

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted remotely
All participants were present via Zoom conference
The public could view/comment through Pinelands Commission YouTube link:
<https://www.youtube.com/watch?v=WtKaODUvC7s>
Meeting ID: 844 3799 7322
February 25, 2022 - 9:30 a.m.

Minutes

Members in Attendance – Jerome Irick, Edward Lloyd, Mark Lohbauer, Laura Matos

Members Absent – Alan Avery

Other Commissioners in Attendance – Shannon Higginbotham, Theresa Lettman

Commission Staff – John Bunnell, Ernest Deman, Katie Elliott, Susan Grogan, Chuck Horner, Brad Lanute, Paul Leakan, Jessica Lynch, Trent Maxwell, Steve Simone, and Ed Wengrowski. Also in attendance was Janice Venables, with the Governor’s Authorities Unit.

1. Call to Order

Chair Matos called the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee meeting to order at 9:32 am. Acting Executive Director Susan Grogan identified staff members present at the meeting and introduced the Commission’s newest Planning Office employees: Steve Simone, Katie Elliott, and Trent Maxwell.

2. Adoption of minutes from the November 19, 2021, CMP Policy & Implementation Committee meeting

Commissioner Lohbauer motioned to adopt the minutes from the November 19, 2021, Committee meeting. The motion was seconded by Commissioner Irick. All members voted in favor.

3. Executive Director’s Report

Tabernacle Township Ordinance 2021-10, amending Chapter XVII, Zoning, of the Township’s Code by rezoning lands from the Infill Commercial District to the Infill Residential and Preservation Area Districts and adding solar energy facilities as a permitted use in the Preservation Area District

Planning Specialist Brad Lanute reviewed the findings of the Executive Director’s Report on Tabernacle Township Ordinance 2021-10. He stated that the ordinance serves two interrelated purposes. It effectuates a rezoning within the Pinelands Preservation Area District (PAD) management area, and it establishes Solar Energy Facilities as a permitted use, under limited circumstances, in the Township’s Preservation Area District Zone.

Mr. Lanute displayed Exhibit A of the Executive Director's report illustrating the zoning changes adopted by the ordinance. He stated that the zoning changes impact a 73-acre area made up of the Township's Infill Commercial District (ICD) Zone. The zone permits single family dwelling units on lots of record as of February 7, 1979, that contain at least one acre. Additionally, the zone permits retail uses, commercial services, agricultural processing facilities, and light industrial uses. He noted that the CMP does not permit these commercial uses in the PAD management area.

He stated that the ordinance would eliminate the ICD Zone in its entirety. Fourteen acres would be rezoned to the Township's existing Infill Residential District (IRD) Zone and the remaining 59-acre sand and gravel mine is to be rezoned to the Township's existing Preservation Area District Zone. The IRD Zone would continue to allow the residential uses permitted in the ICD Zone but would not permit the various commercial uses. The Township's Preservation Area District Zone would permit a very limited number of uses consistent with what the CMP allows in the PAD management area.

Mr. Lanute then described the ordinance's provisions related to solar energy facilities. He said that the ordinance establishes solar energy facilities as a permitted use in the Township's Preservation Area District Zone. He said it would be limited to parcels that contained resource extraction operations in areas that were previously mined and have not been restored. He then described the ordinance's various standards governing the development of such solar facilities. He noted that the ordinance included all the solar standards required by the CMP as well as some additional standards that the Township had added. Those additional standards included limiting the extent of any solar facility to a maximum of 25 acres and requiring that the remainder of the parcel be permanently preserved through deed restriction.

Mr. Lanute noted that the 59-acre mine being rezoned was the only resource extraction site in the Township's PAD management area that received permits to continue extraction after 1981, and that Commission staff was not aware of any other resource extraction sites in the Township's PAD. Therefore, the mine being rezoned was the only site expected to meet the ordinance's solar standards.

Mr. Lanute stated that the CMP permits the siting of solar energy facilities in the PAD management area on the parcel of a resource extraction operation, provided the facility is limited to previously mined areas not under an obligation to be restored. The 59-acre mine being rezoned is under such a restoration obligation. Therefore, a strict interpretation of the CMP would not permit a principal solar energy facility on this site.

Mr. Lanute detailed the reasons why staff found the Township's ordinance to be an appropriate use of the CMP's municipal flexibility provisions. He stated that the elimination of the ICD Zone and the rezoning of the 59-acre parcel to the Preservation Area District Zone would resolve a long-standing infill zone that was approved by the Commission in the 1980s but was no longer consistent with the CMP's infill area standards. The zoning change would eliminate the commercial development potential previously associated with these lands. Additionally, the ordinance includes all the CMP's solar standards and adds additional limits on the extent of any solar facility and includes a land preservation requirement, which would at minimum preserve 34 acres on the site if solar were developed.

Mr. Lanute described the concerns expressed in a written public comment received from Ms. Rhyan Grech, Pinelands Preservation Alliance. He summarized the response provided in the Executive Director's Report to each of Ms. Grech's concerns.

Mr. Lanute ended his presentation stating that staff was recommending that the Commission certify Tabernacle Township Ordinance 2021-10. He requested the P&I Committee to provide a recommendation to the full Commission on certification.

Commissioner Lohbauer stated that typically he would not recommend the development of solar in the Preservation Area, Forest Area, or Agricultural Areas in the Pinelands. However, he stated after reviewing this zoning ordinance that it was a creative attempt to solve several problems while leaving restoration obligations for the mine. He said that he is relying on the staff's representation that the restoration obligation of the site remains in place once the solar facility is no longer active and decommissioned. He said that it is compelling that there could be a beneficial use on this site that would not be damaging while also eliminating the risk of the damage that could occur from a potential commercial development. He asked Mr. Lanute to describe the footprint of a potential solar energy facility. Referencing Exhibit A, Mr. Lanute described the concept plan that was provided by the applicant, stating that the footprint would be about 14 acres in area and located in the unrestored section of the mine floor.

Commissioner Lohbauer then asked whether the darker areas of the parcel on the perimeter were forested. Environmental Specialist Ernest Deman described the perimeter of the parcel as a mix of mature forests as well as stands that were planted as part of the restoration process. Mr. Lohbauer asked if additional planting would be required for screening purposes. Mr. Deman said that is something staff would confirm with the applicant.

Mr. Deman stated that it would be unlikely that additional screening would be necessary due to the design and location of the 11-acre facility, which is already screened by natural vegetation. However, staff would evaluate that during the application process.

Commissioner Lohbauer then asked about the necessary public infrastructure that would be needed to interconnect with the grid. Mr. Deman stated that such information must be submitted and evaluated as part of a development application. Ms. Grogan clarified that the solar development application is a private application and would be reviewed by staff and will not be reviewed directly by the full Commission.

Commissioner Lloyd asked for clarification as to whether the footprint of the facility would be 11 or 14 acres. Mr. Deman answered 11 acres as currently proposed. Commissioner Lloyd asked if the project would provide protection for additional portions of the site from off road vehicles (ORV). Ms. Grogan stated that there is no guarantee that ORV use on the site will be eliminated, but that it is expected to be greatly curtailed if the solar facility is developed. He then asked whether the 11-acre footprint would be located on land that was restored. Ms. Grogan stated that the solar facility can only be sited in an area that has not been restored. He then asked if the Commission would be deferring the site's restoration for the life of the solar facility only, should the application move forward. Ms. Grogan specified that the Commission would be deferring restoration within the footprint of the solar facility, but the restoration obligation for the remainder of the site would continue to apply even during the lifetime of the solar facility.

Commissioner Lettman asked about the location of the 34 acres to be permanently protected and the relationship to PDCs. Ms. Grogan said the preservation of the 34 acres will occur on-site in addition to the lands that would be preserved as a result of the requirement to acquire and redeem Pinelands Development Credits.

Commissioner Irick asked if the 50 ft fire break will remove any trees on the site. Mr. Lanute said no, and that any fire break will have to be located within the 25-acre limit and located on a portion of the site that has not been restored. Commissioner Irick asked for staff input on the precedent for approving such an ordinance. Ms. Grogan stated that this is a unique situation involving an infill commercial district that includes a large parcel. She did not believe a negative precedent was being set, and said that a similar situation is unlikely to occur in the future.

Commissioner Lohbauer asked whether the CMP requires solar developers to post a bond related to the decommissioning and restoration of the site. Ms. Grogan stated the CMP does not require bonding, but a municipality could require it.

Commissioner Lohbauer moved the recommendation that the Commission certify Tabernacle Township Ordinance 2021-10. Commissioner Lloyd seconded the motion, and all voted in favor.

Chair Matos asked if this resolution will be on the agenda of the March 11 Commission meeting, to which Ms. Grogan affirmed that it would.

4. Discussion of the PILOT (Payment in Lieu of Taxes) Program: funding status and draft resolution to support the Pinelands Municipal Council's efforts

Ms. Grogan discussed a resolution adopted by the Pinelands Municipal Council thanking the Governor and the legislature for restoring PILOT funding for Fiscal Year 2022 and requesting that funding be continued in future fiscal years. She said that the Council had requested that the Commission consider a resolution of its own supporting continued PILOT funding in future fiscal years. Ms. Grogan stated that a resolution has been drafted that largely mirrors the Council's resolution and expressed her support for the Commission to adopt this resolution.

To illustrate the importance of PILOT funding to Pinelands municipalities, Ms. Grogan pointed to the example of Washington Township where 90% of its land area is either state-owned or under some other form of preservation. Washington Township received \$1.1 million in Fiscal Year 2022, which is a significant component of their budget. She provided additional statistics for Woodland and Bass River townships.

Commissioner Lohbauer moved to recommend the adoption of the PILOT resolution to the full Commission at the March 11 monthly meeting. Commissioner Lloyd seconded the motion and commented that he is a staunch advocate of the PILOT program. Commissioner Lloyd suggested that it may be beneficial for a Township like Washington to consider merging with an adjoining municipality. Ms. Grogan responded that many of these municipalities do have shared services agreements with neighboring communities, but are not likely to formally merge.

Commissioner Lohbauer praised Commissioner Pikolycky for championing the PILOT program and securing funding for rural communities.

Chair Matos asked for a vote to forward the resolution to the full Commission meeting. All members voted in favor.

5. Update on upcoming Policy & Implementation Committee matters

Pinelands Conservation Fund land acquisition

Ms. Grogan provided an overview of matters expected to come before the P&I Committee in the coming months. She noted that both the Green Acres program and the NJ State Agricultural Development Committee have received infusions of funding and are expected to be active in preserving lands in the Pinelands Area. Additionally, the Commission is planning to launch its own round of land acquisition projects using the Pinelands Conservation Fund. The Commission was unsuccessful in attracting projects

in 2021 due to the pandemic and the volatility of the real estate market. She said that Earth Day (April 22) is the target date to announce the new round of acquisitions and solicit potential candidates. She expected to present eligible projects for funding before for the Committee this summer. The Commission has previously made \$1 million available for land acquisition projects.

Rulemaking: Kirkwood/Cohansey water supply, the Electric Transmission Right-of-Way Pilot Program and CMP amendment priorities

At the March meeting, there will be several CMP draft amendments including Kirkwood-Cohansey water supply rule, now that an agreement has been reached with the U.S. Geological Survey (USGS) to assist in the implementation of the rules should they be adopted by the Commission. Staff is also working on a draft CMP amendment regarding the Electric Transmission Right-of-Way Maintenance Pilot Program, which was previously discussed with Committee members in late 2021. Staff is also working with municipalities on various rezoning and redevelopment plans, and Ms. Grogan posited that many of these matters will come up in meetings this spring.

In April, staff will commence a conversation with Committee members about CMP amendments and rulemaking more generally. Ms. Grogan referenced her memo from last year that compiled a comprehensive list of CMP amendments that have been requested or identified over the past ten years. The Committee will be tasked with prioritizing the amendments. She noted that April is an appropriate time for these discussions as it aligns with the Commission's Fiscal Year 2023 budget planning.

Commissioner Lohbauer asked Ms. Grogan if she will give the new Commissioners an opportunity to take a recent poll ranking and classifying plan amendments. She stated that she will probably not ask them to vote but noted that all new Commissioners did receive copies of the full list of possible CMP amendments as part of their orientation materials. Commissioner Lloyd commented that it would be useful to summarize Commissioner feedback to date for the new Commissioners before the April meeting.

6. Public Comment

Chair Matos opened the meeting to public comment. Rhyen Grech of the Pinelands Preservation Alliance (PPA) thanked the Committee for recommending the PILOT resolution to the full Commission and said PPA hopes that PILOT funding will continue to be available to municipalities.

Ms. Grech stated that she appreciated the thoughtful conversation around the Tabernacle ordinance but did not agree with the argument that this non-conforming ordinance should be certified because it eliminates a pre-existing, non-conforming zone. She argued that it was the responsibility of the Pinelands Commission to not allow this ordinance because it does not comply with the CMP, nor should it allow any proposed commercial uses that would have been proposed in the existing Infill Commercial District which is also not in compliance with the CMP. She stated that it is the obligation of the Commission to not approve or certify developments or plans that conflict with the CMP. She also expressed concern about deferring restoration to a future hypothetical date, which will not benefit the natural resources of the Pinelands today. She voiced a concern that this may set a precedent that incentivizes other mine owners that have an obligation to restore to seek this kind of alternative.

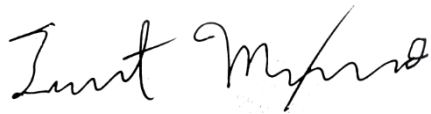
It was noted that Commissioner Higginbotham had joined the meeting in anticipation of the Climate Committee meeting.

Commissioner Irick stated that it was his understanding that the only deferred area for restoration will be the area where the solar panels are located, and that the remaining area of the parcel will need to be restored as part of the application approval. He asked Ms. Grogan if that was correct; she confirmed that it was true.

Chair Matos closed public comment at 10:35 am.

Commissioner Lohbauer motioned to adjourn at 10:36 am. Commissioner Irick seconded. All members voted in favor.

Certified as True and Correct

A handwritten signature in black ink, appearing to read "Trent Maxwell". The signature is written in a cursive, flowing style.

Trent Maxwell

Technical Planning Assistant

March 15, 2022