

Adopted October 30, 2015

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
July 31, 2015 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Sean Earlen, Ed Lloyd, Richard Prickett and Ed McGlinchey (2nd Alternate)

MEMBER ABSENT: Candace Ashmun and Paul E. Galletta

OTHER COMMISSIONERS IN ATTENDANCE:

STAFF PRESENT: Executive Director Nancy Wittenberg, Susan R. Grogan, Larry Liggett, Charles Horner, Stacey Roth, Paul D. Leakan, and Betsy Piner. Also present was Amy Herbold with the Governor's Authorities Unit.

Chairman Lohbauer called the meeting of the Policy and Implementation (P&I) Committee to order at 9:40 a.m.

1. Adoption of minutes from the June 26, 2015 CMP Policy & Implementation Committee meeting

Commissioner Prickett moved the adoption of the June 26, 2015 meeting minutes. Commissioner Earlen seconded the motion. The minutes were adopted with all Committee members voting in the affirmative.

2. Executive Director's Report - Galloway Township Ordinance 1909-2015, adopting a redevelopment plan for a portion of the White Horse Pike Corridor Phase II – Pomona Road Redevelopment Area

Ms. Grogan said that Galloway Township Ordinance 1909-2015 adopts a small (six acre) redevelopment area (the Pomona Road Heritage Village [PRHV] Redevelopment District) within the Pinelands Village of Pomona at the intersection of the White Horse Pike and Pomona Road.

Mr. Leakan projected, on the Smart Board, the aerial map (from the meeting packet) of the proposed PRHV District and surrounding area.

Ms. Grogan identified the location of the Regional Growth, Rural Development and Military Areas surrounding the Pinelands Village and noted the densely developed residential area, commercial zones on both sides of Pomona Road, including a scattering of commercial uses, a

church, school and playground, the Atlantic City Rail Line and a new Wawa. Permitted uses in the PRHV District are limited to mixed use development, consisting of commercial development on the first floor and roughly 100 units of affordable age-restricted multi-family housing on the upper floors. Ms. Grogan said this is one of a series of redevelopment areas that the Township has identified in its efforts to encourage commercial development in the White Horse Pike corridor. Each of these redevelopment areas is identified for a specific project and this one is driven by the Township's interest in accommodating affordable housing.

She added that this mixed used development is somewhat unusual for the Pinelands Area, even though the Commission tries to encourage such projects.

Mr. Leakan displayed Exhibits 2 and 3 (the elevations from the redevelopment plan) on the Smart Board.

In response to questions from Chairman Lohbauer, Ms. Grogan said she doubted that the proposed development would be built right up to the road as this is not a particularly walkable area.

Ms. Grogan said, because this is a Pinelands Village, there is a limit to no more than double the development that existed in 1979. She said this is not an easy standard to evaluate but, over time better mapping tools have been developed. She said an analysis has been done for all Villages, estimating "principal structures" and then determining future development potential. She said Pomona is somewhat unique in that it is sewered and nearly surrounded by development including dense residential development. Staff estimates that there were 325 residential units in 1979 and the current zoning provides the potential for 55 new units based on permitted lot size. Even with the potential 100 new apartment units, the doubling standard can be met.

Ms. Grogan said the new use has to be consistent with the character and magnitude of development in the existing Village. This is a subjective evaluation but, because of the uniqueness of the character of Pomona, staff believes there are no conflicts between the redevelopment plan and the character of the existing Village.

Ms. Grogan said the final issue is that of height. That is what triggered the Commission's formal review of this ordinance because it allows structures to exceed the 35' height limit in a Village. Galloway is proposing to exceed the height limit solely for this project and wants to avoid the need for a variance. The Township believes that permitting a height of 50' is necessary to accommodate mixed use development on multiple floors. Ms. Grogan added that rarely does the Commission see a proposal to exceed the height limitations but, here it is discussed in terms of municipal flexibility. She said the Comprehensive Management Plan (CMP) was written to allow a municipality to do something different based on local conditions. Staff has concluded that, based on the character of this Village located along a busy highway, in which the intensity of development is indistinguishable between RGA and PV, there doesn't seem to be a reason not to allow the 50' height.

Ms. Grogan said that the Executive Director's report included the public comment, all of which was unfavorable, but she was unaware of any negative comment at the local level. Staff is recommending certification of the ordinance.

Commissioner McGlinchey said he was familiar with the area and agreed that this was a good project for Galloway Township.

In response to Commissioner Lloyd's question if this was spot zoning, Ms. Grogan said that was not a question for the Commission, rather for the Township. But, she said, this was only one redevelopment project in the Township's over-arching framework for redevelopment. She said the Commission sees potential for spot zoning mostly with affordable housing projects for specific sites. This is a case in which the redevelopment planning is providing commercial development to allow the affordable housing to be accommodated.

Commissioner Lloyd stated that the Township was meeting a constitutional obligation.

Ms. Grogan said she believed the Township has done a good job and that their planner is thoughtful and thorough.

Mr. Liggett said that Galloway has long been interested in getting more commercial development so this project is a big plus for the Township.

Ms. Grogan said many years ago there was an attempt to develop a transit oriented village in this area.

In response to Commissioner Prickett's concern with municipal flexibility loosening the Commission's rules, Ms. Grogan said here the Township has designated one site; often municipal flexibility applies to a much broader area. She said, because of the character and nature of this site, it is appropriate to apply the municipal flexibility provision.

Ms. Grogan provided other examples for which the Commission has allowed municipal flexibility. She said that Folsom Borough had wanted to build a Union training center in a commercial zone in the Forest Area. Although only roadside retail sales and service establishments are permitted under the CMP, the Commission felt the Borough's proposal was appropriate under the municipal flexibility provision. More recently the Commission has allowed and approved variations for some clustering ordinance (bonus densities, ownership of open space).

Commissioner Prickett thanked Ms. Grogan for putting his concerns in perspective.

In response to another comment from Commissioner Prickett, Ms. Grogan said the CMP would not require a public water supply for this project but public water is available, along with sanitary sewer.

In response to Commissioner Prickett's question regarding the June 18, 2015 letter to Galloway Township (referring to the first page, fourth paragraph of the July 31, 2015 Executive Director's

Report), Ms. Grogan said the Commission is required to respond within 30 days of receipt of an adopted ordinance. The language of this particular letter, a Substantial Issue Finding Letter, was the first step of the formal review process advising the Township why an issue was being raised.

Chairman Lohbauer asked about the elevations provided in the packet (Exhibits 2 and 3 of the Executive Directors' Report) and if the commercial property were pre-leased, noting, for example, that a pharmacy on the street level would be a good fit with age restricted housing on the upper floors.

Ms. Grogan responded that the developer has filed an application with the Commission and she could ask the Township about any pre-lease status.

Chairman Lohbauer also asked if allowing the project to exceed the 35' height restriction would set a precedent, adding that he gathered from the Report that the recommendation is based on the uniqueness of the site and that it is a *de minimis* deviation from the standards and the project does a lot of good.

Ms. Grogan responded that Pomona is a unique Village and Ordinance 1909-2015 would not be before the Commission except for the deviation from the height standards.

In response to Commissioner Earlen's question if there were any other structures that exceeded the 35' height limit in the vicinity, Ms. Grogan said, yes, the church. Mr. Liggett added that steeples are exempt from CMP height limitations.

Commissioner Earlen moved the recommendation that the Commission certify Galloway Township Ordinance 1909-2015. Commissioner Lloyd seconded the motion and all voted in favor.

3. Review of the Executive Director's Recommendation regarding the Eligibility of a parcel of land for acquisition by the Department of Environmental Protection Pursuant to the Limited Practical Use Program

Ms. Grogan said it has been several years since the Commission has reviewed the eligibility of a property for the Limited Practical Use (LPU) land acquisition program. In recent years, Green Acres has acquired properties through its own Quick Action program through which landowners offer their properties directly to Green Acres, bypassing the Commission's process. There is some risk to the landowners as they do not first receive a formal determination from the Commission if the property is buildable. Ms. Grogan said Green Acres has discontinued the Quick Action program so that has triggered the formal Pinelands LPU program once again. For some years, the Commission had provided annual funding to Green Acres for administrative costs but that reimbursement has now ceased.

Ms. Grogan said that the Commission denied a waiver for this property last month (July 10, 2015) and the property owner was made aware that the denial was the first step in the acquisition process. She said staff had provided the applicant with the LPU questionnaire in advance to

expedite the process and, as the property meets the criteria, staff is recommending approval. Green Acres is aware that this matter should be on the Commission's August agenda and is prepared to acquire the property.

Ms. Grogan said, to date, the Green Acres program has preserved some 5,600 acres through the LPU program. Most of the properties are small (1/3 acre) and located in the Forest Area.

Commissioner Lloyd moved the recommendation that the Commission approve the eligibility of Medford Township Block 2101, Lot 6 for acquisition pursuant to the Limited Practical Use (LPU) Land Acquisition Program. Commissioner Prickett seconded the motion and all voted in favor.

4. Briefing on the Department of Environmental Protection's proposed Flood Hazard Area Control Act rules

Ms. Wittenberg said that the New Jersey Department of Environmental Protection (NJDEP) has proposed changes to the flood hazard (Flood Hazard Area Control Act [FHCA] rules and staff would be submitting comment on behalf of the Commission.

Ms. Roth provided a PowerPoint presentation (*Attachment A to these minutes*) summarizing the impact of the proposal on the Pinelands Area and the comments staff is preparing to submit.

Ms. Roth said that the proposal is a NJDEP efficiency measure to streamline and bring consistency between the Coastal Zone Management Act and Freshwater Wetlands Permit Act rules. She said the proposal will have little impact on the Pinelands as it will not supplant or supersede CMP requirements. However, she said, there are some minor things to bring to the attention of the NJDEP such as inconsistent references to Pinelands Area and Pinelands National Reserve as well as references to documents that the Commission no longer issues. She said staff comment will also clarify that for those activities exempt from Pinelands applications, there should be no reason for the Commission to review Flood Hazard Area Control Act applications.

Mr. Horner said additions to single family dwellings, and agricultural and accessory structures are examples of activities that are exempt from Pinelands review.

In response to Commissioner Prickett's question, Mr. Horner said the Commission is not notified by the municipalities when exempt activities are undertaken.

Ms. Roth noted that the public comment period closes today.

Public Comment

Mr. Bill Wolfe, a resident of the City of Bordentown, expressed concerns about a Memorandum of Agreement (MOA) between the Commission and NJDEP regarding freshwater wetlands and said the technical elements of the agreement should be performed by Commission staff yet the

MOA allows DEP staff to do so even though NJDEP staff is less sensitive to Pinelands standards than Commission staff. Referencing Commissioner Prickett's early question about a public water supply in Galloway Township's proposed new redevelopment area, Mr. Wolfe said that applications for development should include a "certification of firm capacity", a letter from the water purveyor indicating that water allocations and pressures, including those needed for firefighting purposes, were adequate to accommodate a project. He asked about the status of the South Jersey Gas (SJG) application, noting that SJG has petitioned the BPU to pre-empt municipal review of its application. He noted that BPU is concerned with safety, not environmental issues, and there will be no transparency if the public is not involved. He said given the regional nature of this project, the energy promoters will serve as the reviewers of the pipeline application.

Ms. Georgina Shanley, a resident of Ocean City, said she agreed with Mr. Wolfe regarding the problematic nature of the SJG application.

In response to Ms. Shanley's question as to the status of the application, Mr. Horner offered to provide her with the letter issued two days ago requesting additional information.

Ms. Shanley said that the power had been stripped away from the Commission and that there were many homeowners in the area of Beasley's Point who were selling their homes. She said she was very concerned for the Pinelands.

In response to her comments, Chairman Lohbauer stated that the application is under review by staff and the Executive Director has only the authority granted by the Comprehensive Management Plan.

Dr. Ron Hutchinson, a resident of Northfield, NJ, referencing an earlier mention of the Atlantic City Rail Line through Galloway Township, said the train station closest to Stockton was in Absecon. He said using trains was an increasing interest for the younger generations who choose not to participate in the consumption of fossil fuels. He said a train station in Pomona would greatly benefit the area. He said the Commission needed to take into account carbon pollution and societal costs when evaluating applications. He said he'd like there to be a cost and benefit analysis calculated to show the impacts of the pipeline project.

Mr. Rich Bizub, with the Pinelands Preservation Alliance (PPA) said PPA was also submitting comment on the NJDEP flood hazard rule proposal. From the Land Capability Map, he identified the location of the Toms River, noting that the headwaters were outside the Pinelands Area in Monmouth County and that as the River flows towards the Atlantic Ocean, it is categorized in multiple ways depending upon the zones through where it is flowing. He said PPA had been successful in getting C-1 designation and will call out DEP on these headwater areas, noting the need to maintain their integrity. He noted that the Commission had spent a significant amount of Pinelands Conservation Fund moneys in the Toms River Corridor.

Mr. Leakan posted the Land Capability Map on the Smart Board.

Mr. Liggett noted that much of the Toms River Corridor is protected. Ocean County has made attempts to protect areas outside the Pinelands and DEP had participated in developing the Toms River Corridor Plan. He said the Green Acres program operates in an *ad hoc* manner; it responds to opportunities but does set out to preserve whole watersheds

In response to Chairman Lohbauer's question if a resolution from the Commission would be helpful, Ms. Roth said the comment letter could include a statement encouraging DEP to take into consideration the quality of the waters flowing into the Pinelands.

In response to Commissioner Lloyd's statement that Ms. Roth's comment letter should reflect the concerns of Mr. Bizub, she said that the comments were limited to the area over which the Commission has jurisdiction but she would speak with Mr. Bizub following the meeting.

Mr. Chris Jage, with the New Jersey Conservation Foundation, stated that the Motorized Access Plan for the Wharton State Forest was being released (http://www.nj.gov/dep/newsrel/2015/15_0065.htm). He said the roads are being signed and maps being developed to reduce significantly the area accessible to motorized vehicles.

Mr. Wolfe spoke again and said that the new NJDEP flood rules will replace a buffer program with a mitigation program in the riparian zone, and that SJG was trying to say that its pipeline will serve primarily the Pinelands but it cannot since the resiliency element will benefit the Cape May peninsula, outside the Pinelands.

5. Other Items of Interest

Mr. Liggett noted that last year the Council on Affordable Housing (COAH) had published their third round rules that were subsequently struck down by the court. Mr. Liggett said COAH is now working with the court to develop new affordable housing obligation numbers. He said determining these numbers is challenging e.g., 12 Pinelands municipalities have had their obligation increased by 500 dwelling units and he had seen numbers that as many as half the municipalities could not meet. He said he felt the Commission should provide the Courts and Pinelands municipalities with build-out numbers, community by community, to try to help determine realistic numbers. Some municipalities have had their obligations increase from zero last year to 1,000 currently.

Ms. Roth concurred and said since the CMP establishes residential densities, the Commission will have to become involved.

Commissioner Lloyd asked Mr. Liggett to provide him with his numbers.

Commissioner McGlinchey said that this has been a long-time issue. He said the COAH numbers are excessive and beyond the build-out numbers. COAH had concluded that the Pinelands was imposing exclusionary zoning and didn't want to listen to the Commission.

Commissioner Lloyd said that the Commission had written a Memorandum of Agreement with COAH but they never signed it.

Ms. Roth said yes, that was in response to A-500, the bill posted to address affordable housing issues.

Ms. Grogan added that staff had drafted rules that would have helped the municipalities.

Commissioner Prickett stated that he found public comment important to the Pinelands Commission's process.

In response to Chairman Lohbauer's request to see a copy of the BPU order related to the New Jersey Natural Gas pipeline, Ms. Wittenberg said she believed there is a ten day waiting period before it would become available.

The meeting adjourned at 11:35 a.m. (moved by Commissioner Prickett and seconded by Commissioner Earlen).

Certified as true and correct:



Betsy Pfner,
Principal Planning Assistant

Date: August 25, 2015