

Disclaimer

These minutes reflect the actions taken by the Commission during its September 14, 2018 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 September 28, 2018.

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

MINUTES

September 14, 2018

Commissioners Present

Alan W. Avery Jr., Bob Barr, Paul E. Galletta, Jordan P. Howell, Jane Jannarone, 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 Generals (DAG) Kristen Heinzerling and Bruce Velzy.

Commissioners Participating by Phone

D'Arcy Rohan Green.

Commissioners Absent

Candace Ashmun and Giuseppe Chila.

Chairman Earlen called the meeting to order at 9:37 a.m.

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

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 12 Commissioners who participated in the meeting.)

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

Chairman Earlen said that the New Jersey Department of Environmental Protection (NJDEP) will not be attending today's meeting to discuss the Bass River Fire Tower application or any matter.

Minutes

Chairman Earlen presented the open session minutes from the August 10, 2018 Commission meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Jannarone seconded the motion.

Chairman Earlen said he would be voting no on the minutes. He felt that the inaction by the Commission related to Bass River Fire Tower application did not comply with the Comprehensive Management Plan (CMP). He added that the OPMA was violated and new information was added into the record when the record was closed.

The August 10, 2018 Commission meeting minutes were adopted by a vote of 9 to 1. Commissioner Barr and Commissioner Quinn abstained from the vote.

Chairman Earlen presented the closed session minutes from the August 10, 2018 Commission meeting. Commissioner Howell left the dais. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Avery seconded the motion.

The August 10, 2018 closed session Commission meeting minutes were adopted by a vote of 10 to 0. Commissioner Howell recused from the vote and Commissioner Quinn abstained.

Commissioner Howell returned to the dais.

Committee Chairs' Reports

Chairman Earlen provided an update on the August 24, 2018 Policy and Implementation (P&I) Committee meeting:

The Committee adopted the minutes of the July 27, 2018 meeting.

The Committee met with representatives from the South Jersey Transportation Authority (SJTA) and the Atlantic City Airport regarding the 2004 Memorandum of Agreement (MOA) and safety concerns regarding the grassland habitat conservation plan. The Committee was informed of the FAA requirements that due to safety concerns, the grassland habitat had to be located at least 10,000 feet from the runways. The Committee agreed to recommend to the full Commission, that staff be directed to engage in further discussion with SJTA regarding the relocation of the grassland habitat and developing an amended or new MOA. The Committee requested an opportunity to see the current habitat first-hand prior to seasonal mowing. *(Several Commissioners visited the site on September 4, 2018)*

The Committee received a presentation on a proposal to be submitted jointly with the United States Geological Survey (USGS) to the New Jersey Department of Environmental Protection (NJDEP) to evaluate the effectiveness of pollutant removal by various stormwater facilities located in the Barnegat Bay watershed.

Oral Motion

Stacey Roth said that the process for considering an Intergovernmental Agreement was revised in February of 2016. She said an oral motion from the full Commission is needed to authorize staff to work with SJTA to create either a new or amended Memorandum of Agreement (MOA) to address the relocation of grassland habitat at the Atlantic City Airport.

Commissioner Galletta made a motion authorizing staff to work with SJTA on an amended MOA. Commissioner Pikolycky seconded the motion. All were in favor and the motion carried.

Executive Director's Reports

ED Wittenberg said Commissioners who participated by phone during the August Commission meeting had difficulty hearing the proceedings. She said the company who originally installed the microphones and recording system met with staff and discussed options to resolve the issue. She said the ceilings are high and the integrated systems are not compatible.

Director Larry Liggett said he has been in contact with 25 Pinelands towns that have Regional Growth Areas, notifying municipal officials about Pinelands Infrastructure Trust Fund monies that are available for certain types of projects. He said staff recently met with Jackson and Manchester townships about two projects: a sewer line and water line. The projects may meet the qualifications of the Pinelands Infrastructure Trust Fund.

Director Chuck Horner provided information on the following regulatory matters:

- On August 15, 2018 staff accompanied Mullica Township officials to an Atlantic County Agriculture Development Board meeting regarding a commercial use that was established at a farm. After the Board was briefed, it determined that the Board did not have jurisdiction and it was a Pinelands Commission matter. The matter was referred back to municipal court and is scheduled to be heard in October.
- A development application was recently submitted to the Commission for the development of 360 dwelling units and a hotel in South Toms River. A redevelopment plan that was certified by the Commission required that Pinelands Development Credits be used on 25% of the market rate units.

Communications Officer Paul Leakan said that Drill Construction expects to be complete with their work around mid-October, at which point the fabricator can begin to install the exhibits.

Update on Application Number 1990-0868.029

ED Wittenberg said the Commission did not approve the Bass River Fire Tower public development application during its August 10, 2018 meeting. She said the NJDEP's application proposes to clear non-native trees to maintain visibility at the fire tower. She said when the Commission fails to approve a public development application, the Comprehensive Management Plan states that the matter must be referred to the Office of Administrative Law (OAL). On August 17, 2018, the Division of Law sent a letter advising of the DAGs assigned to this matter. On August 23, 2018, a letter was received from DAG Mark Collier, who is representing the NJDEP, requesting an extension of time. The extension, if approved, would place a hold on the matter being sent to OAL.

Resolution to Retire into Closed Session

DAG Heinzerling read a resolution to enter into closed session to provide attorney-client advice related to the Bass River Fire Tower matter.

Commissioner Barr made a motion to enter into closed session. Commissioner Avery seconded the motion. The Commission agreed to retire into closed session by a vote of 12 to 0, beginning at 9:54 a.m.

Commissioner Rohan Green ended her participation from the meeting during closed session. Commissioner Jannarone left the meeting at the end of closed session.

Return to Open Session

The Commission briefly entered back into open session at 11:43 a.m.

ED Wittenberg said the Commissioners engaged in a lengthy discussion. The NJDEP's request for an extension of time was granted. She said Commissioners will provide their questions to her in writing, which will in turn be provided to the NJDEP. The NJDEP will answer the questions in writing and they will be discussed at a future Commission meeting. She advised that the record for Application Number 1990-0868.029 will remain closed.

Chairman Earlen said the Commission needs to enter back into closed session to discuss another matter.

Resolution to Retire into Closed Session

DAG Velzy read a resolution to discuss pending litigation regarding Summerfields West and a potential settlement agreement.

Commissioner Avery made a motion to enter into closed session. Commissioner Lohbauer seconded the motion. The Commission agreed to retire into closed session by a vote of 10 to 0, beginning at 11:45 a.m.

Return to Open Session

The Commission entered back into open session at 11:49 a.m.

DAG Velzy said that the Commission was briefed on Summerfields West during the closed session. He said the application is currently with the Office of Administrative Law. The applicant is seeking to develop a mobile home community in Monroe Township. He said

the settlement agreement specifies that 3.75 Pinelands Development Credits must be purchased for application number 1981-0880.004.

Commissioner Avery made a motion to authorize a settlement agreement with Summerfields West. Commissioner Lohbauer seconded the motion. All were in favor.

Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending approval for the demolition of a commercial shopping center in Pemberton Township.

Commissioner Prickett said he would be recusing from voting on this application. He left the dais.

Commissioner Avery moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1983-9146.005) (See Resolution # PC4-18-29). Commissioner Lloyd seconded the motion.

Commissioner Lohbauer said he was pleased that Pemberton Township would be removing the dilapidated structure.

The Commission adopted the resolution by a vote of 9 to 0.

Commissioner Prickett returned to the dais.

Chairman Earlen presented a resolution recommending approval for the construction of recreational facilities at the George W. Ritter Recreation Complex in Waterford Township.

Commissioner Lohbauer moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1993-0465.003) (See Resolution # PC4-18-30). Commissioner Barr seconded the motion.

The Commission adopted the resolution by a vote of 10 to 0.

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

No one from the public spoke.

Ordinances Not Requiring Commission Action

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

- Atlantic County Planning Advisory Board Resolution 2018-2
- Barnegat Township's 2018 Housing Element and Fair Share Plan
- Barnegat Township Ordinances 2018-15, 2018-16 & 2018-19
- Buena Borough Ordinance 669
- Corbin City Ordinance 4-2018
- Galloway Township Ordinance 1995-2018

- Lakehurst Borough Ordinance 2018-09
- Winslow Township Ordinance O-2018-015
- Woodbine Borough Planning Board Resolution 4-8-18
- Woodbine Borough Ordinance 576-2018

No members of the Commission had questions.

Presentation

The Permanent Land Protection presentation will be postponed until the October 12, 2018 Commission meeting.

Commissioner Galletta left the meeting at 11:45 a.m.

General Public Comment

Chairman Earlen reminded the public that the comment period for the Bass River Fire Tower application is closed and additional comments cannot be submitted.

Jonathan Peters said the Commission should take a balanced approach regarding rules and regulations related to growing marijuana.

Karl Swansen of Bass River Township disagreed with the decision to allow the NJDEP to add to the record but not allow the public to comment.

Chairman Earlen said NJDEP's response to questions asked by Commissioners will be shared at a future Commission meeting.

Carol Bitzberger of Bass River Township said she was disappointed that the public cannot add to the record.

Jamie Zaccaria and Don Gant both said they would not be commenting since the Bass River Fire Tower application record is closed.

Adjournment

Commissioner Lohbauer said he regrets that the public cannot comment on the Bass River Fire Tower application. He also said that he hopes this Commission can develop climate change policy.

Commissioner Barr moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 12:00 p.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: September 27, 2018