

PINELANDS COMMISSION MEETING

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

Minutes

May 8, 2009

Commissioners Present

Candace Ashmun, Guy Campbell, Leslie M. Ficcaglia, Paul E. Galletta, John A. Haas, Robert Jackson, Daniel M. Kennedy, Stephen Lee, III, Edward Lloyd, Francis A. Witt and Vice-Chairman, Norman F. Tomasello. Also present were Executive Director John C. Stokes and Deputy Attorney General Amy Donlon.

Commissioners Absent

William J. Brown and Robert McIntosh

Vice-Chairman Tomasello called the meeting to order at 9:38 a.m.

Vice-Chairman Tomasello introduced Deputy Attorney General Amy Donlon to the Commission. He said that DAG Donlon will be replacing DAG Haynes when she retires in June.

Deputy Attorney General Donlon read the Open Public Meetings Act Statement.

Mr. Stokes called the roll.

The Commission and public in attendance pledged allegiance to the Flag.

Minutes

Vice-Chairman Tomasello presented the April 17, 2009 Part II Commission meeting minutes. Commissioner Ashmun moved the adoption of the minutes. Commissioner Ficcaglia seconded the motion.

The Commission adopted the minutes by a vote of 11 to 0.

Committee Chairs' and Executive Director's Reports

CMP Policy and Implementation Committee Meeting

Commissioner Ashmun reported that the CMP Policy and Implementation Committee met on April 24, 2009 and adopted the minutes of the March 27, 2009 meeting.

The Committee recommended that the Commission certify Jackson Township's stormwater management plan and ordinances.

The Committee received a presentation by Jackson Township regarding proposed master plan and zoning amendments.

The Committee reviewed a draft rule proposal related to the PDC Program.

The Committee reviewed draft rules related to affordable housing.

Commissioner Ashmun stated that the Committee also conducted a special P&I Committee meeting on May 4, 2009 at Monroe Township Municipal Building in Williamstown. The Committee adopted the minutes of the April 6, 2009 Special Meeting.

The Committee continued its discussion of proposed map changes.

The Committee voted to eliminate one of the 11 proposed polygons due to significant agricultural use.

Public and Governmental Programs Committee Meeting

Commissioner Lloyd reported that the Public and Governmental Programs Committee met on April 27, 2009.

The Committee discussed appointments to the Pinelands Educational Advisory Council. The Committee unanimously recommended that the Chairman of the Commission appoint Ellen Mushinski, the Director of Educational Initiatives at New Jersey Network Public Television and Radio, and Norma Spice, the supervisor of the Toms River School District's Science Department, as new members to fill two vacant positions on the Pinelands Educational Advisory Council (PEAC). These two appointments bring the PEAC to full capacity.

The Committee discussed the draft county/municipal Public Development Streamlining MOA. Commission staff provided the Committee with a revised draft which addressed the Committee's comments and guidance provided at the March 30, 2009 Committee meeting. The Committee provided additional comments and guidance regarding the revised draft. The Committee recommended that staff begin inviting Counties to enter into the MOA.

The Committee discussed the evaluation of Local Review Officer Program. Commission staff provided the Committee with an April 14, 2009 memorandum providing an evaluation of the Local Review Officer (LRO) Program. In 1995, the program was established to provide a simplified municipal permitting process for applications for single family dwellings on existing lots that met lot size requirements and environmental standards. Nineteen municipalities participate in the LRO Program. The staff offered both positive and negative observations regarding the program and made several recommendations regarding the program. The

Committee suggested that staff brief the Pinelands Municipal Council on the LRO Program. The Committee will continue its discussion of the evaluation at a future Committee meeting.

The Committee received an update on MOAs. Commission staff provided the Committee with an April 24, 2009 memorandum identifying the MOAs that may be included in the Fiscal Year 2010 work plan. Specifically, staff plans to carry over Robert J. Miller Airpark MOA, County/Municipality Streamlining MOA, Oceangro MOA and Camden County Water Supply/Sewer Service MOU into the FY 2010 work plan. The memorandum also identified nine other possible MOAs that could be considered in the FY 2010 work plan, such as Richard Stockton College Master Plan MOA and NJDOT Streamlining MOA.

Personnel and Budget Committee Meeting

Commissioner Ficcaglia reported that the Committee meeting of April 30 was canceled.

Executive Director's Report

Mr. Stokes reported on the following items:

The first meeting with Pinelands botanists is scheduled for May 21, 2009 to start identifying hot spots for rare plants along Pinelands roads. This is the Commission's first step in its effort to work with counties and municipalities to improve maintenance practices along Pinelands roadways.

Staff will be conducting its annual orientation for local officials on May 28, 2009 at 4:00 p.m. at the Pinelands Commission offices.

Staff will be holding its spring and summer Pinelands Speaker Series. The first speaker is scheduled for June 18, 2009 and the topic will be "Survival in the Pinelands," which is being presented by the Tom Brown Tracker School.

On an annual basis staff issues a report to the Commission regarding waiver changes that were made to the Comprehensive Management Plan (CMP) several years ago. Ms. Young distributed that report to everyone this morning. He asked Ms. Grogan to provide the Commission with a brief summary of why the report is prepared and what it indicates.

Ms. Grogan explained that approximately three years ago the Commission adopted amendments to the CMP to address PDC obligations for certain applications which require both waivers and lot size variances. Such applications carry with them an obligation to purchase PDCs, 0.25 for the waiver and 0.25 for the municipal variance. What the Commission was looking at 3 years ago was the combination of those 2 requirements. The Commission was concerned with the cost of the cumulative obligation and decided in certain cases, it would be a good idea to eliminate the need to buy the quarter credit for the municipal variance. PDCs would still be required for the waiver of the environmental standard. The amendments relieve that part of the PDC obligation when one is developing on an undersized lot in a Regional Growth Area, Pinelands Village or Pinelands Town or in certain cases for cultural housing. The Commission's resolution directed

staff to report annually on how many waivers the Commission had granted and how many of those fell into this category where their PDC obligation would be cut in half due to the amendment. She said that the memorandum summarizes the findings from the first two years. She went through the waivers that had been granted and indicated that in the last 3 years there have only been three applicants affected by the amendment. She suggested to the Commission that there is really no need to continue with a formal annual report, although staff will continue to monitor the issue.

Commissioner Galletta made a motion agreeing with Ms. Grogan's suggestion not to report annually on the waivers. Commissioner Hass seconded the motion. The Commission adopted the motion by a vote of 11 to 0.

Mr. Stokes continued with his report.

Regarding the Commission's budget, Mr. Stokes indicated that he forwarded an e-mail to members of the Commission earlier this week informing them that staff has been advised by the State Budget Office that a third cut of Commission's funding has been imposed. The net effect of all three cuts is that the Commission will be receiving a little more than \$450,000 less than what was anticipated. Coupled with some drops in revenue (grants, investment income, etc), the Commission is facing a potential deficit between \$700,000-\$800,000. This represents between 16 -20 percent of the Commission's budget. Staff is continuing to look at the budget in order to find ways to save on expenses.

Also relevant to the budget, staff received a request from the Pinelands Development Credit Bank as a result of a teleconference that he and Ms. Grogan had with the Director of the Division of Banking for the Commission to assume some of the responsibilities of the PDC Bank because it is running out of money. He has received a preliminary proposal from the Bank in which the Bank would discharge its record keeping responsibilities but would not undertake any other efforts, such as outreach, property owner notification, working with developers, etc. This proposal essentially maintains the status quo with one exception that its service agreement with the Commission be discontinued, saving about \$7,000 a year. It is unclear if this is what will be officially proposed to the Commission.

Commissioner Ashmun stated that she would like to be informed if this proposal is going to be discussed at an upcoming Personnel and Budget Committee meeting.

Mr. Stokes agreed that staff will inform Commissioner Ashmun.

The Commission received in its packets a list of potential special projects that staff might consider including in its work plan for the coming year. The recent budget news creates a greater degree of uncertainty in terms of what projects may or may not be able to be undertaken. Mr. Stokes asked if the Commission wishes to discuss these projects.

The Commission agreed that the work plan projects should be discussed at the Committee meetings and that the decisions on the projects should be made by the full Commission.

Major agenda topics of today consist of a presentation by Mark Holmes from the State Ethics Commission, an update by Ms. Grogan on the draft affordable housing rules that serve to respond to State legislation enacted last year, and an update by Mr. Liggett on the potential map changes that the CMP Policy and Implementation Committee (P&I) has been reviewing. A closed session will be needed to discuss the Commission's options relative to the State legislation on affordable housing and whether the Commission needs to take any interim steps to implement that legislation.

Mr. Stokes reminded the Commission that the financial disclosure statements are due May 15.

Mr. Horner reported on the following items:

Two applications will be coming before the Commission, one by Burlington County regarding the widening of Route 530 and the other by Evesham Township on recreational area improvements. Both applications relate to the proposed regulation the Commission adopted approximately 6 months ago with regard to public development applications and stormwater management standards which are now in effect.

The State of New Jersey has adopted a Permit Extension Act. Staff will have to determine which applications are covered by this act and how the Municipal Land Use Law folds into this issue.

There is a large redevelopment application for the Wheaton Mills site in Mays Landing. The applicant is proposing to rehabilitate several existing buildings, demolish several buildings and build several multi-family structures. Many permits are required for this proposal from other agencies, particularly from DEP. Staff is setting up a meeting with the applicant to try to streamline the permitting process so both agencies are not reviewing the same matter, particularly those relating to stormwater.

Commissioner Ashmun asked that she receive a copy of recent CMP amendments.

Ms. Grogan indicated that staff just received the revised code pages on the clustering and stormwater amendments and that these will be forwarded to the Commission shortly.

Mr. Liggett reported on the following items:

An article in the paper indicated that Buena Borough has received \$4.6 million in stimulus money to construct the Buena Borough Sewerage Treatment Recharge Facilities. Staff will be contacting them shortly to see if it can get the Borough moving on their projects.

Stockton State College has submitted additional environmental work which the Project Review staff is currently reviewing. The College is eager to move ahead with its planning effort that started a few years ago. Staff is meeting with them in an attempt to get their master plan and a MOA moving ahead.

The Pinelands Conservation Fund acquisitions are starting to be completed. Two have been purchased recently, one in Mullica and the other in Galloway.

Public Comment on Agenda Items

Mr. Russell Juelg from the Pinelands Preservation Alliance commented in opposition to the Woodland Township application and the paving of various roads in the Township. (See comment attached).

Ms. Theresa Lettman from the Pinelands Preservation Alliance commented in opposition to the Woodland Township road application. She referred to previous comments made about school buses using the road and stated that she was out at the site for three days and didn't see one school bus. She said a Township official told her that the reason for paving the roads is because of the frequent grading that has to be done. She said she wanted the record to show that she looked at both of those issues and found no evidence of either. She stated that there is no compelling public need for the paving. She referred to a condition that has been placed on previous applications regarding northern pine snake habitat. She said that construction could occur between April 15 and October 31 and that a biologist would have to monitor the construction activities to ensure that they do not impact individual pine snakes or pine snake nests. She stated further that prior to the start of construction the applicant would need to notify the Commission as to who is going to be out there and who is going to be doing the work. She stated that this condition was placed on the Garden State Parkway application and also the Mule Road application.

Mr. Stokes introduced Mayor DePetris from Woodland Township who will respond to some of the questions when the Commission considers the application.

Development Review Matters

Review of Public Development Projects

Mr. Stokes stated that Application Numbers 1981-2437-011, Atlantic County Institute of Technology, 1990-1025.011, Waterford Township, 1990-1055.002, New Jersey Department of Environmental Protection, Division of Parks and Forestry, and 2005-0166.004, Egg Harbor City, are applications for public development recommended for approval with conditions.

Mr. Stokes stated that Ms. Young distributed a resolution to the Commission today that included a revised report on public development for the New Jersey Department of Environmental Protection, Division of Parks and Forestry's project. He said that the revised report refers to corrected copy relating to page 2, paragraph 1 which describes some additional information that staff received from the department after issuance of the prior report.

Commissioner Haas moved the adoption of the Resolution Approving with Conditions Applications for Public Development (Application Numbers 1981-2437.011, 1990-1025.011, 1990-1055.002 and 2005-0166.004). (PC4-09-26 attached). Commissioner Witt seconded the motion.

Ms. Karen Young described the new information for the Commission.

Mr. Stokes indicated that representatives of Parks and Forestry are present today in the event the Commission has any questions on the application.

The Commission adopted the resolution by a vote of 11 to 0.

Mr. Stokes stated that Application Numbers 1988-0706.015, Town of Hammonton and 1988-1286.003, Hammonton Board of Education, are applications for public development recommended for approval with conditions.

Commissioner Galletta noted that he does not have to recuse himself on the Hammonton Board of Education application, but that he does have to recuse himself on the recreation project for the Town of Hammonton. He left the room at this time.

Commissioner Ficcaglia moved the adoption of the Resolution Approving with Conditions Applications for Public Development (Application Numbers 1988-0706.015 and 1988-1286-003). (See Resolution #PC4-09-27 attached). Commissioner Jackson seconded the motion.

The Commission adopted the resolution by a vote of 10 to 0.

Commissioner Galletta rejoined the meeting.

Mr. Stokes stated that Application Number 2005-0041.002, Woodland Township is application for public development recommended for approval with conditions.

Mr. Stokes stated that the Commission discussed this application last month and at that time asked staff to follow up on five questions. He said that Mr. Horner wrote to the municipality and they have modified some aspects of its application in response to the questions.

Mr. Horner briefed the Commission on the location of the municipal roads that are proposed for improvement in Woodland Township. He said that the application is for 3 miles of paving of an existing gravel road that is maintained by the Township. He said that the Mayor of the Township agreed to postpone the application until this meeting. He said that the Commission has a revised report before it and there are copies for the public as well. He referred to the report and indicated that he has placed a star on the paragraphs that contain the new information and went through the changes for the Commission.

Commissioner Ficcaglia asked about the corn, rattle, and pine snakes in the area.

Mr. Horner replied that the applicant's report addresses Northern Pine and Timber Rattle snakes. He said that, although the applicant's report does not address corn snakes, staff did a review of all snake sightings in this region and found only one corn snake. Staff had to evaluate the impact of the road on any of the species that may be present and didn't differentiate between the species. Staff also compiled a graphic that shows where snakes have been found dead along Route 72 and County Route 563.

Commissioner Lloyd asked Mr. Horner to address the question about having an expert on site during construction.

Mr. Horner replied that staff has done that in the past but did not feel that it was necessary for this application.

Mr. Stokes noted that the other instances where staff has recommended this are ones where the construction activity itself affects virgin territory to ensure that it does not inadvertently destroy dens, hibernacula and the like. He said that this proposed construction will not be affecting undisturbed land and dens and hibernacula are not located within the cartway of the road. He said further that the proposed fencing will keep active snakes out of the construction project. He said that these two things do not suggest that an expert is needed on site.

Commissioner Ashmun asked if there has been any discussion on the part of the Township or part of the staff, of bifurcating this application to separate the paving of Prince Street.

Mr. Horner replied that the Mayor has discussed the need for different segments of the project.

Commissioner Lee moved the adoption of the Resolution Approving with Conditions an Application for Public Development (Application Number 2005-0051.002). (See Resolution #PC4-09-28 attached). Commissioner Campbell seconded the motion.

Commissioner Jackson referred to last month's discussion about the children in this area and indicated that paving this road will not necessarily make it safer.

Mr. Stokes stated that from staff's standpoint, the Township's reason for paving the roads is not relative to its review. He stated that the standards of the CMP permit the Township to pave these roads.

Mr. Horner commented on the traffic that already exists on the roadways. He said that these include school buses, residents and delivery trucks and noted that the snakes in the area already bask on the existing gravel roadway.

Commissioner Kennedy thanked staff for inviting the Mayor of the Township to attend today's meeting. He said that the Commission's decision should be based on the public need of this project and that he is very interested to hear from the Mayor on these matters.

Mr. Stokes introduced Mayor Bob DePetris to the Commission.

Mayor DePetris provided the Commission with some background information on the roadways in the Township noting that they rely on community development block grants or DOT grants for road maintenance. He said that there have been many requests by residents, the fire department, emergency squad, and school bus drivers that something needs to be done about the roads in question. He said that several years ago the Township started with Prince and Cedar Streets and that it is now in phase 4 and 5 of the project. He noted that deadlines have to be met or grant money will be lost. He said that the Township's main concern is the safety, health and welfare

of its citizens. He said it is important to get fire trucks, ambulances, and police there when needed. He said that the school buses are only going as far as the blacktop then turning around and heading out to Route 72 and coming back to Cedar Lane in order to access Oak and Laurel Streets. He said that the Township has to continually grade the roads and at some point fill will have to be brought in to build the roads up. He said that would contain invasive species which is a worse condition. He said as far as the black top, he believes that what the Township is doing is improving the condition because fill won't have to be brought in. He referred to snakes and said that he has been traveling these roads for years and sightings are a very rare occasion. He said that the safety of the citizens is his main concern and asked the Commission to vote in the affirmative.

Commissioner Lloyd asked if the Township has the funding for the entire project now.

Mayor DePetris replied that they have approximately \$400,000 right now in DOT grants and approximately \$80,000 in community development block grants for phase 4 and 5. He said that the Township is trying to get some stimulus money to do the whole road. He said that the Township asked its engineer to plan out the whole road so the Township doesn't have to keep coming back on a piecemeal basis. He indicated that the Township engineer submitted the entire plan to Pinelands staff and the Township has met all the criteria. He referred to Oak and Laurel Streets and stated that these roads will have to be paved as well. He said that the citizens on those roads deserve the same conveniences as the rest of the citizens in the Township. He noted also that the post office in the Township has the option as to whether or not to deliver on unpaved roads and they have refused to deliver on Oak and Laurel Streets.

Commissioner Haas stated that he visited the site and agreed with the Mayor's contention that these streets should be paved. He said that if construction stays within the right-of-way it will have minimal impact and it will be a benefit for local residents.

Commissioner Jackson referred to potential rule changes in the CMP and asked if the Township would be amenable to having a discussion with the staff in the future if issues come up.

Mayor DePetris said that the Township has never failed to meet with the Pinelands on any issues and stated that they would be open to any discussion. He said that he hopes that the Township will get some stimulus money and will be able to complete the whole project.

Commissioner Campbell stated that he feels the Township has done all that they can do to try and meet requirements and is in support of the application.

Commissioner Witt asked that the Chair call for the vote.

Mr. Stokes commented on irreversible adverse impacts and said that the question relates to whether the adverse impacts from the project are critical to the habitat and to the survival of any local snake populations. He read the standard of the CMP relating to irreversible adverse impacts and indicated that this is the standard that the Commission has to apply in this application. He said that staff does not believe that those adverse impacts are critical to the habitat and survival of any local snake populations in this case.

Commissioner Ashmun asked Mayor DePetris if it is possible that the Township could separate the application to apply to Prince Road and finish the top of Cedar Road to deal with the special problems the Commission is facing (snakes, wetlands, etc.) more appropriately.

Mayor DePetris asked Mr. Callaway to comment on Commissioner Ashmun's question.

Mr. Robert Callaway, Woodland Township Engineer, stated that the construction that has been done over the years is based on the money the Township has received. He briefed the Commission on the initial roadway designs and the stormwater system that is in place and explained why the full design is in front of the Commission today. He also commented on what is occurring as the money comes along.

Commissioner Ashmun asked if trucks can come in and pave a road that is 18 or 20 foot wide without disturbing anything outside that area.

Mr. Callaway said as long as the fence is up on the outside, the work will be done inside that fence. He indicated that progress on this project is based on the availability of funding.

Commissioner Ashmun asked if the design standard that the staff has looked at is because of the stormwater.

Mr. Callaway replied that is correct and stated that it was so they could show that they have compensated for the entire area in terms of stormwater.

Commissioner Lloyd asked how much stimulus money is needed to finish the whole project.

Mr. Callaway replied that they have asked for \$1.7 million.

Mayor DePetris stated that the paved road will discourage a lot of dirt bikes and indicated that the roads will not get a lot of traffic.

Mr. Callaway noted that the school board has stopped school buses from traveling the roads due to damage to the buses.

Commissioner Witt stated that there has been a lot of discussion about this application. He said that he would not like to see this project separated because the Township will be back and staff will have to review the project again. He said that he has a lot of confidence in the staff and they are recommending that this project be approved. He said that he does not want this project to fail and suggested that maybe the application should be tabled until all the members of the Commission are more confident about what the staff has already proposed.

Vice-Chairman Tomasello noted that there are parts of the roadway that are only 15 feet wide, hardly enough room for two cars to go by. He questioned if two trucks come down the road whether or not they will be able to get by one another.

Mayor DePetris indicated that if one travels on Prince Street it is unlikely that two vehicles will be using the road at the same time.

Vice-Chairman Tomasello stated that he is not against the project and concurred with Commissioner Witt as he too, would like to see the application approved.

Commissioner Lee stated that this was his concern as well. He asked if staff is limiting the applicant to 15 feet or 18 feet, noting that the report says 15 to 26 feet.

Mr. Horner replied that there are sections in the existing road where it is as narrow as 15 feet. He indicated that the Township will be paving at that width in those sections.

Commissioner Lee asked what the speed limit is on the road.

Mr. Callaway replied 25 mph.

Commissioner Lee asked how a school bus and a delivery truck pass one another on a 15 foot cartway.

Mr. Callaway replied the same way they do now on the gravel road.

Commissioner Lee said that there has to be a minimum level of service for roads. He said that the Commission should allow them to construct these roads to a safe standard and in some places instead of 15 feet, he believes it should be 18 feet. He said he also has a problem with piecemealing this application.

Mr. Callaway stated that he is in favor of anything that gives the Commission comfort but noted the Township's funding resources have time constraints.

The Commission discussed whether or not to table the application or to consider the vote. Commissioner Lloyd questioned if the Commission can vote on the phases for which the Township has funding and which have the least environmental problems. The Commission can then consider the other concerns that have been raised. He asked if there is a way to bifurcate this that would be useful to the Township and to the Commission.

Commissioner Kennedy said that he doesn't agree with that approach stating that often times the Commission finds itself in a position of compromise. He said that the Township has followed the Commission's stormwater rules and listened to the staff to try to find a way to minimize the impact by keeping the project in the existing cartway. Some of the Commission members want to see the road wider for public use, and guesses that the Township would like to see this design widened a bit. He said that this middle ground position appears to be the compromise between these two schools of thought on what to do with the project of this nature. He said that he doesn't mind if the Township supports moving this matter to the next meeting to get more members here so the full Commission can hear this. He said that the Commission is hamstrung by the lack of members not seated at this table.

Commissioner Jackson suggested that the Commission should first vote on the resolution.

Commissioner Ficcaglia stated that if the Commission voted to bifurcate the application it would have a much better chance of passing.

Commissioner Kennedy stated that if the basis to do this was in the Commission's regulations he would agree with Commissioner Ficcaglia, but he sees no basis in the regulations to bifurcate this application.

Commissioner Ashmun stated that if the Commission looks at the Preservation Area and at the necessity to prove compelling public need, there are a lot of things that are still unresolved between Prince Street and the paved section of Cedar Street. She said that bifurcating the application would be the answer to a problem. She asked about the number of existing lots on Cedar Road.

Mr. Callaway replied that there are 10 homes between the two roads. He said that there are not many lots left on Prince Street.

Commissioner Ashmun stated that what bothers her here is that this street becomes a short cut from Route 72 down to Prince Street. She again suggested that the project be bifurcated.

Mr. Stokes stated that the Commission does not have the authority to unilaterally bifurcate the project. He added that if the project is bifurcated, he is not sure what the issues are on the remaining project. He said if there was some additional information that could be provided, he would be happy to provide the Commission with that information.

Commissioner Haas suggested that the matter be tabled and acted on at next month's meeting.

Commissioner Jackson stated that the Commission should vote on the matter today.

Commissioner Lee asked Commissioner Jackson what happens if the vote fails.

Commissioner Jackson questioned whether or not the vote would fail.

Commissioner Lee said that he doesn't know if the vote will fail, but knows that he doesn't want it to fail and send everyone back to square one.

Mr. Stokes stated that if the vote fails, the matter is referred to the Office of Administrative Law for fact finding. He said that he doesn't believe the Township nor the Commission wants to go through the OAL process. He said that the solution would be, if the Commission votes on this application today and it fails, the Commission and the Township could agree to withdraw the OAL matter and then the matter could come back to the Commission next month. He reminded the Commission that the Mayor agreed to discuss with the Commission those sections of the road that are not paved if new information or concerns arise.

Vice-Chairman Tomasello asked Mayor DePetris if the roads will be done this summer.

Mayor DePetris stated that there is a deadline that has to be met and this project has to be awarded by August or the Township loses the funding.

Vice Chairman Tomasello asked Mr. Stokes to call the roll on the application.

Campbell	yes	Jackson	yes	Witt	yes
Ficcaglia	no	Kennedy	yes	Ashmun	no
Galletta	yes	Lee	yes	Tomasello	yes
Haas	yes	Lloyd	no		

The resolution was adopted by 8 Commissioners voting in the affirmative and three voting in the negative.

Mayor DePetris thanked the members of the Commission for approving the application.

Other Development Review Matters

Mr. Stokes stated that there were two PDC Letters of Interpretation issued this month.

Resolutions Relating to Municipal Ordinances

Mr. Stokes presented the Resolution Issuing an Order to Certify Planning Board Resolution 2009-10, adopting the 2005 Stormwater Management Plan with February 2009 amendment thereto, and Ordinances 09-08 and 20-08 of Jackson Township. (See Resolution #PC4-09-29 attached).

Commissioner Lloyd moved the adoption of the resolution. Commissioner Galletta seconded the motion. The Commission adopted the resolution by a vote of 11 to 0.

Ordinances Not Requiring Commission Action

Mr. Stokes stated that Egg Harbor Township Ordinance 61-2008, Hamilton Township Ordinance 1639-2008, Medford Township Ordinance 2009-4, Vineland City Ordinance 2009-10, Vineland City Ordinance 2009-11 and Wrightstown Borough Ordinance 2008-13, are ordinance amendments that do not raise a substantial issue with regard to the provisions of the Comprehensive Management Plan. The Commission took no action, allowing the ordinance amendments to take effect.

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

Other Agenda Items

Ms. Theresa Lettman of the Pinelands Preservation Alliance referred to the Woodland Township application and stated that the public development report says that the applicant proposes to erect construction fencing within the limits of the existing gravel roadway. The conditions state that

the fencing is to preclude sediment from entering the wetlands to protect the Pinelands Tree Frog and that the proposed fencing will also be installed to ensure that disturbance will occur within the limits of the existing gravel roadway. She indicated that it did not say that the fencing would be put in to protect the Northern Pine snakes. She said she is assuming that it is being implied by the Commission that the only protection the Commission gave the Northern Pine snake in the paving of this road, is the fencing.

Mr. Stokes stated that if Ms. Lettman would like to ask the staff to respond to that question they will be happy to meet with her following the meeting today.

Ms. Lettman stated that she didn't want the question answered by staff, but rather, by the Commission.

Mr. Russell Juelg of the Pinelands Preservation Alliance thanked the Commission for the work that PPA and Commission staff are doing together on the roadside plant issue. He referred to the Commission's vote today on the Woodland Township application and stated that 8 members voted to approve an application that does not comply with the Commission's regulations and he doesn't know how it can justify that approval. He said that there is no evidence to demonstrate that the applicant is in compliance with the Commission's threatened and endangered protection rule. He said neither the staff nor the applicant know whether they are in compliance and whether or not paving will introduce a permanent adverse impact to habitats that are critical.

Ms. Nan Walnut from Southampton Township said that many years ago one of the Commissioners referred to her as the conscience of the Pinelands. She said that today she has seen the Pinelands dealt a final blow.

Mr. Carleton Montgomery of the Pinelands Preservation Alliance referred to the Commission's vote last month to amend the draft forestry regulation that was put out for public comment, particularly the change to allow disking in Pitch Pine Shrub Oak forest. This change was made to a key provision of the draft regulations, a provision that had been a specific subject of discussion and consensus by the Forestry Advisory Committee that disking was not appropriate because of the damage it would do the shrub oak understory. He said that this eleventh hour change was made with no discussion or examination of the justification for the change or the scientific bases for the change, the ecological impact that it could have in a forest operation whose agenda was being served, where it was coming from, or what was to be accomplished. He said that it undermines the overriding purpose of these regulations which is to ensure that forestry can go forward in a way that preserves the local forest types including those that are most sensitive and important, such as the Pitch Pine Shrub Oak. He said that when the Commission does this it undermines the confidence of those who try and participate in its processes and undermines the public's confidence in the agency's decision making process.

Mr. Bill Fox of Ocean Township and a member of the Agricultural Advisory Committee stated that he did not like the way the vote was done on the forestry rules and regulations. He said that the Pinelands Agricultural Advisory Committee was opposed to it. The whole package was a series of compromises over 5 years to make it economically viable for them to have a forestry operation.

Commissioner Ashmun indicated that those rules have been published so that the Commission can hear comments before making a final decision.

Other Agenda Items

Presentation – Mark Holmes of the State Ethics Commission

Mr. Stokes introduced Deputy Executive Director Mark Holmes of the State Ethics Commission who will provide the Commission with a brief overview of the Ethics Commission's advice to the Commission. He is also willing to respond to questions that the Commission may have about the decision.

Mr. Holmes apologized for the length of time it took the Ethics Commission to answer the questions the Commission posed. He said that it reflects that his office, the Commission, and the Attorney General's office took the questions very seriously and wanted to give it an appropriate level of thought and consideration. He said that he was contacted by Ms. Roth of the Commission's staff about the extent, if any, that any of the members need to recuse themselves from participation and voting on amendments to the CMP. He said that this raised a threshold question regarding a particular provision in the Commission's own statute which contains an exemption for Commissioners to participate in the preparation and adoption of the CMP itself. The question posed was, does that exemption, which would exempt the Commission from the application of the conflicts law and regulations, apply to amendments to the CMP as well. That is not a question that is within the jurisdiction of the Ethics Commission so it was forwarded to the Attorney General's office for advice. Since the exemption was meant to apply only to the original adoption of the CMP, the Ethics Commission had to address the underlying issues that were posed to them. The Ethics Commission felt very strongly that the Commission needed to understand the basis for the Attorney General's advice so it waived the privilege for that advice and it was attached to the opinion. He said the amendments to the CMP were doing a host of things but in one significant way they are making changes to the Commission's PDC program. He said the question became whether a Commissioner who owned PDC rights or was eligible to receive PDC rights, owned property in an area which either was a Regional Growth Area or might become a Regional Growth Area would have a conflict because there was a financial or personal interest in the outcome of the amendments. He said that a decision that could have a direct financial impact on you as an individual, that Commissioner needs to recuse himself under the recusal rule and also under an appearance of a proprietary standard. He said that this answered the first question. He said that there was also an issue raised as to whether this Commission is unique in the sense that the statute mandates members from certain backgrounds, similar to a decision that the Ethics Commission issued to the State Board of Agriculture, and that the standards ought to be changed for the Pinelands Commission to reflect those unique circumstances. He said that the State Board of Agriculture is a unique body in that every one of its members is required to be a producer of either livestock or crops so that body has to make decisions which affect its members. He said that if a rule affects the entire industry all members would be forced to recuse themselves if the Ethics Commission applied its ordinary standards, so the Ethics Commission changed the standards with respect to the State Board of Agriculture and said that a member could participate so long as s/he is not uniquely affected. The Ethics

Commission looked at the composition of the Pinelands Commission and by statute some of the members have to be residents of the Pinelands with economic interests and others have to be residents of the State with conservation interests. However, these are not the same sort of broad based statutory requirements which create an inevitable conflict which cannot be resolved with ordinary recusal standards. As a result, the Ethics Commission decided not to apply the standard that it applied in the agricultural decision to this body. Therefore, the ordinary recusal standards were applied in the Pinelands Commission's case. He said that the Ethics Commission issued very general advice based on that. The decision which was rendered by the Ethics Commission was not specifically addressed to any of the Commission members as individuals but it was intended to be a much higher level, broad based set of standards that it can apply. He said that he is sure that many of the members of the Commission have individual circumstances which require particular advice, which Ms. Roth and his staff is willing to provide.

Commissioner Galletta stated that "COIL" was enacted in 1971 or 1972 and the Pinelands Protection Act was enacted in 1979. The Commission has been doing business for almost 29 years and asked what changed this year.

Mr. Holmes stated that he has been with the Ethics Commission for about a year and a half and he hasn't seen any reported decisions that addressed that issue at all. He said that it may be that Commissioner Galletta's assumption is incorrect and that it may have been going on but they simply weren't aware of it. He said that the only change he is aware of that would be significant was the potential change that came from the State Board of Agriculture.

Commissioner Lee said that the process has changed and for a very long time the Attorney General's office provided direct advice to the Commission about conflict of interest and ethics issues, in closed and open sessions, Commission retreats and training for new Commission members. He said about 8 years ago, the Attorney General's office was no longer permitted to discuss ethics issues with the Commission; rather, they had to go through an ethics liaison officer and through the Ethics Commission's office. He said that advice by Deputy Attorneys General sitting at this table made many distinctions about uniquely affected and a great deal of time was spent discussing the concepts of judicial versus administrative functions of the Commission. He said at the Commission's level they had a pretty good understanding of how to apply both the Conflict of Interest Law and the Pinelands Protection Act. He said Commissioner Galletta is pointing to a sharp turn that occurred in the last year in interpreting both the Conflict of Interest Law and the Pinelands Protection Act and without interaction that had routinely occurred with the Attorney General's office on ethics issues. He said that he is sure that something happened internally, either at the Attorney General's office or at the Ethics Commission office, to cause the abrupt turn in the road. He said that the advice in the Ethics Commission's opinion was in sharp contrast to all the verbal and written advice that the Commission had received from the Attorney General's over many years.

Mr. Holmes said that he hasn't seen the advice that Commissioner Lee is referring to and he is not aware of any significant policy change. As far as he is aware, when specific recusal questions come up on short notice, members can rely on its liaison officer or the deputy attorney general. He said that the issue his office dealt with was much broader and would affect a multitude of the members. He said that the public view of ethics has changed. He said that there

is a lot more sensitivity to ethics now than there was even 5 years ago. He said the appearance of impropriety is a significant element of their statute and of their regulations. He said that one has to think of it not from the perspective of do "I" think I can be objective but would someone watching me think that I was making the decisions because of my official position and not because of my personal circumstances. He said as they understood the PDC program, a number of the Commissioners stand to be impacted financially by those changes.

Commissioner Galletta said that if someone in the audience actually owned PDCs or that could receive PDCs, the appearance of impropriety would be just as great because nobody would be voting with that perspective. There are two ways of looking at the public appearance of impropriety. Today, the Commission was short handed and hamstrung on a vote, the same thing is going to happen with PDCs. Some of the Commission members are going to have to recuse themselves and there will be a hamstrung board voting and the appearance of impropriety is going to be very great.

Mr. Holmes said that he understands and is sympathetic to Commissioner Galletta's point as his Commission is down in members and they have quorum problems themselves right now. He said that, although the Pinelands Commission by statute is required to have people come from certain backgrounds, he wouldn't read that as suggesting that it is the Commission's job to represent those special interests as opposed to being simply a person with background knowledge and perspective because of that history. He said that he doesn't think you have to be a person who owns PDCs or owns property in a Regional Growth Area to understand the issues and factor them into whatever it is the Commission is going to do. He said that quite a number of interest groups made submissions to the Ethics Commission. He said that his impression from reading those was that the Commission has a number of bodies that come to its meetings that can present those perspectives, even if individual Commissioners have to recuse themselves.

Mr. Stokes stated that some of the difficulties that Commission members may be having in sorting this out relates to how broad or narrow the policy issues are. Virtually every policy decision could have an effect on people who live in the Pinelands. He asked if a policy that has universal application throughout the Pinelands would not inherently disqualify a person from voting merely because that person lives in the Pinelands.

Mr. Holmes replied that this would be fair to say.

Mr. Stokes stated, in the future, a policy that has a very direct and limited impact on a member of the Commission would clearly require recusal. He said that the other end of the spectrum is the very broad, overarching policy where recusal is not warranted. The issue is where in the middle the line is drawn. He said that Mr. Holmes is probably not in a position to give the Commission that advice today.

Commissioner Jackson stated that it is personal gain that seems to be the issue.

Commissioner Galletta stated that that could be ambiguous because he had to recuse himself because of forestry. He said that he never did forestry but he owns a piece of ground that is forested. What's to say that any of the Commissioners could vote and the very next day either

lease or buy a piece of ground for forestry. He said that everyone on the Commission is afforded the same opportunity in the future to go into forestry and apply those rules.

Commissioner Jackson stated that at that time they probably would have to recuse themselves if a forestry issue came up because a potential for gain exists.

Commissioner Galletta said that they would have already voted on the new forestry rules.

Ms. Roth said that there is a direct and indirect personal or financial interest that may be implicated as a result of the potential regulation or administrative action. She said on the other side of the spectrum there is what she would characterize as actions by the Commission of general applicability. These are not dependent upon the circumstances of any specific Commissioners' holdings or personal interest, they are across the board, broad based, and will be applied the same. She said that she and Mr. Holmes are engaged frequently in discussions to define that middle ground as the Commission moves forward. She said that taking the forestry regulations as an example, the difference in terms of the general applicability standards is that the regulatory package is designed to set forth forestry activities and prescriptions based on the types of resources that are found on the ground. She said if a Commission member has forest lands that have specific types of resources, you are required to use specific types of processes or procedures and are precluded from using other processes or procedures. She said hypothetically that someone who is motivated by increasing their financial gain with regard to the resources on their property or decreasing their cost with regard to operations on their property could adjust the regulations to accommodate their needs because they are not universal but are based on facts that are inherent to the land. When she looks at the analysis that way, there is a potential appearance problem. That is the very detailed analysis that goes into these types of questions.

Commissioner Galletta stated that there was not a cedar inventory done on his property when the discussion of him being recused happened. He said that there was a little piece of forest on his lot and that was enough to say he was recused. He said that it was ambiguous.

Mr. Stokes stated that unfortunately it is just not a clear line.

Commissioner Kennedy stated that he thinks that Mr. Holmes' position and the Ethics Commission and DAG's opinion are based on the same things that the Commission is concerned about which is that actions are grounded in democracy. The reason why everyone wants clean ethics is because they want to believe in the process. What is at risk here is the perception issue. Taking good ethical people on both sides of the table off the table erodes the faith in the democratic process. He thinks that ethics is always going to be a moving line. He said that he believes that we are reacting to some people crossing that line and we're now going a little too far on the other side. He said that democracy means people at the table who have an interest and knowledge of the issues that they are making decisions about.

Commissioner Lee said that the distinctions that they heard in the past were quasi legislative and quasi judicial. He said that helped guide and allow for some of the broad discussions on broad topics. He said that when he hears general applicability and broad based he is not sure what that means anymore. He said that he doesn't want to break something that is not broken but he

doesn't understand. He said that he believes he is the only one here today that lives in the Pinelands who has a septic system. He asked if he is uniquely affected around this table. He said that maybe he shouldn't discuss septic systems anymore. He said that he believes that the Legislature tried to put people around this table to discuss things on an ongoing basis. He said that he disagrees with the ethics opinion but is more than willing to follow it. He said that municipal planning boards in New Jersey seem to deal with this issue all of the time when they do master plans that affect everyone in town. He asked if there is an analogy between the work of a planning entity like the Pinelands Commission and municipal planning boards.

Mr. Holmes stated that Commissioner Lee makes a good point that the perception that the Commission's judgment could be affected by one's personal circumstances is going to be affected by whether talking about something that applied to one's home, town, county or state. When one gets outside the realm of the square corners of the recusal rule and gets into an appearance issue, he believes this kind of analysis can take place. The rule is what it is. With respect to the issue that was before the Ethics Commission at the time, the PDCs did have the potential to have a very personal impact on some of the Commission members. He said that he is not sure that they are in the realm of the very general regulations for septic systems that would apply equally to everyone. He said that there is a role for that analysis to play in some of these gray zones that Mr. Stokes was describing.

Vice-Chairman Tomasello referred to his two sons who own farmland that they are considering preserving and do not intend to sell their PDCs because they may go through the county. He asked if he has to recuse himself.

Mr. Holmes replied that this would be a close call.

Mr. Stokes stated that this is something that Ms. Roth and Mr. Holmes should take a closer look at.

Vice-Chairman Tomasello asked if this means that he can't get himself involved with a discussion with Commissioner Galletta or Commissioner Lee if PDCs come up.

Mr. Holmes said that this is a different question than Vice-Chairman Tomasello's first one. He said unrelated to whether his son would be impacted by a change to the CMP, if a particular issue came up about Mr. Galletta's and Mr. Lee's PDCs that doesn't impact his son's rights, Vice-Chairman Tomasello could participate in that unless there is some other issue that hasn't been talked about that might create a problem.

Mr. Stokes stated that he believes that Vice-Chairman Tomasello was asking whether or not he could discuss a PDC matter with Commissioners Galletta and Lee.

Mr. Holmes said that if Vice-Chairman Tomasello was recused he shouldn't be participating in discussions about it with any other members of the Commission.

Mr. Stokes stated that Mr. Holmes and Ms. Roth will take a closer look at the issue Mr. Tomasello raised.

Vice-Chairman Tomasello said that he was the mayor of Winslow for five years and asked if he would have to recuse himself from any matter relating to the town that came before the Commission.

Mr. Holmes replied only if he felt that he couldn't be objective or was directly involved in a matter. He said that the Ethics rules would not require him to recuse himself from any matter involving that town simply because he was the mayor.

Ms. Roth said that she is always available to discuss these types of issues with members of the Commission and, by understanding the personal facts, can make a quicker answer and speed up the process. She said that she would rather speak to the Commission beforehand than have an investigation afterward. She said that another risk is that, if it turns out that someone was supposed to recuse oneself and didn't, a Commission decision will be rendered invalid by the court.

Presentation – Larry Liggett –Update of Land Capability Map Changes

Mr. Liggett provided a power point presentation and briefed the Commission on the proposed changes to the Land Capability map. He discussed the Ecological Integrity Assessment Study prepared by the Science office and described the principles and assessment methods used to look at the ecological integrity of the Pinelands and how that assessment was utilized in recommending changes to the management areas (see presentation attached).

Presentation – Possible Affordable Housing Rules

Mr. Stokes stated that the discussion on the possible Affordable Housing Rules has two parts—both stem from legislation that was enacted last year. The legislation amends the State's Fair Housing Act. There is a section that deals with regional planning entities of which the Pinelands Commission is one. It establishes a newer role for the Pinelands Commission to play in the provision of affordable housing within the Pinelands Area. Ms. Grogan will brief the Commission on this in the context of what regional rules the Commission may consider. He said that the other side is an interim question which is does the Commission have an obligation to implement at least parts of the State law even before the rule making process is complete. He said since this involves advice from the Commission's counsel, this discussion will occur in closed session. Following that, both of these matters will be discussed at the next P&I Commission in an open forum.

Ms. Grogan provided the Commission with a power point presentation. She briefly provided background information on the State's affordable housing rules and indicated that this relates to what the Council on Affordable Housing (COAH) refers to as its third round rules for affordable housing throughout the state. She said that staff has discussed the rules and the difficulties it sees in trying to harmonize the Commission's standards with COAH rules, problems that were identified to COAH and how those rules can best be applied in the Pinelands. She said that the Commission doesn't have state planning areas in the Pinelands but rather Pinelands management areas. She said that there are some basic issues between the two sets of rules that staff have tried

to resolve over time. She indicated that staff have made comments to COAH formally and continue to try and work with them on a revised MOA between the two agencies to iron out some of those differences. She said that staff is discussing this matter with the P&I Committee now in an attempt to address some of the long standing issues. Ms. Grogan summarized the new State Law, A-500, which is now also Public Law P.L. 2008, Chapter 46. She said that she tried to reflect the provisions of the new state law and issues staff has come across with the COAH rules into amendments to the Commission's rules that would implement the State Law and resolve some of the differences with the COAH rules. She said that the amendments themselves are pretty basic and described them for the Commission (see presentation attached). She indicated that the rules were discussed with the P&I Committee and will be discussed with them again at the end of this month. In the meantime she has distributed them to all interested parties and is beginning to receive comments on them. She said that a lot of the comments received have been very helpful and staff will be meeting with COAH staff next week to hear their concerns. She indicated that most of the issues that have come up have been fairly minor thus far, such as terminology and a question of what you do with municipalities who aren't going to COAH with their housing element and fair share plans but are choosing to go through the court process instead. She said that perhaps the Commission's rules need to recognize that as another means of achieving the affordable housing plan. She said that staff will be working through all of this and then will come back to the Commission with a revised version of the rules at the end of the month.

Commissioner Ashmun asked how this all connects with the first and second round numbers.

Ms. Grogan replied that these rules and the State Law apply only to the third round.

Commissioner Ashmun asked if the round one and two numbers will still have to be met.

Ms. Grogan replied that COAH would require that.

Ms. Stokes stated that the COAH certification process is voluntary and municipalities are not required to get COAH approval of their fair share and housing plans. He said there are municipalities in the Pinelands that have not sought certification.

Commissioner Ashmun said that this is why she is asking because it has all been voluntary and remains voluntary. She questioned how voluntary it will be.

Mr. Stokes stated what will happen in the Pinelands is the 20% inclusionary requirement that the State Law requires in the Pinelands will apply to every municipality in the Pinelands regardless of whether they go to COAH for certification. He said that going to COAH would be voluntary. The question is whether or not a municipality might have an added inducement to do that because if they do they can develop their own housing plan and, to the extent that they want to do something different than a 20% across the board requirement, this gives them the opportunity to do so. He said that he looks at it that unlike other parts of the State there will be affordable housing provided throughout the Pinelands, and two, municipalities can exercise more creativity and discretion if they go through the COAH certification process.

Ms. Grogan said that many of the Pinelands Towns may choose not to go through the process and just do the 20%, which is fine.

Commissioner Galletta asked if the towns can still be sued for a builder's remedy if they do the Pinelands 20%.

Ms. Grogan replied that this is a very good question and said that she doesn't know the answer to that. It is something that needs to be discussed with COAH and with the Commission's attorneys because the State Law does not make that clear.

Mr. Stokes stated that the Fair Housing Act protects municipalities from builders' remedy lawsuits if they have COAH certification. He said that he doubts that the Pinelands 20% set aside is a segregate for COAH certification.

Mr. Stokes stated that the Commission will need to adjourn into closed session to discuss the second part of this affordable housing question which is whether the Commission should take any action before it goes through formal rule making.

Closed Session Resolution

DAG Donlon read a resolution to retire into closed session to discuss attorney-client matters.

Commissioner Witt moved to retire into closed session. Commissioner Jackson seconded the motion. The Commission agreed to retire into closed session by a vote of 10 to 0. Commissioner Ficcaglia was not present for the vote.

Return to Open Session

Vice-Chairman Tomasello reopened the public portion of the meeting.

DAG Donlon reported that the Commission discussed in closed session the impact of A-500 and the P&I Committee will be considering a resolution to that effect at its next meeting.

Commissioner Jackson referred to the Woodland Township application. He said that there were reasons for all the Commission members' stance and he thinks knowing how funding is done, knowing the time frame necessary, hearing testimony from the Mayor, realizing that there were 8 Commission members, probably not today, but at the next meeting who would vote yes, he thinks it is important that the Commission compromise where it can and move on. They have to seek other funding in times of hardship and that other portion may never get done. He thinks that fewer disturbances are better than discussing a wider road with more disturbances and right now there was a compromise where it would vary from 15 to 20. He said he doesn't like that being paved but knowing what could happen, he wanted to see it move forward now. He said that this is why he voted the way he did. He said that the Commission needs to be responsible where it can and make compromises where it can.

Commissioner Lee moved to adjourn the meeting. Commissioner Lloyd seconded the motion. The Commission agreed to adjourn at 1:30 p.m.

Certified as true and correct:

Nadine B. Young,
Executive Assistant to the Commission

Date: _____