

Adopted January 25, 2013

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

15 Springfield Road

New Lisbon, NJ

January 4, 2013 – 9:30 a.m.

**MINUTES**

**MEMBERS IN ATTENDANCE:** Leslie Ficcaglia (Acting Chairperson), Robert Jackson, Richard Prickett and Candace Ashmun (1<sup>st</sup> Alternate)

**MEMBERS ABSENT:** Chairman Mark Lohbauer & Paul E. Galletta

**STAFF PRESENT:** Executive Director Nancy Wittenberg, Susan Grogan, Stacey Roth, Paul Tyshchenko, Paul Leakan, Robyn Jeney and Betsy Piner. Also present via telephone conference call, Kerstin Sundstrom (Governor’s Authorities Unit)

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

**1. Adoption of minutes from the November 30, 2012 CMP Policy and Implementation Committee meeting**

Commissioner Ashmun moved the adoption of the minutes of the November 30, 2012 CMP Policy and Implementation Committee meeting. Commissioner Jackson seconded the motion and all voted in favor.

**2. Executive Director’s Reports**

*Ms. Grogan stated that Commissioner McGlinchey (not a member of this Committee) was planning to attend this morning’s meeting in order to hear the discussion related to Barnegat Township. So as to accommodate his arrival, the sequence of the agenda would be altered from that posted originally.*

**Egg Harbor Township’s 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township and Ordinance 37-2012, Amending Chapter 225 (Zoning) of the Township’s Code by creating a new zoning district, the AH-RG-4 (Affordable Housing) Zone**

Ms. Grogan said Egg Harbor had adopted an amendment to its Housing Element and Fair Share Plan as well as Ordinance 37-2012, creating a new zoning district (the Affordable Housing Zone) in response to a builder’s remedy lawsuit. She said that staff had worked with the Township and Mr. Phil Caton, the court-appointed Master, for a solution to the litigation that would satisfy both the Township and the developer and that Ordinance 37-2012 implements the settlement agreement. Some 120 acres within the RGA have been rezoned from the previous RG-1 Zone (with a permitted maximum density of 1.5 du/ac.) to the new AH-RG-4 (Affordable Housing

Zone) (4 du/ac.) in order to accommodate higher density affordable housing. PDCs are required for 25% of the market rate units, 20% of all new units in the Zone must be affordable to low and moderate income households, and there is a cap of 223 units total, up to 25% of which can be single-story multi-family units. There is an existing mobile home park within the rezoned area that will be sewered under the agreement. The Township will acquire 40 acres for open space and recreation purposes. Staff is recommending full certification of Ordinance 37-2012.

Commissioner Jackson moved the recommendation to the Commission of certification of Egg Harbor Township's 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township and Ordinance 37-2012. Commissioner Prickett seconded the motion.

Commissioner Ashmun how this ordinance did not create spot zoning.

Ms. Grogan responded that this was more a question for the Township's attorney but, last year Egg Harbor Township had adopted an inclusionary housing ordinance that provides for affordable housing and PDC obligations throughout the Township. She said that Hamilton Township had done something similar with a global approach to the entire municipality. In response to a further question from Commissioner Ashmun, Ms. Grogan said that there are no clustering provisions because the AH-RG-4 Zone is within the RGA; clustering is mandatory in the Forest and Rural Development Areas.

Commissioner Ficcaglia called for the vote and all voted in favor.

**Maurice River Township Resolution 2012-09, Adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620, Amending the Township's Land Development Regulations Ordinance in response to amendments the Pinelands CMP related to forestry, wetlands management, and residential cluster development in the Pinelands Forest and Rural Development Areas**

Ms. Grogan said that Resolution 2012-09 and Ordinance 620 were Maurice River Township's response to the three sets of CMP amendments. She said that the Township had done a really good job with a thorough analysis as to how the cluster provisions would affect their community. They had divided the Township into some 10 or 11 areas and then looked at various characteristics of each of these areas such as existing and potential development, how the bonus provisions might be applied, would new roads be allowed, etc. She said that a number of members of the Land Development Board (LDB) were originally concerned with negative impacts of clustering but, through the process, became supportive once they completed the analyses.

She said that the Master Plan recommended a number of changes to the Pinelands clustering rules that raise no issue. These include options in terms of regulating the open space associated with a cluster development by requiring ownership by a homeowners' association or incorporation into one of the residential lots. She said that although it appeared that the Township did not want the responsibility of maintaining the open space, it is possible that an

applicant might go before the LDB and request an alternative method. This issue would be between the applicant and the Township and would not involve the Commission. Other changes relate to the use of existing road frontages in RDA residential cluster development, the lot width requirements on existing roads (not a CMP standard), and incentives for using old mining ponds as “lakefront developments” to address the use of large mining properties once the operations cease.

Ms. Grogan said that there is one change that the Township has made that raises an issue, and that is the exclusion of wetlands when calculating bonus densities; the Township wishes bonus densities to be accrued only from uplands. Ms. Grogan said that she had spoken extensively with the Township planner who felt the Township was concerned with the southern portion of the Township that is almost total wetlands. There is concern that density from the wetlands properties would be transferred elsewhere. However, Ms. Grogan explained, under the CMP’s clustering standards, one cannot build on wetlands or transfer the development potential from such wetlands properties to non-contiguous properties elsewhere. This is a non-issue.

Ms. Grogan said that Commission staff had tried to find justification for excluding wetlands and the Township had known that it would be a concern. The Township planner had suggested that if the Commission does not certify the ordinance as written, they might want to add some language to make clearer that only contiguous properties can be used in calculating bonus densities.

In response to a question from Commissioner Ashmun, Ms. Grogan said that the Township will be required to make the changes necessary to receive full certification but meanwhile, the Commission’s Project Review staff is applying the CMP clustering standards in its review of any development applications.

Commissioner Ashmun moved the recommendation to the Commission of conditional certification of Maurice River Township Resolution 2012-09, adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620. Commissioner Prickett seconded the motion.

Commissioner Jackson said that the Township’s consultant should be complimented for her work. Ms. Grogan concurred that she had done a good job.

Commissioner Ficcaglia called for the vote and all voted in favor.

**Waterford Township’s December 2010 Master Plan and Ordinances 2012-13, 2012-14 and 2012-15, amending Chapter 176 (Land Use, Development and Zoning) of the Township’s Code by revising permitted uses, adopting standards for solar and wind energy facilities, adopting a revised Zoning Map and responding to amendments to the Pinelands CMP related to forestry, wetlands management, and residential cluster development in the Pinelands Forest and Rural Development Areas**

Ms. Grogan said that Waterford had adopted several ordinances, including its response to the three sets of CMP amendments, Ordinance 2012-15. She said that staff had no concerns with

Waterford's response. The Township had made one change by distinguishing between minor and major subdivisions in terms of how the open space management would occur in order to better deal with the issue of how the open space lot would be taxed. For major development projects, all the CMP options are available for open space management. For minor subdivisions, the Township has chosen to be more restrictive by requiring that the open space be owned by one of the homeowners within the subdivision but maintained as a separate (deed restricted) lot. The Township believes this would make it easier for purposes of administering assessment and tax collection.

Commissioner Prickett said that he thought there could be concern that the landowner might not pay the taxes on that open space lot, in which case it would go to foreclosure.

Ms. Grogan said that for Waterford the tax issue appeared to be their only concern. She said that, as with Maurice River Township, if a small project were to come in, she suspected the applicant and Planning Board could resolve any issues related to open space ownership and management. The Commission's concern is that the open space is deed restricted. Staff recommends full certification of Ordinance 2012-15.

Mr. Tyshchenko said that Waterford Township Ordinance 2012-14 made some twelve changes to the Zoning Map, mostly recognizing public ownership of lands. Three changes in Pinelands management area boundaries are also made. He projected maps of these three changes, as included in the meeting packet materials, on the Smart Board. These map changes involve (1) the rezoning of 12.5 acres from Rural Development Area (RDA) to Regional Growth Area (RGA) in order to recognize an already residentially developed area (although the rezoning could permit up to 21 dwelling units on the vacant lot in the rezoned area, only two new dwelling units are proposed at this time); (2) the rezoning of 110 acres from RGA to RDA along the Old White Horse Pike to eliminate a freestanding RGA and encourage development more consistent with the current land tenure pattern; and, (3) a 16-acre rezoning from RDA to RGA along Jackson Road at the site of the Archway School in order to allow some expansion to occur at the School. Staff has recommended conditional certification, requiring the Township's rezoning to include all lots along Jackson Road up to Cedar Avenue in order not to leave some isolated RDA lots as currently proposed by the Township and to ensure that similarly situated properties are treated similarly. Attachment A to the Executive Director's report offers the conditions for full certification.

Ms. Grogan said that staff is concerned with not creating a strange management area boundary. Similarly situated properties need to be treated in the same way in terms of zoning and management areas. She said that she didn't feel it would cause any problem for the Township to include all the parcels and that they might want to consider rezoning some other areas also. She said that, overall, the Township is removing more land from RGA than they are adding but there are few opportunities for development and PDC use in any case.

In response to Commissioner Ashmun's questions about Exhibit #2, Mr. Tyshchenko said that the Old White Horse Pike is far less commercial than the White Horse Pike. Ms. Grogan added that the Township is trying to focus development in their Highway Business Zone in another area of the Township.

Mr. Tyshchenko said that Ordinance 2012-13, among other things, implements the Commission's solar rules and permits solar generating facilities in three zoning districts. The standards for solar energy facilities within the Agricultural (AG) District are consistent with CMP standards, but there are issues with their provisions within the Planned Light Industrial (PLI) District (due to conflict with CMP visual impact standards concerning wild and scenic rivers and proximity to Wharton State Forest) and within the Planned Highway Business (PHB) District (for which buffering and visual impact standards are inadequate). Mr. Tyshchenko also said that Ordinance 2012-13 fails to include restrictions for new or expanded off-site infrastructure. He said that Attachment B to the Executive Director's report offers recommended changes to render the ordinance consistent.

Commissioner Jackson moved the recommendation that the Commission certify Waterford Township's December 2010 Master Plan and Ordinance 2012-15 and to conditionally certify Ordinances 2012-13 and 2012-14. Commissioner Prickett seconded and all voted in favor.

*(The Committee took a brief recess from 10:25 a.m. until 10:28 a.m. during which time it was determined that Commissioner McGlinchey had been delayed and would not be attending the meeting.)*

**Barnegat Township's April 2011 Master Plan, and Ordinances 2012-05, 2012-06, 2012-07, 2012-08, 2012-09, 2012-10, 2012-12 and 2012-22, Amending Chapter 55 (Land Use) of the Township's Code by revising zoning boundaries within the Ocean Acres subdivision and adopting revised zoning maps and creating new zoning districts and overlays for purposes of implementing the municipality's petition for plan endorsement for that portion of the Township located in the Pinelands National Reserve but outside the Pinelands Area**

Ms. Grogan said that Barnegat Township had submitted a new Master Plan and several ordinances revising zoning maps and creating new zoning districts for purposes of implementing its petition seeking Plan Endorsement from the State Planning Commission. She described the process for areas located within the Pinelands National Reserve but outside the state-designated Pinelands Area. She said that although the Commission has no regulatory responsibilities related to actions taken east of the Garden State Parkway, this dialogue among agencies assures that the maps are consistent with those of the State Planning Commission, the municipality and DEP which administers land use in the Coastal Area Facility Review Act (CAFRA) area. Before implementing the changes approved by the State Planning Commission, DEP is required to consult with the Commission regarding CAFRA boundary and zoning changes. Because these involve management area boundary changes, only the Commission, not the staff, can approve such changes. This is done through a CMP amendment or through the conformance process. Barnegat has chosen to use the conformance process and has submitted the documents before the Commission today. Upon the Commission's certification of Barnegat's zoning plan in the Pinelands National Reserve, among other changes, some management area boundaries will change in the PNR to reflect a new commercial Core along Route 9 and some 300 acres removed

from Planning Area 2 (comparable to Pinelands Regional Growth Area) to Planning Area 5 (Forest Area) in recognition of contiguous forest habitat.

In response to a question from Commissioner Ashmun, Ms. Grogan said that the Commission is the last piece of the puzzle and the result will be a consistent map which will allow the Commission to provide comment to the Township and to relevant state and federal regulatory agencies.

On the Smart Board, Ms. Grogan displayed Exhibit #3 from the Executive Director's report, the map of Ocean Acres, a pre-existing subdivision within the Pinelands Area. She said that Barnegat Township Ordinance 2012-12 amends the Township Zoning Map by rezoning some 38 vacant acres (135 lots) from the RC (Residential Conservation) Zone to the RH (Residential High) Zone, the "overlay area" of Ocean Acres. She said that this rezoning is based on the terms of the 2004 agreement among the Commission, the Township and a developer/owner of many of the lots, Mark Madison, LLC. The agreement allowed additional T/E (threatened and endangered species) surveys to determine if the overlay area constitutes critical habitat for Northern Pine Snake. If this area were determined not to be critical habitat, then residential development could occur. Surveys were performed and reviewed by Commission staff and a determination was made in 2009 that development could occur in recognition that this was no longer deemed critical habitat. Such development can occur on lots of at least 10,000 sq-ft and, under a program unique in the Pinelands Area, on lots between 9,000 and 10,000 sq-ft with the purchase of 0.25 PDCs or two lots in the RC Zone, similar to a mini Density Transfer Program.

In response to Commissioner Prickett's question regarding the methodology used to determine the presence of snakes, Mr. Horner said that he believed that the methodology used for the snake survey was the most effective available at the time and it remains so today.

Ms. Roth said that in the October 5, 2009 report, staff describes how the survey was far more detailed than required. Also, in response to Commissioner Ficcaglia's concerns regarding failure of proper trapping techniques and protocol, she said that those issues were raised early enough in the survey cycle to allow correction and time to provide correct and accurate data.

Upon hearing further questions from the Committee regarding the integrity of the survey, Ms. Roth responded that the decision was rendered in 2009 and currently there is no basis to challenge that determination. In 2009, there was an extensive public process regarding the survey work, the receipt of comment, response, and a determination that this was not critical habitat. The only decision before the Committee today relates to the approval of the ordinance; the area is no longer recognized as critical habitat.

Commissioner Ficcaglia stated that there had been no subsequent finding of the species, unlike the Sanctuary project in Evesham Township.

Commissioner Jackson said that he had not been a Commission member at the time the decision was made and that he found that much of the public comment included in the meeting packet materials was unrelated to the decision that was to be made today.

Mr. Horner said that he had been present at the time and that he had been involved in the issue. He said that he could assure those present that it was a thorough review and study and that a regulatory decision had been made. The October 5, 2009 report lays out the facts.

Commissioner Ashmun said that the Commission had reviewed the materials *ad nauseum*. One needed to remember that Ocean Acres predates the Pinelands Protection Act and that a huge amount of effort went into efforts to buffer the stream corridor that runs through the subdivision based on some terrific work by staff.

Commissioner Jackson moved the recommendation to the Commission of certification of Barnegat Township's April 2011 Master Plan and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10, 2012-12 and 2012-22. Commissioner Ashmun seconded the motion and all voted in agreement.

### **3. Public comment**

Ms. Roth reminded the audience that an extensive record had been developed on the rezoning in Ocean Acres, that the record was closed, and that any testimony must be limited to that provided previously.

Mr. Frank Pecci, Barnegat Township resident, repeated the testimony he had provided previously (See January 4, 2012 Executive Director's Report, Exhibit #8) regarding the rezoning in Ocean Acres, Barnegat Township.

Mr. Jake Taylor, Barnegat Township resident, repeated the testimony he had provided at the June 27, 2012 public hearing on Barnegat Township Ordinance 2012-12 as summarized in the Executive Director's report.

### **4. Other Items of Interest**

There being no additional items of interest, the meeting adjourned at 11:10 a.m. (moved by Commissioner Jackson and seconded by Commissioner Ashmun).

Certified as true and correct:

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Betsy Piner, Principal Planning Assistant

Date: January 14, 2013

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