

Disclaimer

These minutes reflect the actions taken by the Commission during its April 17, 2009 meeting. Although these minutes have been approved by the Commission, no action authorized by the Commission during this meeting, as reflected in these minutes, shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of these minutes has been delivered to the Governor for review, unless prior to expiration of the review period the governor approves same, in which case the action shall become effective upon such approval. These minutes were delivered to the Governor on April 30, 2009.

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

Minutes

April 17, 2009

PART II

Commissioners Present

William Brown, Guy Campbell, Leslie M. Ficcaglia, Paul E. Galletta, John A. Haas, Robert Jackson, Daniel M. Kennedy, Edward Lloyd, and Acting Chairperson Candace Ashmun. Also present were Executive Director John C. Stokes and Deputy Attorney General Valerie Haynes.

Commissioners Absent

Stephen Lee, III, Robert McIntosh, Francis A. Witt and Acting Chairman Norman F. Tomasello

Minutes

Acting Chairperson Ashmun presented the March 13, 2009 Commission meeting minutes. Commissioner Jackson moved the adoption of the minutes. Commissioner Brown seconded the motion.

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

Committee Chairs' and Executive Director's Reports

Personnel and Budget Committee Meeting

Commissioner Ficcaglia reported that the Committee met on April 9, 2009 and adopted the minutes from the March 5 meeting.

The Committee reviewed the resolution To Authorize the Executive Director to Modify the Cooperative Agreement with the National Park Service for Pinelands Monitoring. Mr. Stokes discussed the agreement stating that this funding supports the environmental and economic long term monitoring programs. Following the discussion, the Committee unanimously recommended Commission approval of the resolution.

The Committee was provided an update by Mr. Stokes on the FY2010 financial situation regarding revenue and expense projections along with the impact on the fund balance. He also mentioned that we are still awaiting information from the State on a possible reduction of our appropriation in addition to the \$16,000 cut.

Mr. Stokes provided a summary of the Commission's deferred revenue and reserve accounts and provided additional information and answered several questions.

The Committee discussed the check register and electronic funds transfer (EFT) disbursements for March 2009.

The Committee reviewed employee actions during March 2009 and noted an unpaid intern has begun work at the Commission.

The Committee received an update on the Fenwick Manor renovations. Ms. Russell informed the Committee that additional damage was discovered from the broken water pipe in the barn which is being submitted to the insurance company. She added that the HVAC system in the barn needs to be balanced. The Science staff is scheduled to move into the barn on April 15th.

The Committee received an update on application fees for March.

The Committee held a closed session to discuss confidential items including several CWA matters.

Public and Governmental Programs Committee Meeting

Commissioner Kennedy reported that the Public and Governmental Programs Committee met on March 30, 2009. The Committee discussed questions that the Commission raised on the draft County/Municipal Public Development Streamlining MOA. Commission staff summarized the issues regarding the MOA raised by Commissioners at the March 13, 2009 full Commission meeting. The staff revised the draft MOA to specifically address two of those issues regarding road shoulder maintenance activities and the addition of an MOA suspension provision. Commission staff reviewed the revised draft MOA with the Committee. A third issue raised at the full Commission meeting involved public notification and the effective date of Commission staff approval of an individual MOA development application. Commission staff indicated that notice of receipt of the MOA applications would be provided on the Commission webpage. A

copy of each of the staff determinations would be provided to the Commission members on a monthly basis in the Commission packets. Language regarding the notification process would be included in each resolution accompanying the MOA. Commission staff indicated that it would revise the draft MOA based on the Committee's comments and answers to a list of frequently asked maintenance questions to distribute to municipalities/counties for the Committee's review. The MOA will be further discussed at the Committee's April 27, 2009 meeting.

The Committee was provided a legislative update. Commission staff indicated that A3781 would prohibit the Pinelands Commission from altering Pinelands Management Area boundaries. Legislative approval would be required for any management area boundary changes. Additionally, A2962 and S1897 were passed by the Assembly and Senate establishing a licensing program to speed up the remediation of contaminated sites under NJDEP's jurisdiction. Mr. Stokes indicated that he had several conversations with the Commissioner of NJDEP regarding A823 to regulate off-road vehicle use. He indicated that NJDEP believed that NJ would need to establish legal facilities for off-road vehicle use to get legislative support for the bill.

The Committee opened the meeting up to public comment. Theresa Lettman, a representative of PPA, notified the Committee of proposed Bill A3713 which would eliminate specialty license plates and replace them with a decal system. She expressed concern that drivers would no longer participate in the program if the license plates were eliminated. She also expressed concern regarding whether Green Acres or the Commission would have the resources to distribute these decals, therefore resulting in much fewer sales and less money for the Limited Practical Use Program.

Permanent Land Protection Committee Meeting

Acting Chairperson Ashmun reported that the Permanent Land Protection Committee met on March 27, 2009 and adopted the minutes from the January 30, 2009 meeting.

The Committee voted to approve an advancement of funding for two second-round projects under the Pinelands Conservation Fund. These are projects that the Committee has the authority to approve under the rules of the Commission.

The Committee received an update on the status of the Cape May County MUA Acquisition Fund. The Commission's contract with The Nature Conservancy expires on June 21, 2009. A short extension may be necessary. The Committee recommended funding for a project in Estell Manor City which is located outside the pre-approved acquisition areas. This requires the full Commission's approval and is on today's agenda.

Science Committee Meeting

Commissioner Haas reported that the Science Committee met on March 13, 2009 and adopted the minutes from the October 10, 2008 meeting. Robert Nicholson of the USGS briefed the Committee on the hydrologic-modeling component of the Kirkwood-Cohansey Project. Dr. Robert Zampella, Kim Laidig, and John Bunnell each gave presentations describing various

aspects of the Commission's ecological-modeling components of the Kirkwood-Cohansey project. The meeting was then opened for public comment. The meeting adjourned at 2:55 pm.

Pinelands Agricultural Advisory Committee

Mr. Stokes reported that the Pinelands Agricultural Advisory Committee met on March 20, 2009 and adopted the minutes of the February 20, 2009 meeting.

The principal purpose of the Pinelands Agricultural Advisory Committee meeting was to again review the draft (2/19/09) forestry rules and they expressed concerns and recommendations and suggested that an economic viability study be done on forestry by a credible outside consultant. The Committee also recommended that the forestry rules not be adopted by the Commission until such time as the Pinelands Agricultural Advisory Committee's concerns with the ruling by the State Ethics Commission (SEC) is remedied. A number of the recommendations were discussed with the CMP Policy and Implementation Committee. He said that he will discuss the economic viability matter a little later in today's meeting.

Executive Director's Report

Mr. Stokes reported on the following items:

Mr. Stokes stated that he has spoken with Mr. Tomasello several times this week and indicated that he is currently in the hospital. He reported that Mr. Tomasello is feeling well but he was unable to attend today's meeting because the doctors are planning to run some more tests.

DAG Valerie Haynes will be retiring in June of this year. He introduced DAG Amy Donlon and stated that DAG Donlon will be DAG Haynes' successor. He said that the Commission looks forward to working with her upon DAG Haynes' departure. He indicated that DAG Donlon will be joining the Commission at its next two meetings as well. Acting Chairperson Ashmun welcomed DAG Donlon to the Commission. He also introduced DAG Chris Piatek, the Assistant Section Chief in the Environmental section of the Attorney General's office. He said that DAG Piatek has been active in Pinelands matters periodically over a number of years but she had never attended a Pinelands Commission meeting until today. Acting Chairperson Ashmun said that the Commission will miss DAG Haynes.

Mr. Kutner has been working with Stafford and Barnegat Townships as well as the state forestry officials on a fire wise program. He said that he is happy to report that Horizons Development in Barnegat has been officially certified as a Fire Wise Community and now has a fire plan in place which deals with perimeter fire buffers and the like. Mr. Kutner continues to work with Stafford and Barnegat Townships on much broader matters.

Mr. Leakan and Mr. Mott have been busy working on an exhibit plan for the Richard Sullivan Center. A team of National Park Service exhibit experts was here in late March and is in the process of preparing an exhibit plan for the Commission's facility. The project is being funded by the National Park Service.

The Barn renovations are complete and the Commission's Science staff has moved back into the building. He indicated that the project was done well. He invited members of the Commission members who wish to do so to take a tour of the Barn following the meeting.

Staff is continuing to work with the CMP Policy and Implementation Committee on possible management area map changes. The last special meeting that the Committee held was in Hamilton Township. The next special meeting is scheduled for May 4 at 9:30 a.m. in Monroe Township. The next regular P&I Committee meeting is scheduled for next Friday.

Mr. Mark Holmes who had been scheduled to be here today from the State Ethics Commission, had to postpone his attendance due to a medical emergency. Staff is rescheduling Mr. Holmes to attend the Commission's meeting in May.

The Commission's Financial Disclosure Statements are due by May 15. Mr. Stokes reminded the Commission members that there are fines associated with late filing.

Ms. Roth reminded the Commission members that this is the first year that members have to file on line. She said that if anyone needs assistance with filing to either call Ms. Young or herself.

Acting Chairperson Ashmun asked if staff receives confirmation of receipt when a member files his/her disclosure.

Ms. Roth replied that she receives a weekly update on who has filed and who has not filed. She said that she just received an update yesterday.

Mr. Horner reported on the following items:

Mr. Horner met with the Mayor of Lacey Township and other representatives of the Town to discuss a firing range for its police force to try and resolve some issues relating to that particular application.

Staff previously met with the Mayor of Manchester Township to discuss an on-going vehicle junk yard that is causing a problem in the Township. Another meeting has been scheduled for May 4 where Commission staff will attempt to coordinate with the County officials and DEP officials to help the Township address this matter.

At their request, staff met with the Mayor of Waterford Township to discuss how we can assist the Township to resolve a violation.

Staff is meeting with Evesham Township officials including the Mayor on Monday to discuss an application for an artificial surface field located off Tuckerton Road near the Evesham Township Municipal Building. There are some stormwater issues due to the soil conditions in the Marlton area.

An issue has arisen regarding rebuilding the Bargaintown Volunteer Fire Company in Egg Harbor Township. There are signs posted on the Fire House that the Commission will not let

them rebuild. A letter has been sent and a phone call has been made to the Fire Chief regarding an application fee issue. Staff has not begun to review the application itself as yet. Staff anticipates resolving the issue of the application fee shortly and believes that there is no apparent reason why the application won't be approved.

Mr. Horner reported that Nan Walnut is in rehabilitation from hip replacement surgery and is doing well and wanted everyone to know that she anticipates being back at the Commission meetings soon.

Mr. Liggett reported on the following items:

Jackson Township has submitted all materials relating to its stormwater ordinance. This is the last of the ordinances related to that Comprehensive Management Plan (CMP) amendment.

Jackson Township will also be at next week's P&I Committee meeting. There are several issues relating to its Regional Growth Area and a noise program related to the Lakehurst Naval Base.

Staff worked with Stockton State College on its future development plans, both in terms of how the EIA might impact them and how they could implement their development plans.

People are now looking around for solar generating facilities sites. The sites need to be anywhere from 60 to 120 acres in size. At some point, these may become an issue to be discussed in plan review.

Acting Chairperson Ashmun asked if the Stockton College and the Jackson Township matter will come before the special P&I Committee meeting or the regular meeting.

Mr. Liggett replied both matters will come before the regular meeting.

Commissioner Haas asked if a military facility proposes a solar facility would this be an ancillary use to their military function.

Mr. Stokes replied in all likelihood that is correct.

Commissioner Lloyd asked about the status of the legislative bill dealing with solar facilities on agricultural lands as an accessory use.

Ms. Roth replied no limitation exists in terms of an accessory use. She said that when the bill was originally introduced, staff had discussed with the sponsor of that bill that if it were limited to accessory use that that would be acceptable. Since that time, the Senate bill has been amended to make clear that those operations have to be consistent with the CMP. She said that the bill has cleared the Senate but it is still in the Assembly.

Acting Chairperson Ashmun stated that this matter can be discussed at the P&I Committee meeting.

Public Comment on Agenda Items

Mr. Russell Juelg of the Pinelands Preservation Alliance thanked the Commission and its staff for setting up a project for PPA and the Commission to work together on the roadside issues. He said they have been begun meeting with Mr. David Kutner of the Commission staff and they expect to have some good results on this matter.

Mr. Stokes stated that he sent a memorandum to Commission members updating them on staff's initiatives. If the Commission has any questions on this matter, he will be happy to answer them.

Mr. Juleg referred to the public development application relating to the paving of Cedar Drive, Prince Street, Oak Lane, and Laurel Lane in Woodland Township. He said that PPA hopes that the Commission will consider delaying action on this application due to a number of issues that it raises, such as how any new, paved or widening of roads affect wildlife habitat. He referred to the Commission's landscaping requirements and went through some of the native grasses that were provided to the applicant noting that some of the grasses listed are not native Pinelands grasses at all.

Commissioner Ficcaglia asked where the Commission got this list of plants.

Acting Chairperson Ashmun stated that these are from the CMP.

Commissioner Ficcaglia stated that maybe these plants need to be reviewed based on this current information.

Mr. Stokes stated that the Commission can review this list but added that the Commission is currently bound to apply its regulation. He added that the Commission's regulations do not characterize these plants as native grasses, but rather they characterize them as tolerant of droughty, nutrient poor conditions. He said that this was the purpose for which these grasses were identified. He said that he understands the concerns that Mr. Juelg is expressing and this is one of the reasons why the Commission is undertaking the rare plants initiative along roads, but there is also an obligation to live by the Commission's regulations.

Peter Ferwerda commented on final restoration of wetlands and aquatic areas. He said final restoration plans for these sites should be reviewed and approved prior to commencement of the project before destruction occurs to endangered habitats.

Theresa Lettman of the Pinelands Preservation Alliance commented on the public development application in Woodland Township for road paving. She asked the Commission not act on the application today. She stated that she has reviewed many Commission applications in the past and noted that when northern pine snakes are located in or adjacent to the project area no activity is done from April 15 to November and questioned why it is not a condition to the Woodland Township application.

Christine Ferwerda of Warren Grove commented on the Phoenix Pinelands mining site which abuts her backyard. She stated that Phoenix Pinelands extracts sand and the extraction is

approximately 200 feet deep. She said that Phoenix Pinelands has a problem now with an herb plant and they have been instructed to put a fence around the plant. She said that whenever Phoenix Pinelands wants something, they get approved. She further commented on the water wells located near Phoenix Pinelands and stated that she is afraid that one day there won't be any water in these wells.

Acting Chairperson Ashmun asked if someone on staff could explain what is happening at Phoenix Pinelands.

Mr. Stokes suggested that if Ms. Ferwerda is going to be here following today's meeting she can talk to Ms. Karen Young in order to follow up on the matter.

Acting Chairperson Ashmun agreed.

Tom Beaver, of the New Jersey Farm Bureau, thanked Commissioner Haas for providing revised language related to disking (re forestry rules) and said that he appreciated the compromises that the Commission had made on the forestry rules.

Development Review Matters

Review of Public Development Projects

Mr. Stokes stated that the Commission received a resolution that proposed three public development projects. He said that Mr. Horner has an alternate resolution that separates the Woodland Township application from the other two in order for the Commission to deal with that matter separately if the Commission so desires.

Mr. Horner stated that the Commission has before it three public development applications. He said that Application Numbers 1988-0390.012, Egg Harbor Township Board of Education, 205-0041.002, Woodland Township, and 2009-0005.01, Upper Township are applications for public development recommended for approval with conditions.

Mr. Horner stated that he appreciates the concerns raised by the public today with regard to the Woodland Township application and noted that these concerns were also raised and discussed by Commission staff. He pointed out that staff has to review this project within the context of the Commission's regulations. He said that the project is for a significant road improvement. He pointed out the area in question on a map. The Township has proposed to pave what is an existing 20 to 22 foot wide maintained gravel and sand road through the more undeveloped areas of the Pinelands. He said that when the application was first submitted, the staff had many concerns with threatened and endangered species, stormwater, etc. He said by narrowing the width of the road and locating the stormwater management facilities under the pavement, staff believes it addresses the threatened and endangered species requirements. He said that the Commission's regulations are very specific about when a new road can be built in the Preservation, Forest and Special Agricultural Areas in the Pinelands. Mr. Horner summarized all the environmental standards that have to be complied with in terms of the Commission's regulations.

The Commission discussed at length the Woodland Township application and a number of issues, particularly those relating to whether or not the paving of the roads would have an irreversible adverse impact to wetlands and threatened and endangered plant and animal species. Commissioner Kennedy proposed that staff ask the Township to postpone this application for a month and to invite Township officials to be present at the next meeting to answer some of the questions that have arisen. He suggested that this matter be postponed until later on in the meeting to wait to see what the Township's response is on these questions. Mr. Horner stated that staff will speak with the Mayor of Woodland Township and suggested that, in the meantime, the Commission can consider the alternate resolution for the other two applications and then return to this matter later on in the meeting.

Acting Chairperson Ashmun concurred and asked that the alternate resolution be distributed to the Commission for its consideration.

Mr. Horner distributed the alternate resolution to the Commission containing Application Numbers 1988-0390.12, Egg Harbor Township Board of Education and 2009-005001, Upper Township.

Commissioner Haas moved the adoption of the Resolution Approving with Conditions Applications for Public Development (Application Numbers 1988-0390.012, 2005-0041.002 & 2009-0005.001). (See Resolution #PC4-09-21 attached). Commissioner Ficcaglia seconded the motion. (See Resolution PC4-09-21 attached).

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

Mr. Stokes stated that Application Number 2007-0197.00, Ocean County, is an application for public development recommended for approval with conditions.

Commissioner Haas recused himself from the following discussion and left the room.

Commissioner Galletta moved the adoption of the Resolution Approving with Conditions an Application for a Public Development (Application Number 2007-0197.001). (See Resolution #PC4-09-22-attached). Commissioner Jackson seconded the motion.

Mr. Horner briefly summarized the public development application relating to improvements to the intersection of County Route 528 and County Route 547.

The Commission adopted the resolution by a vote of 8 to 0. Commissioner Haas was not present for the vote.

Commissioner Haas returned to the meeting.

Review of Waivers of Strict Compliance

Mr. Stokes stated that Application Number 2008-0283.001, Thomas Abernathy, is an application for a waiver of strict compliance recommended for denial.

Commissioner Ashmun moved the adoption of the Resolution Denying an Application for a Waiver of Strict Compliance (Application Number 2008-0283.001). (See Resolution #PC4-09-23 attached). Commission Lloyd seconded the motion.

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

Resolutions of the Commission

Mr. Stokes presented the Resolution To Authorize the Executive Director to Modify the Cooperative Agreement with the National Park Service for Pinelands Monitoring. (See Resolution PC4-09-24 attached).

Commissioner Jackson moved the adoption of the resolution. Commissioner Lloyd seconded the motion.

Commissioner Kennedy asked if anything has changed in the technology, techniques or data to help get the Commission a better and clearer picture of economic indicators for the Pinelands.

Mr. Stokes replied that every year there are improvements made in the monitoring program. He indicated that limitations do exist relative to specific data that is being analyzed and described those limitations for the Commission.

Commissioner Kennedy asked if any of the variables have substantial improvements in the quality of the data.

Mr. Stokes replied that he does not know but will be happy to ask staff economist, Tony O'Donnell, to follow-up on Commissioner Kennedy's questions.

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

Mr. Stokes presented the Resolution To Approve a Request by The Nature Conservancy to Purchase a Property Outside the Pre-Approved Acquisition Areas for the Cape May County MUA Land Acquisition Funds (Simon). (See Resolution #PC4-09-25 attached).

Acting Chairperson Ashmun stated that The Nature Conservancy has been working with the Commission in the use of that money for land purchases. The arrangements with the Commission expire June 21 of this year and there is a purchase involving a piece of land outside the area that was previously authorized by the Commission. She said that the Commission has a map on this area.

Mr. Stokes stated that the Permanent Land Protection Committee initially considered this project in closed session because the property was not under contract at that time. He

indicated this project is now under contract so it is appropriate to consider this matter in open session.

Ms. Grogan pointed out the properties that The Nature Conservancy is seeking approval to purchase on the map. She said that the PLP Committee reviewed these properties and recommended that they do have significant merit and warrant acquisitions. There is about \$240,000 remaining under the contract which has been in operation approximately 10 years now. Ms. Grogan described this project and two other acquisitions that The Nature Conservancy is pursuing.

Commissioner Haas moved the adoption of the resolution. Commissioner Jackson seconded the motion. The Commission adopted the resolution by a vote of 9 to 0.

The Commission returned to the Woodland Township application matter. Mr. Horner reported that staff has spoken with the Mayor of Woodland Township regarding the request for an extension, to which the Mayor indicated that he would like it to be clear as to what needed to be addressed.

Commissioner Brown made a motion that the Woodland Township application be approved as submitted. Commissioner Campbell seconded the motion.

The Commission discussed questions that they would like answered in terms of the Woodland Township application.

Acting Chairperson Ashmun asked if the mover and seconder are willing to withdraw their motion of Woodland Township matter. Commissioner Brown and Campbell agreed to withdraw their motion on the matter.

Mr. Stokes outlined the 5 areas of inquiry that the Commission would like to ask with regard to this application: steps to ensure construction limits aren't exceeded; what is the Township's objective for developing the spur roads; what the literature shows about mortality of snakes relative to the roads; the area and extent of landscaping and how that relates to the construction limits; and what species might be used to revegetate that might be more in keeping with the local environment.

The Commission concurred with the inquiries outlined by Mr. Stokes.

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

Mr. Russell Juelg of the Pinelands Preservation Alliance referred to the forestry rule and stated that he has a concern with the way changes were made at the last minute. He referred to the Woodland Township application, stating that he thought that the rule puts the burden on the applicant to demonstrate that no irreversible adverse impacts will occur and didn't know that the Commission took the position that it is the Commission's staff's job to make that determination. He said that he doesn't believe that that determination was demonstrated in this application.

Mr. Peter Ferwerda commented on the Phoenix Pinelands Corporation seeking an amendment to the license issued to them pursuant to the Pinelands regulations. He said that he attended a Township meeting last evening and that there was no engineer or environmental experts there to provide testimony. He said that the only person who provided testimony was the Corporation's attorney. He said that environmental questions were not answered, such as whether or not any irreversible adverse impacts would occur. He objects to anything being done at that site without a full and complete notice of hearing.

Mr. Stokes stated that Mr. Ferwerda is commenting on a permit that was issued by the Little Egg Harbor Planning Board. He suggested that this matter may come before the Commission but the most appropriate vehicle for Mr. Ferwerda to register his objections is to write to Mr. Horner expressing what his concerns are relative to the permit and its compliance with Pinelands requirements. He said that the Commission has to be careful when dealing with permitting matter that it maintains a clear record. He said that if the matter comes before the Commission it doesn't want to give Phoenix Pinelands Corporation an opportunity to challenge the Commission's decision.

Approval of Minutes

Acting Chairperson Ashmun presented the April 17, 2009, Part I minutes. Commissioner Ficcaglia moved the adoption of the minutes. Commissioner Lloyd seconded the motion.

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

Adjournment

Commissioner Jackson moved to adjourn the meeting. Commissioner Campbell seconded the motion. The Commission agreed to adjourn the meeting at 12:22 p.m.

Certified as true and correct:

Nadine B. Young,
Executive Assistant to the Commission

Date: _____