

Adopted June 26, 2009

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall
15C Springfield Road
New Lisbon, New Jersey
May 29, 2009 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Acting Chairman Norman Tomasello, Candace Ashmun, Stephen Lee, Ed Lloyd, John Haas (1st Alternate), and Daniel M. Kennedy (3rd Alternate)

MEMBERS ABSENT: Leslie Ficcaglia and Robert W. McIntosh

STAFF PRESENT: John Stokes, Larry Liggett, Susan Grogan, Stacey Roth, Paul Leakan and Betsy Piner

Acting Chairman Tomasello called the meeting to order at 9:42 a.m.

1. Adoption of minutes from the April 24, 2009 CMP Policy and Implementation Committee meeting

Commissioner Ashmun moved the adoption of the minutes of the April 24, 2009 meeting. Commissioner Haas seconded and all were in favor. In response to a question posed by Commissioner Kennedy, Ms. Piner said that the *absence* of Alternate Committee members is not noted in the minutes as their meeting attendance is usually optional.

2. Review of the Executive Director's recommendations to the Pinelands Commission as to the eligibility of parcels for the 42nd round of acquisition under the Limited Practical use program

Ms. Piner said that one questionnaire had been received pursuant to the 42nd Round of the LPU program. It is a 0.69 ac. parcel in the Pinelands Village of Milmay that had been denied a waiver at the April 17, 2009 Commission meeting. Staff is recommending eligibility.

Commissioner Lee moved the recommendation to the Commission of the eligibility of a parcel in the 42nd round of the LPU program. Commissioner Haas seconded and all were in favor.

3. Joint Land Use Study for Joint Base McGuire-Dix-Lakehurst – Presentation by consulting team and recommendation for endorsement

Mr. Stokes said that Ms. Grogan has served as the Commission's representative to the Joint Land Use Study (JLUS) Policy Committee.

Ms. Grogan said that the meeting packets had included excerpts from the final JLUS report but the entire report is available on line, as listed in her packet memo, at <http://www.jointbasenj.org/default.aspx>

She said that the consultants hired by Ocean County were here today and she introduced Ms. Brandi Bartolomeo who in turn introduced her colleague, Mr. Charles Mink in addition to other JLUS members in the audience, Mr. Dave McKeon, Director of the Ocean County Planning Department, Ms. Stacy Perrine, with the Ocean County Planning Department, and Mr. Ed Fox with the Burlington County Planning Department.

Ms. Bartolomeo provided a PowerPoint presentation, noting that the study area included the joint base (McGuire-Dix-Lakehurst) surrounded by a 2 mile buffer. (*See Attachment A*)

Mr. Stokes asked about the timing of the next AICUZ (Air Installation Compatible Use Zone) study. Mr. Mink responded that it will take about a year and that it will be important because it will capture the Navy and Marines aircraft moving from the Willow Grove Naval Air Station.

Commissioner Ashmun asked for copies of the maps included in the report and several Commissioners asked for copies of the entire report. Due to limited quantities, Ms. Bartolomeo was able to leave only one copy with the Committee.

In response to Commissioner Kennedy's question if the consultants thought that the APZ (Accident Potential) zones would change over time, Ms. Bartolomeo responded, no they are set.

Commissioner Lee said that he had some operational questions in relation to the use of the improved new runway at Lakehurst. How much planning was done? Were alternatives considered? Was the assault landing strip at Warren Grove considered? Are there alternatives that can be combined with acquisition and rezonings in the future? Can there be more operational flexibility?

Mr. Mink responded that he had worked previously at Lakehurst and didn't recall that Warren Grove had been considered. The impetus of the Joint Base was to save fuel and keep flights in the area. He said that following receipt of complaints, the flight patterns at Lakehurst have been altered.

In response to Commissioner Ashmun's question as to how the JLUS relates to the Department of Defense acquisition program, Ms. Bartolomeo responded that the JLUS recommends acquisition of lands, primarily in the areas of noise and the APZ. She said that both Ocean and Burlington Counties have been active in acquisition in the area.

Mr. McKeon said that federal funding has contributed to the purchase of lands in the priority area and that next month a 163 acre parcel will be purchased using funds from the Pinelands Conservation Fund and federal dollars.

Commissioner Kennedy added that Burlington County had also been successful and is facilitating the acquisition of easements.

Commissioner Haas said that at some point, Jackson Township may do some downzoning. He asked if it was anticipated that the Township would contribute to the pool of acquisition funds.

Mr. McKeon responded that there has been no commitment for municipal donations but it is on the table. Jackson Township is looking at its master plan and there have been discussions of voluntary changes, e.g. the Clayton property has potential commercial rather than residential use.

In response to Ms. Grogan's suggestion that she discuss the Implementation Committee, Ms. Bartolomeo said that the JLUS recommends the development of a procedure manual that could help to keep a semblance of continuity in recognition that base commanders and mayors change. She added that the consultants were very pleased with the involvement and activity of all the participating parties in the Study.

Commissioner Lee said that he was bothered by the recommendation that targeted a particular landowner and was concerned that there were other owners of vacant lands within the study area who had not been notified or represented. They needed such representation.

Ms. Bartolomeo said that one of the recommendations was for a TDR program for non-Pinelands communities to give benefit to such landowners.

Commissioner Lee said that one of the recommendations (D-4) on page 255 of the report was the establishment of priorities for acquisition. Ms. Bartolomeo said that a list has been developed and, as Mr. Stokes suggested, that the priorities are for acquisition of ACZ-1 and then ACZ-2 lands. Commissioner Lee asked that the list be shared with the Commission's Permanent Land Protection Committee.

Ms. Bartolomeo added that SADC representative, Mr. Tim Brill has said that there are funds available to assist with acquisition.

Mr. Stokes asked the consultants about the presentation at the April 24, 2009 CMP P&I meeting at which a representative from Lakehurst had indicated that the incorporation of noise standards into new construction is not permitted. Ms. Bartolomeo responded that such a statement was correct. One cannot arbitrarily change the codes which were developed by an international committee; it cannot be done at the municipal level.

In response to Mr. Stokes question if the JLUS recommended that New Jersey pursue such changes, Ms. Bartolomeo said that the report discusses incentives but not that one; someone at the state level would need to sponsor such a change but it was not made as a clear recommendation.

Mr. Stokes said that it would have been helpful to have had that recommendation included. Mr. Mink noted that it had been included in an earlier iteration of the report.

Mr. Stokes said that Governor Corzine is a strong advocate for the Joint Base and that this issue should be brought to the Governor's attention. Ms. Bartolomeo responded that the JLUS is not a static report and that such a recommendation can be added.

Mr. McKeon said that the issue of code enforcement developed at the end of the process. He said that the Committee did not want to change noise standards at that time but concurred with Ms. Bartolomeo's assertion that this was a living document. He agreed that it should have been stressed in the report.

Mr. Liggett said that he understood that noise standards can be required around commercial airports but not military. Ms. Bartolomeo concurred; it is a matter of FAA vs. military oversight. Mr. Liggett said that the source of the noise might be different but the impacts are the same.

Ms. Bartolomeo said that the charter for the Implementation Committee appears in the appendix of the JLUS report.

Ms. Grogan said that the Committee had been provided with a draft resolution endorsing the final report and conceptually, the recommendations. She said that that any ordinances or master plan amendments developed pursuant to the JLUS study would require formal Commission review and certification for consistency with the CMP.

Commissioner Ashmun moved the addition to the second-to-the-last "Whereas" in the resolution of ...to the Commission for review "*and approval*"... Commissioner Lloyd seconded and all were in favor.

Commissioner Ashmun moved the recommendation to the Commission of the revised resolution endorsing the Joint Land Use Study report. Commissioner Haas seconded and all were in favor.

4. Affordable Housing: Review of draft rules and discussion of interim implementation of P.L. 2008, Chapter 46

Staff distributed two documents related to this discussion (Memorandum to Ms. Grogan with attached email from representatives of Clarke Caton Hintz attached to File Copy Only and a letter from NJBA (Attachment B).

Mr. Stokes noted the interrelationship between the issues of affordable housing and Pinelands Development Credits (PDCs). He said that the amendments to the Fair Housing Act now required that 20% of all new residential development be affordable, unless economically infeasible; and that the Commission (like other regional planning agencies including the Highlands Council, Meadowlands Commission, and the Ft. Monmouth Economic Revitalization Planning Authority) is empowered to take a more active role in the provision of affordable housing. Mr. Stokes said that the Attorney General's office has been evaluating these new provisions and recently said that the Commission has a statutory obligation to implement them now. He said that a rule proposal to allow for clear implementation of the 20% set-aside requirements has been prepared but will be delayed as staff would like the Commission to advance both the PDC rules and the affordable housing rules together, possibly for the July 10, 2009 Commission meeting; they are so interconnected that it would be difficult for the municipalities to implement them separately. He said that staff had met with representatives of the builders on May 26, 2009 and they seemed very positive; they have concerns but they are mainly in the form of recommendations. They have asked to speak with the Committee today.

Ms. Grogan said that staff had met with COAH and had many discussions in an attempt to clarify and coordinate the various provisions. She said that there is a 20% mandatory set-aside for major development (≥ 5 units) on sewer and an in-lieu fee in non-sewered areas. Commission staff wants to provide another option, an incentive to do better affordable housing planning. Consistent with the CMP's provision for municipal flexibility, this optional process will allow the municipality to go before COAH and demonstrate a more comprehensive plan that meets or exceeds the 20% requirement or demonstrate why it cannot be achieved.

Ms. Grogan reviewed the revisions to the earlier draft affordable housing rules and said that the latest iteration allows a municipality to go before the Superior Court, as well as to COAH, for certification of their fair share housing plans; a number of Pinelands municipalities have done this previously and there is no interest in precluding that option. Also, the previous draft rules (as discussed at the April 24, 2009 Committee meeting) gave the Commission the authority to reduce the housing obligation by up to 50%; the revisions also provide for an *increased* obligation. Ms. Grogan said that A-500 indicates that affordable housing obligations cannot be increased in municipalities receiving certain types of municipal/school aid. Based on work done by staff economist, Tony O'Donnell, it appears that Pemberton, Monroe and Winslow Townships and the City of Vineland are the only Pinelands municipalities to fall under these categories. Other provisions relate to the determination of economic feasibility and the granting of a density bonus to provide an economic incentive; the clarification that any bonus units in a project should not be subject to the 20% housing set-aside; and that the in lieu payments (at a rate of 50% of COAH's per-unit subsidy in all management areas) should be made to the NJ Affordable Housing Trust Fund unless the subject municipality has its own (appropriate) affordable housing trust fund. Ms. Grogan said that she was concerned that once funds were in the state trust fund, it appeared that there is no obligation that the

funds be applied within that same municipality. She said that the staff will encourage the use of the funds in the same municipality, or at least within the Pinelands.

Mr. Stokes said that the rules that allow an applicant to seek COAH review could be broadened to include relief from an in lieu payment that an applicant feels is too high.

Ms. Grogan said that COAH is preparing a series of spreadsheets to assist those municipalities and developers that want to demonstrate that a 20% set-aside is not appropriate for their circumstances.

In response to Commissioner Ashmun's question as to how the COAH rules will apply in split towns, Ms. Grogan said that the Commission would need to update its MOU with COAH and that some elements will need coordination, for example in those municipalities that have no housing plan. Also, she said that most split municipalities have very little affordable housing activity in the Pinelands Area; they are meeting their obligations in the non-Pinelands portion.

Mr. Stokes said that the Pinelands Protection Act says that the Commission should not consider affordable housing in its permitting and planning functions. However, the preliminary determination of the office of the Attorney General is that it must now be considered. If, at a later time, it is found that the Commission has no obligation to do so, then the rules before the Committee today will not be needed.

The Committee discussed the draft resolution prepared by Ms. Roth providing notice of the Commission's immediate implementing the 20% affordable housing set aside. Of particular concern was the second whereas ... "repeals by implication" ...

Ms. Roth said that rationale was provided by the Office of Legislative Services and the Attorney General's office and was intended as a clarification. Mr. Stokes said that staff would try to communicate further with the Attorney General's office but a formal legal determination is an exceedingly lengthy process and would be untimely to pursue.

Commissioner Ashmun asked for a copy of Section 18 of A-500. (*This was provided to the Committee later in the meeting.*)

Ms. Joanne Harkins, Vice President for Regulatory Affairs at the NJ Builders Association (NJBA) said that the legal advice provided to them was that the Commission does not have the authority to enact by resolution and that it must do so through rules and regulation.

Mr. Stokes responded that if a statute is self executing, then the responsible party is obligated to implement it immediately and that is the legal advice that the Commission has received.

Ms. Harkins said that although the requirements related to Affordable Housing has been in place for 40 years in New Jersey, it is new to the Pinelands Commission.

Ms. Harkins reviewed the letter submitted by Timothy J. Touhey, CEO, NJBA (*Attachment B*). Among her comments, she said that the requirement for a 20% set aside “to the extent economically feasible” does not mean that the Commission gets to determine economically feasible. She said that affordable housing cannot be provided at the low densities under the proposed Pinelands rules. The Commission needs to have realistic densities. She said that with the current economic conditions there will be a long, slow recovery process and that residential development cannot carry the costs of affordable housing as it had in the past. Home buyers will not be willing to subsidize affordable housing. She said that at a subsequent meeting she would like to bring with her the NJBA house counsel on affordable housing.

Commissioner Lee asked that, when she returns before the P&I Committee, Ms. Harkins tell them what she believed the Commission *should* do.

Mr. Stokes said that, if indeed the Commission is obligated to implement the provisions of P.L. 2008, Chapter 46, Section 18(a), then it must move ahead with new rules immediately. The Commission cannot rely on someone else’s determination.

Ms. Tiffany CuvIELLO said that Galloway is a split (Pinelands/non-Pinelands) municipality with a housing plan certified under Round 2 of COAH’s rules. She said that the Commission needed to look at all the cost-generating elements.

Ms. Meg Worthington said that Galloway was COAH certified in 1987 and that she had served on COAH in the early 1990’s. The Commission is dealing with COAH for only the first time. She said that previously DEP had transferred its affordable housing responsibilities to COAH and that the Commission might want to do the same. She said that the Commission needed to rely on those who have dealt with COAH for decades. She said that Galloway has \$2 million in its Housing Trust Fund. The municipalities are the best resource; it is not appropriate for the Commission to deal with COAH matters.

Staff distributed the relevant portions of A-500 (*Attachment C*).

Mr. Stokes said that the P&I Committee needs to decide if it concurs with the interim approach. A resolution needs to get before the Commission in order to solidify the discussion. Meanwhile, discussion will continue with the Attorney General’s office and in closed session at the June 12, 2009 Commission meeting.

Commissioner Lloyd moved the advancement to the Commission, without recommendation, of a resolution implementing the 20% Affordable Housing set-aside of newly constructed residential units. Commissioner Lee seconded noting that the Commission will have an opportunity to review the resolution with the Deputy Attorney General at the June 12, 2009 Commission meeting. All were in favor and the motion carried.

Mr. Stokes said that Commissioners Lee and Tomasello would need to recuse themselves prior to any discussion of the PDC program, thus he would like to change the sequence of the agenda to allow their participation in the discussion of work plan projects.

5. Discussion of possible FY10 Work Plan projects

Mr. Stokes noted that his list of potential work plan projects had been based on the best estimate of resources available as of May 1, 2009. They are listed in three categories: Likely, May be Recommended, and May be Considered at Mid-Year. Since that time, he has been advised that the State's funding of the Commission has been further reduced. Staff is in the process of developing final resource allocations and will be meeting with the Personnel and Budget Committee on June 4, 2009 to make recommendations. The Commission is faced with a serious deficit that will affect its ability to complete at least some of the projects. Mr. Stokes asked the Committee to review the priorities.

In response to Commissioner Kennedy's question regarding the status of the Medford/Evesham Conservation Plan (#16), Mr. Stokes said that the outstanding issue is the preparation of an ordinance. Medford is proceeding but Evesham has stalled, due principally to a change in government. Last week staff spoke with representatives of the William Penn Foundation regarding an extension of the funding agreement.

Commissioner Kennedy noted that many of these projects will depend upon the ability of various partners. With the fiscal and budget challenges, one needs to be sure that those entities are also ready to proceed.

Mr. Stokes responded that for instance, #23 (Execute an intergovernmental agreement with Ocean County that controls future development at the Robert J. Miller airport), Ocean County is very active in this project and moving ahead. He said that any projects that are listed under the Likely category were assigned because staff believes that any participating partners are also willing to move ahead.

Commissioner Haas asked for an update on the Kirkwood-Cohansey study (#11).

Mr. Stokes said that the project is scheduled for completion in December 2009. However USGS is delayed in its delivery of certain models to be utilized by other sub-contractors and the Science Office. The Science Office is now concerned that the December 31 target date cannot be met as upon receipt of the models, some 6-8 months will be required for the completion of others' portions of the project. Mr. Stokes said that he believed it was possible that the project might be completed by the end of the fiscal year.

Commissioner Lee said that he did not know enough about #12, the Forest characterization study.

Mr. Stokes responded that it was presented to the Science Committee about a year ago.

Commissioner Lee said that he would recommend a delay until one can see the results after the implementation of the EIA (Ecological Integrity Assessment) study.

Commissioner Lee asked about the status of #39 (Execute and agreement with Winslow Township and the Camden County MUA to implement natural resource protection measures to mitigate impacts stemming from the closure of the Sicklerville wastewater treatment facility). Mr. Liggett said that the project was not entirely discretionary but that staff had been going back and forth with the participating entities and is hoping that it will wind down soon.

Commissioner Lee said that items 27-30 are database management issues. He said that he would like a briefing on where the Commission will be with these projects in the next 5-6 years. Mr. Liggett responded that the MIS and GIS offices do three-year plans. Mr. Stokes added that there are a series of other automation related issues that “may” occur.

At 12:20 p.m., Commissioners Tomasello and Lee left the meeting leaving Commissioners Ashmun, Haas and Kennedy in attendance. Commissioner Ashmun served as Chairperson for the remainder of the meeting.

6. PDC Program Reexamination – review and recommendation of rule proposal

Mr. Stokes said that he hoped that at its June 26, 2009 meeting, the Committee would recommend the Affordable Housing rules to the full Commission in order to get the rule proposal under formal review. He said that much of the issues related to the PDC program are being driven by Affordable Housing matters and it would be ill advised for the Commission to delay; he hoped that the Commission would then propose new rules at its July 10, 2009 meeting.

Due to the late hour and the scheduling of the Permanent Land Protection Committee meeting immediately following this meeting, Commissioner Ashmun called for brief public comment on the proposed PDC rules.

Ms. Joanne Harkins said that some two years ago the NJBA had expressed concern with the mandatory PDC rules and with the economy, those concerns are magnified further. She asked that the P&I Committee not proceed with new rules and said that it was not economically feasible for the industry to pay for PDCs for all residential development.

Commissioner Ashmun asked her to provide written comment to the Committee.

Ms. Tiffany CuvIELLO submitted a letter (*Attachment D*) and said that the proposed PDC rules encourage high density and would discourage commercial development. She said that Galloway Township does not need any more hindrance to economic development along the White Horse Pike. She said that with the passing of so much time, Mr. Liggett needed to re-do his presentation to all the municipalities as he had done leading up to the

Spring of 2007. She said that she had many comments and that now was not the right time to revise the PDC program.

Commissioner Ashmun asked that she submit her comments in writing.

Ms. Meg Worthington said that although revisions to the PDC program were on Galloway's radar, there were many other towns that are focused on the EIA study instead. She asked that the Commission conduct workshops for the municipalities. She said that the mayors were not supportive two years ago and that the Pinelands Municipal Council (PMC) needed to be involved.

Mr. Stokes responded that the draft PDC proposal has been before the PMC for the past 1-1/2 years. He agreed that there had been a gap in time but there had been no changes.

Mr. Jay Mounier, Franklin Township resident, said that the P&I Committee is well aware that the farmers and residents of the Preservation Area District (PAD) know that the PDC program is mandatory for those who are providing the supply. The voluntary part is for those who provide the demand. He said that the municipalities and the businesses have been experts for 25 years at avoiding the use of PDCs. He said that those who hold PDCs have no demand for that which they have been forced to supply. If the mandatory element bothers those on the demand side, then "Welcome to the club."

Mr. Mounier said that he had sent all the Committee members an email suggesting that the demand side of PDCs might be increased by eliminating the sliding scale provision; it is interesting but very complex. He said that he supported a straight allocation of demand based on acreage, just as supply has been determined. This would simplify the understanding of the obligation to use PDCs. He also said that, at this time of year, the Agricultural Advisory Committee is involved with seasonal issues and is not commenting on the draft rules.

Commissioner Ashmun asked that Mr. Mounier supply his comments in writing.

7. Public Comment

There was no additional public comment.

8. Other Items of Interest

There were no other items of interest.

The meeting adjourned at 12:35 p.m.

/CS15A

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15C Springfield Road
New Lisbon, New Jersey
May 29, 2009 - 9:30 a.m.

SUMMARY

The Committee adopted the minutes of the April 24, 2009 meeting.

The Committee recommended the eligibility of one parcel for the LPU program.

The Committee received a presentation on the Joint Land Use Study for the combined military bases (McGuire-Dix-Lakehurst) and advanced a resolution of support to the Commission.

The Committee requested that a resolution be forwarded to the Commission, without recommendation, regarding the implementation of the 20% affordable housing set-aside element of A-500

The Committee received comment on the draft Affordable Housing and PDC/Density rules.

The Committee reviewed potential work plan items for FY 2010.

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