff member Jessica Noble was recognized for 10 years of service at the Commission.

Committee Chairs' Reports

Commissioner Avery said the May 2, 2017 Personnel and Budget Committee was canceled. He said the Audit Committee met on April 28, 2017. He said the FY 15 Audit Report identified minor recording errors. He said the Commission has purchased new accounting software from Edmunds, and it will help with bank reconciliations. He said Bowman and Company, who serves as the Commission's accounting consultant, will review the financials on a monthly basis.

Vice Chairman Galletta provided an update on the April 28, 2017 Policy and Implementation Committee Meeting:

The Committee adopted the minutes from the March 24, 2017 CMP Policy & Implementation Committee meeting with a correction to page 5 regarding the fencing program in Wharton State Forest.

The Committee recommended that the Commission certify Barnegat Township Ordinance 2017-05, adopting the Shoreline Sand & Gravel and Compass Point Redevelopment Plan.

The Committee received a presentation on a grant proposal the Science Office is preparing in response to a Request For Proposal from the Environmental Protection Agency. The study will look at the effects of land use on water quality and microorganisms in natural ponds, excavated ponds, and stormwater basins, and will build on two previous Commission studies. The Committee endorsed the submission of the proposal.

The Committee received an update on the history and status of telecommunications plans and was told that amendments may be submitted shortly for the Public Safety Tower Plan, Verizon's Small Network Node Deployment, and the Mobilitie, LLC Small Cell and Transport Facility Deployment.

Executive Director's Reports

ED Wittenberg updated the Commission on the following:

- The Commission has not received a formal letter from the U.S. Department of the Interior appointing a federal representative. A phone call was held with Bob Krumenaker, who has been named the temporary appointee.

- Staff met with officials from the City of Port Republic to discuss closure of its landfill.
- Staff recently met with the New Jersey Department of Environmental Protection (NJDEP) staff to discuss a number of issues. At that meeting, Wharton State Forest was discussed. The group discussed using the USGS topographic map of Wharton from 1997 as a baseline guide to define roads.

Commissioner Lohbauer said he supports working with the NJDEP to find a means to protect Wharton.

Director Larry Liggett provided information on two items that will be discussed at upcoming Policy and Implementation (P&I) Committee meetings:

- Vertical Bridge, a telecommunication infrastructure company, is proposing to build a cell tower in Chatsworth. A plan amendment will be necessary for the construction of the tower.
- NJDEP released the Water Supply Master Plan at the beginning of May. Staff will pay close attention to the analysis of Pinelands watersheds, recharge and aquifer storage and recovery (ASR). NJDEP will hold three public hearings and staff will most likely attend the hearing held at Stockton University.
- A former mayor of Estell Manor has contacted the Commission about restrictions in the Forest Area and the limitations the management area presents for constructing solar facilities. The City of Estell Manor is predominately a Forest Area.

After a brief discussion between Commissioners about the permitted uses in the Forest Area and potential impacts of solar, it was requested that staff provide additional information on the matter at a future Policy and Implementation Committee meeting.

Ernie Deman updated the Commission on the following:

- During the April Commission meeting, an applicant provided comment on the reasons why their property could qualify to build a single family dwelling under the cultural housing provision. Staff was not able to determine that the applicant qualifies under that provision, but a Certificate of Filing was issued for the development of a dwelling under a different standard.
- Staff site inspected the stormwater management facilities associated with the construction of exit 44 on the Garden State Parkway after a member of the public commented about the basins at the April Commission meeting. It was observed that the basin was constructed in accordance with the Commission approval and that the basin was functioning properly.
- April Field, who worked as an Environmental Specialist in the Regulatory Programs office for 17 years, resigned from her position in April.

Susan Grogan said a brochure was recently printed that highlights the importance of roadside habitats in the Pinelands. (Copies were provided to each Commissioner and made available to the public). She said Robyn Jeney has had some positive meetings with the counties to review the best management practices (BMPs) for caring for native roadside habitat. An update on those meetings will be provided at a later date.

Stacey Roth introduced Bruce Velzy as the Commission's new Deputy Attorney General. She said DAG Velzy previously worked in the Environmental Enforcement Section, handling waste licensing matters at the Division of Law, and now works in the Environmental Permitting and Counseling section.

Stacey Roth provided an update on the South Jersey Gas Appeal:

- During the April Commission meeting, the Commission denied a motion to Stay Pinelands Resolution No. PC4-17-03 that was filed by the Pinelands Preservation Alliance. The Stay motion filed by the Pinelands Preservation Alliance at the Appellate Division was also denied because the Appellate Division Judge determined that there would be no irreparable harm from the construction, maintenance and operation of the pipeline. In addition, South Jersey Gas made a motion to accelerate the proceedings, and that motion was granted. Once the Statement of Items Comprising the Record is submitted to the court, a scheduling order will be provided. RC Cape May made a motion to intervene in the appeal, and that motion was granted. There is another motion for the consolidation of NJ Sierra Club, Environment New Jersey and the Pinelands Preservation Alliance litigation matters that is still pending.

Paul Leakan said the architect has submitted drawings to the State for the issuance of permits needed to proceed with the Pinelands Visitor Center. He also said the Pinelands Summer Short Course has 14 confirmed courses and six field trips. The educational event will take place on July 27th at Kramer Hall in Hammonton.

Public Development Projects and Other Permit Matters

Vice Chairman Galletta presented a resolution recommending the approval of the development of an access road and nine monitoring wells on the same site as the Estell Manor landfill.

Commissioner Barr moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1992-0280.004) See Resolution # PC4-17-08). Commissioner McGlinchey seconded the motion.

The Commission adopted the resolution by a vote of 11 to 0.

Municipal Master Plan and Ordinances

Vice Chairman Galletta presented a resolution recommending the adoption of Barnegat Township Ordinance 2017-05.

Commissioner McGlinchey moved the adoption of a resolution Issuing an Order to Certify Barnegat Township Ordinance 2017-05, Adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area (See Resolution # PC4-17-09). Commissioner Lohbauer seconded the motion.

Susan Grogan said Barnegat's redevelopment plan is comprised of 140 acres in the Regional Growth Area. An aerial map of the parcel was displayed on the Smartboard. The site is surrounded by existing residential development. The site will be redeveloped by two separate builders, one for each site (Shoreline Sand and Gravel and Compass Point). The plan will permit age restricted residential development and a small commercial development (25,000 square feet). Threatened and endangered survey work was performed, and it was determined that there is no critical habitat for the Northern Pine Snake. A 300 foot buffer to wetlands will be maintained due to the presence of Pine Barrens treefrogs. There will be a 30% Pinelands Development Credit (PDC) obligation for non-affordable housing units.

Commissioner Prickett asked about the role of the Commission in assisting municipalities with redevelopment plans.

Susan Grogan said it depends on the relationship with the municipality. She said staff is always available to look at language prior to a town submitting an ordinance. She added staff is always happy to offer suggestions about PDCs, affordable housing requirements and applicable CMP standards.

Ms. Grogan provided additional information on the PDC requirement associated with the redevelopment plan. She also said that there is an affordable housing requirement built into the redevelopment plan. She said that as adopted the Shoreline portion requires a 10% set aside and the Compass Point ranges from a 5% to a 10% set aside. The township may change where they want the affordable housing units to be built and instead require the redevelopers to contribute to the Affordable Housing Trust Fund. She added that should this change occur and as long as there are no changes to density or PDC requirements, the amendment could be resolved without bringing another resolution to the Commission.

Commissioner Lloyd asked why the set aside percentage was not 20% and asked about the status of Barnegat's affordable housing settlement.

Susan Grogan said the 20% set-aside is no longer typical, adding that more and more staff have been seeing lower numbers related to set-asides, around the 10% range. She said Barnegat Township is currently in settlement discussions with the Fair Share Housing Center.

The Commission adopted the resolution by a vote of 11 to 0.

Public Comment on Agenda Items and Pending Public Development Applications

Georgina Shanley of Ocean City, NJ, said she is opposed to solar in the Forest Area. She requested clarification on the South Jersey Gas appeal update.

Paula Yudkowitz of Oaklyn, NJ, said she is upset about the lack of progress with the Wharton State Forest map. She said she visits Wharton about three times a week, and each time she witnesses some type of destruction.

Jason Howell of the Pinelands Preservation Alliance, said the destruction that has occurred at Wharton State Forest happened on DEP's watch. He said the subcommittee process is redundant and the Commission should issue a resolution. He said an off-road vehicle recently damaged fields at Tuckahoe Turf Farm.

Margit Meissner-Jackson, Conservation Chair for Ocean County Sierra Club, said the Commission's only job is to protect the Pinelands and the aquifer. She spoke about autism in New Jersey and the importance of testing private wells for heavy metals. She said New Jersey has enough housing and too many vehicles on the road. She said she is boycotting Jersey produce.

Temma Fishman of Medford Lakes, NJ, requested clarification on the South Jersey Gas appeal.

Bob Filipczak of Linwood, NJ, said converting BL England from a coal-fired plant to natural gas will not benefit air quality. He resubmitted testimony from the Jan. 24, 2017 Commission meeting and submitted additional info (see attached). He said solar panels should be installed on every high school gymnasium in New Jersey. He also provided the Commission with a sample of water from the Barnegat Bay. He said Oyster Creek is destroying the Barnegat Bay, not fertilizer.

Katie Smith of the Pinelands Preservation Alliance said she hopes the Commission will thoroughly review the potential proposed solar amendment for the Forest Area and allow adequate time for public participation.

Marilyn Miller of Toms River, NJ read a quote from Major Ronald Balfour: "No age lives entirely alone; every civilization is formed not merely by its own achievements but by what it has inherited from the past. If these things are destroyed, we have lost a part of our past, and we shall be the poorer for it."

Jackie Zimnak of Little Egg Harbor, NJ, said the Commission needs to take action to stop the off-road vehicle damage at Wharton State Forest.

Ordinances Not Requiring Commission Action

Chairman Earlen asked if any Commissioners had questions regarding the ordinances not requiring Commission action:

- Berlin Borough Planning Board Resolution 2017-5
- Egg Harbor City Ordinance 3-2017

Chief Planner Grogan noted that within Berlin Borough's Resolution a very detailed affordable housing plan outlines each site with specific set-aside requirements.

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

Bob Filipczak of Linwood, NJ expressed his dissatisfaction with the NJDEP and the Governor.

Georgina Shanley of Ocean City, NJ, asked if the CMP is being amended to include standards on climate change. She said she wished the Commission would take on more of a leadership role. She said the South Jersey Gas pipeline will eventually be used for export.

Margit Meissner-Jackson of Eagleswood Township spoke about a 30-inch pipeline being proposed by New Jersey Natural Gas. She said it will go under the Bay to serve Long Beach Island residents. She does not support the use of natural gas.

Jason Howell of the Pinelands Preservation Alliance said the Commission has heard from a variety of people who use Wharton State Park. He encouraged the Commission to take action on a map.

Marilyn Miller of Toms River, NJ, said the public cares about the Pinelands.

Paula Yudkowitz of Oaklyn, NJ, suggested a moratorium on Enduro events until the ORV issue is under control at Wharton.

Dan Homan of Philadelphia, PA said he loves the Pinelands.

Other

Commissioner Prickett said he recently heard about an instance where PFOS and PFOA were being detected in privately-owned wells on the Rancocas. He asked if it was possible to have an update on the issue at a Policy and Implementation Committee meeting.

ED Wittenberg said an update can be provided.

At the request of some members of the public, Ms. Roth provided additional details on her earlier statement regarding the South Jersey Gas appeal.

Commissioner Avery questioned who was representing the three parties that have challenged the Commission's South Jersey Gas decision.

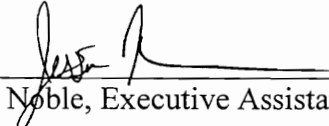
Stacey Roth said NJ Sierra Club and Environment New Jersey are represented by New Jersey Appleseed, and the Pinelands Preservation Alliance is represented by Dechert.

Commissioner Lohbauer said he is encouraged by the progress staff has made with working with the NJDEP on the Wharton matter. He said it seems like everyone is in agreeance with the resolution advising where motor vehicle activity can occur at Wharton. He added that ultimately the map will need to be implemented by the NJDEP and the Park Police.

Adjournment

Commissioner McGlinchey moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 11:24 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: May 22, 2017



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-17- 08

TITLE: Approving With Conditions an Application for Public Development (Application Number 1992-0280.004)

Commissioner Barr moves and Commissioner McGlinchey seconds the motion that:

WHEREAS, the Pinelands Commission has reviewed the Public Development Application Report and the recommendation of the Executive Director that the following application for Public Development be approved with conditions:

1992-0280.004

Applicant:	Estell Manor City
Municipality:	City of Estell Manor
Management Area:	Pinelands Forest Area
Date of Report:	April 21, 2017
Proposed Development:	800 linear foot access road and the installation of nine groundwater monitoring wells.

WHEREAS, no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received for this application; and

WHEREAS, the Pinelands Commission hereby adopts the Conclusion of the Executive Director for the proposed development; and

WHEREAS, the Pinelands Commission hereby determines that the proposed public development conforms to the standards for approving an application for public development set forth in N.J.A.C. 7:50-4.57 if the conditions recommended by the Executive Director are imposed; and

WHEREAS, pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period and Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that Application Number 1992-0280.004 for public development is hereby **approved** subject to the conditions recommended by the Executive Director.

Record of Commission Votes

AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*
Ashmun			X	Galletta	X			Prickett	X		
Avery	X			Jannarone	X			Quinn	X		
Barr	X			Lloyd	X			Rohan Green	X		
Brown	X			Lohbauer	X			Earlen		X	
Chila			X	McGlinchey	X						

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Nancy Wittenberg
Nancy Wittenberg
Executive Director

Date: May 12, 2017
Sean W. Earlen For
Sean W. Earlen
Chairman



Chris Christie
Governor

Kim Guadagno
Lt. Governor

State of New Jersey

THE PINELANDS COMMISSION

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www.nj.gov/pinelands



Sean W. Earlen
Chairman

Nancy Wittenberg
Executive Director

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

April 21, 2017

Stephen Teasenfitz, Mayor
City of Estell Manor
P.O. Box 102
Estell Manor, NJ 08319

Re: Application # 1992-0280.004
Block 58, Lot 3
Block 59, Lot 3
City of Estell Manor

Dear Mayor Teasenfitz:

The Commission staff has completed its review of this application for an 800 linear foot access road and the installation of nine groundwater monitoring wells. Enclosed is a copy of a Public Development Application Report. On behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its May 12, 2017 meeting.

Any interested party may appeal this recommendation in accordance with the appeal procedure attached to this document. If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Prior to any development, the applicant shall obtain any other necessary permits and approvals.

Sincerely,

Charles M. Horner, P.P.
Director of Regulatory Programs

Enc: Appeal Procedure

c: Secretary, City of Estell Manor Planning Board (via email)
City of Estell Manor Construction Code Official (via email)
Atlantic County Department of Regional Planning and Development (via email)
Andrew Grier, P.E.





Chris Christie
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Sean W. Earlen
Chairman

Nancy Wittenberg
Executive Director

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

PUBLIC DEVELOPMENT APPLICATION REPORT

April 21, 2017

Stephen Teasenfitz, Mayor
City of Estell Manor
P.O. Box 102
Estell Manor, NJ 08319

Application No.: 1992-0280.004
Block 58, Lot 3
Block 59, Lot 3
City of Estell Manor

This application proposes an 800 linear foot access road and the installation of nine groundwater monitoring wells on the above referenced 48.6 acre parcel in the City of Estell Manor. The closed, but not capped, City of Estell Manor landfill is located on the parcel.

The proposed access road will be ten feet wide with no further improvements. The nine proposed monitoring wells will all be located within 50 feet of the proposed access road. The monitoring wells will be utilized to monitor groundwater in the vicinity of the landfill.

STANDARDS

The Commission staff has reviewed the proposed development for consistency with all standards of the Pinelands Comprehensive Management Plan (CMP). The following reviews the CMP standards that are relevant to this application:

Land Use (N.J.A.C. 6.75(c))

The proposed access road and monitoring wells are located in a Pinelands Forest Management Area. The CMP requires that all landfills which ceased operation after January 14, 1981 be capped. The City of Estell Manor landfill ceased operation in 1991. The proposed wells will be used to monitor for potential leachate in groundwater from the landfill.

Wetlands Standards (N.J.A.C. 7:50-6.13)

There are wetlands located on the parcel. The CMP prohibits most development in wetlands and requires a buffer of up to 300 feet to wetlands.

6. Appropriate measures shall be taken during construction to preclude sedimentation from entering wetlands and shall be maintained in place until all development has been completed and the area has been stabilized.
7. For those six monitoring wells proposed in either wetlands or the required buffer to wetlands, the applicant shall not disturb more than 400 square feet of vegetation for each monitoring well.

CONCLUSION

As the proposed development conforms to the standards set forth in N.J.A.C. 7:50-4.57, it is recommended that the Pinelands Commission **APPROVE** the proposed development subject to the above conditions.



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-17- 09

TITLE: Issuing an Order to Certify Barnegat Township Ordinance 2017-05, Adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area

Commissioner McGlinchey moves and Commissioner Lohbauer seconds the motion that:

WHEREAS, on April 8, 1983, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Barnegat Township; and

WHEREAS, Resolution #PC4-83-29 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-83-29 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on May 21, 2012, the Barnegat Township Committee adopted a resolution designating the Shoreline Sand and Gravel Area to be an Area in Need of Redevelopment as defined in the Local Redevelopment and Housing Law; and

WHEREAS, on March 7, 2017, Barnegat Township adopted Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 2017-05 on March 23, 2017; and

WHEREAS, by letter dated March 29, 2017, the Executive Director notified the City that Ordinance 2017-05 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Ordinance 2017-05 was duly advertised, noticed and held on April 12, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has found that Ordinance 2017-05 is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify that Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, is in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Ordinance 2017-05 be certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 2017-05 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the

minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that

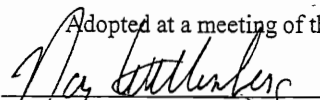
1. An Order is hereby issued to certify that Barnegat Township's Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, is in conformance with the Pinelands Comprehensive Management Plan.
2. Any additional amendments to Barnegat Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

Record of Commission Votes

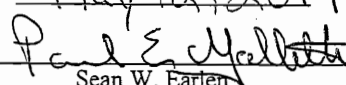
AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*
Ashmun			X	Galletta	X			Prickett	X		
Avery	X			Jannarone	X			Quinn	X		
Barr	X			Lloyd	X			Rohan Green	X		
Brown	X			Lohbauer	X			Earlen			X
Chila			X	McGlinchey	X						

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission


Nancy Wittenberg
Executive Director

Date:

May 12, 2017

Sean W. Earlen
Chairman



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Chris Christie
Governor

Kim Guadagno
Lt. Governor

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen
Chairman

Nancy Wittenberg
Executive Director

**REPORT ON ORDINANCE 2017-05, ADOPTING A REDEVELOPMENT
PLAN FOR THE SHORELINE SAND AND GRAVEL AND
COMPASS POINT REDEVELOPMENT AREA**

April 28, 2017

Barnegat Township
900 West Bay Avenue
Barnegat, NJ 08005

FINDINGS OF FACT

I. Background

The Township of Barnegat is located in southern Ocean County, in the eastern portion of the Pinelands Area. Pinelands municipalities that abut Barnegat Township include the Townships of Lacey, Ocean, Stafford and Little Egg Harbor in Ocean County, and the Townships of Bass River and Woodland in Burlington County.

On April 8, 1983, the Pinelands Commission fully certified the Master Plan and codified Land Use Ordinances of Barnegat Township.

On May 21, 2012, the Barnegat Township Committee adopted a resolution designating the Shoreline Sand and Gravel Area (consisting of 94 lots) to be an Area in Need of Redevelopment as defined in the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.).

On March 7, 2017, Barnegat Township adopted Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area. This Redevelopment Area encompasses approximately 140 acres of land within the Pinelands Regional Growth Area, with approximately 123 acres in Barnegat's existing RL/AC (Residential Low/Adult Community) zoning district and 17 acres in the existing CN (Neighborhood Commercial) zoning district.

The Pinelands Commission received a certified copy of Ordinance 2017-05 on March 23, 2017. By letter dated March 29, 2017, the Executive Director notified the Township that Ordinance 2017-05 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following ordinance has been submitted to the Pinelands Commission for certification:

- * Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, introduced on February 7, 2017 and adopted on March, 7, 2017.

This ordinance has been reviewed to determine whether it conforms with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50-3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50-3.39.

1. **Natural Resource Inventory**

Not applicable.

2. **Required Provisions of Land Use Ordinance Relating to Development Standards**

Ordinance 2017-05 adopts a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area within Barnegat Township. The Redevelopment Area is situated on the southern side of W. Bay Avenue (County-Route 554) and bounded by Cloverdale Road to the west, Caribbean Avenue to the south, and Nautilus Drive to the east (see Exhibit 1).

The Redevelopment Area includes 94 existing lots that combine for an area of approximately 140 acres of land. The Plan separates the Redevelopment Area into two tracts: the Shoreline Sand and Gravel Tract, which is comprised of properties that contain the Shoreline Sand & Gravel, LLC mining facility; and the Compass Point Tract, which is comprised of 85 existing undeveloped residential lots (see Exhibit 2). The only existing structures within the Redevelopment Area are buildings associated with the mining facility, including one office building, one detached garage, and two sheds.

The Redevelopment Area is located entirely within the Pinelands Regional Growth Area and spans two existing zoning districts: the RL/AC (Residential Low/Adult Community) district and the CN (Neighborhood Commercial) district. The RL/AC district permits the development of planned adult communities, detached single-family units, adult community housing, cluster development, and a variety of institutional and recreational uses. The CN district permits a variety of non-residential uses.

In order to meet its goals, described further below, the Redevelopment Plan supersedes the existing zoning district regulations and establishes two new zoning districts: the Shoreline Sand and Gravel Mixed Use Zoning District and the Compass Point Redevelopment Zoning District. The boundary of each new district corresponds to the two tracts described above. The lots included in each district are further described in Table 1, below.

Table 1. Summary of Zoning Districts Established by Ordinance 2017-05

Shoreline Sand and Gravel Mixed Use Zoning District	Compass Point Redevelopment Zoning District
Area: 113 acres	Area: 27 acres
Existing Lots: 9	Existing Lots: 85
Current Zoning Districts: RL/AC (108 acres) CN (5 acres)	Current Zoning Districts: RL/AC (15 acres); CN (12 acres)
Lots included: Block 92: Lots 15, 16, 18, 18.01, 20, 21, 23, 23.03, 23.04	Lots included: Block 92.103: Lots 1-4 Block 92.104: Lots 1-16 Block 92.105: Lots 1-23 Block 92.106: Lots 1-24 Block 92.107: Lots 7,8 Block 92.108: Lots 15-24 Block 92.109: Lots 14, 15 Block 92.113: Lots 42-45

Shoreline Sand and Gravel Mixed Use Zoning District

The goal of the Shoreline Sand and Gravel Mixed Use Zoning District is to promote and facilitate the redevelopment of its 113 acres as either a Lifestyle Planned Community or as a Planned Adult Community. Under both options, a mix of age-restricted (55+) residential uses and non-residential uses are permitted. Bulk standards are provided for each of the permitted residential uses and for non-residential uses.

Under both options, a minimum of 25,000 square feet of the district shall be set aside for non-residential uses, with the option to have up to a maximum of 10 acres of non-residential land. Both options permit the same types of non-residential uses, which include: nursing homes, community retail, professional offices, medical uses, restaurants, pharmacies, financial institutions, conveniences stores and self-storage facilities.

If a Lifestyle Planned Community is proposed, the following residential uses are permitted: detached single-family dwellings, attached single-family units, clustered cottages, townhouses (including townhouses over flats), villas, apartments, assisted living facilities, and congregate care facilities. If a Planned Adult Community is proposed, the residential use options are limited to single-family detached dwellings, single-family semi-detached dwellings as well as townhouses. The Redevelopment Plan also restricts the proportion of certain residential uses within the district. The Redevelopment Plan requires that 10% of the residential units be made affordable to low- and moderate-income households.

The district allows for a maximum net residential density of 7.15 units per acre. The net density excludes lands associated with nonresidential uses as well as lands associated with assisted-living, congregate care, or nursing home facilities. For these facilities, the district allows for a

maximum of 250 beds. The maximum gross density permitted for such a facility is 20 beds per acre, not including long-term care beds within nursing facilities.

Compass Point Redevelopment Zoning District

The goal of the Compass Point Redevelopment Zoning District is to develop residential age-restricted (55+) single-family, detached, fee-simple homes only. The Redevelopment Plan restricts density in this district to 4.3 units per acre, or a maximum of 113 units. Bulk standards are provided for the permitted use. The Redevelopment Plan requires that 5% of the existing 85 residential lots and 10% of any additional lots created beyond the original 85 lots to be made affordable to low- and moderate-income households.

As a result of the two zoning districts established by Ordinance 2017-05, the residential zoning capacity of the lands within the Redevelopment Area has increased from 492 units to 1,078 units (see Table 2, below). This is an increase of 586 units.

Table 2. Summary of Residential Capacity Enabled by Ordinance 2017-05

Existing Residential Capacity	Redevelopment Plan Residential Capacity
RL/AC Zone (123 acres):	Shoreline Mixed Use Zone (113 acres):
492 units ¹	715 units (not including assisted living) ²
CN Zone (17 acres):	250 units (assisted living only)
0 units	Compass Point Redevelopment Zone (27 acres):
	113 units
Total Units: 492	Total Units: 1,078

1. Assuming that a Planned Adult Community is developed at the maximum density through the use of PDC bonus densities to achieve a maximum density of 4 units per acre for the entire 123 acres.

2. Assuming that a minimum of 0.5 acres is set aside for non-residential uses and that a facility containing the maximum number of assisted living units (250 units) uses 12.5 acres, the remaining 100 acres may be built out to a density of 7.15 units per acre.

Pursuant to N.J.A.C. 7:50-5.28(a)1 and 3, the CMP would require the opportunity for 420 residential units within the Redevelopment Area. Therefore, the Redevelopment Plan results in the potential for approximately 658 units beyond what the Comprehensive Management Plan requires. A strict application of the Comprehensive Management Plan standards would not require an increase in residential capacity of this magnitude within the Redevelopment Area. However, in order to achieve the goals and objectives of the Redevelopment Plan, the Township has elected to provide a higher permitted density in the Redevelopment Area than the Comprehensive Management Plan would require.

The fact that the residential capacity of the Township's Regional Growth Area will now exceed the minimum required by the Comprehensive Management Plan does not make Ordinance 2017-05 inconsistent with the Comprehensive Management Plan. In fact, N.J.A.C. 7:50-5.28(a)7i

expressly authorizes municipalities to establish programs that provide for additional density within their Regional Growth Areas, provided that the Pinelands Development Credit program is not impaired as a result. In this case, Barnegat Township has satisfied its Regional Growth Area residential zoning obligation under the Comprehensive Management Plan and has elected to provide additional density to a designated Redevelopment Area while at the same time requiring a certain percentage of Pinelands Development Credit use (see Section 8, below).

In further support of the site's suitability for increased density, it is noted that a Threatened and Endangered Species Survey was conducted in 2015 with a target species of northern pine snake. The Commission staff has accepted the survey's finding that no critical habitat for northern pine snake was found within the Redevelopment Area. This finding was contingent upon a 300 foot proposed buffer to the Four Mile Branch wetland complex located in the extreme southwestern corner of the site, and that if a smaller buffer was proposed, a survey for Pine Barrens treefrog should be completed.

The development intensities, permitted uses and zoning changes adopted by Ordinance 2017-05 are otherwise consistent with the standards for Pinelands Regional Growth Areas set forth in the Comprehensive Management Plan. Therefore, this standard for certification is met.

3. Requirement for Certificate of Filing and Content of Development Applications

Not applicable.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

N.J.A.C. 7:50-3.39(a)8 specifies that in order to be certified by the Commission, municipal land use ordinances must provide for sufficient residentially zoned property, in the Regional Growth

Area, to be eligible for an increase in density to accommodate Pinelands Development Credits (PDCs) as provided for in N.J.A.C. 7:50-5.28(a)3.

Ordinance 2017-05 increases the amount of residentially-zoned land in Barnegat's Regional Growth Area by approximately 17 acres, which accounts for those lands within the Redevelopment Area that were zoned in the existing CN district. Furthermore, the residential zone capacity was increased for the other 123 acres that were previously zoned within the RL/AC district.

In order to comply with N.J.A.C. 7:50-5.28(a)3, Ordinance 2017-05 requires that PDCs be acquired and redeemed for 30% of all residential units within the Redevelopment Area, with two exceptions.

First, units made affordable to low- and moderate-income households for purposes of satisfying the 10% set-aside requirement within the Shoreline Mixed Use District and the 5% set-aside in the Compass Point Redevelopment District are exempt from this requirement. It is important to note that such affordable units beyond the required 10% and 5% set-aside described above will require that PDCs be acquired and redeemed at the 30% rate.

Second, Assisted Living/Congregate Care facilities will have a different PDC obligation structure. Such facilities will have a permitted base-density of 8 units per acre with a bonus-density, achievable through the use of PDCs, of up to 12 units per acre. This is fully consistent with N.J.A.C. 7:50-5.34(2) of the CMP, which provides that the maximum permitted density for assisted living facilities in Regional Growth Areas may exceed 8 units per acre only through the use of Pinelands Development Credits. Ordinance 2017-05 also provides that once a density of 12 units per acre is achieved through the use of PDCs, assisted living facilities are eligible for an additional bonus density of up to 20 units per acre without the use of PDCs. It is important to note that units in this case represent beds within the facility.

Based on the densities assigned to Barnegat Township's Regional Growth Area by the Comprehensive Management Plan (N.J.A.C. 7:50-5.28), the Township is required to provide an opportunity for the development of residential units at a base-density of 2 units per acre, with a bonus-density of up to 3 units per acre achievable through the use of PDCs. Given the characteristics of the Redevelopment Area, the municipality is required to permit up to 280 residential units and the opportunity for an additional 140 units through the use of PDCs. In other words, the municipality would have to allow for the opportunity to use 140 rights (35 Pinelands Development Credits). This traditional approach requires that municipalities provide the *opportunity* for use of PDCs for 33% of the total number of residential units permitted in their Regional Growth Areas.

The PDC requirements adopted by Ordinance 2017-05 will result in an opportunity for the use of 275 rights (68.75 Pinelands Development Credits). As described in Section 2 above, the municipality has elected to zone at higher densities than required by the Comprehensive Management Plan. This has resulted in a greater PDC opportunity than what is required. Furthermore, if full zone capacity is reached, an assisted living facility is developed and the affordable housing set-aside requirements are met, approximately 25% of the units in the Redevelopment Area would require PDC use. While the overall PDC opportunity of 25% is not as high a number as would be provided through the more traditional approach described above requiring 33%, it is important to remember that the traditional base-density/bonus-density

approach utilized throughout the Pinelands Area only provides an *opportunity* for the use of PDCs. There is no requirement under the traditional approach that any PDCs be used in any particular development project. Ordinance 2015-07 *guarantees* a PDC redemption rate of 30% for much of the potential development within the Redevelopment Area. Given the greater certainty provided by this approach, the Executive Director finds that the PDC requirements adopted by Ordinance 2017-05 are consistent with Comprehensive Management Plan standards.

This standard for certification is met.

9. Referral of Development Applications to Environmental Commission

Not applicable.

10. General Conformance Requirements

Ordinance 2017-05 is consistent with standards and provisions of the Pinelands Comprehensive Management Plan.

This standard for certification is met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

Ordinance 2017-05 is consistent with standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act.

This standard for certification is met.

13. Procedure to Resolve Intermunicipal Conflicts

The lands subject to Ordinance 2017-05 are not contiguous with or adjacent to any other municipalities. Therefore, this standard is not applicable.

PUBLIC HEARING

A public hearing to receive testimony concerning Barnegat Township's application for certification of Ordinance 2017-05 was duly advertised, noticed and held on April 12, 2017 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which no testimony was received.

Written comments on Ordinance 2017-05 were accepted through April 17, 2017 and were submitted by the following parties:

Katherine Smith, Policy Advocate, Pinelands Preservation Alliance (see Exhibit 3)

EXECUTIVE DIRECTOR'S RESPONSE

Ms. Smith of the Pinelands Preservation Alliance has expressed concerns regarding how PDCs are distributed temporally throughout the development. In particular, she states that "it is essential that the purchase of PDCs be evenly distributed temporally throughout development, so that 30% of the units within each stage require PDCs".

Ms. Smith's concerns are very much appreciated as a well-functioning PDC Program is of critical importance to the Pinelands Commission. As such, the PDC requirements within this Redevelopment Plan have been carefully considered during the conformance review process. It should be noted that the initial Redevelopment Plan adopted by Barnegat Township was found by staff to include ambiguous PDC requirements. As a result, staff worked with Township representatives to establish appropriate and unambiguous PDC requirements. The revised Redevelopment Plan, integrating staff's recommended PDC requirements, was adopted by the Township Committee, and contained in the Plan now under consideration. (A full discussion on the revised PDC requirements included in the Redevelopment Plan under consideration can be found in Section 8 above).

In response to Ms. Smith's particular concern regarding the temporal distribution of PDCs, the Comprehensive Management Plan, as well as Chapter 55 of the code of Barnegat Township, includes provisions that require a developer to redeem any necessary PDCs prior to final subdivision or site plan approval. Pursuant to N.J.A.C. 7:50-5.47(c), municipalities may grant general development plan, preliminary subdivision or preliminary site plan approval without the redemption of any requisite PDCs. If a development gets final approval for discrete sections of a project, then redemption of the requisite PDCs is required on a pro-rated basis, based on the proportion of units within the phase relative to the total units included in the preliminary approval. In this case, if final approval of any project in the Shoreline Sand and Gravel and Compass Point Redevelopment Area is granted in phases or sections, the redemption of PDCs for 30% of the units in each and every section of the project will be required, given the special exceptions described in Section 8 above.

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 2017-05, adopting a Redevelopment Plan for the Shoreline Sand and Gravel and Compass Point Redevelopment Area, is consistent with the standards and provisions of the Pinelands Comprehensive Management Plan. Accordingly, the Executive Director recommends that the Commission issue an order to certify Ordinance 2017-05 of Barnegat Township.

SRG/DBL/CBA
Attachments

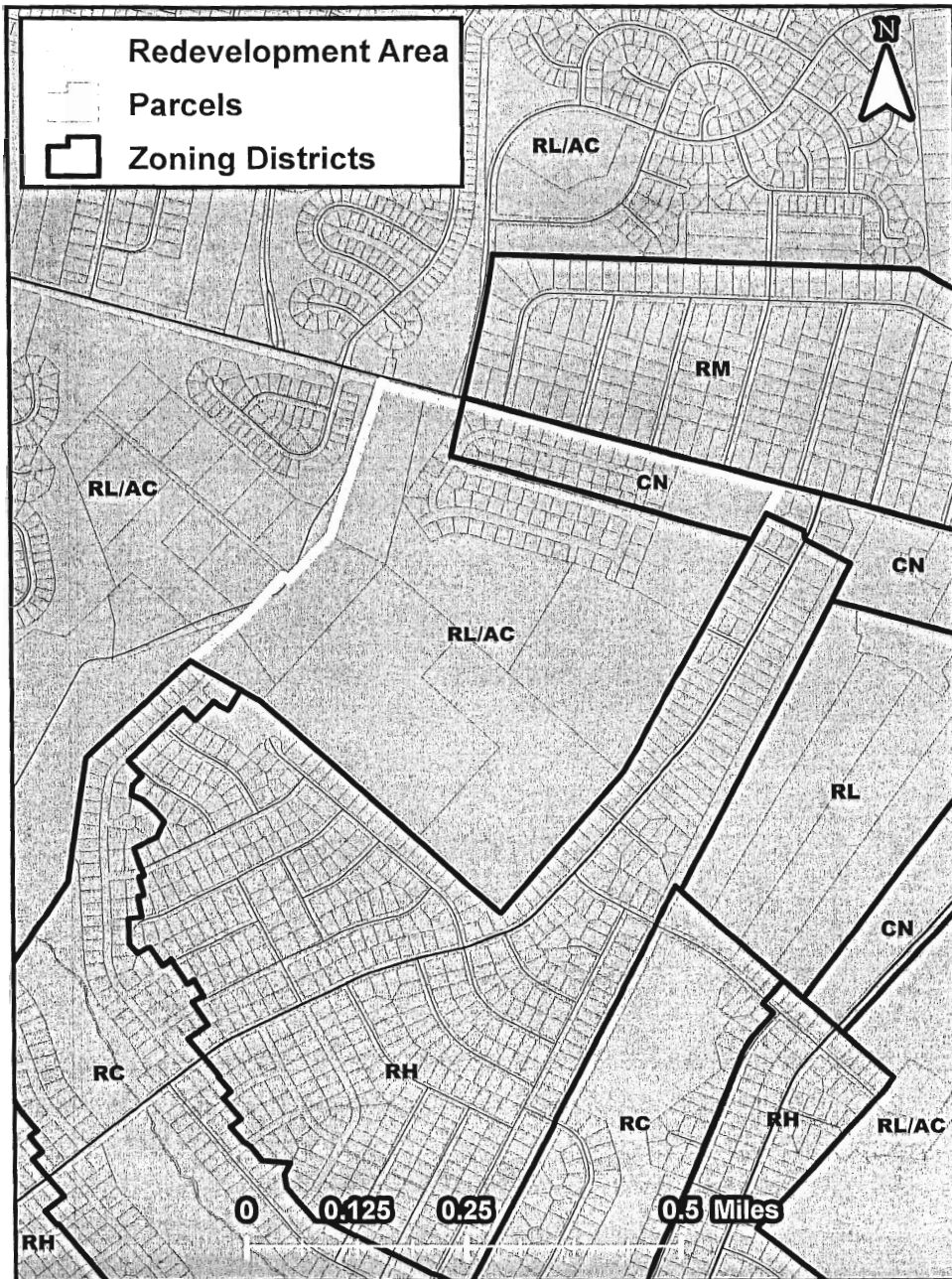


Existing Conditions of Redevelopment Area

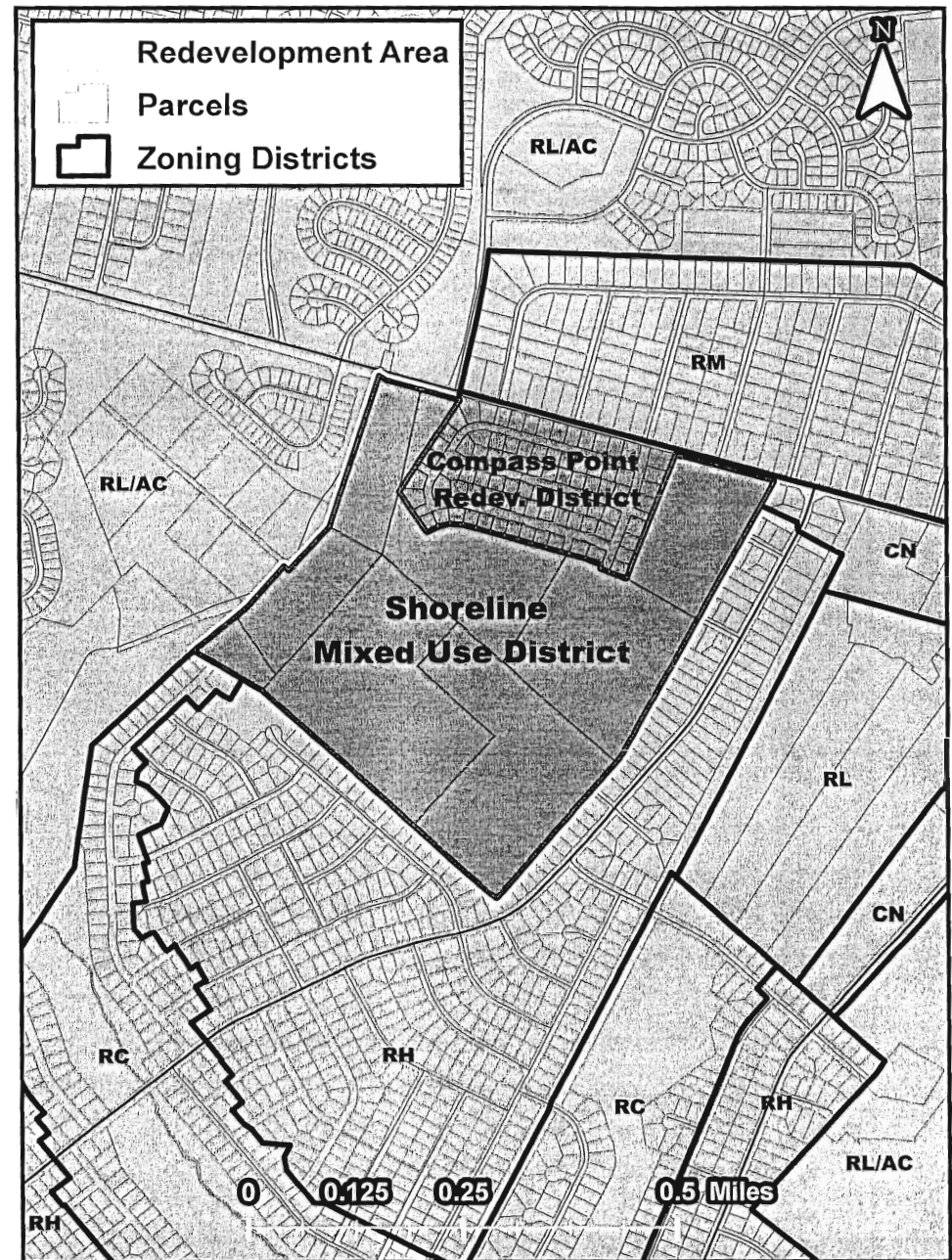


Proposed Zoning of Redevelopment Area

Executive Director's Report
Barnegat Twp., Ord. 2017-05
Exhibit 2
4/28/2017



Current Zoning



Proposed Zoning



Printed on recycled paper
with linseed ink.

Pinelands Preservation Alliance

Bishop Farmstead • 17 Pemberton Road • Southampton NJ • 08088
Phone: 609-859-8860 • ppa@pinelandsalliance.org • www.pinelandsalliance.org

Executive Director's Report
Barnegat Twp., Ord. 2017-05
Exhibit 3
4/28/2017

Protecting the Pinelands
since 1989

April 17, 2017

Pinelands Commission
PO Box 359
15 Springfield Road
New Lisbon, NJ 08064

Barnegat Township Ordinance 2017-05

Dear Ms. Grogan and Pinelands Commission staff,

I am writing concerning the Barnegat Township Ordinance 2017-05, which adopts the Shoreline Sand and Gravel and Compass Point Redevelopment Plan ("Plan"). I am happy to read in the ordinance that the Township Committee has been in consultation with the Pinelands Commission staff regarding the Plan to suggest modifications that bring it closer to conformance with the Comprehensive Management Plan. As the Plan states, Pinelands Development Credits (PDCs) shall be purchased and redeemed for 30% of all units (with some exceptions). It is essential that the purchase of PDCs be evenly distributed temporally throughout development, so that 30% of the units within each stage require PDCs. While this is the interpretation I reached from the Plan, it could be clarified within the Plan itself or in the Commission's report to remove any ambiguity. This is particularly important given the alternate PDC requirements for the assisted living and congregate care facilities, which rely on base and maximum densities.

Sincerely,

Katherine Smith

Policy Advocate

Pinelands Preservation Alliance

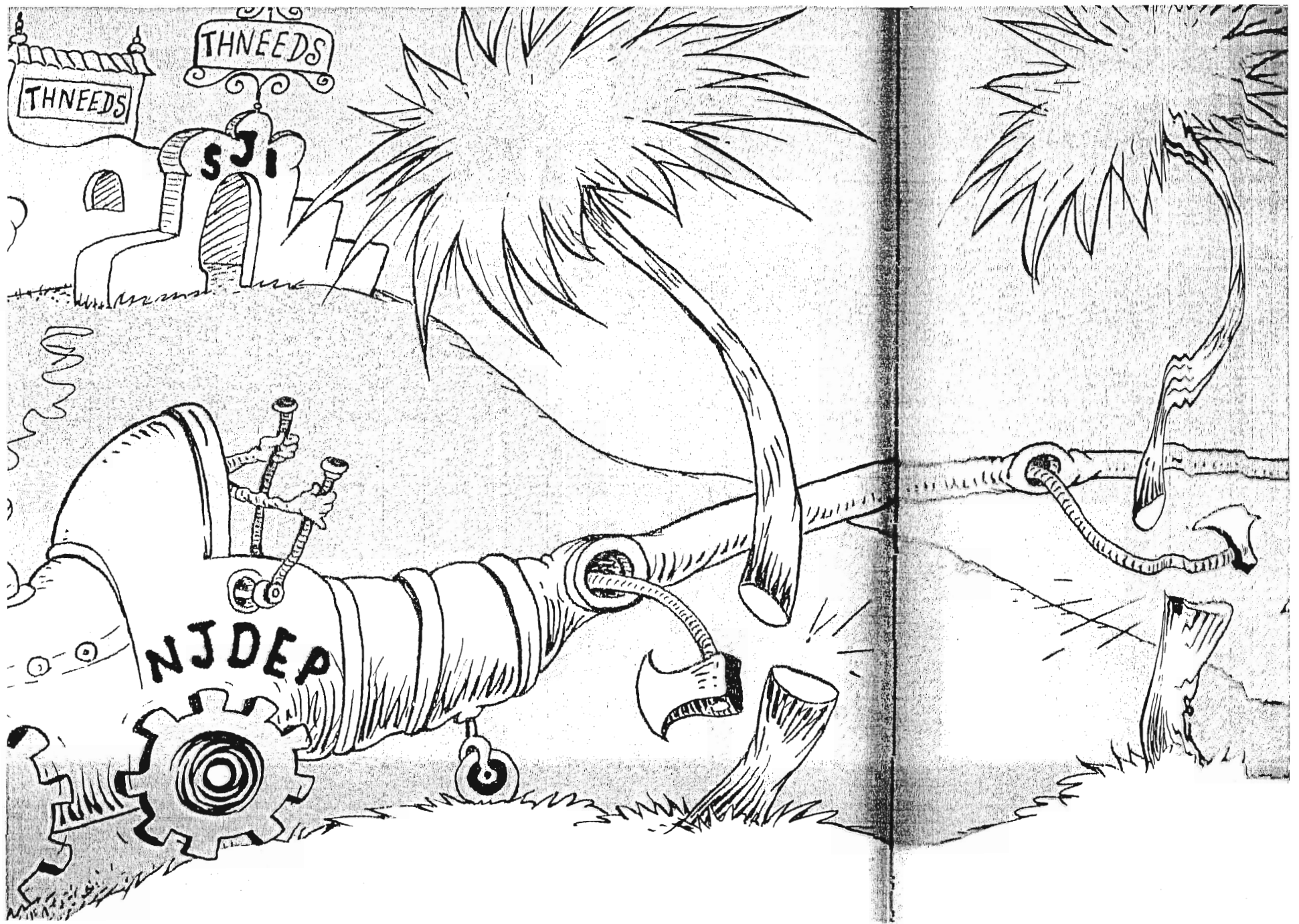
$$\frac{30 \text{ mg debris}}{4 \text{ oz seawater}} \times \frac{9}{1000 \text{ mg}} \times \frac{1 \text{ lb}}{454 \text{ g}} \times \frac{32 \text{ oz}}{1 \text{ qt}} \times \frac{4 \text{ qt}}{1 \text{ gal}}$$

$$.00211 \frac{\text{lb}}{\text{gal}}$$

$$\times 6,000,000 \frac{\text{gal}}{\text{day}}$$

$$12,687 \text{ lb debris day}$$

$$2,315 \text{ tons / year}$$



"Mister!" he said with a sawdusty sneeze,
"I am the Lorax. I speak for the trees.
I speak for the trees, for the trees have no tongues.
And I'm asking you, sir, at the top of my lungs"—
he was very upset as he shouted and puffed—
"What's that THING you've made out of my Truffula tuft?"

