

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING
SPECIAL MEETING: REVISIONS TO LAND CAPABILITY MAP

Monroe Township Municipal Building
125 Virginia Avenue
Williamstown, New Jersey
May 4, 2009 – 9:30 AM

MINUTES

MEMBERS IN ATTENDANCE: Acting Chairman Norman Tomasello, Candace Ashmun, Leslie Ficaglia, Stephen Lee (arrived @10:05 a.m.), Ed Lloyd, Paul E. Galletta (2nd Alternate), Daniel M. Kennedy (3rd Alternate)

MEMBERS ABSENT: Robert W. McIntosh

OTHER COMMISSIONER PRESENT: Robert Jackson

STAFF PRESENT: John Stokes, Larry Liggett, Paul Leakan, Paul Tyshchenko, Michael Yaffe, Nick Procopio, and Betsy Piner

Acting Chairman Tomasello called the meeting to order at 9:45 a.m. He thanked Monroe Township for the use of their facility and noted the presence of Mr. Tim Kernan, Monroe Township Planner, and Maurice River Township Mayor Andrew Sarclette.

1. Adoption of the minutes from the April 6, 2009 CMP Policy and Implementation Committee meeting.

Commissioner Ashmun moved the adoption of the minutes of the April 6, 2009 meeting. Commissioner Kennedy seconded and all were in favor.

2. Public Comment

Mr. Kernan said that earlier draft maps of the EIA analysis had included a number of changes that Monroe Township supported. Unfortunately, now that polygons of less than 1,000 acres have been removed from consideration, those recommendations are no longer under consideration by the Committee. However, Monroe Township may wish to pursue some of the recommendations in any case.

Mayor Sarclette said that, on behalf of Maurice River, he appreciated the fact that the Committee has reduced some of the areas under consideration. Unfortunately there is still the area in the vicinity of Routes 347 and 47, the potential growth area most likely to be developed in the Township, which is still included among the polygons. He said that 2/3 of the Township is already protected through Pinelands regulations and the rest through CAFRA, Wild and Scenic Rivers, and the wetlands terrain that provides a natural restriction. He said that the residents appreciate the protection that is offered in some areas but not in others. He asked to continue to meet with the Commission to discuss the proposed management area changes.

Mr. Kent Schellinger, said that he has served as Maurice River Township's engineer for 16 years and that the Township has been a faithful steward of the Pinelands and has actively protected the Pinelands Area. He noted that the Township has invested heavily in improving roads in response

to a previous agreement with the Commission to create a special commercial zone in a portion of the area. He said that his primary objection is the integrity of the Pinelands Commission to be a viable and trustworthy partner and not keep re-visiting the issue.

Mr. Richard Hluchan said that he is an attorney representing Whibco, a sand mining company in Maurice River Township. He said that he was opposed to the rezoning proposed by polygon E consisting of 1503 acres from RDA to FA. He said that he agreed with the comments of Mayor Sarclette and Mr. Schellinger this morning. He said that in November, 2000, the Commission downzoned 1528 acres from RDA to FA in Maurice River Township with the understanding that the downzoning would serve as an offset for a future upzoning. In 2003, 322 acres (242 of which was owned by Whibco) were upzoned from FA to RDA in the vicinity of Routes 347/47. This is the area of the Township through which the shore traffic travels and the Township was hoping for some modest commercial development to replace the lost opportunities when the Department of Transportation (DOT) re-routed that traffic, bypassing existing businesses. Two commercial nodes were to be developed 1 mile apart but now, after all that planning, the Commission wants this area to revert to FA. He asked what had happened since 2003 to warrant that kind of change. What documents are there to explain the rationale? He said that he wanted to see all the documentation so that he could comment.

Mr. Stokes said that the research by the Science Office was the basis for all the changes and is on the website. Also, the Planning Office has developed the criteria for these changes. He invited Mr. Hluchan to contact Mr. Liggett after the meeting.

Mr. Tom Czerniecki, Evesham Township Administrator, said that the Township was concerned about the lack of notification to the residents (*concerning Polygon I*). He said that Evesham has received a smart growth grant, part of which is a contract to study the Medford-Evesham Plan and explore it with the residents through a visioning plan. He said that Evesham wants the input of its residents regarding any management area changes.

Mr. Mark Shourds, a professional engineer and planner with Taylor Wiseman and Taylor, said that he had been working with Whibco on various projects and questioned the sense of downzoning this property (Polygon E), which he characterized as being surrounded by Regional Growth Area. He said that smart growth supports utilizing existing roads and surrounding development. Since this is the area of the by-pass, he asked why the Commission would want to change this from RDA to FA after Maurice River Township has planned to centralize development in this area.

Mr. Stokes clarified that there is no RGA surrounding the Whibco property. Rather it is Rural Development Area.

Mr. Shourds concurred. He said that this is not a unique property and asked why it needed protection. Most of the property has mining permits from the Township and he said that he saw nothing specific on the Commission's web site indicating why this area is worthy of protection.

Commissioner Lee arrived at 10:05 a.m. Mr. Stokes read the Open Public Meetings Act Statement.

Mr. Hluchan said that, in addition to representing Whibco, he also is the recently hired attorney for Atlantic Cape Community College (ACCC). He said that his client had concerns regarding Polygon J (Atlantic County) which is proposed for a management area boundary change from RGA to FA. He introduced Dr. Rick Perniciaro, Dean of Facilities.

Mr. Hluchan said that he understood that a significant portion of the College's property was in wetlands and that was not their issue. However, they believed that some 75 acres are developable uplands and they wanted to save them for future facilities. The College is currently applying for a wetlands delineation of the entire property.

Dr. Perniciaro said that the lands are an asset with a public purpose. He said that the map had been the same for 30 years but now the College had spent funds for attorneys, engineers and such to respond to this proposed map change. He said that the College had not been noticed of the EIA project so had not known that they would be impacted, nor why. He said that the College will work with the Commission to see why this map change is being undertaken .

Mr. Stokes asked about the status of the master plan that the College President had referenced in a letter to him (*March 30, 2009 letter from Dr. Peter L. Mora, President, ACCC to John Stokes, distributed to the Committee at the Special meeting of April 6, 2009*) Dr. Perniciaro responded that the master plan was not for the entire property, just the developed area.

Dr. Perniciaro said that two or three years ago the College had evaluated its assets to determine which lands would be used for the generation of revenue and which for development. They want to retain that flexibility and want a clear answer as to which lands are truly environmentally sensitive and which are developable.

Commissioner Ficcaglia, referencing the comments by Maurice River Township, said that they had put forth much effort and money in paving roads and had a public development plan so at least the "new" PPHB Zone in polygon E should be removed from consideration.

Commissioner Ashmun said that she wanted to remind everyone again that these are regional decisions that will be implemented at the local level. Commissioner Ficcaglia responded that such was not the kind of assurance that would make the Township feel better.

Mayor Sarclette said that the mining issue is dictated by the Commission and they can change whatever the Township does. He said that he felt it was erroneous to state that this is a municipal issue.

3. Ecological Integrity Assessment: continues review of revised Land Capability Map

Mr. Stokes asked Mr. Liggett to continue the discussion of the remaining polygons.

Mr. Liggett, with the assistance of Mr. Tyshchenko and Mr. Yaffe, made a power point presentation of the various polygons under consideration today.

- Polygon K includes nearly 7,400 acres in Franklin, Buena Vista and Monroe Townships. He said that there had been little comment from either Franklin or Monroe on this particular change (RDA? FA). He identified various features of this polygon including Collings Lake to the West, two active mines that are not recommended for management area change (as they are a permitted use under current RDA designation), and the proposed ATV site purchased by DEP

Before proceeding further, Mr. Liggett reviewed his April 28, 2009 packet memo which addressed five concerns raised by the Committee at previous meetings. (1.) He said that, for purposes of the EIA project, a sewer service area is an area within which sewers exist in-ground

in the immediate vicinity and said sewers are actually available. (2.) He said that Commissioners Kennedy and Galletta had wanted to look closely at how “committed” parcels are determined. In response, staff had looked at development application records since 2005 on the PCIS system and still believes that the issuance of a No Call-Up letter is the most appropriate criterion although perhaps a different level of application activity could, in combination with other factors, be considered at the edges of these polygons. (3.) The staff also looked at split parcels only in the Case II polygons (High Integrity APA? FA) in order to avoid splitting farm holdings and found that no farms would be split under the staff proposed recommendations. Otherwise, split parcels, a good example of an issue best handled during local conformance, were not a regional criteria. (Note: the 11 polygons consist of approximately 6,000 lots; an examination of all would be very labor/time intensive and there is a low likelihood of large non-agricultural lands under common ownership.) Recently, based upon public comments, staff has found a few exceptions to the general criterion that parcels should not be split, based on local conditions and staff would point these out as the polygons are discussed. (4.) Staff also noted other items, seemingly more appropriate at the local level, such as on-site wetlands delineation and scattered inappropriate lot sizes at the edge. He also said that every day project status may be changing and projects may get under way in the interim. Thus it is appropriate for the Commission to look at the management area changes as a regional issue using the twenty criteria and leave issues appropriate and timely to the conformance process to the municipalities. (5.) Finally, staff also feels that, for existing homes that might become nonconforming as a result of these management area changes, alterations such as sheds, decks, etc. should not require the property owner to go through the municipal variance process.

Commissioner Galletta said that he supported the concept of landowners with non-conforming lots (as a result of this process) being able to alter their homes without seeking local variance.

In response to Commissioner Lloyd’s question if this would be recognized in the narrative of the rule proposal, Mr. Stokes said yes, it would be included in the background material.

Commissioner Kennedy said that the Committee had heard testimony regarding commercial businesses and mining operations. He asked if those uses would become non-conforming. He said that he was concerned with protecting the businesses.

Commissioner Lee said that he too wanted to protect the rights of the existing businesses.

Mr. Stokes said that he didn’t think staff would have any inherent objection but that the status of the businesses would be something that the municipalities could decide. They will have the latitude to decide how to deal with nonconforming uses in their ordinances.

Commissioner Ashmun said that management areas are about density; zoning is how the municipality deals with it.

Commissioner Lee said that the sewer issue has evolved over the past several months. Mr. Liggett responded that he recognized that but that the original application of the criterion by staff, that the sewer is in the ground and available, has not changed. Mr. Stokes said that the mere description of a sewer service area does not have much meaning; some of the “sewer service areas” have existed for 30 years with no intent to provide sewer.

Commissioner Jackson said that one doesn’t want to sewer an area inadvertently.

Mr. Stokes said that there is the policy allowing for sewer to be extended to a non sewer service area if there is a public health issue, but it is not intended to encourage new development in such an area.

The Committee briefly discussed public lands and their end uses. Mr. Stokes said that staff has provided the best information available but it is not always clear and complete. The end use of publicly owned property might be as open space or a public facility.

Mr. Liggett returned to the discussion of Polygon K and showed development activity on the parcel including a shooting range, a potential ORV park and an area of two residential development projects of 43 units and 50 units on approximately 300 acres. Staff noted that the developer is still acquiring lots for the project and is planning to consolidate the two projects, a portion of which is outside Polygon K

Commissioner Lee said that he does not like applying the composite integrity to a parcel and has said so all along. He said that he felt that using the composite was an attempt to “create a lot of green areas.” He said that he would like to see the landscape integrity alone and on a lot-by-lot basis.

Mr. Stokes said that the EIA score that is reported in the study is the sum of the three individual analyses. Mr. Stokes said that the Commission had access to all the information and that the composite score reflects what happens in the real world but obviously the Commission members can determine how much weight to assign to any given factor

Dr. Procopio reviewed the three metrics of the composite score and explained how the Science Office had looked at landscape, aquatic, and wetlands integrities. In combining the three to develop composite scores, the Science Office provided a more holistic evaluation of Pinelands habitat.

Mr. Tyshchenko noted that for today’s off-site meeting they had only the composite data but the individual EIA scores were available at the office and would be available at future P&I meetings there.

In response to Commissioner Lee’s comment that as one moves further down the watershed, one sees less impact from upstream development, Dr. Procopio said that such dilution occurs only if there is no additional development/upland agriculture along the way.

Returning to Polygon K, Mr. Liggett said that should this management area change occur, Buena Vista wants to retain commercial development along Route 54. This might be permitted through a density transfer program, Mr. Stokes said that staff was scheduled to meet with Mayor Chiarello. For a commercial zone in the RDA that is being redesignated as FA, those business zones should be dealt with on an individual basis.

Commissioner Galletta said that a compelling reason was needed for the Commission to be going through this process.

Mr. Stokes said that this process is the result of a thorough review and a determination of the “best of the best” of Pinelands habitat outside the Preservation Area District. The question is what it is the Commission wants to protect.

Commissioner Jackson said that this is what the Commission is supposed to do.

Commissioner Ashmun said that the commercial area along Route 54 appears to be all wet.

Mr. Stokes said that there are two realistic development opportunities in Buena Vista Township: one is the Route 40 sewer service area which is related to the Buena Borough MUA issue. In addition, the Township is working with the Atlantic County Utility Authority to try to sewer Richland Village.

In response to Commissioner Galletta's statement that the Commission needs to work with the colleges on their master plans, Mr. Stokes said that staff has already done that. It is difficult with limited staff resources but the Public and Governmental Programs Committee has been successful working with master plan projects such as those for Stockton College, the Atlantic City Airport, the RJ Miller Air Park and the Woodbine Airport.

- Polygon D

Mr. Liggett said that Polygon D is a 1,000 acre farmland-assessed property in Maurice River Township. There has been no application activity on this property and there has been no contention related to a recommended management area change (FA? APA).

- Polygon E

Mr. Liggett said that this is the area that had generated much public comment earlier today. He said that the DoT bypass has isolated businesses by diverting shore traffic through a new route. Much of Maurice River Township is in Forest Area but this polygon is in RDA and of high integrity. Mr. Liggett identified the Whibco properties and noted the status of any resource extraction activity.

Commissioner Ficcaglia asked why, if Maurice River Township has a public development plan for the commercial development along Route 47, why it is considered in a boundary change.

Mr. Stokes responded that staff criteria was that there be a formal plan, e.g. the Toms River corridor plan, or a facility plan such as that for Stockton College. He said that the concern is, since every municipality can say they have a plan through an approved zoning plan, and then nothing shall be changed. Here there was an unusual limitation and there were business development objectives. This was arguably different than projects undertaken elsewhere.

Commissioner Ficcaglia said that the infrastructure project done by the municipality including \$1 million for road improvements, might not constitute a formal plan but this is a unique situation. The Commission needs to provide them with the opportunity that they were granted previously.

Mr. Liggett said that what has changed since 2003 is the EIA and the recognition of a score of 90-100%.

Commissioner Ficcaglia responded that at the earlier time, the Commission felt that the limited development along the road would not be harmful to the sensitive lands. Also the Township now says the design criteria are too strict.

Commissioner Lee said that Maurice River Township's plans sound as much like a plan of that of the Toms River Corridor Plan, to accomplish a particular objective. We focused on the nodes for commercial development and recognized their limits.

Mr. Stokes said that staff has acknowledged to the Township that their business nodes will be incorporated into any CMP changes for this area. However, this area looks to be a Forest Area and it should be called a Forest Area. If it were allowed to remain as RDA, in the long term, if the Township abandons its business plan what will happen here is probably RDA residential.

Commissioner Lloyd said that he wanted staff to develop criteria to recognize and memorialize the history of this area. These are a unique set of criteria that he said should be drawn as narrowly as possible.

- Polygon D

Commissioner Ashmun said that she would like to know what some of the public lands are that are identified on Polygon D. She asked if staff knew which are deed restricted to which Mr. Tyshchenko answered in the affirmative.

Mr. Stokes said that the planning staff has tried to identify those lands held for conservation purposes but they might not necessarily have easements or deed restrictions.

In response to Commissioner Lee's questions about the EIA score of <70% for Polygon D, Mr. Tyshchenko said that at the moment all he know was that 86% of the polygon had an EIA score of <70% . Mr. Tyshchenko also said that he would review his notes and provide more information later in the meeting concerning the property's farmland assessment.

- Polygon C

Mr. Liggett said that he wanted to bring to the Committee's attention some new information related to Polygon C, in Ocean County. From the map he identified the area and said that staff had recommended a management area change of RDA? FA due to the high integrity of the area. However staff has since learned that this is an active cranberry farm within a state park and that the State's intent is to continue the partnership with the former bog owner in perpetuity; staff had said previously that it would not change the management area of an active farm so the question becomes, should this still be considered.

Mr. Stokes said that staff had been looking at active farms in private ownership; this is an active agricultural use on state lands. His concern was with the long term goal to sustain this historic use for interpretive purposes, like others at Whitesbog and Double Trouble. Mr. Liggett noted that he had brought this recommendation to the Agricultural Advisory Committee and they were ambivalent about any change. He said that it was his recommendation that to maintain the regional perspective, that if this is removed from consideration, the area will remain unchanged.

Commissioner Lloyd said that, based on this new information, this polygon should be dropped.

Commissioner Kennedy moved the removal of Polygon C from the list of polygons under consideration for designation to a new management area. Commissioner Lloyd seconded and all were in agreement.

- Polygon D

Mr. Tyshchenko said that he had located more detailed information regarding Polygon D as requested by Commissioner Lee. He said that 433 acres constitute hay fields, 300 acres are

pasture and 425 acres are woodlands. There are 37 horses and ponies, a number of alpacas and the total area is about 1200 acres.

Mr. Stokes said he hoped to schedule one or two more of these special meetings to consider management area changes. They would be conducted at the office so that more data would be available. He hoped that the Committee would start making some decisions and suggested that Polygon D (the horse farm) might be the first to be recommended for a management area change as he had heard no concerns about that property.

Mr. Liggett said that staff has an outline of issues to accompany every polygon map.

Commissioner Lee said that this was a precedent setting project and he wanted to see some concurrence with the municipalities and the landowners.

Mr. Stokes said that, with the exception of Oyster Creek, the Commission had not independently changed management areas outside the conformance process. He said that he would ask Ms. Nadine Young to schedule two meetings and then the Committee can try to accomplish their recommendations in only one.

4. Public Comment

Mr. Schellinger said that the Township's interest in retaining the current RDA zoning along the by-pass was no opening Pandora's Box. Rather, a rezoning to FA would close an opportunity for the Township. He said that there was such limited development permitted in the two small commercial nodes along Rt. 347 that it would have little affect on the sensitive lands identified in the EIA project.

Mayor Sarclette said that he appreciated the indication that the Commission would work with the Township on specific language to recognize the development nodes within the FA. However he said that any use in the FA will require more scrutiny than that in the RDA and he urged that it be allowed to remain as RDA.

Mr. Bill Fox, Jackson Township resident, said that for 30 years the Pinelands Commission has protected the environment regardless of zone because of the application requirements including T/E species and other environmental studies. He said that he was amazed at the number of mayors, freeholders and other officials who have attended the meetings at which these changes have been discussed and asked that they not be made. He said that a history of property use has been created and to change that now will upset the apple cart. He asked that the P&I Committee "kill the deal" now.

Mr. Hluchan, speaking on behalf of Whibco, said that there was a fairness and equity issue regarding the proposed changes in Maurice River Township. He again addressed the management area change in 2003 and how, based on the Commission's actions, the Township has since invested in infrastructure. He said that if the Commission were to now "pull the rug out" from under the Township, it didn't represent a very good plan. He said that the businesses are hurting and would benefit from the changes made in 2003 but he said that he had heard of no good reason to make the changes currently proposed. Also, he said that he was concerned that because Whibco has 7-8 mining sites that are not all mined annually, he was concerned with a change to FA as they might be viewed as being presumptively abandoned based on the Commission's amendments several years ago in reaction to the Winzinger case. They would then

lose their mining rights. He said that he would continue to follow this project and work with the Township to oppose this management area change.

Mr. Kernan asked Mr. Liggett to address the offset issue (re: RDA to RGA change). He said that while Monroe Township understood that one parcel had been removed from the EIA project because it was less than the 1,000 acre threshold, he thought that if the Township were to pursue the upzoning on its own, no corresponding offset would be necessary.

Mr. Liggett responded that the current CMP requires that municipalities look for offsets to management area changes. However, he noted that among the 131 earlier recommendations, there might be downzonings that could serve as an offset.

Before concluding the meeting, Mr. Stokes said that he wanted to clarify the status of the Maurice River properties with mining permits. He said that Whibco owns 1,000 acres in this area of which 300 acres is not identified in its mining application. Of the remaining 700 acres they have a mining permit for 2 acres within a 300 acre parcel. That is their sole permit.

In response to Commissioner Lee's question if a 50% expansion would allow them to mine 3 acres, Mr. Stokes said that mining properties within the FA have protected status for properties identified in their mining applications. They could seek mining permits within the 700 acres identified in their application. He emphasized that Whibco has permits for 2 acres of mining, not 700 acres.

5. Other Items of Interest - None

The Meeting adjourned at 12:40 p.m. (moved by Commissioner Ashmun and seconded by Commissioner Ficcaglia).

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