

Adopted June 26, 2009

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

Richard J. Sullivan Center
Terrence D. Moore Room
15C Springfield Road
New Lisbon, New Jersey
June 17, 2009 – 9:30 AM

MINUTES

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

MEMBERS ABSENT: Norman Tomasello, Robert W. McIntosh

OTHER COMMISSIONER PRESENT: Robert Jackson

STAFF PRESENT: John Stokes, Larry Liggett, Susan Grogan, Paul Leakan, Paul Tyshchenko, Michael Yaffe, Paul Leakan, John Bunnell, and Betsy Piner

Acting Chairperson Ashmun called the meeting to order at 9:40 a.m.

1. Adoption of the minutes from the May 27, 2009 CMP Policy and Implementation Committee meeting

Commissioner Ficcaglia moved the adoption of the minutes of the May 27, 2009 meeting. Commissioner Haas seconded and all were in favor.

2. Public Comment

As had been done at the May 27, 2009 Special Meeting, Mr. Liggett, Mr. Tyshchenko and Mr. Yaffe were able to access and project on the wall all the polygons and associated data layers (block/lot lines, wetlands, aerial maps, etc.) and this information was utilized to assist with today's discussion of the various polygons under consideration for management area changes. During the course of the discussion, Mr. Tyshchenko noted that they were using 2007 aerial maps.

Commissioner Ashmun called for public comment on agenda items (Burlington and Cumberland County polygons only.)

Mr. Liggett expressed his apologies for any miscommunications to those in attendance. He noted that there were those present today who were interested in specific projects, particularly related to proposed management area changes for Route 347 in Maurice River Township. He noted that at the last meeting, staff had expressed their intent to continue reviewing the remaining polygons but it had become evident that there was

insufficient time to review them all and staff was not yet ready to discuss Route 347 today.

Mr. Tom Gerber said that he opposed management area changes to three parcels he owned in Southampton Township (Block 2901, Lot 4, 123 acres; Block 2902, Lot 2, 30 acres (G3); and Block 3003, Lot 18 (6 acres).

He said that he had no opposition to the proposed change of his Medford parcel identified as G2.

He said that G3 is high and dry Pine-Oak uplands (160' above sea level) and is farmland assessed. The current zoning doesn't jeopardize any environmental concerns. He said that he had nothing proposed for this property and intends to keep it wooded for the duration of his lifetime but opposed a management area change that could reduce its value if he should find it necessary to sell the property to raise money in the future.

Mr. Gerber also said that he wanted to keep Block 2003, Lot 18 as a developable lot; it is across Hawkins Road from his other properties.

Commissioner Jackson arrived at 9:45 a.m.

Mr. Richard Hluchan said that he was the attorney for Whibco, Inc. and said that with him here today were Maurice River Township Mayor, Andrew Sarclette, Committeewoman Kathy Ireland, and Mr. Wade Sjogren, the President of Whibco. He said that his group was here today because they had understood that Polygon E involving Route 347 in Maurice River Township was to be considered at this meeting. He said that Mr. Liggett had indicated previously that there might be some reconsideration of designating the area as a Forest Area. He said that his group was interested in having the current proposal removed from consideration and asked where things stood procedurally.

Mr. Liggett said that the packet memo had outlined a possible solution. He said that the Commission had worked with the Township in the years 2000 through 2002 to designate a commercial zone to accommodate some new development within the Township to compensate for the rerouting of shore bound traffic that had meant lost revenues to local businesses. He said that Maurice River Township had invested in roads in anticipation of this much anticipated commercial development. Staff has said all along that it needed to recognize a solution. He said that his memo had reflected the need to re-think commercial development in the Forest Area and that a solution had to be tailored much like that for Folsom Borough's commercial zone along the Black Horse Pike. He said that staff still needed to delineate the area under consideration, look at the impacts and then prepare recommendations to the Committee. He said that he hoped to address these concerns at the next meeting (June 26, 2009).

Mr. Hluchan said that he wanted to see all the memos and requested copies of all relevant documents and to be advised when the matter would be on the agenda.

Mayor Sarclette said that he felt that the meeting agenda should have been made clearer. He said that this proposed management area change would have a major impact on his community and that his presence today was costing him time and money, particularly since the subject polygon would not be discussed today. He said that he stood by his previous request that this area be pulled from consideration. He said that Maurice River Township had swapped properties and spent money. If the Commission proceeded with these recommendations, he would not accept a change and if the Township “loses” the battle, he expected remuneration for all the associated expenses. He said that the Commission could not make zoning changes of this magnitude arbitrarily.

In response to Commissioner Jackson’s question as to why the traffic was re-routed as it had greatly impacted the businesses on Route 47, Mayor Sarclette said that it was the result of an agreement between Cumberland County and the Department of Transportation to create a more direct route for shore-bound traffic. Maurice River Township was not involved in the decision. Also, three businesses have closed due to this re-routing.

Commissioner Ficcaglia said that they had felt that the alternate route would relieve the traffic jams at the traffic light on Route 47.

Committeewoman Ireland listed the types of uses permitted in the current business zone under RDA zoning including agriculture, horticulture, shops, restaurants, motels, golf courses and single family dwellings on 3.2 acre lots vs. those permitted under proposed FA zoning, including agriculture or horticulture, forestry and single family dwellings on 25 acre lots. She noted that this would mean a huge change and a huge loss to the Township. Restaurants and a motel could be needed with the Pine Barrens Byway being directed through the area.

Commissioner Lee arrived at 10 a.m.

Mr. Sjogren said that his family owned-and-operated sand and gravel business had been active in Maurice River Township since the 1920s. He said that his business had two active grandfathered mining operations in Polygon E. He said that while the current economy is soft, Whibco looked forward to improved economic opportunities in the future. He said that by removing this area from commercial development, there would be a significant diminution in land value. He said that his firm wanted to pursue other compatible uses after mining and believed that the current zoning was adequate.

Dr. Ira Mendelsohn referenced his two subdivisions in Buena Vista Township (Polygon K) and noted that he had spoken with Mr. Tyshchenko earlier and realized that although the Committee might not discuss his properties at this meeting, he wanted to have his engineer speak before the Committee. Also, he questioned the amount of time he would have relative to the adoption of these amendments to get his no call-up letter in order to preserve his vested rights.

Mr. Stokes said that Dr. Mendelsohn had a valid question and that the Commission's attorneys were looking at this issue. Whenever the CMP is amended, the Commission has one set of regulations while the municipalities have another until such time as they amend their ordinances to reflect the new amendments. The municipalities are granted one year in which to make these changes. Mr. Stokes noted the dilemma of determining if the Commission is legally obligated to implement its new regulations in the intervening period even though the municipalities might not yet have incorporated them into their own ordinances. He said that, since 1980, the Commission tries to limit those instances where it has had to implement its regulations, and usually it is done only for those changes that have regional impact to regulatory policy. He said that the preferred approach is to allow the conformance process to play out but this is an issue that the Commission will try to work through. He said that when he speaks with applicants about this issue, he tries to encourage them to move ahead to secure their local approvals and go through the Commission's process in order to maintain their vested rights.

Mr. Stokes said that he would be happy to sit with Dr. Mendelsohn and discuss the rule adoption process and its implications further after the meeting.

Mr. William Swiderski, with Swiderski Associates, said that he had been Dr. Mendelsohn's engineer for the past 10 years. He referenced polygon K3 and said that his Norman Road project was initiated in 2004 and originally was to have been development on 3.2-acre lots. Based upon the results of a series of T/E studies, the project will now consist of clustered development on 1-acre lots. He said that some 7 submissions have been made to the Commission since 2004 but with significant changes in policies and how they are interpreted, the project has had to address a variety of issues including mounding analyses for stormwater detention basins and the delineation of open space for cluster development. This has been a difficult process but Dr. Mendelsohn was working through the issues.

Mr. Swiderski said that the second project, Hopkins Estates, is located near 10th street and the Conrail tracks. He said that the staff recommendations will result in the bifurcation of Block 2502, Lot 1 and, in another area, parts of two separate lots. Combined with its proximity to the active railway tracks, the designation of this polygon to FA did not seem to be based on good planning. Dr. Mendelsohn's projects will involve clustering on 141 acres resulting in the preservation of some 90 acres of permanent open space. He asked that this area be removed from consideration.

Ms. Judy Mendelsohn said that she would speak on behalf of her family and noted that the significant investments that they had made on this project, some \$2 million to date, could not be recouped if these projects are not allowed to proceed. She said that one thought that land would always have value and it is a hard concept to think that land could lose value. She said that the T/E studies have concluded that there is no raptor habitat on this uplands site.

Mr. James Del Cane, (Polygon F) Galloway Township resident, said that he found himself in a similar situation and had worked on a development project for some five

years. He had met with Mr. Stokes and was now trying to adjust his project to involve clustering. In response to questions about his approvals, Mr. Stokes told Mr. Del Cane that if the project is signed off by the Commission, then it would be afforded protection. He also asked Mr. Del Cane about the progress he was making in securing any necessary variances from Galloway Township. Mr. Del Cane responded that the Township was trying to work with him. Mr. Del Cane provided the Committee with a document related to his comment (*Attachment A*).

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

POLYGON G

Mr. Liggett led a discussion of Polygon G (*Medford and Southampton Townships; 2,091 acres; RGA & RDA to FA*) noting that this is just north of a cranberry farming system and involves two watersheds.

He identified G1 (74 ac.) as a parcel having had some application activity since 2005. A T/E protocol report has just been submitted within the past two weeks. A 17 unit project is proposed but it has not yet received a Certificate of Filing.

Mr. Gerber's property, C3 (150 acres), is an upland property that he might wish to develop in the future. Lands south of Hawkins Road are all RGA while north of Hawkins Road it is zoned RDA. Mr. Gerber said that there was no frontage on Hawkins Road; it is on Pricketts Mill Road.

Commissioner Lee asked about the site that had been discussed for a regional high school for the Lenape District.

Mr. Liggett said that, based on the school's need for at least 100 acres, staff looked for upland parcels within RDA and RGA of at least that size. He recalled that this was one of the sites that met the criteria but it was rejected by the Board of Education. In response to Commissioner Haas' question, staff projected the wetlands layer which clearly showed that this was indeed uplands property, surrounded by much wetlands.

Commissioner Kennedy referenced the exclusionary criteria for agricultural lands where multiple parcels are operated as a single unit and also asked about potential agricultural soils.

Mr. Liggett responded that those criteria were applicable to parcels in APA; this property is in RGA.

Commissioner Kennedy noted that unfortunately this property was excluded from the farmland preservation application because it was not in a suitable zone. This was an administrative matter as Burlington County considers only those lands (within the

Pinelands Area) that are in SAPA or APA for preservation. He asked why it would not be appropriate to consider the exclusion of active agriculture from the polygon.

Mr. Liggett responded that it depends upon the future of the land. Lands of high integrity in the RGA and not part of a farm should remain within the polygon.

Mr. Gerber said that G3 serves as a watershed protection system for his cranberry farm. Traditionally, for every one acre of bogs, 10-15 acres of uplands are required to assure pure water.

Commissioner Haas asked, if the Committee were to say that this is part of the farm and it becomes redesignated as APA, then would Burlington County have an interest in accepting it in the Farmland Preservation Program?

Commissioner Kennedy responded that the County would have no interest in preserving it because their program is based upon tillable acres. However there might be other conservation oriented entities interested in preserving these lands.

Mr. Stokes said that if the Committee wishes to apply the criterion of ownership/management of lands as a unit, the outcome should be that G3 becomes APA. If the Committee feels that it should remain in RGA, the application of that criterion is not appropriate but another criterion might apply: adjacent to an already developed area. There were arguments to both sides.

Mr. Gerber said that the soils are excellent on this site. Mr. Tyshchenko added that they are classified as suitable soils for septic systems (no sewer is available).

Mr. Stokes said that development on this site (G3) would be served by septic systems, conceivably a community treatment system. He asked what would happen with G1 where there has been some application activity. The Committee has been struggling with how to deal with these decisions; G1 could remain within the proposed polygon to be redesignated as FA; G3 could be changed to APA; or both G1 and G3 could be allowed to remain in RGA.

In response to Commissioner Haas' question to Mr. Gerber if G1 and G3 were developed what sort of impact it would have on the water quality for his bogs, Mr. Gerber said that there would be no impact. However any development to the south side of Pricketts Mill Road would drastically impact the cranberry operation.

Commissioner Lee said that Mr. Gerber has said that he'd prefer not to develop his land. A change of zoning will set a bad precedent on a lot of other parcels that the Committee has not discussed.

Commissioner Jackson said that if one goes with the development pattern, all the adjacent natural areas will go away. One needs to look at the natural areas and save as much as

possible. There is a tipping point; the longer and further away you keep that development, the better the quality of the bogs.

Commissioner Lee said that the Pinelands Protection Act is not only to preserve trees but to promote compatible development. The County Agricultural Development Board would have preserved the easement on this land at the same time they preserved Mr. Gerber's cranberry farm except perhaps they didn't want to expend public funds on lands that could be developed. He said that the Committee had heard from Dr. Mendelsohn and Mr. Del Cane and there needs to be a balance. The EIA had not provided new information; it has characterized some pixels.

Commissioner Ashmun said that the Commission is mandated not to have scattered and piecemeal development. She said that she felt that the EIA study had provided a lot of new information. Through Plan Review, the Commission had decided to look again at the original designation of management areas based on new information. She said that she was concerned with sprawl and that the Committee was discussing management area changes, not zoning. She said that changing a management area does not necessarily mean taking someone's rights; to develop a property, one still has to address issues such as wetlands and buffers. The issue here is that G3 is a drainage area for the bogs; the discussion is becoming one of how the land will be appraised with a new management area. She said that the Commission was not in a position to be doing appraisals.

Commissioner Lee said that the Committee needed to look at the entire statute to see its mandate. He said that perhaps when rezoning a village that is adjacent to existing development, maybe a municipal reserve system, like that which had been done in Hamilton Township, could be an option. Maybe there needs to be clustering of more units. He said that he didn't think that this property should have a new management area designation and that, if allowed to go forward as proposed, it would jeopardize the whole project.

Mr. Stokes said that the difficulty the Committee is having is not unexpected. He asked if they were sitting as a regional planning board making specific recommendations on individual properties or should they consider what zoning options are available but defer the zoning decisions to the municipalities. He said that Commissioner Ashmun was looking at the project from a regional perspective while Commissioner Lee was looking at it from a local view. He said that of the three options available, each appears to have some justification. He said that if one subscribes to treating G3 as a unit of the farm, then it should be designated as APA. However, Mr. Gerber has testified that it is not.

Mr. Gerber said that he farms 60 acres of cranberries on his 1,000 acres within Burlington County.

Commissioner Kennedy said that he did not believe that the County would preserve this part of the farm as it is in the RGA. When farms are preserved, it is like a puzzle. There is always a risk that something at the fringe of the parcel will be detrimental to the quality of the farmland.

Commissioner Jackson said that if the bogs have high ecological value and adjacent development is allowed to occur, that value will be impacted.

Commissioner Lee said that, as Mr. Gerber had just stated, the actual farmed land is a very small percentage of his holdings.

In response to Commissioner Jackson's question as to why he had not preserved more of his farm, Mr. Gerber stated that he had preserved everything he had in Medford's APA. He said that if Burlington County had been interested in G3, that would have been preserved also. But, he did not want to see the value of that land go away.

Commissioner Kennedy said that the County has criteria and limited resources for land acquisition.

Mr. Stokes said that if G3 (153 acres) were to be put in APA (uplands), under the CMP the landowner is entitled to 3 non-farm related houses (3 1-acre lots to be subdivided). The remaining 150 acres would qualify for PDCs (~28 rights). (The 3 on-site development opportunities would reduce that value to 25 rights.) He said that if the land were designated as FA, he could not envision that it would accommodate as many units as if it were in RGA. However, one had to ask if this were an area appropriate for development. He said that Commissioner Lee had compared this situation with those of Mr. Del Cane and Dr. Mendelsohn; however because those other areas were not in RGA and not adjacent to development, there is the distinction between Mr. Gerber's properties and theirs.

Commissioner Haas said that he agreed with Commissioner Lee that these lands are next to (and within) a RGA. But he said that he was trying to balance that with the fact that this is an operating cranberry farm. In the CMP, cranberry farming is more important than housing yet the landowner wants his rights protected. He said that public ownership was needed; if it is to be downzoned, the land needs to be purchased at the higher appraised value.

Commissioner Lloyd said that zoning and purchase protects land.

Mr. Stokes said that zoning affects property value. If one is unwilling to deal with zoning decisions, one should not be serving on the Pinelands Commission. Every change before the Commission will have an effect. One must make a judgment based on criteria that make sense from a regional standpoint.

Mr. Liggett said that Mr. Stokes had outlined three alternatives; however he proposed that splitting G3 was yet another.

Commissioner Ficaglia said that she thought that sounded like a good compromise.

Commissioner Lloyd moved the recommendation that G3 south of Pricketts Mill Road be designated APA in recognition of the watershed and the farm. The remainder of G3 (north of Pricketts Mill) and G1 are to remain in RGA. Commissioner Ficcaglia seconded the motion.

In response to Commissioner Lee's question as to how this complies with other situations, Mr. Liggett said that the staff recommendations for the creation of new APA have been dropped because of the revised evaluation of only those polygons of $\geq 1,000$ acres.

Mr. Stokes said that over the years, the Commission has made very few management area changes, Oyster Creek being the most memorable; most have been initiated through municipal zoning.

Commissioner Jackson said that the two watersheds bifurcate the area naturally so this will further protect the watershed.

Mr. Stokes said that the designation of a portion of G3 recognizes that it is part of the farm, drains to actively managed bogs and has high ecological value. He said that he believed that these criteria can be applied elsewhere. Leaving G1 and the remainder of G3 within RGA will be based on the fact that G3 is immediately adjacent to an already developed area

Mr. Liggett said that a recommendation would also be made to Medford Township to designate G2 to APA. Mr. Gerber noted that the map incorrectly identified one of his parcels within G2.

Commissioner Lee said that if the Commission is going to make changes with regional implications, he would like to add a criteria requiring that proposed changes be accepted by the municipalities. If a municipality did not accept a change, then it would not be made.

Commissioners Ficcaglia and Lloyd said that the municipalities do not have veto power.

Commissioner Lee said that before the Commission starts creating new APA, he thought attention should be paid to the equitable issue.

Mr. Stokes said that staff had tried to communicate with the municipalities and had had more success in some cases than in others. He suggested that the motion have two contingencies: 1. ask the staff to look at how the criteria used to make the decision might affect other situations and then look at the outcome; and 2. ask the staff to advise the Township and request their comments. He said that, in most cases, if the Township had a concern, it would have been expressed to the Commission by now.

Both Commissioners Lloyd and Ficcaglia accepted this amendment to the motion. Commissioner Ashmun suggested that those amendments apply to all the recommendations that have been made thus far.

Mr. Stokes said that he recalled that for the other decisions made by the Committee, staff understood how they made sense and how they would fit in to the final recommendations.

Commissioner Lloyd said that this was an iterative process and it was important to know the implications of each parcel.

Commissioner Ashmun called for the vote. All voted in favor except Commissioner Lee who abstained.

POLYGON A

Mr. Liggett identified Polygon A (Pemberton Township 1,034, acres RDA→FA) in the vicinity of Whitesbog Village and the intersection of Routes 530 and 70. He said that this area consists of much public lands and wetlands. No comment has been received. There are several developed areas along the south side of Route 530 with high integrity areas at the back of the lots.

Mr. Tyshchenko added that there are also a number of undersized lots. Ms. Grogan said that the recommendation is that they remain in RDA.

Commissioner Lee asked about the Forest Area north of Route 530. Ms. Grogan said that she was meeting with the Pemberton Township planner shortly and that they are aware of the polygon. She said that she would bring this area to the attention of the municipality.

Commissioner Ficcaglia moved the removal of the 2 A1 polygons from a management area change and the consultation with the Township on this area. Commissioner Lloyd seconded and all were in favor.

POLYGON I

From the map, Mr. Liggett identified the polygon (Medford and Evesham Townships, 3,727 acres, RDA→FA) and highlighted such features as the Aerohaven Airport (a disturbed area with extensive snake habitat), Kings Grant, and the western border of the Pinelands. He noted that this polygon change follows the recommendations of the Medford-Evesham Plan (adopted in April 2006) related to the sensitive lands and creates a corridor along Hopewell road. Mr. Kutner has been meeting with the municipalities. Evesham Township has hired a consultant to start a visioning process and then they will decide if they want to implement the Plan. Because of the EIA, staff believes that the Commission should proceed with this redesignation.

Ms. Grogan said that Medford Township has already taken steps to implement the Plan. Also, she said that the Medford/Evesham Plan recognizes that there are some smaller lots with existing houses and special arrangements should be made to deal with those areas.

Mr. Liggett said that the 2 small areas recommended for removal from the polygon (11, 20 acres) are part of a subdivision.

Commissioner Haas moved the recommendation of the removal of the two parcels from the polygon. Commissioner Ficcaglia seconded the motion.

Mr. Liggett suggested that the Committee also consider two other changes at this time. Since Kings Grant is sewerred, it should be in RGA. Also at the western edge of Evesham, near Voorhees, staff is recommending the creation of an RGA to serve as a receiving area for the density transfer program.

Commissioner Haas amended his motion to include these two recommendations. Commissioner Ficcaglia concurred. All voted in favor.

Mr. Stokes said that staff would try to make sure that the public was aware of which polygons will be addressed at the next meeting. Staff hoped to be able to discuss the Maurice River Township polygons, but, if not, would pick up some of the remaining Atlantic County polygons.

4. Public Comment

Ms. Theresa Lettmann, with the Pinelands Preservation Alliance, stated that by allowing a portion of G3 in Southampton Township to remain in RGA, the Commission was allowing a potential substantial impact on the remaining area that they were interested in preserving.

5. Other Items of Interest

There being no other items of interest, the meeting adjourned at 12:15 p.m. (moved by Commissioner Kennedy and seconded by Commissioner Lee).

(Please Note: Page 12 of these minutes is the Summary Page that is presented at the Commission meeting)

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

Richard J. Sullivan Center
Terrence D. Moore Room
15C Springfield Road
New Lisbon, New Jersey
June 17, 2009 – 9:30 AM

SUMMARY

The Committee adopted the minutes of the May 27, 2009 special meeting.

The Committee received public comment on draft proposed changes to the Land Capability Map.

The Committee made recommendations regarding polygons in Evesham, Medford, Southampton and Pemberton Townships.