

Disclaimer

These minutes reflect the actions taken by the Commission during its July 13, 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 August 6, 2018.

PINELANDS COMMISSION MEETING

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

MINUTES

July 13, 2018

Commissioners present

Bob Barr, Giuseppe Chila, 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 General (DAG) Bruce Velzy.

Commissioners Participating by Phone

Candace Ashmun & Jordan P. Howell.

Commissioners Absent

Alan W. Avery Jr., Paul E. Galletta and D'Arcy Rohan Green.

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

DAG Velzy read the Open Public Meetings Act Statement.

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

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

Minutes

Chairman Earlen presented minutes from the June 8, 2018 Commission meeting. Commissioner Prickett moved the adoption of the minutes. Commissioner Barr seconded the motion.

The June 8, 2018 Commission meeting minutes were adopted by a vote of 10 to 0. Commissioner Chila abstained from the vote.

Committee Chairs' Reports

Chairman Earlen said there were no Committee meetings.

Executive Director's Reports

ED Wittenberg updated the Commission on the following:

- A meeting with Jonathan Meade from the National Park Service (NPS) was cancelled. The Commission has been without a NPS appointee for over a year. The meeting will be rescheduled and, at that time, staff will brief Mr. Meade on past collaboration between the Commission and NPS and goals for the future.
- A joint site visit with the Federal Aviation Administration (FAA), the South Jersey Transportation Authority (SJTA), the New Jersey Department of Environmental Protection (NJDEP) and the Commission was rescheduled for August to view existing bird habitat adjacent to the runway at the Atlantic City Airport. SJTA will be attending a future Policy and Implementation Committee meeting to discuss its proposal to amend the existing Memorandum of Agreement.
- Internal budget meetings were held to prepare the FY 2019 Budget. Adoption of the final budget is expected to occur at the August Commission meeting.
- Construction in what used to be the tech center and reception area has begun. The next step is the installation of the actual exhibits.

ED Wittenberg introduced new Commission employee Matt Martin, who joined the Information Systems office in June.

Director Larry Liggett updated the Commission on the following matters:

- An existing Memorandum of Agreement (MOA) with the Buena Borough Municipal Utilities Authority and Buena Vista Township that required the installation of a membrane system at the wastewater treatment plant has produced very positive results over a two-year monitoring period. The plant can now expand to 600,000 gallons of flow per day.
- The New Jersey Department of Environmental Protection contacted Commission staff about existing Pinelands Infrastructure Trust funds remaining from a 1985 bond issue. The funds can only be allocated to projects in Regional Growth Areas.

A call has been scheduled for next week to further discuss the parameters of the funds and the next steps in the process for identifying projects.

Director Chuck Horner provided information on the following Regulatory matters:

- On June 22nd, staff met with the Mayor of Pemberton Township to continue the discussion of extending sanitary sewer to two existing schools currently served by an onsite treatment system. In order to run sanitary sewer to the schools, sewer lines would need to be constructed in an Agricultural Production Area. The schools themselves are located in a Rural Development Area. Both management areas do not permit sewer.
- Staff will be attending an Atlantic County Agriculture Development Board hearing on August 15, 2018 regarding a Right to Farm issue.
- Staff recently issued a Certificate of Filing for a residential development project in Evesham Township. The original project proposed 34 dwellings on the 138 acre parcel, but due to the presence of wetlands and threatened and endangered species, the number of dwellings was reduced to 17, with the remainder of the property protected as open space.

Director Horner said that during the June Commission meeting Commissioner Lohbauer questioned why the Evesham solar project panels were not being placed on the existing school roof. He said the applicant's engineer advised him that it was not economically feasible and placing the panels on the roof raised structural concerns.

DAG Velzy updated the Commission on the following litigation matters:

DAG Velzy said Shamong Township withdrew a complaint against the Pinelands Commission related to a cell tower application. Shamong Township had met with Commission staff to discuss a proposed cell tower project in a Rural Development Area (RDA). At that meeting, Commission staff advised Shamong Township that it would need to look for sites in the Regional Growth Area. Soon after that meeting, the cell tower provider met with Commission staff. Staff advised the provider that it needed to look at placing the tower in a Regional Growth Area. Two cell tower providers ultimately submitted Pinelands Development Applications to construct cell towers in a Regional Growth Area within Shamong Township. Certificates of Filing were issued. The cell tower providers submitted applications for site plan approval to the Shamong Township Planning Board, which were ultimately denied. One of the providers, Tower North, sued the Shamong Township Planning Board in Superior Court. The Planning Board subsequently filed a third-party complaint against the Commission. Shamong Township Planning Board has since decided to withdraw its third party complaint against the Commission.

DAG Velzy said the Appellate Division issued a decision related to soccer activities at Tuckahoe Turf Farms on Thursday, July 12, 2018. He said the issue stems back to 2013. He said the Commission issued no call up letters for the Town of Hammonton Planning Board and Waterford Township Planning Board approval that authorized soccer activities with limitations at the turf farm. Several organizations appealed these no call up letters. In 2016, the Legislature amended the Pinelands Protection Act to include soccer and soccer

activities as low intensity recreational uses permitted in an Agricultural Production Area. The Appellate Division held that this legislation made moot any further litigation regarding the 2015 and 2016 approvals. The Appellate Division also found that the Executive Director properly determined that the review of the municipal approvals did not require a hearing before the Office of Administrative Law or the Commission. The Appellate Division also held that amendment of the Comprehensive Management Plan (CMP) was not required, because the language used in the Legislation is very clear. Finally, the Appellate Division found that the State Agriculture Development Committee (SADC) deed restriction on a portion of the Tuckahoe Turf farm was a matter that needed to be addressed with SADC and was not ripe for review in the appeal.

Chairman Earlen asked DAG Velzy what organizations appealed the decisions.

DAG Velzy said the Pinelands Preservation Alliance and the New Jersey Conservation Foundation appealed the decision.

Ms. Stacey Roth added that the Appellate Division's decision affirmed that the Executive Director has the authority to settle a matter prior to a public hearing as long as there are no substantial issues remaining concerning the developments compliance with the requirements of the CMP.

Chief Planner Susan R. Grogan announced that for the first time ever, a project in Jackson Township will be using Pinelands Development Credits for residential development in the Regional Growth Area, under an ordinance the Commission approved a couple of months ago. She said the developer recently purchased 14 rights.

Communications Officer Paul Leakan updated the Commission on the following:

- Exhibit artifacts have been delivered to Minnesota. The designers will now incorporate the artifacts into the displays.
- The July 19th Summer Pinelands Short Course is still accepting registrations.
- On July 24th, the Commission will hold the Pinelands Orientation for Newly Elected Officials. The event is held in combination with the Pinelands Municipal Council meeting.

Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending approval for the construction of a traffic ramp from Amelia Earhart Blvd. to Tilton Rd. in Egg Harbor Township.

Commissioner Barr moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1984-0655.032) (See Resolution # PC4-18-19). Commissioner Lohbauer seconded the motion.

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

Chairman Earlen presented a resolution recommending approval for the construction of a 121,000 square foot elementary school in Pemberton Township and the demolition of the Alexander Denbo Elementary School.

Commissioner Prickett said he would be recusing from the vote and left the room.

Commissioner Lohbauer moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1985-0726.010) (See Resolution # PC4-18-20). Commissioner Jannarone seconded the motion.

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

Commissioner Prickett returned to the dais.

ED Wittenberg said the Commission will need to defer action on the Bass River State Forest Fire Tower application, that proposes to clear 16.4 acres to restore visibility from the tower. She said the Commission received a third party appeal on the application. She said there is currently pending litigation related to third party appeals stemming from the New Jersey Natural Gas application, so the appeal was forwarded to the Attorney General's for review. She added that deferring the application does not have anything to do with the substance of the application.

DAG Velzy added that on July 10, 2018, Commissioner Lohbauer and Commissioner Prickett circulated an email, with a memo attached, that proposed changes to the Bass River Forest Fire Tower resolution. The email was sent to the Chairman, the Executive Director and Commissioners. He said in order to be in compliance with the Open Public Meetings Act, the email and memo will be attached to the minutes so there is a public record.

ED Wittenberg said she advised the New Jersey Department of Environmental Protection that its application would not be acted on today.

Chairman Earlen presented a resolution recommending approval for forestry activities on 64 acres in Brendan T. Byrne State Forest located in Pemberton Township.

Commissioner Prickett moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1996-1386.003) (See Resolution # PC4-18-21). Commissioner Barr seconded the motion.

Commissioner Prickett said the report mentions the use of herbicide to control invasive species. He asked what type of invasive species the NJDEP trying to control.

Director Horner said he did not know the specific invasive species, but normally it's the seed bank they are trying to control.

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 Earlen said the list includes three public development applications and three Waivers of Strict Compliance.

Commissioner Lohbauer asked if staff could provide information on the lean-to proposed to be demolished at Batsto Village.

Mr. Ernest Deman of the Regulatory Programs office said the grist mill lean-to has deteriorated and become unsafe, requiring its removal. He said that the lean-to has been reconstructed twice over the last 65 years. He added that if it is determined that any portion of the lean-to is of historical significance, it will be preserved.

No members of the public spoke.

Ordinances Not Requiring Commission Action

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

- Barnegat Township Ordinance 2018-18
- Berlin Township Ordinance 2018-5
- Egg Harbor Township Ordinance 21-2018
- Lacey Township Ordinance 2018-16

No members of the Commission had questions.

Other Resolutions

Chairman Earlen presented a resolution recommending approval to allow the Commission to purchase items necessary for operation until the adoption of the Fiscal Year 2019 budget is adopted.

Commissioner Lloyd moved the adoption of a resolution To Authorize the Executive Director to Continue to Expend Funds for Fiscal Year 2019 at the Same Level of Expenditures as Fiscal Year 2018 until the Adoption of the Fiscal Year 2019 Budgets. (See Resolution # PC4-18-22). Commissioner Lohbauer seconded the motion.

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

Long Term Economic Monitoring Presentation

Resource Planner Gina Berg said the 2017 report uses data from 2015 and 2016. Many of the past core indicators and variables remain the same. She described the updates made to the 2017 report and proceeded to highlight each category of the report (See presentation slides for further details).

Link to 2017 Long Term Economic Report:

[https://www.nj.gov/pinelands/landuse/current/economic/LTEM%20%202017%20Report%20\(Complete\).pdf](https://www.nj.gov/pinelands/landuse/current/economic/LTEM%20%202017%20Report%20(Complete).pdf)

General Public Comment

Chairman Earlen reminded the public that the public comment for the Bass River State Forest Fire tower is closed.

Dr. Jonathan Peters said he thinks the data presented in the Long Term Economic Monitoring report is actually more positive than what currently exists because per capita income is down. He passed around a handout on outdoor recreation data from 2001 (see attached) He suggested that the Commission be thoughtful and slow when making policy changes to preserve the environment and maintain the economic vitality of the Pinelands.

Katie Smith of the Pinelands Preservation Alliance (PPA) raised concerns about not being able to comment on the Bass River Fire Tower application. She informed meeting attendees about upcoming events at PPA.

Ms. Roth said there is language contained in the CMP specifically for public development applications stating that no new information can be included in the record once the Executive Director's report has been issued.

Rose Sweeney of Bass River Township asked the Commission if there was any other opportunity to provide comment to the Commissioners about the Bass River State Forest Fire application.

Chairman Earlen advised Ms. Sweeney that the public comment for the application closed at 5:00 p.m. on June 8th.

Commissioner Chila he said he understands the public comment is closed but questioned why the Commission could not listen to the comment on the Bass River Township application.

Ms. Roth said no additional information can be provided to Commissioners between the period of when the record for an application closes until a vote on the matter takes place. She said any comment becomes part of the record and could have an effect on one's decision.

Ms. Roth said the process for public comment regarding public development applications was adjusted so that the public comment would be heard at the Commission meeting prior to the Commission meeting where the matter would be voted on.

A brief discussion between Commissioner Lloyd and Ms. Roth occurred concerning the Commission's ability to extend the public comment period for a public development application.

Adjournment

Commissioner Prickett moved to adjourn the meeting. Commissioner Barr seconded the motion. The Commission agreed to adjourn at 10:49 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: July 30, 2018