

Adopted May 27, 2016

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
March 24, 2016 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Candace Ashmun, Paul E. Galletta, Mark Lohbauer, Richard Prickett, Joe DiBello (1st Alternate) and Ed McGlinchey (2nd Alternate)

MEMBERS ABSENT: Sean Earlen (Chairman) and Ed Lloyd

STAFF PRESENT: Executive Director Nancy Wittenberg, Susan R. Grogan, Stacey Roth, Robyn Jeney, Brad Lanute, Paul D. Leakan, and Betsy Piner.

Acting Chairman Galletta called the meeting of the Policy and Implementation (P&I) Committee to order at 9:32 a.m.

1. Adoption of minutes from February 26, 2016 CMP Policy & Implementation Committee meeting

Commissioner Prickett moved the adoption of the February 26, 2016 meeting minutes. Commissioner Ashmun seconded the motion. The minutes were adopted with all Committee members voting in the affirmative.

Ms. Wittenberg announced that the agenda item for a presentation by John Bunnell on a grant proposal has been postponed until the April Commission meeting, not the P&I Committee meeting, noting the time constraints due to the deadline for submitting the application.

Commissioner Prickett said he was somewhat familiar with the proposal that involves evaluating fish and amphibians for evidence of intersex, possibly due to fungicides and chemicals seeping into ponds and affecting the development of gonads.

Commissioner Lohbauer arrived at 9:35 a.m. Ms. Roth confirmed that all six Commissioners present today were eligible to vote.

2. Review of the Executive Director's recommendation to the Pinelands Commission as to the eligibility of a parcel for acquisition under the Limited Practical Use program

Ms. Grogan said that this Limited Practical Use (LPU) land acquisition application is for a property of nearly six acres in Hamilton Township's Forest Area. She asked the Committee to recall that a waiver application had been denied on this property at a recent Commission meeting

and it was the goal of the applicant to become eligible for the LPU program. She said staff recommends the eligibility of this property and, upon notification of the Commission's approval, the Green Acres program will contact the property owner and make an offer for purchase.

Commissioner Prickett moved the recommendation to the Commission of the eligibility of Hamilton Township Block 593, Lot 1 to participate in the LPU program. Commissioner Ashmun seconded the motion and all voted in favor.

In response to a question from Commissioner Ashmun, Ms. Grogan said that LPU funding currently comes from the Pinelands license plate fees, which also contribute to other Pinelands acquisitions.

3. Plan Review Recommendations -Sign Regulations in the Pinelands

Ms. Grogan said that today's presentation on sign regulations is one in a series based on the various Plan Review recommendations that may lead to rule proposals. (See page. 170 of the .pdf at <http://www.state.nj.us/pinelands/cmp/planreview/PR%20reports/PlanReviewReportFinalDraft.pdf>) She said Mr. Brad Lanute, the newest member of the Commission's planning staff, will review current CMP standards for signs and discuss a number of recommendations. She said no vote on the recommendations would be requested from the Committee today.

Mr. Lanute said that sign ordinances were an issue with which he had some familiarity in his previous position as the zoning officer for a small town in Vermont. Mr. Lanute's presentation is attached to these minutes and also located at:

http://www.nj.gov/pinelands/home/presentations/P&I%203.24.2016%20Signage%20Presentation_Final_static.pdf

Mr. Lanute provided background on why the Commission regulates signs and how signs are regulated under the CMP. He described how sign standards are based on the sign type and the various attributes of signs such as height, area and other design details. He described the various sign types that the CMP has defined. He noted that the signage provisions are divided into mandatory sign standards applicable to all management areas, additional sign standards applicable to only the Preservation Area District (PAD), and the Special Agricultural Production Area (SAPA), as well as additional guidelines for all other management areas outside the PAD and SAPA. He also noted that on-site signs are exempt from Commission review, while off-site signs require Commission review.

Mr. Lanute then discussed the implications of a recent Supreme Court case on how signs have commonly been regulated in municipalities across the country as well as by the Pinelands Commission. He described how the decision in *Reed v. Town of Gilbert* (2015) made clear that if a sign is regulated based on the written content of the sign, that regulation is presumably unconstitutional. He gave examples of the ways in which the CMP distinguishes and regulates signs based on a sign's content, which would now be presumably unconstitutional.

Mr. Lanute then discussed best practices for signage regulation given both the recent court decision as well as the jurisdictional nature of the Pinelands Commission as a regional governing entity. He explained that many of the tools for regulating signage that remain constitutional after the Supreme Court case would be most appropriately determined and carried out at the local

level. He explained that this is due to the context-sensitivity and local knowledge needed for well-designed regulations and the need for adaptability over time to address changing technologies and local scenic values with regard to aesthetics and economic development.

Mr. Lanute said that given the recent Supreme Court decision, current best practices for regulating signs, and business fairness, staff is recommending that the Commission no longer regulate temporary signs, on-site signs or off-site noncommercial signs, but maintained that the Commission should continue to regulate off-site commercial signs.

Mr. Lanute said, assuming the Commission will continue to regulate off-site commercial signs only, staff recommended that such new signs continue to be permitted only in the Regional Growth Area (RGA) and Pinelands Towns (PT), at the discretion of the municipality. The Commission should maintain the transferable billboard right program and the current rules on pre-existing non-conforming signs. The approval of both on-site commercial and non-commercial signs would be regulated by the local municipality.

Commissioner Ashmun said she remained concerned with the quality of signs and lighting and interference with wildlife. She said that municipalities might not be able to halt certain sign designs, such as lights that shine straight up.

Ms. Grogan reminded the Committee that for the past 35 years, Pinelands municipalities have been regulating and permitting signs, largely without the Commission's involvement, because on-site signs are exempt from application requirements. Staff believes the CMP should be amended to recognize the reasons noted above and the reality that, other than billboards, signs are not being regulated by the Commission. She said that staff recommends the CMP provide standards or guidance only for billboards, with the understanding that municipalities would have the option of permitting such off-site signs.

Mr. Liggett said the new digital LED signs are less intrusive than other lights. He said if the Commission is interested in the effects of light on the Pinelands, then parking lot lights and street lighting are probably a bigger issue.

Commissioner McGlinchey said, as a local review officer, he wanted to know what is the barometer that determines when a sign is a billboard. Is it just because of the height? He said an illuminated sign is beneficial to a business. Now that individuals are more energy conscious, as technology reduces lighting costs, LEDs will be used more and without anyone being directed to do so. He said under the provisions of the transferable sign rights, billboard owners were required to remove billboards by a certain date but the municipalities have not followed through.

Ms. Grogan reminded the Committee of the current CMP requirement for removal of an existing billboard in, for example, the Preservation Area District or Forest Area before a new billboard can be permitted in a Regional Growth Area or Pinelands Town. The Commission has issued a number of transferable sign rights over the years, although few municipalities allow new billboards.

Commissioner McGlinchey said few landowners want to use up their space with a sign.

Mr. Liggett said there was a provision of the Federal Highway Beautification Act requiring that a sign owner cannot be forced to remove a billboard without compensation or the State will lose federal highway funding. The transferable sign right was intended to be a means of compensation.

In response to Commissioner McGlinchey's question as to what constitutes a billboard, Ms. Grogan said the CMP does not use the term billboard; rather it refers to off-site commercial advertising signs.

Commissioner Ashmun said that the Committee had previous discussions regarding moving letters and LED signs. Ms. Grogan said staff suggests that the CMP be amended to include standards or guidelines to help municipalities with their regulation of off-site signs, including standards related to brightness, frequency and speed of change of scrolling messages, etc.

Commissioner McGlinchey commented that there are also potential concerns with traffic safety with moving signs. *(Editor's note: a primary concern of the NJ Department of Transportation)*

Commissioner Lohbauer said he concurred with Commissioner McGlinchey but, for the Commission, the issue should be the environmental impact. He said he felt there could be impacts from on-site signs. He said he wanted to hear if there are environmental impacts from signs that are lighted continuously. He said the Commission needs parameters to protect the environment.

Commissioner Galletta said that sounded reasonable.

Ms. Grogan concluded the discussion by saying that staff would provide more detail at an upcoming meeting and provide the Committee with suggested CMP language to address the sign issues.

4. Public Comment

Mr. Bill Wolfe, a resident of Bordentown, questioned the priority of allocating resources to the issue of signage. He said American Planning Association sign recommendations are based mainly on zoning while the Pinelands is a natural resource and staff should look at signage at national parks for something comparable. He said the Commission should have affirmative design standards and rather than using a Supreme Court decision related to signs, it should look at Lake Tahoe and its temporary moratorium on fossil fuel infrastructure. Climate change should be the priority for the Commission. Also he said what NJDEP was doing in Wharton State Forest is not sufficient and input from the Commission is needed. He also asked about the priority issue of the MOA discussion and the review powers of the Executive Director.

Dr. Joanna Burger, with Rutgers University, said she had done biological research in New Jersey for more than 30 years. She distributed a handout showing a dead 15-year-old pine snake that had been run over and killed by an all-terrain vehicle in Bass River State Forest on an illegal, unauthorized, single track motorized dirt-bike trail. She said snakes are vulnerable to injury,

particularly during the months of March and April when they are coming out of hibernation and again in October and November when they are entering their hibernation sites. She urged an end to inadequate enforcement.

Mr. Jason Howell, with the Pinelands Preservation Alliance, said that NJDEP had not increased the amount of enforcement at Wharton State Forest but had merely moved the wardens around. He read an article from a 2001 issue of the *Baltimore Sun* noting that the fines for violators have not increased and that the number of officers has actually been reduced since that time.

Ms. Marianne Clemente, a resident of Barnegat Township, said she would ask the Committee again as to when it would answer her question regarding the authority of the Executive Director to make a determination on private development applications without Commission input. She said she would put it in writing and that she wanted to hear a response at a public meeting to ensure transparency.

Ms. Connie Higgins, a resident of Long Beach Island, said that she appreciated the concern about signage but the Commission was talking about light pollution while allowing two pipelines through the Pinelands. She said she felt the authority of the Commission was being diminished and she urged the Commissioners to take their jobs seriously. She said it is wrong to allow one person to have the authority to make decisions on big projects.

Ms. Margo Pellegrino said the Commission's focus on signage was comparable to someone straightening the bedspread while the house falls off the cliff. She said 40% of all energy generation is lost in transmission. She said if transmission lines go down, then there will be no power no matter what the source. She cited an article in today's *New York Times* <http://www.nytimes.com/2016/03/24/business/energy-environment/fight-to-keep-alternative-energy-local-stymies-an-industry.html?ref=energy-environment> about residents in the Midwest who object to high tension transmission lines distributing power to the east coast while there is plenty of wind on the Atlantic seaboard and such power generation should be generated locally. She said the Commission needed to look at climate change and energy and small Pinelands towns should have the opportunity to generate their own power.

Honorable Chuck Chiarello, Mayor of Buena Vista Township, referenced the signage discussion and said it was important that small towns such as his have the flexibility to regulate on-site signs in order to help their small businesses. He said Buena Vista had revised its sign ordinance some time ago and wants to be able to permit more digital signs. He said, for example, his municipality has five fire districts, one of which erected a "rogue" digital sign; now the other four want such signs. It might not be the most important project the Commission undertakes but, in a town like his, where there is no downtown but all the businesses are separated, some consideration would be appreciated to assist them with signage issues.

Mr. Peter Ferwerda, a resident of Warren Grove, said that he had recently completed some extensive traveling and noted the degradation of the Amazon due to illegal forestry and mining while the ice sheets of Antarctica were degrading due to temperature rise. He said the Commission needed to do more oversight of the approval process. While the local governments

have the enforcement authority, the Commission needs to follow up and see that all necessary permits are obtained. He said the Commission should “trust but check.”

Ms. Clemente said she had attended last night’s Jackson Township planning board meeting and felt the board had abrogated its responsibilities by allowing Six Flags Great Adventure to cut down 60 acres of trees to accommodate a solar farm. (*Editor’s Note: outside the Pinelands Area*) She said it would have been better to have placed the panels over the parking lot, which would have been a win for the environment, the guests of the park and the corporate image. She asked that the Commission not abrogate its responsibilities.

Mr. Wolf challenged the use of cell phones by Commission members during the meeting, noting that it undermines the public trust and leaves no paper trail.

Commissioner Galletta responded that he and the other Commissioners are volunteers but many of them also have business obligations. He said there are occasions when his employees must text him on important issues needing his prompt attention. He said he would ask Ms. Roth to advise if the Commissioners were doing anything that was incorrect.

5. Other Items of Interest

Wharton Forest Stakeholders

Ms. Wittenberg offered a summary of the invitation-only meeting held at Batsto by NJDEP to present their current actions regarding off road vehicle use in Wharton State Forest. (The meeting presentation is located at: <http://www.nj.gov/dep/workgroups/docs/wharton20160322-pres.pdf>). She said she had attended along with Commissioners Galletta and Lohbauer. She said the NJDEP focus will be on enforcement, education, volunteers and signage. She said NJDEP is placing new signs and wants to levy more significant fines for natural resource damage. She added that they will be doing road maintenance but it is very expensive.

Commissioner Galletta said that NJDEP staff was reduced to 2,800 employees. Ms. Wittenberg said during her tenure, there had been more than 4,000.

Commissioner Lohbauer said although he was favorably impressed with what they had accomplished with limited resources, there are existing rules that clearly prohibit driving vehicles off the road. It is difficult for NJDEP to enforce with limited personnel. He said what is not illegal is driving *on* a road. But it is difficult to determine what a road is since some are fire breaks, some are sand roads, etc. and it is hard to make the distinction.

Commissioner Lohbauer said when he had toured the disturbed areas with Mr. Bunnell, Ms. Wittenberg and Commissioners DiBello and Prickett, they encountered sections where the roads themselves were so damaged that they could not be driven. He said at the NJDEP meeting some first responders described the difficulty of reaching people in emergencies due to impassable roads. Commissioner Lohbauer said this is a public safety issue and currently NJDEP estimates there are \$1.2 million in needed repairs. He said he felt it is still the duty of this Committee to

define a policy and help NJDEP in its mission to determine what is a road and to close certain areas. He said without targeted road closures, he didn't think there would be a resolution of the impassable road problem. There are nearly 700 miles of roads in Wharton and the State does not have the money and manpower to keep up with its maintenance. He asked this Committee to agree upon a resolution to limit access and generate a road closure map, adding that NJDEP says it is not going to publish a map.

Commissioner McGlinchey said one problem is lack of equipment. He said the State parks depend upon other agencies such as the Forest Fire Service for equipment. He says within Winslow Township often he'll send out his public works employees to grade roads within the Winslow Wildlife Management Area in order to assist with their maintenance.

Commissioner Ashmun said she agreed with Commissioners Lohbauer and McGlinchey. She said she was reminding everyone that all Commissioners had taken an oath to uphold the CMP. She said she thought it had failed in this matter. She said there is a very explicit section of the CMP that says the Commission should designate areas where motorized vehicles should be prohibited. She said NJDEP can have the roads but the Commission needs to designate areas where NJDEP should not allow motorized vehicles.

In response to Commissioner Galletta's question as to what she meant by they can "have the roads", Commissioner Ashmun said that the Commission needed to tell NJDEP where vehicles were allowed to go.

Commissioner Prickett said his experience on the Wharton tour was that the roads were in deplorable condition. He said the only vehicles that can traverse some sections are the specially designed illegal ones. He said he was all about access to these beautiful areas and it is unfair that, due to the damage, they have been rendered inaccessible to many. He noted the vehicle tracks all around the foundation at Hampton Furnace. He asked the Commissioners to consider the damage to its own Fenwick Manor bog garden if vehicles were to drive over those plants and yet it is happening on a regular basis in Wharton.

Commissioner DiBello said the Commission needed to deal with both the policy and planning issues as well as the implementation (enforcement, education, maintenance) of a plan to protect the forest. He said the Commission should work with all approved parties to identify the public roads and identify sensitive areas to be protected.

Commissioner McGlinchey said he was concerned with the transfer of two employees from Bass River State Forest to Wharton as that would leave other parks vulnerable.

Commissioner Galletta asked if Wharton Superintendent Rob Auermuller could make a presentation before the Commission.

Ms. Wittenberg said that he had made a presentation to staff about a year ago and that she would discuss the possibilities with DEP.

Stafford stormwater basin

Commissioner Lohbauer said that at the April 8, 2016 Commission meeting, the agenda will include a waiver to allow a stormwater basin in the Forest Area of Stafford Township. He said that Mr. Horner had provided him with a copy of a report prepared by an engineer hired by the Commission to review the proposed basin. He encouraged all Commissioners to read the report as it indicates that this detention basin will not be a complete solution to the flooding problems in Ocean Acres.

Ms. Wittenberg said the staff's report on the waiver application will discuss the alternatives evaluated by the Township and why they had been ruled out.

Commissioner Ashmun said that new Commissioners will need a lot of information about the waiver process.

Ms. Grogan said that this was an unusual application and the first application for a waiver for compelling public need that the Commission had seen in some 20 years.

Ms. Wittenberg confirmed that the staff report, recommendation and supporting documents had not yet been provided to the Commission. She noted it is a very large file. Ms. Roth said any Commissioner who wishes to review the file can make arrangements with Mr. Horner.

There being no other items of interest, the meeting adjourned at 11:15 a.m. (moved by Commissioner DiBello and seconded by Commissioner Prickett)

Certified as true and correct:



Betsy Piner,
Principal Planning Assistant

Date: April 18, 2016

Sign Regulations in the Pinelands

Policy & Implementation Committee
March 24, 2016

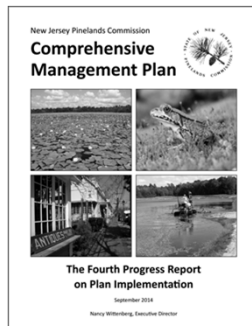


Agenda

1. Background
2. The CMP & Signage
3. Signage & the Courts
4. Recommendations
5. Next Steps

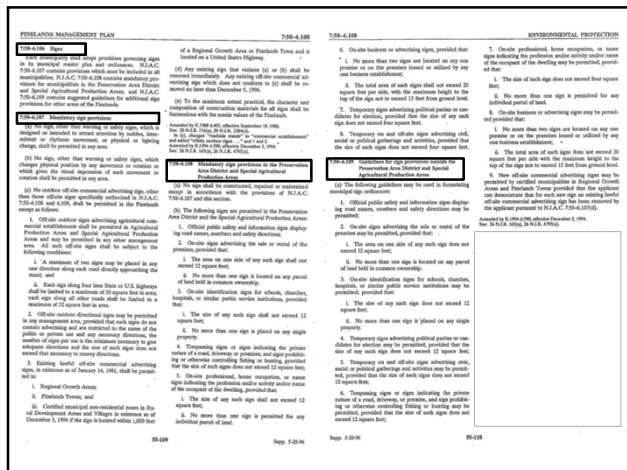
Background

- Outdoor Advertising Signs
 - Digital/LED Signs
- U.S. Supreme Court decision (June 2015)
- New complex issues encompassing digital/LED signage
- Decisions need to be made on the big picture first, digital/LED signs will follow



The CMP & Signage Overview

- Scenic Management Program
- Limited changes over time
- Signage Regulations and Standards
 - Regulations for all management areas
 - Additional regulations for PAD & SAPA management areas
 - Additional "guidelines" that may be used elsewhere
- Application Process
 - On-site signs are **exempt** from Commission review
 - Off-site commercial signs (billboards) require Commission review



The CMP & Signage

What Signs Are Regulated

On-Site Sign Types



Off-Site Sign Types

The CMP & Signage

What Signs Are Regulated

On-Site Sign Types



Off-Site Sign Types

The CMP & Signage

What Signs Are Regulated

On-Site Sign Types



Off-Site Sign Types

The CMP & Signage

What Signs Are Regulated

On-Site Sign Types

- Official Public Safety/Information
- For Rent/For Sale
- Institutional
- Trespassing/Private Property
- Temporary
- Home Occupation
- Business

Off-Site Sign Types

- Directional
- Civil Social, Political Activities
- Agricultural Commercial Establishments
- Commercial

The CMP & Signage

How Signs Are Regulated

Location

Manner

- Quantity
- Size
- Height
- Other Design

The CMP & Signage

How Signs Are Regulated

Location



The CMP & Signage

How Signs Are Regulated

Location



The CMP & Signage

How Signs Are Regulated

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Manner

- Quantity
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The CMP & Signage

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The CMP & Signage

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The CMP & Signage

How Signs Are Regulated

Location

Manner

- Quantity
- Size
- Height
- Other Design



Signage & the Courts

Reed v. Town of Gilbert (2015)

Free Speech and Signs

U.S. Supreme Court decision with impacts for signage regulation

Non-commercial temporary signs

- If you have to read a sign's content to regulate it, it is content based and presumed unconstitutional



Signage & the Courts

General Implications

Regulators

- Revise codes
- Unfamiliar terrain

Legal Uncertainty

- Definition of a sign
- Content based categories
 - On-premises v. off-premises
 - Commercial v. non-commercial



More litigation to come!

Signage & the Courts

Pinelands Commission Implications

On Site Sign Types

- Official Public Safety/Information
- For Rent/For Sale
- Institutional
- Trespassing/Private Property
- Temporary
- Home Occupation
- Business

Off-Site Sign Types

- Directional
- Civil Social, Political Activities
- Agricultural Commercial Establishments
- Commercial

How do we approach solving this more complex problem?

Best Practices for Signage Regulation

A Regional Perspective

- Risk management and liability
- More tools in practice today than 1981,....
- ...but they require greater local knowledge and context-sensitivity
- ...and they require adaptability, frequent updates
- Purposes go beyond scenic values
- Variability from locality to locality is inevitable



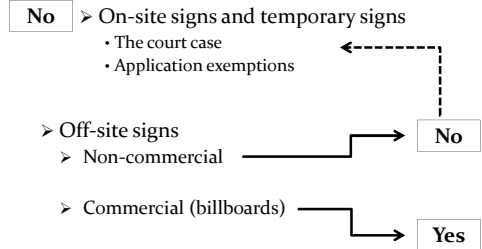
Recommendations

Who is best suited to regulate signage?

- Defer to local control in most cases

Recommendations

What signs should be regulated by the Commission?



Recommendations

Where/How should signs be regulated by the Commission?

Assuming commercial off-site signs only

- Yes** ➤ Location
- Yes** ➤ Manner
- Quantity
 - Size
 - Height
 - Illumination
 - Other design

Recommendations

Where/How should signs be regulated by the Commission?

Assuming commercial off-site signs only

- Yes** ➤ Location →
- Yes** ➤ Manner
- RGA & Town only at the option of the municipality
 - Maintain transferrable billboard right program
 - Maintain current rules on pre-existing non-conforming

Recommendations

Where/How should signs be regulated by the Commission?

Assuming commercial off-site signs only

Yes ➤ Location

Yes ➤ Manner



➤ Anywhere billboards are allowed, such billboards may be digital/LED at the option of the municipality

Next Steps

Integrate today's feedback

Draft language for P&I Committee review

Bundle with additional CMP amendments in process

