

Disclaimer

These minutes reflect the actions taken by the Commission during its February 13, 2015 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 February 27, 2015.

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

MINUTES

February 13, 2015

Commissioners Present

Candace Ashmun, Alan W. Avery Jr., Bill Brown, Joe DiBello, Sean Earlen, Ed Lloyd, Paul E. Galletta, Richard Prickett, Robert Jackson, Jane Jannarone, Ed McGlinchey, Gary Quinn, D'Arcy Rohan Green and Chairman Mark Lohbauer. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit Liaison Amy Herbold and Deputy Attorney General Kristen Heinzerling.

Commissioners Absent

Fran Witt

Chairman Lohbauer called the meeting to order at 9:35 a.m.

DAG Heinzerling read the Open Public Meetings Act Statement.

Ms. Wittenberg called the roll and announced the presence of a quorum. (There were 14 Commissioners present.)

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

Minutes

Chairman Lohbauer presented the minutes from the January 16, 2015 Commission meeting. Commissioner Ashmun moved the adoption of the minutes. Commissioner Rohan Green seconded the motion.

The minutes of the January 16, 2015 Commission meeting were adopted by a vote of 14 to 0.

Committee Chairs' Reports

Personnel & Budget Committee

Vice Chairman Avery provided an update on the February 3, 2015 Personnel and Budget Committee meeting:

The Committee adopted the minutes from the December 2, 2014 meeting.

Nancy Wittenberg and Jessica Lynch reviewed the financial statements and the November and December Check Registers, electronic disbursements and application fees. There was a discussion concerning the potential purchase of a generator(s) to keep the Commission functioning in emergencies. Michelle Russell provided an update on employee actions. The Committee met in Closed Session.

Commissioner McGlinchey said that he was not able to attend the meeting and would have liked to be part of the generator discussion. He recommends purchasing a 20kW generator.

Policy & Implementation Committee

Chairman Lohbauer provided an update on the January 30, 2015 Policy and Implementation Committee meeting.

The Committee adopted the minutes of the October 31, 2014 meeting.

The Committee recommended Commission certification of Barnegat Township Ordinance #2014-23, adding mixed use development as a conditional use in the Neighborhood Commercial Zone within the Regional Growth Area.

The Committee discussed its interest in reviewing the procedure for considering Memoranda of Agreement (MOA).

Chairman Lohbauer said he suggested creating an Ad Hoc Committee to investigate if there was a need to amend the Comprehensive Management Plan (CMP) to address MOA's in a different manner. He encouraged Commissioners to contact him with any suggestions and hopes to make a decision about this at the next Policy & Implementation Committee meeting on February 27.

The Committee met in closed session to discuss litigation matters.

The Committee returned from closed session and functioned as the full Commission by adopting Resolution PC4-15-02 entitled *Confidentiality and Privilege of Certain Documents* with eight affirmative votes.

Chairman Lohbauer added that as a result of the resolution, Commissioners have the ability to review email between staff and other entities from the MOA between the Commission and Board of Public Utilities (BPU) regarding construction of a natural gas pipeline.

Commissioner Rohan Green said she is happy to see the MOA process be evaluated after the events during the BPU MOA.

Executive Director's Reports

Ms. Nancy Wittenberg updated the Commission on the following:

- Commissioners were advised that there are two sets of email correspondence pertaining to the Board of Public Utilities MOA that are available to view. She advised Commissioners to contact her if they would like to review them.
- Staff has engaged in discussions with the applicant and Hammonton regarding conditions and limitations on the soccer activities proposed for the Tuckahoe Turf Farm. These conditions would allow for the continuation of soccer events on a limited basis while the Commission develops a pilot program consistent with the CMP. Staff learned that the bill (S2125/A3257) was up for consideration on February 12, 2015. Ms. Wittenberg said the bill would expand the types of use qualifying as low intensity recreation on Pinelands Development Credit (PDC) deed restricted land in Pinelands Agricultural Production Areas. Staff prepared a letter for the Senate Economic Growth Committee (See attached). Ms. Wittenberg said she went to the hearing to provide testimony, and it went very well. She said the Committee chose to hold the bill and requested an update on the progress of the development of the pilot program in about 4 ½ months.
- She attended a joint meeting with Woodland Township officials and New Jersey Department of Environmental Protection (NJDEP) representatives regarding the Franklin Parker Preserve.
- The Pinelands Municipal Council met on February 11. They did not have a quorum. Robert Auermuller, Wharton Forest Superintendent delivered a presentation on the William Penn project.
- Staff has had preliminary discussions with New Jersey Natural Gas regarding a natural gas pipeline that is being proposed on land that traverses the Joint Base McGuire Dix Lakehurst (JBMDL). She said the Commission has not received a formal application.

Commissioner Ashmun said JBMDL is required to apply to the Commission for all proposed development.

Mr. Chuck Horner provided an update on the following:

- The Commission received a request for an Amended Certificate of Filing for the Tuckahoe Turf soccer application to include lands in Winslow and Waterford

townships. The Commission received a site plan approval for the soccer activities issued by the Town of Hammonton. That approval is currently under review. The Commission has 15 days to either request more information, send a letter of no further review or issue a letter for a Commission staff public hearing.

Commissioner McGlinchey asked if, as part of the development of the pilot program, a municipality would be able to choose whether they can participate in the program.

Ms. Grogan said the Commission would need to decide if participation in the pilot program would be mandatory.

Commissioner McGlinchey said he thinks towns should have the option of participation. He said this is why the Commission needs to re-establish the Agriculture Committee.

- Mr. Horner said at last month's Commission meeting an article was discussed about Southampton Township in which municipal officials insinuated that Commission staff had concluded that the municipal complex could not be expanded. He said that he spoke with the Mayor and Administrator of Southampton Township. He said they both conveyed that it was not their intent to suggest that they purchased property based on Commission staff's assessment. The Township will be working with the planning office on rezoning the parcel that houses the municipal public works facility in order to allow its expansion.
- The Commission received an application for a commercial use on the Cape May County Municipal Utilities Authority (CMCMUA) landfill property. In 2009, the Commission approved a landfill expansion on the site. As part of that public development approval, CMCMUA had to address the presence of Red-headed Woodpecker. CMCMUA was required to submit a conservation plan, while specific areas were to be deed restricted and other areas were to remain wooded. A discrepancy remains over the deed-restricted lands and the conditions of the public development approval.

Commissioner Ashmun requested a map of the CMCMUA property.

Chairman Lohbauer asked what type of development is being proposed.

Mr. Horner said they are proposing a natural gas fueling station.

Commissioner Avery asked if this was a public and private development application.

Mr. Horner said that has yet to be determined.

- Staff will meet with Jackson Township officials on February 25 to review the Commission's application process and municipal permitting procedures.

Ms. Stacey Roth provided the Commission with an update on the status of the New Jersey Turnpike Authority's (NJTA) efforts to address the secondary impacts associated with the

widening of the Garden State Parkway between mileposts 30-80 (see presentation slide). Ms. Roth reminded that Commissioners that as part of its review of the Memorandum of Agreement for the widening project, the Commission had retained the Delaware Valley Regional Planning Commission (DVRPC) to conduct secondary impacts analysis for the project. DVRPC's analysis identified the potential for secondary impacts to occur at Interchanges 58 & 69. In order to provide a mechanism to address these potential secondary impacts, the NJTA and the Commission had entered into a Secondary Impacts Agreement. As part of that agreement the NJTA agreed to obviate secondary impacts in the vicinity of Interchanges 58 & 69 by memorializing the existing zoning on conforming lots located up to 1 ½ miles from the Interchange on major feeder roads. The Secondary Impacts Agreement obligated the NJTA to undertake efforts to memorial the zoning for 5 years from the date of execution of the MOA by all parties and provided for a one year extension. The NJTA obtained an extension before January 4, 2014. That extension expired on January 5, 2015. As of January 5, 2015, the Commission has four years to complete memorializing zoning on the remaining conforming lots.

Ms. Roth advised that NJTA has been very successful in its efforts to obviate potential secondary impacts. Additionally, she reported that on December 30, 2014, NJTA acquired the George Cluen, LLC property. As a result of that acquisition approximately 1,475 acres in the vicinity of Interchange 69 have been addressed. She noted that there is not much land left to be acquired.

Ms. Roth asked for an oral motion to approve a two-year extension of the agreement so NJTA can complete any pending acquisitions. She also asked that the agreement be amended to allow staff to approve two additional extensions, if necessary.

An oral motion was moved by Commissioner Lloyd. The motion was seconded by Commissioner Earlen.

Commissioner Lloyd said because the Commission no longer has an acquisition consultant and the NJTA has done a good job of acquiring lands, the extension makes sense.

Commissioner McGlinchey said he would feel more comfortable only allowing for one 1-year extension after the two years have expired.

The original motion was amended after discussion amongst the Commissioners. The amended motion authorized staff to negotiate with the NJTA to amend the Secondary Impacts Agreement to provide NJTA with 2 more years to fulfill the Agreement's obligations and memorialize zoning with the possibility of two- one year extensions should the NJTA demonstrate to the staff that completion of a task(s) required pursuant to the Agreement is imminent and that the task(s) will be completed within the extended time period. Staff was also directed to discuss with NJTA the possibility that the Commission retains any money left over in the escrow account to complete any tasks remaining at the end of the ten year agreement period, i.e. January 5, 2019.

All the Commissioners voted in favor of the amended motion. Commissioner McGlinchey was not present for the vote.

Public Development Projects and Other Permit Matters

Chairman Lohbauer said there is one public development application that is being recommended for approval today. He said Egg Harbor City is proposing to build a fishing pier at an existing municipal park.

Commissioner Galletta moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1994-0336.004)(See Resolution # PC4-15-03). Commissioner Earlen seconded the motion.

The Commission adopted the resolution by a vote of 13 to 0 (Commissioner McGlinchey was not present at the time of the vote). All voted in favor.

Chairman Lohbauer presented the next resolution approving waivers for the development of two single family dwellings.

Commissioner Galletta said although he does not know the applicant of the Hammonton application, he is recusing himself because he believes the property in question abuts his parcel of land in Hamilton Township. Commissioner Galletta stood and left the dais to sit in the audience.

Commissioner Lloyd moved the adoption of a resolution Approving With Conditions Applications for Waivers of Strict Compliance (Application Numbers 1995-1379.001 & 2005-0257.001)(See Resolution # PC4-15-04). Commissioner Brown seconded the motion.

The Commission adopted the resolution by a vote of 13 to 0. All voted in favor with Commissioner Galletta not participating in the vote.

Resolutions Relating to Municipal Ordinances

Commissioner Ashmun moved the adoption of a Resolution Issuing an Order to Certify Ordinance 2014-23, Amending Chapter 55 (Land Use) of the Code of Barnegat Township (See Resolution # PC4-15-05). Commissioner Earlen seconded the motion.

The Commission adopted the resolution by a vote of 14 to 0.

Public Comment on Agenda Items and Pending Public Development Applications

Bill Wolfe said the New Jersey Natural Gas pipeline the Executive Director mentioned in her report is causing an enormous public dispute. He said there are many components of the project and if pre-application meetings are being held, the public needs to know. Mr. Wolfe asked if the recusal process had been altered because a Commissioner did not exit the room.

Chairman Lohbauer said that Commissioner Galletta has gone on the record that when he is recusing himself from voting on an application, he will not leave the room.

Mr. Wolfe said he does not agree with that.

Ordinances Not Requiring Commission Action

Chairman Lohbauer asked if any Commissioners had questions regarding the ordinances not requiring Commission action:

- Barnegat Township Ordinance 2014-35
- Egg Harbor Township Ordinance 29-2014

No members of the Commission had questions.

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

Chairman Lohbauer asked members of the public who plan to speak today to refrain from making ad hominem attacks on staff. He said Commissioners appreciate public comment on substantive issues.

Bill Wolfe urged Commissioners as part of their review of the MOA process to strengthen the "equivalent protection" language. He said the current standards allow for too much discretion. He also recommended adopting technical standards. He said this would promote transparency. He recommended defining "public agency" and "public purpose". He suggested imposing an administrative moratorium on any MOAs while the rules are pending revision. He questioned at what point in time did the application for the pipeline become an MOA. He also said the only role the Governor has at the Commission is the ability to veto the Commission's minutes.

Cidnie Richards commended Chairman Lohbauer for his work on the P&I Committee and the possible Ad Hoc Committee. She asked for the status of the South Jersey Gas pipeline application.

Ms. Wittenberg said the Commission does not have an application.

Fred Akers of the Great Egg Harbor Watershed Association provided comments on the need for reviewing the MOA process (See attached comments).

Marianne Clemente said she saw on the agenda the change in the limit from five minutes to three minutes for public comment. She said this was an attempt to stifle the public. She said the Commission needs to hear what the public has to say. (Note: There was no such item on the agenda.)

Tony DiLodovico said the New Jersey Builders Association is finalizing a stormwater infiltration basin report in conjunction with NJDEP. He said he met with Commission staff a number of months ago to discuss basins in the Pinelands. He said Commission staff was

very helpful and professional to work with. He said he would be happy to present the material in the report to the Commission or staff upon completion. He said after listening to the discussion at today's meeting that he would like to volunteer his time to be involved in the review of the MOA process. He described some of his professional experience that relates to MOAs. He also said that he serves as Vice Chairman of the Ocean County Soil Conservation District, on that body he encourages the public to speak but does not believe anyone should be disruptive or make personal attacks on staff.

Arnold Fishman said he was confused by the response provided to Cidnie Richards about the South Jersey Gas application. He said the application is not over because the matter is currently before the Appellate Division. He added the matter will not be over until the Appellate Division makes a determination. He said he was happy to volunteer his time as a member of the public if the Ad Hoc Committee for the review of the MOA process ever comes to fruition.

Chairman Lohbauer said Mr. Fishman was correct but he believes staff's response to Ms. Richards was fair.

Bill Wolfe briefed the Commission on his recent complaint to the Joint Legislative Committee on Ethical Standards.

Commissioner Rohan Green asked DAG Heinzerling to explain the resolution from the last Policy & Implementation Committee meeting. She asked what it means for Commissioners.

DAG Heinzerling said the resolution states that the Commission is recognizing its statutory obligation to keep certain confidential documents confidential. She said the resolution also affirms that the Commission is not waiving its privileges.

Commissioner Earlen asked Ms. Wittenberg if she has received anything new from South Jersey Gas.

Ms. Wittenberg said no.

Commissioner Lloyd said his understanding of the resolution was to allow Commissioners to view the unredacted emails, while at the same time maintaining the Commission's position in Court.

Commissioner McGlinchey asked Chairman Lohbauer if it was an appropriate time to make a motion to create an Agricultural Committee.

Chairman Lohbauer recommended waiting until the next Policy & Implementation Committee meeting to further discuss an Agricultural Committee.

Closed Session Resolution

DAG Heinzerling read a resolution to retire into closed session to discuss pending litigation and collective bargaining.

Commissioner Jackson moved to retire into closed session. Commissioner Ashmun seconded the motion. The Commission agreed to retire into closed session by a vote of 14 to 0, beginning at 11:01 a.m.

Return to Open Session

Commissioner Jackson made a motion to return to open session. Commissioner Prickett seconded the motion. The meeting resumed at 11:58 a.m.
Commissioner Brown left the meeting.

DAG Heinzerling said pending litigation and collective bargaining were discussed in closed session.

Commissioner Avery made a motion to Authorize the Attorney General's office to settle the matter involving the Pinelands Preservation Alliance. The motion was seconded by Commissioner Jackson. The motion passed by a vote of 12 to 1, with Commissioner Earlen voting no.

Commissioner Earlen left the meeting.

Adjournment

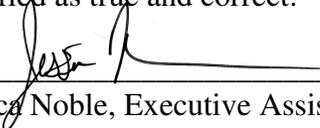
Commissioner Prickett asked Mr. Paul Leakan for an update on the Pinelands Short Course.

Mr. Leakan said so far 300 people have signed up and there is push to get families to sign up for the new family friendly track of courses.

Chairman Lohbauer asked his fellow Commissioners to reach out to him if they hadn't already about their thoughts on the MOA Committee.

Commissioner Galletta moved to adjourn the meeting. Commissioner Jackson seconded the motion. The Commission agreed to adjourn at 12:06 p.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: February 25, 2015