

Adopted June 29, 2012

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

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

15C Springfield Road

New Lisbon, New Jersey

May 25, 2012 – 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Robert Jackson, Richard Prickett, Candace Ashmun (1st Alternate), and D'Arcy Rohan Green (2nd Alternate)

MEMBERS ABSENT: Leslie Ficcaglia and Paul E. Galletta

OTHER COMMISSIONERS PRESENT: Sean Earlen, John Haas, and Ed Lloyd

STAFF PRESENT: Executive Director Nancy Wittenberg, Stacey Roth, Larry Liggett, Susan Grogan, Robyn Jeney, John Bunnell, Paul Leakan, and Betsy Piner

Chairman Lohbauer called the meeting to order at 9:34 a.m. Ms. Roth noted that a quorum of the Commission was anticipated and she read the Open Public Meetings Act Statement. She said that although all Commissioners were welcome to participate in the discussion, she asked that only Committee members vote.

1. Adoption of minutes from the April 27, 2012 CMP Policy and Implementation Committee meeting

Commissioner Jackson moved the adoption of the minutes of the April 27, 2012 CMP Policy and Implementation Committee meeting. Commissioner Rohan Green seconded the motion and all voted in favor.

Commissioner Lloyd arrived at 9:35 a.m. creating a quorum of the Commission.

2. Review of a Memorandum of Agreement between the Pinelands Commission and Ocean County Regarding Robert J. Miller Airpark

Commissioner Jackson moved that the Commission approve the Memorandum of Agreement with Ocean County regarding the Robert J. Miller Airpark. Commissioner Rohan Green seconded the motion.

Ms. Roth reviewed the proposed Memorandum of Agreement and the packet materials provided to the Committee and reminded them that the Robert Miller Airpark was a pre-existing non-conforming use that had been established in 1968. She said that the cross-wind runway was the most significant portion of the proposed project and that the area to accommodate its

development had been kept clear since 1976. She said that the Commission has been aware of this project since 1984 and that the stormwater system had been sized to accommodate the proposed development. Other elements of the project include a parallel taxi-way, the 500' shift of the main runway away from County Route 530 for safety reasons, the construction of 9 new "T" hangars, obstruction removal (topping/removing trees and stumps), replacement of runway pavement, replacement of runway navigational lights, and a future 5-acre development pocket. Among other conditions, the County agrees that, rather than undergoing a tedious and difficult determination of what constitutes 50% expansion of the pre-existing airport, it accepts that the 50% expansion has already been exceeded and is addressed through this MOA's offset requirements. There is a proposed 3:1 offset (485 acres) for critical habitat as well as other obligations, including creation of Reptile Habitat Management and Sickie Leaved Golden Aster management plans.

Ms. Roth directed the Committee to Exhibit A (*posted on an easel*), the Airport Layout Plan (ALP), and noted that any change to what is proposed in this MOA would need to be submitted to both FAA and the Commission. The County has taken the position that is the build-out plan.

In response to comments from Commissioners Jackson and Prickett, and confirmation by the County representatives, as indicated by Commissioner Haas, the MOA will indicate that the County accepts that this is a build-out plan for RMAP without the need for demonstrating that the 50% expansion has been reached or exceeded. At the Committee's request, Ms. Roth said that the language can be included in both the MOA and the Executive Director's report.

In response to questions from Commissioner Jackson regarding the 485 acres of lands to be preserved, Ms. Roth said that the intent is to acquire lands appropriate to the species being protected; snakes prefer upland habitat while tree frogs require a pond. The Commission will be providing the County with the criteria for determining suitable sites, both primary and secondary. It is a market environment so the County needs a number of sites to pursue.

In response to Commissioner Ashmun's concern that there was no reference to a schedule for providing mitigation during this long-term project, Ms. Roth said that if lands are not acquired within three years, then the County will provide escrow funding at a rate of \$7,500 per acre for any remaining acreage yet to be acquired and an additional 5% annual funding increase to encourage acquisition. She said that this is a staged project with the construction of the crosswinds runway to start in the Fall of 2012 and be completed in 2014. The second phase involves the apron expansion (2014-2015) while the obstruction removal is scheduled for 2016. The remaining projects will occur after that. This means that there are numerous opportunities for the Commission to halt the project. In addition, the County will be providing quarterly reports regarding the acquisition.

Commissioner Jackson asked why the Commission should have to spend its resources seeking offsets. Why hasn't the County been pursuing appropriate lands? Why hasn't it provided the Commission with a portfolio of lands?

Ms. Roth responded that originally, it was thought that lands could be preserved on site. However, the FAA objected and will not accept deed restriction on site out of concern with

setting a precedent at other airports, particularly in the Midwest where issues related to grazing and ranchlands are a concern. So, lands must be sought outside the airport for mitigation. Much of the land in the vicinity of the airport is already preserved. The County has an active Natural Lands Trust acquisition program and *could* have chosen to hold on to certain Pinelands Area parcels for this project, but instead, proceeded with their acquisition. The Commission staff wanted to be involved with selecting appropriate lands. She said that this was similar to the case with mitigation for the Garden State Parkway expansion project. She said that the Commission could still ask the County to search for appropriate lands or could assess lands in advance.

Commissioner Rohan Green said that the proposed scenario has the Commission “driving the train”; the County is deferring its decision to the Commission as to the appropriateness of the offsetting lands.

In response to Chairman Lohbauer’s question if her concerns were satisfied that the development not outpace preservation, Commissioner Ashmun said that she felt the tree topping should occur simultaneously with mitigation.

Ms. Roth suggested that a logical point where the project could cease, pending acquisition of the offset, would be prior to the apron expansion. Perhaps staff could require that 75% to 100% of the mitigation occur by then.

Mr. Liggett reminded all that the acquisition relies on willing sellers. If the Commission demands purchase by a certain deadline, it might not get the best lands.

Chairman Lohbauer said that this should be handled with flexibility and that he had confidence that staff understood the Committee’s concerns.

In response to Commissioner Prickett’s questions concerning the Reptile Habitat Management Plan (RHMP), Ms. Roth said that, due to the impact of the 500’ runway shift on important pine snake habitat, the obligation for RHMPs will be onsite, not within a mitigation area.

Commissioner Prickett’s said that he was interested in learning of the success of the required Sickle Leaved Golden Aster and reptile management plans, perhaps asking the County for reports on an annual basis for the next ten to twenty years.

Ms. Roth stated that Amy S Greene Environmental Consultants (ASGEC) will be preparing both programs. She said that there will need to be an end point.

Commissioner Rohan Green said that there would be additional expenses associated with such services and that monitoring and enforcement are the responsibility of the Commission.

In response to Commissioner Jackson’s question if this project really had any benefit to the public and if there were any private funding involved, Ms. Roth said that Ocean County is the owner of the airport and the project will be funded by the FAA.

Commissioner Lloyd said that the MOA is a contract between the Commission and the County. He believed that the Commission is waiving its standards by allowing for this deviation beyond a 50% expansion and that this was an opportunity to ask for an offset beyond the open space that is already being preserved. He said that under State law, Ocean County may not be allowed to use Open Space funding for mitigation.

Ms. Wittenberg said that the Commission had been advised by the Attorney General's office that mandating the source of funding was beyond the Commission's jurisdiction.

Ms. Roth said that the Executive Director's report allows the County to determine how it will fund the acquisition. The mere fact that the Commission is contracting does not allow it to go beyond the authority granted in the Pinelands Protection Act.

Chairman Lohbauer said that the Commission had an obligation to stay within its authority. It is up to the County to determine the source of funding for the offset.

Commissioner Lloyd said that he disagreed.

Commissioner Ashmun said that she agreed with Commissioner Lloyd and stated that she felt this could set a precedent for the entire State.

Ms. Wittenberg said that the language has been revised in this document over what the Committee had seen previously; the source of funding has been removed and it is left to the County to make that determination.

Commissioner Haas complimented Ms. Roth and Ms. Wittenberg for the thoroughness of the report. He said that he, along with Commissioners Rohan Green and McGlinchey, had attended the public hearing. He said that three-fourths of those present were in support due to safety concerns.

Chairman Lohbauer stated that safety did not need to be an element of an MOA. Ms. Roth added that the CMP authorizes an MOA providing that there is an offset offering at least a minimal level of protection of Pinelands resources. There is no discussion of safety and the safety element is not a criterion by which the Commission can base the merit of this MOA.

Based on comments from Commissioner Lloyd, Ms. Roth said that the word "potential" will be struck from an analysis of the development proposed for this project.

Ms. Roth noted that one requestor objected to not being allowed to see a deliberative, contemplative document that is not subject to OPRA. She said that the requestor asked for a privilege log; it was appropriate to withhold the requested document.

Commissioner Lloyd expressed concern that the Commission would be in jeopardy regarding the privilege log and said that he felt an obligation to provide the requested information.

Ms. Roth countered that there is no obligation to prepare a privilege log. Ms. Wittenberg said that staff would look at the language. Chairman Lohbauer added that the Commission did not want to “taunt” the public.

Commissioner Rohan Green said that the use of the airport is for emergency services to the benefit of the community and to the Pinelands.

Commissioner Ashmun stated that she was disappointed that there was no discussion of the use of the air space in the area, e.g. the Atlantic City Airport and several small airstrips in the region. She asked how anyone will control who is in the air.

Ms. Roth said that the airspace over the RMAP is controlled by the FAA, not by the Atlantic City Airport. An evaluation was done by the FAA in conjunction with awarding the funding for the project.

Chairman Lohbauer noted the significant comment received regarding this MOA as being bad policy for the Preservation Area. He stated that he thought all the Commissioners have been concerned with the unique circumstances of this preexisting airport. He has taken the matter to heart. Given the unique circumstances, he said that it was unlikely that another applicant could come forth requesting a comparable MOA. He requested that a roll call vote be taken.

By roll call vote, Commissioners Jackson, Prickett, Lohbauer, Ashmun and Rohan Green all voted in favor. The motion carried by a vote of 5 to 0.

Commissioner Haas left the meeting at 11 a.m.

3. Pinelands Conservation Fund

Mr. Michael Catania, with Conservation Resources, Inc., (CRI) updated the Committee on Pinelands Conservation Fund projects through a PowerPoint presentation (*Attachment A*). He said that the YMCA Camp Ockanickon-Wollman Tract Project is proceeding to closing but the Camp has been required to bear the costs of certain subdivision approvals requested by the seller and the acreage has been reduced yet a second time from that under the original agreement (from 240 acres to 202.8 acres). CRI had assisted the Camp in finding additional private funding to assist with overall project costs but the percentage of PCF funding has increased from the usual 33.3% to 35.2% and now to 37.1%. Green Acres funding has not been reduced and CRI is recommending that the Committee allow this increased percentage. The grant agreement funding of \$436,563 will remain the same, still less than the original grant allocation of \$699,300, but the percentage of funding will increase with the reduction in acreage. In addition, the Camp has requested that the funding be made available in advance of settlement (*see letter included in meeting packet*).

In response to a question from Commissioner Jackson as to why it was necessary for the Committee to approve this change, Ms. Grogan said that it was important that the Committee be aware that the acreage had been decreased. She said that as this is within a pre-approved area,

the Committee can make the determination; this is not a matter that requires approval by the full Commission.

Commissioner Ashmun moved that the Committee authorize the increase in the percentage of grant funding for the YMCA Camp Ockanickon Project to 37.1% of the acquisition costs and that the funding is made available in advance of closing. Commissioner Jackson seconded and all voted in favor.

In response to Commissioner Prickett's question as to how much of a reduction in acreage would require the Committee to reconsider the award, Mr. Catania suggested that a change in development potential could be a determining factor. For example a change in acreage along a road might change the development potential.

At 11:10 a.m., Commissioner Jackson moved that the Committee meet in closed session to discuss acquisition matters. Commissioner Prickett seconded the motion and all voted in favor.

Ms. Roth stated that the purpose of this closed session was to discuss acquisition matters and the minutes of the meeting could be available upon conclusion of the project.

Commissioner Earlen left the meeting.

The Committee met in closed session, returning to Open Session at 11:30 a.m.

Mr. Catania summarized the Closed Session noting that one project in Atlantic County had received an extension until June 30, 2012 to reach an agreement with the landowner on price. Should that occur, an additional 30-day extension will be granted to negotiate a Purchase and Sale Contract. Also, the Committee granted an allocation to Ocean County for acquisition of an 11.46 acre lot that is identified as a pre-approved parcel in the NJ Turnpike Authority MOA. Finally Mr. Catania summarized the PCF funds available (\$877,064.64 of which \$768,042.00 is restricted to Turnpike Parcels and \$187,845.50 to projects in the Pinelands Area of Cape May County).

4. Recommendation for extension of the Commission's Limited Practical Use Agreement with the New Jersey Department of Environmental Protection – Green Acres Program

Ms. Grogan said that discussion of the Agreement would be deferred until the Committee's June meeting to allow Green Acres staff to participate and share information about available funding.

5. Executive Director's Reports

Monroe Township's 2012 Master Plan Reexamination Report and Ordinance 0:11-2012, Amending Chapter 175 (Land Management) of the Township's Code in response to amendments to the Pinelands CMP related to forestry, wetlands

management, and residential cluster development in the Pinelands Forest and Rural Development Areas

Ms. Grogan said that Monroe Township had adopted a Master Plan Reexamination Report and Ordinance 0:11-2012 in response to the three sets of CMP amendments. The Township had made a minor change related to the clustering regulations regarding scenic setbacks. She said that in the CMP, there is a 200' scenic setback for public, paved roads except for internal roads within residential development in the Rural Development (RDA) and Forest (FA) Management Areas. Cluster development in RDA and FA were exempted from this scenic setback requirement as part of the CMP amendments. However, the Township has chosen to maintain a setback of 100' in recognition that much of the vacant RDA and FA lands are along the Black Horse Pike. For both scenic and safety reasons, Monroe felt that this setback was appropriate. Ms. Grogan said that staff was comfortable recommending certification of Monroe's response to the CMP amendments.

Commissioner Jackson moved the recommendation to the Commission of the certification of Monroe Township's 2012 Master Plan Reexamination Report and Ordinance 0:11-2012. Commissioner Rohan Green seconded the motion and all voted in favor.

6. Presentation on a research proposal

Mr. Bunnell provided a PowerPoint presentation (*Attachment B*) on a Science Office grant proposal to submit to the EPA for the study of excavated ponds and stormwater basins (both are created wetlands). He said that this was an extension of a previous EPA funded study for natural ponds. He said that the grant application was due on June 8, 2012. The grant would be for approximately \$450,000, about one-third of which would go to USGS for their work on the project.

Commissioner Rohan Green moved that the Policy and Implementation Committee endorse the Science Office application to EPA for a grant to study excavated ponds and stormwater basins. Commissioner Prickett seconded the motion and all voted in favor.

7. Public comment

Ms. Theresa Lettman, with the Pinelands Preservation Alliance (PPA), said that she had been the subject of the snag regarding the access to documents (as referenced by Ms. Roth during the discussion of the Robert Miller Air Park). She noted that staff is extremely helpful and accommodating when she needs documents and that she always receives whatever she needs. She did not want the Commissioners to believe that staff was anything less than cooperative.

Dr. Jaclyn Rhodes, also with PPA, commended the Science Office for its work and said that PPA supports the research proposal.

Commissioner Ashmun thanked the staff for the work on the RMAP project.

Commissioner Prickett noted that he appreciated the fact that when he wanted to access materials, a staff member reviewed such documents with him.

8. Other Items of Interest

There being no other items of interest, the Committee meeting adjourned at 11:55 a.m. (moved by Commissioner Ashmun and seconded by Commissioner Rohan Green).

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____

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