

Disclaimer

These minutes reflect the actions taken by the Commission during its June 13, 2013 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 June 24, 2013.

PINELANDS COMMISSION MEETING¹
Richard J. Sullivan Center
Terrence D. Moore Conference Room
15 Springfield Road
New Lisbon, New Jersey

MINUTES

June 13, 2013

Commissioners Present

Joe DiBello, Paul Galletta, John Haas, Robert Jackson, Ed McGlinchey, Richard Prickett, and Chairman Mark Lohbauer. Also present were Executive Director Nancy Wittenberg and Governor's Authorities Unit Liaison Kerstin Sundstrom.

Participating by telephone conference call were Commissioners Candace Ashmun and Leslie Ficaglia, as well as Deputy Attorney General (DAG) Kristin Heinzerling.

Commissioners Absent

Bill Brown, Sean Earlen, Ed Lloyd, Gary Quinn, D'Arcy Rohan Green and Fran Witt.

Chairman Lohbauer called the meeting to order at 7:15 p.m.

Ms. Stacey Roth read the Open Public Meetings Act Statement.

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

¹ Please note that all attachments are maintained with the original minutes, but are not attached to copies. For information about attachments, please contact the office.

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

Minutes

Chairman Lohbauer presented the May 10, 2013 Commission meeting minutes (open and closed session). Commissioner Galletta moved the adoption of the minutes. Commissioner Prickett seconded the motion.

The minutes of the May 10, 2013 Commission meeting were adopted by a vote of 9 to 0.

Chairman Lohbauer presented Ms. Stacey Roth with a plaque and thanked her for her 10 years of service to the Commission as Senior Counselor.

Committee Chairs' Reports

Personnel & Budget Committee

Commissioner Haas updated the Commission on actions taken at the June 4, 2013 Personnel & Budget Committee meeting:

The Committee adopted the minutes from the April 2, 2013 meeting.

The Committee reviewed and recommended Commission approval of the resolution to Authorize the Executive Director to Purchase Information Processing Items from Dell Marketing L.P. and to Revise the FY 2013 Operating Budget.

The Committee reviewed and recommended Commission approval of the resolution to Authorize the Executive Director to Enter into a New Cooperative Agreement with the National Park Service for Pinelands Monitoring.

The Committee reviewed and recommended Commission approval of the resolution to Authorize the Executive Director to Continue to Expend Funds for Fiscal Year 2014 at the Same Level of Expenditures as Fiscal Year 2013 until the Adoption of the Fiscal Year 2014 Budgets.

Donna Connor reviewed the FY 2014 Draft Operating Budget.

The Committee reviewed financial updates, including the check register and electronic funds transfers for May 2013. It also received an update on application fees

No one from the public spoke.

The Committee discussed the status of the Audit Committee. Commissioner McGlinchey made a motion to bring to the Commission the idea to revisit the spending plan for the Pinelands Conservation Fund (PCF).

There was no closed session.

Plan Review Committee

On behalf of Commissioner Ashmun, Chairman Lohbauer updated the Commission on actions taken during the May 10, 2013 Plan Review Committee Meeting.

The Committee approved the March 8, 2013 meeting minutes.

Staff provided an update regarding the progress of the Plan Review report and first-round rule proposal.

Staff delivered a presentation regarding the development of the PDC use enhancements and Southern Medford/Evesham rule proposals.

Staff delivered a presentation on the Commission's Mowing and Maintenance Best Management Practices (BMPs) for Pine Barrens Roadside Plant Communities, which will be considered in the Plan Review process.

Staff discussed the potential for a CMP amendment permitting digital billboards in specified areas (example: Atlantic City Expressway).

The June 14, 2013 meeting of the Plan Review Committee has been canceled.

Policy & Implementation Committee

Chairman Lohbauer updated the Commission on action from the May 31, 2013 Policy and Implementation Committee meeting:

The Committee adopted the minutes of the April 26, 2013 open session meeting.

The Committee received a presentation from Conservation Resources, Inc. (CRI), and

- Voted to authorize the Executive Director to sign a Partner Contribution Form related to an application by DEP and Ducks Unlimited for a North American Wetlands Conservation Act (NAWCA) grant. Funds already expended by the Commission for the Lenape Farms project will be leveraged for a wetlands wildlife project in New Jersey; and
- Voted to authorize the Executive Director to extend the Commission's 2006 contract with CRI through December 31, 2013 to allow the firm to complete outstanding active projects. The 2009 contract runs until February 1, 2015.

In closed session, the Committee granted extensions until October 31, 2013 for the completion of two Pinelands Conservation Fund (PCF) projects. Upon the completion of all outstanding projects, all PCF monies will have been spent, with the exception of \$768,042.00 that is restricted for acquiring "Turnpike parcels" only.

The Committee reviewed the status of the Limited Practical Use land acquisition program and agreed to extend the agreement through FY-14 to fund 50% of Green Acres' administrative costs for the LPU program up to a maximum of \$16,000/year.

The Committee deferred any recommendation on the draft rule proposal related to efficiency measures and the alternate design septic system program pending review by the Governor's office.

Executive Director's Reports

Ms. Wittenberg updated the Commission on the following:

She and staff met with the New Jersey Department of Environmental Protection (DEP) to discuss forestry issues. She noted that DEP has acknowledged the Commission's jurisdiction over forestry activities in the Pinelands Area, and both agencies believe they have the same goals. She said Ray Cantor (Chief Advisor to DEP Commissioner Bob Martin) followed up with a copy of the minutes of that meeting and indicated that DEP is committed to resolving outstanding issues. She said much work is to be done, and it will continue.

She noted that some 60 people attended the Pinelands Orientation that was conducted during the Pinelands Municipal Council meeting on May 30, 2013 and quite a number of new participants were present.

She said that, following up on Commissioner Haas' questions at the last meeting about the status of the Southern Pine Beetle (SPB) infestation, she received some slides from DEP that she projected on the Smart Board (*See File copy of Minutes*). The first slide showed projections of SPB infestation for the years 2000 through 2012, with a peak of 14,000 acres in 2010 and a reduction to roughly 6,500 acres in 2012. She said DEP makes projections based on fly-overs. If they observe areas where there appears to be damage, ground-truthing is done to determine if the problem is generated by the Southern Pine Beetle or another source. The second and third slides summarized suppression type (cut-and-leave and cut-and-remove) for various sites and listed by acres, cost and suppressor (State Forest Service or private contractor). She noted that of the more than 4,000 acres of potential infestation in the Pinelands, suppression had occurred on only 60.6 acres.

In response to Commissioner Galletta's question as to which type of suppression worked better, Ms. Wittenberg said she didn't believe that either was particularly effective.

In response to Commissioner McGlinchey's question as to why the drop-off had occurred after 2010, she said that it was unknown. She added that DEP has not seen the spread that the Department had anticipated and, although the infestation had crossed the Mullica River, it had been controlled.

Mr. Larry Liggett updated the Commission on the following:

He said now that the plan for emergency services towers had been approved (*See Resolution PC4-12-15, adopted May 11, 2012*), the Commission is beginning to receive applications for those towers.

He said he has been conducting a series of meetings with various interest groups regarding enhancements to the Pinelands Development Credit (PDC) program and has met with builders and environmental groups. Upcoming meetings were scheduled with landowners and with municipalities.

Finally, Mr. Liggett said there are a number of notable conformance activities, including: work with Jackson to resolve long-standing issues related to its Regional Growth Area designation; renewed cooperation with Dennis Township to come into conformance with Pinelands regulations as it seeks approval of its petition for Plan Endorsement through the State Planning Commission; and finally, the Borough of South Toms River is very close to coming in for conformance certification, the last Pinelands Area municipality to do so.

Ms. Wittenberg noted that former Commissioner Dan Kennedy, now with the Office of Planning Advocacy, had been most helpful in standing up for the Pinelands Commission when he realized that Dennis Township was no longer in conformance with the CMP and interceded in its Plan Endorsement process. She said it was a good reminder to use other resources, if available, to resolve issues.

Mr. Chuck Horner updated the Commission on the following:

He said he sent a letter to the Off Road Vehicle (ORV) club that was believed to have gone off route during its recent enduro event in Woodland Township. The letter stated that it was “suspected” that the club had not used the approved route and indicated that an independent monitoring component would be required of this club for the remainder of 2013 and into 2014. The letter provided a number of alternatives that the club might choose to use.

At the request of Chairman Lohbauer, Mr. Horner said that he would circulate copies of the letter.

Mr. Horner said the New Jersey Department of Transportation (DOT) has requested another emergency authorization to alter the design of its stormwater swales along Route 72 in Ocean County, due to ongoing difficulties. The Executive Director has written a letter granting this further alteration and suggested that DOT consider an alternative means of dealing with the flooding problem.

In response to Commissioner Haas’ questions as to the nature of the requested modification, Mr. Horner said that they are reducing the depth/slope of the basins to increase travel safety. He added that the CMP requires that the Commission be advised whenever the Executive Director provides emergency authorization.

Mr. Horner said that staff conducted a pre-application meeting with a developer for a project of 200 units on some 80 acres in Tabernacle Township, proposing the use of an on-site community wastewater treatment system (WWTS). He said this was the first time a community WWTS project of this magnitude had been proposed.

Mr. Horner said staff met with representatives of Maurice River Township to discuss potential sites for an ORV park. He said staff was beginning a preliminary review.

In response to Commissioner McGlinchey's question regarding future enduros and the Commission's ability to deny any future application from the offending club referenced previously, Mr. Horner said that, if an enduro does not use the approved route, what level of evidence would the Commission need? He said that the public report of the violation was appreciated, but the staff could not be 100% certain that the violation was committed by this club and not by unrelated individuals in the vicinity.

Ms. Roth added that the provisions of the CMP are quite vague regarding these events and the Commission should contemplate revising them.

Commissioner Ficaglia asked how there could be no proof of deviation from the route when the Commission has photographs.

Mr. Horner said the applicant had indicated that the violators were not affiliated with the event. The staff was unable to definitively determine their association.

Commissioner Haas said this issue should go to Plan Review and that a financial component should be put in place.

Ms. Roth stated that she thought Mr. Horner's letter had done a very good job of directing them to use the approved course.

Chairman Lohbauer said he was very concerned about the increase in violations, not only because it makes the Commission feel powerless but also because of the implication that other permit seekers may feel they can deviate from the approved course. He commended Mr. Horner for a good, moderate solution.

Commissioner McGlinchey asked Mr. Horner for confirmation that the DOT is the same agency that is in violation of federal stormwater rules.

Review of Local Approval

Commissioner Haas said that, as he has known Ms. Audrey Winzinger for some 20 years through their affiliation with the State Recycling Association, he recused himself from the next agenda item and left the room.

Chairman Lohbauer noted that he too knew Ms. Winzinger in relation to a non-Pinelands issue. He was disclosing that fact, although, after discussion with the Commission's ethics

liaison officer, it was determined not to the level for his need for recusal, it did not rise to the level for a need for recusal.

Commissioner Ashmun moved the adoption of a Resolution Denying an Application by Robert T. Winzinger, Inc. for a Resource Extraction Operation (Application Number 1980-0062.001) on Block 6402, Lot 7 in Woodland Township. (See Resolution PC4-13-17) Commissioner McGlinchey seconded the motion.

Mr. Horner provided an overview of the 30+ year history of this application for a pre-existing resource extraction operation in the Preservation Area of Woodland Township. The most recent history dates back to 2011 when the Pinelands Commission issued a conditional Certificate of Filing noting that there were issues related to the presence of threatened and endangered (T&E) species, as well as abandonment of the mining operation. Subsequently, the Woodland Township Planning Board granted a mining permit and determined that the operation had never been abandoned. However, one requirement of the Woodland approval was that the applicant prepare and submit to the Commission a Habitat Protection Plan for Northern Pine Snakes. It was noted that the applicant's own consultant submitted a report stating that mining would have an irreversible adverse impact on northern pine snakes.

The Commission staff called up the local approval on two issues: 1.) abandonment and 2.) compliance with the T&E standards. At the public hearing staff indicated that the issue of permitted use i.e abandonment, no longer raised a substantial issue. However, the hearing was still necessary to address the proposed mining activities' compliance with the T&E standards. Mr. Horner noted that at the hearing the applicant's attorney's position was that because the mining operation was a "grandfathered" use, it only had to meet the resource extraction standards of the CMP, and thus, the T&E standards did not apply. However, the T&E issues remained, and no Habitat Protection Plan was submitted.

Ms. Roth further expanded on and summarized the applicant's attorney's arguments for the Commissioners. Specifically, she stated the applicant's attorney maintains that the applicant only needed to comply with all the developmental standards of the CMP including T&E, if they were expanding the use. (*See NJAC 7:50-5.2*) However, according to the applicant's attorney, the use was not being expanded, rather the applicant was continuing its grandfathered, pre-existing use.

Ms. Roth said a previous Appellate Court decision held that Winzinger should be allowed to continue this use, but the decision was related only to the abandonment issue and did not deal with T&E species. At that time, the term "abandonment" did not appear in the CMP. She said Winzinger has demonstrated that its mining operation is a permitted use. However, they have failed to demonstrate that it can meet the T&E standards.

Commissioner Galletta asked if Ms. Roth is comfortable that the courts will uphold the Commission's decision should the application be denied. She said she was very confident.

Commissioner Galletta asked how many times Winzinger has been before the appellate division on this matter. Ms. Roth said it has appeared twice: one matter addressing the Labor and Industry standards, and the other pertaining to the abandonment issue. Commissioner Ficcaglia said she is confident the Commission's resolution is appropriate. She said, from her experience on the local planning board, because someone has a pre-existing non-conforming use, it never absolved them from meeting all other standards.

The Commission adopted the motion by a vote of 8 to 0 with Commissioner Haas abstaining.

Public Development Projects and Other Permit Matters

Two resolutions related to public development applications were on the agenda. Chairman Lohbauer presented the resolution related to multiple applications at which time, Commissioner Galletta recused himself and left the room believing that the resolution before the Committee was related to the Town of Hammonton. After he left the room, the remaining Commission members determined that they would table the resolution related to multiple municipalities and would instead consider the application involving the Town of Hammonton.

Commissioner McGlinchey moved the adoption of a Resolution Approving with Conditions an Application for a Public Development (Application Number 1993-1011.006) (See Resolution # PC4-13-18). Commissioner Prickett seconded the motion.

The Commission adopted the resolution by a vote of 8 to 0 with Commissioner Galletta having recused himself.

Commissioner Jackson moved the adoption of a Resolution Approving with Conditions Applications for Public Development (Application Numbers 1981-0755.014, 1982-3362.009, 1984-0655.028, 2007-0350.001 and 2013-0052.001) (See Resolution # PC4-13-19). Commissioner Ficcaglia seconded the motion.

Mr. Leakan displayed a slide on the Smart Board depicting an aerial view of the proposed project to create a full interchange connecting the Atlantic City Expressway to Amelia Earhart Boulevard (App. No. 1984-0655.028). (*Attachment to File copy of these Minutes*). Mr. Horner said that staff felt it would help the Commission to envision the project.

In response to Commissioner Prickett's question regarding Application Number 1984-0650.001 as to how the historic bridges (to be removed/replaced) would be recorded, Mr. Horner said that significant Pinelands cultural resources must be preserved in place, if possible, preserved at another location if they cannot be preserved in place, or recorded. These bridges will undergo the latter, with drawings, photographs and written analysis. Normally this documentation is archived with the Pinelands Commission but, in this case, an MOA between the State Historic Preservation Office (SHPO) and DOT have outlined a detailed arrangement wherein SHPO will be the repository.

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

Chairman Lohbauer asked about the status of the draft rule proposal that is included in the Commission packet.

Ms. Wittenberg responded that she spoke briefly with Ms. Sundstrom before the meeting and it appears that the fee-related items have raised the level of review to a higher level than initially anticipated. She encouraged the Commissioners to review the proposal and said that it might become necessary to convene a special Commission meeting in order to start the proposal process. It is vital that the provisions of the alternate design WWTS proposal move forward.

Public Comment on Agenda Items and Pending Public Development Applications

Chairman Lohbauer noted that this evening meeting had brought out some new members of the public.

Chairman Lohbauer called for any comment on the public development applications as listed in the packet. None were offered.

Miscellaneous Resolutions

Commissioner Ashmun moved the Resolution To Authorize the Executive Director to Continue to Expend Funds for Fiscal Year 2014 at the Same Level of Expenditures as Fiscal Year 2013 until the Adoption of the Fiscal Year 2014 Budgets (See Resolution #PC4-13-20). Commissioner Prickett seconded the motion.

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

Commissioner Haas moved the Resolution To Authorize the Executive Director to Enter into a New Cooperative Agreement with the National Park Service for Pinelands Monitoring (See Resolution #PC4-13-21). Commissioner McGlinchey seconded the motion. Commissioner DiBello recused himself and left the room.

In response to Commissioner Ashmun's question if the NPS funding was the same as previously, Ms. Donna Connor said that it was slightly less due to the sequester.

Ms. Wittenberg said that next week she would be meeting with Commissioner DiBello to talk about possible federal funding sources.

The Commission adopted the resolution by a vote of 8 to 0.

Commissioner Prickett moved the Resolution To Authorize the Executive Director to Purchase Information Processing Items from Dell Marketing L.P. and to Revise the FY 2013 Operating Budget (See Resolution #PC4-13-22). Commissioner McGlinchey seconded the motion.

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

Ordinances Not Requiring Commission Action

Chairman Lohbauer asked if any Commissioner had questions regarding the list of ordinances not requiring Commission action:

- Egg Harbor Township Ordinances 46-2012, 5-2013 and 16-2013
- Hammonton Town Ordinance 005-2013
- Maurice River Township Resolution 2013-03 and Ordinance 624
- Waterford Township Ordinance 2013-10

No members of the Commission had questions.

Other Agenda Items

There were no other agenda items.

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

Dr. Emile DeVito, of the NJ Conservation Foundation, said he was pleased to hear of the meeting with DEP regarding forestry. He said he was a member of the Pinelands Forestry Advisory Committee and that the forestry rules are very good rules. He said there is a lot of active forestry on private lands throughout the Pinelands. He said he believed that the State is reluctant to abide by the Commission's rules. He said he was involved in a project in the Highlands on lands managed by the Division of Fish and Game and the habitat of the Golden-winged Warbler. He said that prior to forestry activities occurring, the State said it had done an internal review of T&E species. However, he discovered that the State Heritage Program had been left out of the internal review process for the past six years. He had visited the site with expert botanists and almost immediately found four rare plants and he anticipated that there were up to 60 rare plant species on the site. He said the State is ignoring critical natural resources. The Pinelands Commission requires that the State follow the rules. He thanked the Commission for fighting for the rules.

Also, he said that the decrease in the presence of SPB might be due to its natural predator, the checkered beetle.

Finally, on the ORV issue, he said he was the person who got up early on St. Patrick's Day to go out in the woods and take the pictures of the enduro. He said the goal is to make sure that the applicants follow the same path that they have submitted. He said that NJCF supports enduros as long as they meet the obligations of their approvals.

Mr. Mark Demitroff, a Buena Vista Township resident, provided a hand-out of documents (*to File Copy only of these Minutes*) and said he had concerns with the Commission's use of the term Smart Growth and the failure of any state agency to regulate redevelopment.

He said there are a number of violations in Richland Village, and he has nowhere to have them addressed.

Dr. Jaelyn Rhodes, of the Pinelands Preservation Alliance (PPA), thanked the Commission for conducting a night meeting and said that PPA felt it was seeing progress in reducing the damage from enduros.

Mr. Fred Akers, of the Great Egg Harbor River Council, commended the Commission for sponsoring the annual orientation for newly elected/appointed officials. He said that he had attended it and was very impressed. He said that with the turnover in officials, it is important that the Commission conduct this training each year to help everyone understand the rules.

Other

Ms. Roth said she spoke with Chairman Lohbauer about his earlier comment related to the Winzinger application and his ability to participate in the vote. She said Ms. Winzinger had attended a lecture that Chairman Lohbauer had conducted yesterday and, indeed, that presented no conflict.

Commissioner Prickett announced that the 30th annual Whitesbog Blueberry Festival will be held on Saturday June 29, 2013 at the Whitesbog Village in Browns Mills, and he invited everyone to come and enjoy the event.

Adjournment

Commissioner McGlinchey moved to adjourn the meeting. Commissioner Prickett seconded the motion. The Commission agreed to adjourn at 8:40 p.m.

Certified as true and correct:



Betsy Piner, Principal Planning Assistant

Date: June 18, 2013