

Disclaimer

These minutes reflect the actions taken by the Commission during its January 10, 2020 meeting. Although these minutes have been approved by the Commission, no action authorized by the Commission during this meeting, as reflected in these minutes, shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of these minutes has been delivered to the Governor for review, unless prior to expiration of the review period the governor approves same, in which case the action shall become effective upon such approval. These minutes were delivered to the Governor on January 24, 2020.

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

MINUTES

January 10, 2020

Commissioners Present

Alan W. Avery Jr., Daniel Christy, Sean Earlen, Jordan P. Howell, Jerome H. Irick, Jane Jannarone, Ed Lloyd, Mark Lohbauer, William Pikolycky, Gary Quinn and Chairman Richard Prickett. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Craig Ambrose and Deputy Attorney General (DAG) Kristina Miles.

Commissioners Absent

Candace M. Ashmun and D'Arcy Rohan Green.

Chairman Prickett called the meeting to order at 9:31 a.m.

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

DAG Miles read the Open Public Meetings Act Statement (OPMA).

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum.

Minutes

Chairman Prickett presented the open and closed session minutes from the December 13, 2019 meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Pikolycky seconded the motion.

The minutes from the December 13, 2019 meeting were adopted by a vote of 10 to 0. Commissioner Christy was not present for the vote.

Committee Chairs' Reports

Commissioner Avery announced that the State Auditor issued the Fiscal Year 2018 Pinelands Commission Audit Report. He said the Commission has had no findings for the second year. He thanked the two public members on the Audit Committee and Jessica Lynch, Business Services Manager, for successfully transferring to new financial software.

ED Wittenberg said that a resolution accepting the FY 2018 Audit will be prepared for the next Commission meeting.

Executive Director's Reports

ED Wittenberg provided an update on the following items:

- A conference call with Monica Pham, the Governor's representative in Washington D.C., regarding the Federal 502 funds occurred this past week. Ms. Pham advised that the best time to pursue the funds would be this upcoming spring. Staff will be preparing a document about the Pinelands Commission and determining who is the best Congressional delegate to contact. Additionally, staff will need to include the New Jersey Department of Environmental Protection (NJDEP) in the process because it is the administrator of the funds.
- Conversations with NJDEP Assistant Commissioner Ray Bukowski are continuing to determine which state lands need assistance with Off-Road vehicle mapping.
- Staff will be meeting with a retired Deputy Attorney General next week to discuss providing part-time rule writing assistance.
- Press clips will be delivered by email going forward unless requested otherwise.

Chief Planner Susan R. Grogan provided an update on the following:

- The draft Kirkwood-Cohansey water supply policies are nearing completion. Staff will convene a group of stakeholders on January 31st to hear suggestions and questions to be considered for inclusion in future rulemaking. The stakeholder invitation list includes municipal utility authorities, water purveyors, township officials and non-profit organizations.
- Staff will be preparing an application for designation of the Pine Barrens Byway as a National Scenic Byway. The application process opens in mid-February. This is the first time in several years there has been an opportunity for designation.

Commissioner Avery asked if staff would be looking at the prior list of Section 502 acquisition areas.

Chief Planner Grogan said maps will be generated to identify the 502 areas that have not been purchased. She said there are about 12,000-14,000 acres remaining. She added that if the 502 money is released, additional areas may need to be designated in order to spend the funding.

Director Chuck Horner provided information on the following regulatory matters:

- A pre-application meeting was held with a potential applicant who owns 2,300 acres in the City of Estell Manor. The property is located in the Forest Area, where only one unit per 25 acres is permitted. Staff informed the property owner of the Commission's clustering rules and provided contact information to NJDEP's Green Acres program.
- Discussions continue with Pemberton Township regarding two areas the town has an interest in redeveloping. Both redevelopment areas, Noteboom Avenue located in the Browns Mills section of the township and the old Burlington County College site have wetland and/or wetland buffer constraints.
- Staff will be meeting with Pemberton Township officials regarding a proposal to extend sanitary sewer to two schools. Sanitary sewer is not permitted in the management area where the schools are located.
- Staff continues to work with an applicant who is interested in re-opening a bar/restaurant in Bass River Township.

Commissioner Lloyd asked how many acres at the college are developed and the breakdown of wetlands and uplands.

Director Horner said he would report back on that information.

Chief Planner Grogan added that even with the presence of wetlands, the impervious surface development envelope is significant.

Stacey Roth, Chief, Legal and Legislative Affairs, said that South Jersey Transportation Authority's (SJTA) deicing pad application is not on today's agenda. She said SJTA asked for a one-month extension so they could properly respond to the public comments raised at the December Commission meeting.

She noted that SJTA has entered into an agreement with Atlantic County with the purpose of finding suitable land for the new Grassland Conservation Management Area associated with the First Amendment of the February 26, 2004 Memorandum of Agreement. She said the county is experiencing challenges in finding suitable habitat to support the Upland Sandpiper, which requires large amounts of open space. She said the county also asked if the Commission is willing to consider property outside the Pinelands Area for the new Grassland and Conservation Management Area. She asked Commissioners for their opinion on the matter.

Commissioner Howell asked if the MOA allows for land outside the Pinelands Area to be considered.

Ms. Roth said the amended MOA leaves open the location of a specific site and, if necessary, it could be outside the Pinelands Area but within the Pinelands National Reserve. She noted that the original 2004 MOA raised concerns with finding a conservation area.

Commissioner Earlen asked for a formal update on the offset measures at the next meeting.

Commissioner Lohbauer said he supported looking outside the Pinelands Area. He noted the airport is near the boundary of the Pinelands Area.

Commissioner Avery said as long as the land is suitable he is not opposed to the County's request to look outside of the Pinelands Area. He asked if the Atlantic County Board of Freeholders can use eminent domain as a mechanism to acquire the lands.

Ms. Roth said it's an option but not preferred.

Commissioner Lloyd said he was open to the County looking for land outside of the Pinelands Area as long as there were some parameters expressing the extraordinary circumstance.

Joel Mott, Public Programs Specialist, said registration for the Pinelands Short Course is open. He said Commissioners are permitted to attend free-of-charge. He suggested Commissioners contact him if they would like to attend. He said the Summer Short Course is scheduled for July 14, 2020.

Commissioner Christy joined the meeting.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of four public development applications: installation of a sidewalk and rubber surfacing at existing playgrounds at an Elementary school in Hamilton Township, construction of a wooden boardwalk at the Piney Hollow Preserve in Franklin Township, improvements to the Braddock Mill Road dam in Evesham Township and installation of a groundwater discharge pipe at the Boyer Avenue wastewater facility in Hammonton.

Commissioner Lohbauer made a motion Approving With Conditions Applications for Public Development (Application Numbers 1985-0202.005, 1986-1154.004, 1988-0471.002 & 1988-0706.021) (See Resolution # PC4-20-01). Commissioner Earlen seconded the motion.

Chairman Prickett said Hammonton's application for the groundwater discharge pipe was previously approved as an emergency and was glad to see that the town had completed the process.

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

Chairman Prickett presented a resolution recommending approval of a Waiver of Strict Compliance for the development of one single family dwelling in Waterford Township.

Commissioner Lohbauer made a motion Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 2017-0213.001) (See Resolution # PC4-20-02). Commissioner Earlen seconded the motion.

Commissioner Lohbauer said the property for this application has a high water table and he was curious about the placement of the septic system.

Director Horner explained the waiver regulations and that the applicant has met all the conditions to qualify for a waiver. He said a mounded septic system will be required to ensure that there is adequate separation between the disposal bed and the seasonal high water table.

Chairman Prickett asked if both the Commission and the County would review the septic permit.

Director Horner said yes.

Commissioner Irick asked if the applicant would be installing an alternate design septic system.

Director Horner said alternate design septic systems are required when an applicant has less than 3.2 acres. He said the property in question is 11.14 acres, so a standard septic system, will be installed.

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

Public Comment on Public Development Applications and Items where the record is open

Chairman Prickett read the list of Public Development and Waiver applications up for comment.

Ryan Rebozo of the Pinelands Preservation Alliance (PPA) provided comment on Application # 1984-0514.008 (forestry activities at Wells Mills County Park). He said both PPA and the New Jersey Conservation Foundation support the stewardship plan. He added that there are some inconsistencies in the proposal. He requested clarification to determine if the stewardship plan is appropriate (written comments are attached).

Rhyan Grech of the Pinelands Preservation Alliance asked if there would be public comment on the South Jersey Gas remand resolution. She added that members of the public are here to comment on the resolution.

Chairman Prickett advised that there would be no public comment on the South Jersey Gas remand at this time.

Margo Pellegrino, Medford Lakes, NJ, said she doesn't understand how this Commission can make decisions on applications and plans when there is no advisory committee looking at the climate impacts first.

Commissioner Avery announced that two members from the Ocean County's Department of Parks and Recreation are present. He wants to be sure they were provided with the public comment submission for their forestry application.

Marianne Clemente of Barnegat, NJ, asked if public comment would be permitted on the South Jersey Gas remand resolution.

Chairman Prickett said he would ask Commissioners how they felt about allowing public comment.

Ordinances Not Requiring Commission Action

Chairman Prickett asked if any Commissioners had questions regarding the ordinances not requiring Commission action.

- Little Egg Harbor Township Ordinance 2019-04
- Little Egg Harbor Township Ordinance 2019-09

No members of the Commission had questions.

South Jersey Gas Remand Resolution

Chairman Prickett said the public is interested in commenting on the resolution. He asked Commissioners about whether they want to take public comment before voting.

Commissioner Lloyd said he is recusing from this matter because he recused from the original application and left the room.

Commissioner Pikolycky said he would also be recusing on the matter and left the room.

A number of Commissioners said they were not opposed to public comment on the application.

Chairman Prickett asked that comments be kept to three minutes.

Marianne Clemente of Barnegat Township asked questions and provided no comment.

Jeff Tittel of the Sierra Club said the resolution does not follow the opinion of the Attorney General. He said the Board of Public Utilities issued a conditional approval for the South Jersey Gas pipeline and unless the Commission rescinds the approval, the applicant can come back. He said the Commission should change the resolution to include language that the application is denied.

Rhyan Grech of the Pinelands Preservation Alliance said the previous resolution that was posted on the Commission's website in April was much stronger and clearer. She said the

Commission should strive for clarity and efficiency and change the resolution to include language stating that the South Jersey Gas application is not consistent with the Comprehensive Management Plan (CMP) and Resolution PC4-17-03 is invalid. Margo Pellegrino, Medford Lakes, NJ said that Senate President Steve Sweeney is the only person in the current administration still interested in the South Jersey Gas pipeline. She said he is also holding up Pinelands Commission appointments. She urged Commissioners not to vote on the resolution until there are other Commissioners seated.

Commissioner Lohbauer made a motion recommending approval of the Remand of the South Jersey Gas Company Application Due to a Significant Change in Material Fact (See Resolution # PC4-20-03). Commissioner Howell seconded the motion.

Commissioner Lohbauer said there were two draft resolutions but a number of Commissioners gathered to come up with the language in the present resolution. He said the language could have been more definitive but at this point this Commission needs to respond to the Court's remand. He said because the application can no longer meet the Forest Area standard, today's resolution invalidates Resolution # PC4-17-03.

Commissioner Irick said he reviewed the South Jersey Gas application, including the ED's Recommendation report, Resolution # PC-17-03 and proposed gas line route. He said the resolution complies with the court order to remand the matter back to the Commission, preserved due process and identified substantial changes to the project and further identifies that South Jersey Gas has not provided an application that correctly identifies the scope of the project. He said the project no longer complies with the CMP. He said he would be voting in favor of the resolution.

Commissioner Howell read the following statement into the record: "In addition to this resolution, a letter was sent from the Executive Director to the applicant, as well as a letter from the Attorney General's office expressing an opinion about the validity of the project. This resolution is another statement that the project is no longer valid. The language in the resolution reflects what is currently feasible for us to say and do as the CMP is written. Not as we might wish it were written or perhaps should be written, but as it is written. The public needs to keep in mind that the Commission cannot act outside of its own rules, even as weird as the process for this particular application has been. So I will vote for this resolution as the best possible outcome at this point in time and in fulfillment of our obligations of the remand decision."

Commissioner Earlen said he has expressed his concern with this resolution before. He said he agrees that the application has changed and that the applicant does need to apply for the project. He said the resolution doesn't do anything. He said the Commission should not be in the business of passing resolutions and rescinding them. He said ED Wittenberg has issued a letter to the applicant that is stronger than this resolution. He said he will not be voting in favor of this resolution.

Commissioner Christy said he is new to this board and was not here for the South Jersey Gas pipeline application. He said he has served on many boards over the years and passed

many resolutions. He said this is the first time he has seen a resolution invalidate another resolution. He said resolutions have conditions for a reason and if an applicant cannot meet the conditions, the resolution is automatically invalid. He said he does not support the resolution.

Commissioner Jannarone asked about South Jersey Gas's ability to proceed with the project.

ED Wittenberg said because BL England is no longer part of the project, the application has changed and South Jersey Gas would have to reapply to the Commission.

Commissioner Avery said its been six years to the day that the Commission voted on the MOA. He said the MOA resolution failed to have enough votes, which represented final agency action. He asked if today's vote would represent final agency action, regardless if the resolution passes or fails.

Ms. Roth said the By-Laws require eight affirmative votes to move a resolution.

ED Wittenberg read the final paragraph of the March 6, 2019 letter sent to South Jersey Gas "As you must agree, the approval granted by the Commission was based on and specific to the particular project proposed. Since the factual basis for the Commission's approval has substantially changed, that approval can no longer be justified and South Jersey Gas will need to make a new application to the Commission for any new or amended project through the Pinelands Area".

Commissioner Howell said he is uncomfortable with the resolution setting precedent; however the resolution meets the obligation of the Court's remand, while reconfirming the March letter from the Executive Director and the Attorney General's letter and a substantially changed project.

Commissioner Earlen said South Jersey Gas is going to have to reapply or amend their application if they choose to proceed with a future application. He is not willing to set precedent even though the Court remanded the application back to this body. He added that the Executive Director's March letter is stronger than the resolution.

ED Wittenberg called the roll.

The motion failed by a vote of 4 to 5.

General Public Comment

Mark Demitroff, Richland, NJ, spoke about redevelopment in Richland Village and failing stormwater basins in the area. He said he is awaiting a response from the Commission regarding a letter he submitted (see attached).

Jeff Tittel of the Sierra Club expressed his dismay over the outcome of the vote for the South Jersey Gas remand resolution. He added that the board represents the people of New

Jersey and should be protecting the Pinelands. He noted the current wildfires burning around the world. He said the CMP needs fire planning regulations in combination with climate impacts.

Rhyan Grech of the Pinelands Preservation Alliance said she was opposed to allowing South Jersey Transportation Authority (SJTA) to look outside the Pinelands for suitable threatened and endangered species habitat. She said the second amendment of the SJTA MOA destroyed 290 acres of habitat for three species. She urged the Commission to insist that SJTA find land within the Pinelands Area to be used as the new Conservation Area.

Margo Pellegrino of Medford Lakes said climate change is having a negative effect on infrastructure and she used the bridge repair in Pemberton Borough as an example. She said the Commission's Land Use, Climate Impacts and Sustainability Committee needs to evaluate how the CMP can be modified to include climate change.

Marianne Clemente, Barnegat, NJ, asked the Commission if there are plans to formally address climate change by including language in the CMP. She said she was disappointed that Senator Steve Sweeney has not moved Pinelands Commission appointments.

Chairman Prickett, Commissioner Earlen and Commissioner Avery all responded, advising the public that the goal of the Land Use, Climate Impacts and Sustainability Committee is to update the CMP as it relates to climate change.

Other

At the request of Chairman Prickett, Director Horner provided information related to Mr. Demitroff's comments about the Commission's role with redevelopment.

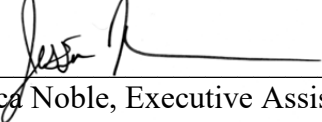
Commissioner Avery asked if the MOA with SJTA precluded the authority from purchasing a parcel and clearing it to create the habitat.

Ms. Roth said the clearing of a parcel that large would require a public development application and approval from the Commission. She said SJTA is better off acquiring cleared land.

Adjournment

Commissioner Avery moved to adjourn the meeting. Commissioner Pikolycky seconded the motion. The Commission agreed to adjourn at 11:22 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: January 21, 2020