

Disclaimer

These minutes reflect the actions taken by the Commission during its April 12, 2019 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 May 1, 2019.

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

MINUTES

**April 12, 2019**

Commissioners Present

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

Commissioners by Phone

Jane Jannarone

Commissioners Absent

Candace Ashmun, Daniel Christy and D'Arcy Rohan Green.

Chairman Earlen called the meeting to order at 9:34 a.m.

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

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

Oath of Office

Chairman Earlen introduced and welcomed Jerome Irick to the Commission.

DAG Miles administered the oath of office to Mr. Irick, who will serve as Atlantic County's appointee on the Commission.

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 11 Commissioners who participated in the meeting.)

Minutes

Chairman Earlen presented the open and closed session minutes from the March 8, 2019 Commission meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Pikolycky seconded the motion.

The March 8, 2019 Commission meeting minutes (open and closed sessions) were adopted by a vote of 8 to 0. Commissioner Irick, Commissioner Jannarone and Commissioner Quinn abstained from the vote.

Committee Chairs' Reports

Chairman Earlen provided an update on the March 29, 2019 Policy and Implementation (P&I) Committee meeting:

The Committee adopted the minutes of the February 22, 2019 meeting.

The Committee recommended Commission certification of:

- Bass River Township Ordinance 2018-05 (responding to CMP amendments and implementing an alternative permitting program for single-family homes); and
- Manchester Township's master plan and land use ordinances for that portion of the municipality in the Pinelands National Reserve, outside the state-designated Pinelands Area.

The Committee recommended that the draft amendment to the 2004 Memorandum of Agreement with the South Jersey Transportation Authority for the Atlantic City Airport be advanced to the Commission, without recommendation, with modifications related to the funding timetable.

Executive Director's Reports

ED Wittenberg updated the Commission on the following items:

- Staff met with National Park Service (NPS) representatives to discuss past and future funding, the next cooperative agreement and potential changes to the monitoring work.

- The ED, Chairman and the Vice Chair met with the New Jersey Department of Environmental Protection (NJDEP) Commissioner and other NJDEP staff members to discuss coordination between the two agencies.

Director Larry Liggett updated the Commission on the following:

- Staff attended a meeting of the Governor's Interagency Work Group. The purpose of the meeting was to discuss the State Planning Commission's proposed rules, 98 expiring centers and the plan endorsement process. None of the expiring centers are in the Pinelands Area.
- The Pinelands Preservation Alliance requested to use the Commission's Kirkwood-Cohansey presentation material to share with some groups.
- AT&T has notified the Commission that it may need to amend its Comprehensive Plan due to difficulties with a number of cell tower sites in the Pinelands. The Federal Communications Commission (FCC) has shortened its review period for cellular towers so towns have less of an opportunity to reject the plans. Staff provided comments to the FCC on the proposed rules and advised them of the Commission's process.

Chief Planner Susan R. Grogan explained that Pinelands Villages and Towns are equivalent to what the State Plan refers to as a "center" and are recognized as such by the State Planning Commission through an old MOA and in the State Planning Commission's regulations.

Director Chuck Horner provided information on the following regulatory matters:

- Staff will be meeting with Mullica Township representatives to discuss opportunities for economic development within the town, which is almost entirely served by septic systems.
- Staff will be meeting with Egg Harbor City officials to discuss rezoning a parcel to accommodate a commercial development.
- Staff continues to work with Hammonton regarding its plan to acquire a portion of the Frog Rock Golf Course to use for the onsite application of treated wastewater.
- Staff continues to assist Winslow Township officials regarding a matter that is currently in municipal court. A property owner has removed a significant amount of soil from a parcel without application to the Commission.
- Staff is assisting Estell Manor officials with a situation that involves an abandoned mine and illegal Off Road Vehicle (ORV) use.

Stacey Roth, Chief, Legal & Legislative Affairs, reminded Commissioners that Financial Disclosure Statements must be filed by May 15, 2019.

Communications Officer Paul Leakan provided an update on the following:

- The 30<sup>th</sup> Annual Short Course had almost 600 attendees. Based on an on-line survey of the event, attendees were very satisfied with the program. The Summer Short Course will be held on July 18<sup>th</sup> at Kramer Hall in Hammonton.
- The Pinelands Orientation for Newly Elected Officials is scheduled for July 23<sup>rd</sup>.

- A media tour is being scheduled for the Buena Borough Water Pollution Control Plant. Commissioners will be invited to attend.

Commissioner Prickett said he enjoyed both Joel Mott's and John Bunnell's presentations at the Short Course.

#### Public Development Projects and Other Permit Matters

Chairman Earlen presented the Bass River Fire Tower resolution.

Commissioner Avery made a motion Approving With Conditions an Application for Public Development and Certificate of Appropriateness (Application Number 1990-0868.031) (See Resolution # PC4-19-13). Commissioner Barr seconded the motion.

ED Wittenberg said NJDEP's original application was deemed complete in May of 2018. The Commission voted on that application at its August 10, 2018 meeting, but there were not enough votes to pass the resolution. The NJDEP withdrew the application in October and resubmitted the application in January of 2019. The NJDEP resubmitted the same application with the addition of responses to questions raised by the public and Commissioners. She noted the Commission had received four appeals of her recommendation.

Commissioner Lohbauer said he disagrees with the counsel's and the attorney general's office decision to deny the four third-party appeals that were filed on this application. He said amendments to the Comprehensive Management Plan (CMP) were placed on hold two years ago regarding this very matter. He said the original Commission wanted to afford the public the right to file these matters. He said when the Legislature changed the Administrative Procedure Act (APA) in 1993, it had no bearing on the CMP. He also said there is no case law that said the APA change in 1993 applies to the CMP. He said he feels the public does have the right to third-party appeals.

Ms. Roth said legally, the Supreme Court has spoken on the matter. She said that, as was discussed at the time of the CMP Amendments, the Commission's staff is obligated to interpret and follow the law as it exists. She said the APA removed the authority of state agencies to confer third-party hearing rights, even if those agencies had regulations to do so. She noted a decision regarding an application that was before the then Meadowlands Commission where the Court found that the Meadowlands Commission could not apply its third-party appeal regulations (In re Amico/Tunnel Carwash). She added that the Division of Law also provided written guidance in February 2018, advising that the 1993 APA amendments apply to this Commission.

Commissioner Lloyd said he disagrees and that staff is applying provisions the Commission did not agree with or adopt. He said the staff works for the Commission, not the AG's Office.

DAG Miles said further discussion on this matter is more appropriate for closed session. The Commission chose not to enter into Closed Session.

Commissioner Lohbauer thanked the Forest Fire Service for responding to the questions raised by Commissioners. He said he accepts that the Forest Fire Service needs a clear view of the forest from the Bass River Fire Tower and that certain alternatives won't meet its needs. He said he disagrees with staff's conclusion to allow clear cutting of 16.4 acres of forest. He said the tree cutting is not necessary. He said a new tower could be built; however, it is cost prohibitive. He said the cost of the tree clearing was not addressed in the revised application. The relocation of the tower and topping of trees were also not addressed. He said in less than five years, the surrounding trees at Bass River will further obstruct the view from the tower. He said cutting the trees is not the only option or the quickest. Even if the application is approved today, it will take the NJDEP a year to cut the trees. He said there is an alternate solution and this is why he wanted to have a discussion with the Forest Fire Service after the application was withdrawn.

Commissioner Lloyd said he shares many of Commissioner Lohbauer's concerns. He said the Commission should not be reviewing forestry applications on a case-by-case basis. He said he would like to have a discussion with the NJDEP and come up with a comprehensive plan to manage the forest. He thanked the NJDEP for answering some of the Commission's questions and said he will vote for the resolution.

Commissioner Quinn said he is prepared to vote yes on today's resolution but he agrees with Commissioner Lloyd in that the Commission needs to have broader discussions about forest management and fire safety of Pinelands communities.

Commissioner Prickett said the NJDEP and the Commission need to have a better working relationship. He agrees with the comments raised by the other Commissioners.

Commissioner Barr said the Commission needs better coordination with the NJDEP and Forest Fire Service. He said he is prepared to vote yes today but said he cautions any future votes on similar matters without a plan. He said the health and safety of the public is important to him.

Commissioner Howell compared the Bass River Fire Tower application to other instances of environmental conflict and said resolution was met by compromise. He said John Muir wanted to preserve landscapes as they were and Gifford Pinchot advocated wise use of natural resources. He said this Commission and the public want to preserve the Pinelands. He said the NJDEP answered most of the questions raised. He said he has to defer to the personnel fighting the fires because they are the experts.

Chairman Earlen noted the recent special legislative hearing on Pinelands wildfires and the recent fire that destroyed thousands of acres in Burlington County. He said he is not an expert on forestry, forest fires or threatened and endangered species.

ED Wittenberg called the roll.

The Commission adopted the resolution by a vote of 10 to 1.

Planning Matters

Chairman Earlen presented the Bass River Township Ordinance 2018-05 resolution implementing an alternate permitting process for single family dwellings.

Commissioner Lohbauer made a motion Issuing an Order to Certify Ordinance 2018-05, Amending Chapter 16 (Subdivisions and Site Plans) and Chapter 17 (Zoning) of the Code of Bass River Township (See Resolution # PC4-19-14). Commissioner Pikolycky seconded the motion.

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

Chairman Earlen presented the Manchester Township master plan and land use ordinances resolution.

Commissioner Lohbauer made a motion Issuing an Order to Certify the Master Plan and Land Use Ordinances of Manchester Township, Up to and Including Ordinance 18-035, for That Portion of the Township Outside the Pinelands Area but Within the Pinelands National Reserve(See Resolution # PC4-19-15). Commissioner Avery seconded the motion.

Commissioner Avery said the settlement agreement for the Heritage Minerals site includes the development of 2,450 residential units and commercial development. He noted that the agreement may or may not be valid at this time and that will be determined by the Court. He said in order for the development to occur, sewer service will have to be installed through the Forest Area, which the CMP may not permit.

Chief Planner Grogan said she reread the settlement agreement and the section on sewer service does not specify where the sewer line will be installed. She said it does state that the NJDEP “shall approve sewer lines.” She said she believes the Commission would be able to permit the sewer lines because the settlement designated a development area and an area to be deed restricted in the Forest Area, where thousands of acres would remain undeveloped. She said should the application proceed, the sewer discussion will need to take place. She noted that the action the Commission is being asked to take today does not change anything with the Heritage Minerals property. She said the town is merely implementing the terms of the Settlement Agreement in addition to Manchester’s own agreement with Heritage Minerals.

Ms. Roth said the litigation is still pending in federal court. She said the NJDEP denied the Coastal Area Facilities Review Act (CAFRA) permit that proposed almost double the amount of units than the number in the settlement agreement.

Commissioner Lloyd asked if the applicant filed an appeal of NJDEP’s permit denial.

Ms. Roth said she would provide an update after speaking with Deputy Attorney General assigned to the case.

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

#### Memorandum of Agreement

Chairman Earlen presented a resolution related to the Memorandum of Agreement with the South Jersey Transportation Authority.

Commissioner Barr made a motion Authorizing the Executive Director to Execute the First Amendment to the February 26, 2004 Memorandum of Agreement between the South Jersey Transportation Authority and the New Jersey Pinelands Commission Eliminating the Seasonal Mowing Restriction Relating to the Grassland Conservation and Management Area at Atlantic City International Airport (See Resolution # PC4-19-16). Commissioner Avery seconded the motion.

ED Wittenberg said that staff informed the P&I Committee back in May of last year about the need to amend the existing MOA with SJTA to move the grassland habitat. She said it was discussed at six P&I Committee meetings and five Commission meetings and included a site visit to the airport. She noted that the P&I Committee moved the resolution to the full Commission without recommendation.

Ms. Roth said the original MOA with SJTA began in 2003. The Atlantic City Airport and SJTA proposed a number of short term projects that would impact two threatened and endangered bird species, the Uplands sandpiper and the Grasshopper sparrow, and the state designated threatened and endangered lepidoptera species, the Frosted elfin butterfly. Offsetting measures in the MOA included the creation and maintenance of a 290-acre Grassland Conservation and Management Area (GCMA). She said about three years after the 2004 MOA was executed, the Federal Aviation Administration (FAA) issued an Advisory Circular and Cert Alert related to wildlife attractants and protection of state - listed species habitat on airports and keeping a certain distance/buffer from the area of operation. She said currently the GCMA is about 30 feet from the taxiway, which does not meet the requirements of the Advisory Circular. She said at the same time, bird strikes at the airport began to increase. She said SJTA conducted a Wildlife Hazard Assessment that prompted the Authority to request that the Commission re-evaluate the location of the GCMA. She said the First Amendment would eliminate the seasonal mowing restrictions for the GCMA and permit the SJTA to continue to mow the area to a grass height of 5-10 inches year-round while encouraging a monoculture of turf grass.

Ms. Roth then explained the offsetting measures to compensate from the loss of the GCMA:

- an initial payment of \$500,000 and then five annual payments of \$500,000, to be added to the Pinelands Conservation Fund for land acquisition;

- the acquisition of a parcel for, and the creation and long-term maintenance of, a new GCMA area, that will, at a minimum provide 25 hectares of effective grassland habitat; and
- the enhancement of 12 acres in the northeastern quadrant of the airport as habitat for the frosted elfin butterfly and the designation of this enhanced habitat and the location of the existing colony at the airport within the Forest Preservation Area on the airport's layout plan.

She added that the Policy and Implementation Committee requested that provisions be included in the MOA to ensure that the Authority undertakes the offsetting measures. Ms. Roth provided an overview of those provisions.

Ms. Roth answered questions raised by Commissioners.

In response to a question from Commissioner Barr concerning what would happen if the airport were transferred to another state agency, Ms. Roth stated that should any successor takeover the airport, the obligations in this agreement will be transferred to that party and the MOA shall remain in effect. Commissioner Howell commented on the increase in bird strikes at the airport since creation of the grassland associated with the original MOA.

Ms. Roth said there is a safety concern, especially if the airport personnel cannot see what species are in the un-mowed GCMA. The airport has a process in place to deal with geese and other nuisance species that may inhabit the mowed GCMA.

Commissioner Lohbauer said he was skeptical when staff first presented the proposal to remove the GCMA. He said after reading through the many documents, he is supportive of the MOA. Commissioner Lohbauer thanked staff for its efforts.

Chairman Earlen thanked the South Jersey Transportation Authority for adjusting to the Commission's needs and working under a limited timeframe. He said the tour at the Atlantic City Airport was very helpful.

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

Mark Demitroff of Richland, NJ, provided comments on Application #1982-2560.004 (see attached handout). He indicated that Buena Vista Township may not have applied to the Commission for certain development and the Township may not have followed its own administrative code. He said he is not against the development of the trails. He noted that the trails are being constructed in a parabolic dune field.

#### Ordinances Not Requiring Commission Action

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



- Barnegat Township Ordinance 2019-4
- Egg Harbor Township Ordinance 4-2019
- Folsom Borough Ordinance 02-2019
- Hamilton Township Ordinance 1897-2019
- Jackson Township Ordinance 07-19
- Maurice River Township Ordinance 681
- Plumsted Township Ordinances 2019-04 and 2019-05
- Upper Township Ordinance 001-2019
- City of Vineland Planning Board Resolution 6317

No members of the Commission had questions.

### General Public Comment

Commissioner Jannarone ended the call.

Margit Meissner-Jackson, Chair of the Ocean County Sierra Club, said the Bass River Fire Tower is archaic and a new one should be constructed. She said the 16 acres of trees should not be cut down. She said the pipelines could blow up and cause massive destruction to New Jersey. She said there is radioactive material at the Heritage Minerals site in Manchester Township, and it would not be a good place to build homes.

Mark Demitroff asked the Commission if Buena Vista Township is permitted to engage in redevelopment projects as both the developer and the redevelopment entity.

Karl Swanseen of Bass River Township spoke about the appeal process regarding the Commission's regulations. He said the Commission's vote on the Bass River Fire Tower was based on wrong information. He said he wished the Commission had done more due diligence. He said the NJDEP did not answer the Commission's questions. He said if the tower were moved it would have better views of the forest.

Chairman Earlen thanked Mr. Swanseen for sharing pertinent information throughout the Bass River Fire Tower application process.

Jeff Tittel, Director of the Sierra Club, read a John Muir quote about forests into the record. He said the Commission should have planned first and approved later regarding the Bass River Fire Tower application. He said the state needs to update its high hazard fire mapping and the Commission should incorporate the maps into the CMP. He asked Commissioners to use the South Jersey Gas pipeline as a lesson and not make politically expedient decisions. He said the Southern Reliability Link is currently being built while the litigation continues.

Rhyan Grech of the Pinelands Preservation Alliance said the Alliance appreciates the intent of the resolution invalidating Pinelands Resolution No. PC4-17-03 and suggested that the Commission also invalidate Resolution No. PC4-17-42, which was the resolution that set out the process to review the South Jersey Gas application. She said she submitted a letter

to the Executive Director requesting that and asked the Commission to proceed with the rule making process for infrastructure projects.

Deb Smith of Burlington County raised concerns about the decision to cut trees surrounding the Bass River Fire Tower. She said the vote was shortsighted and she is very disappointed.

Dave Dempsey, Shamong Twp. asked if the Commission had time to look at the Recreational Trails Program (RTP) information that he sent to the Commission. He added that he organized a clean-up at Wharton and it was a great success.

Chairman Earlen asked that Mr. Dempsey allow the Commissioners additional time to review the information.

Karl Swansen provided additional information about the cost effectiveness of building a new fire tower rather than cutting the trees surrounding the existing aging tower.

#### Resolution to Retire into Closed Session

DAG Miles read a resolution to enter into closed session to discuss the appeals related to the South Jersey Gas matter.

Commissioner Lohbauer made a motion to enter into closed session. Commissioner Barr seconded the motion. The Commission agreed to retire into closed session by a vote of 10 to 0, beginning at 11:44 a.m.

#### Return to Open Session

The Commission entered back into open session at 12:30 p.m. DAG Miles provided a summary of the closed session. She said the Commission discussed litigation related to the South Jersey Gas matter. Commissioner Howell left the meeting

DAG Miles said the Commission received legal advice regarding the South Jersey Gas natural gas pipeline matter. The Commission discussed the potential adoption of a resolution regarding substantive provisions of the matter due to the materially changed circumstances related to BL England. She added that Commissioner Lloyd did not participate in the discussion.

Commissioner Lloyd said he recused himself from the closed session discussion about the South Jersey Gas pipeline matter because he recused from the original matter.

Chairman Earlen said based on the closed session discussion, no action will be taken at this time.

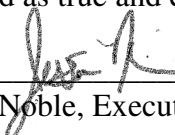
Commissioner Avery made a motion to postpone the matter (Resolution Invalidating Pinelands Resolution No. PC4-17-03) to a subsequent meeting. Commissioner Barr seconded the motion.

The Commission adopted the resolution by a vote of 8 to 0. Commissioner Lloyd recused himself from the vote.

Adjournment

Commissioner Pikolycky moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 12:35 p.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: April 30, 2019