

Disclaimer

These minutes reflect the actions taken by the Commission during its December 13, 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 December 23, 2019.

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

MINUTES

December 13, 2019

Commissioners Present

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

Commissioners Absent

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

Chairman Prickett called the meeting to order at 9:40 a.m.

Stacey Roth, Chief, Legal and Legislative Affairs read the Open Public Meetings Act Statement (OPMA).

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

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

Minutes

Chairman Prickett presented the minutes from the November 8, 2019 meeting. Commissioner Avery moved the adoption of the minutes. Commissioner Lohbauer seconded the motion.

The minutes from the November 8, 2019 meeting were adopted by a vote of 8 to 0. Commissioner Earlen abstained.

Committee Chairs' Reports

Chairman Prickett provided an update from the November 22, 2019 Policy & Implementation (P&I) Committee meeting:

The Committee adopted the minutes of the September 27, 2019 meeting.

The Committee received an update and recommended the full Commission extend the Right-of-Way pilot program for an additional two years.

The Committee received an update on the schedule for a revised Memorandum of Agreement with Atlantic County for development activities at Lake Lenape. It is anticipated that the revisions will be presented to this Committee in January 2020 and that a final updated MOA could be considered by the full Commission at its April meeting.

The Committee received a presentation from the Executive Director of the State Agriculture Development Committee, Ms. Susan Payne, regarding Special Occasion Events on preserved farms. Ms. Roth will coordinate the submission of any comments by Commissioners on the draft proposal.

The Committee asked staff to pursue federal appropriation of the remaining \$8 million of Section 502 funding for land acquisition. Staff is updating mapping to identify the location of lands of interest. The Governor's office will coordinate the effort.

Executive Director's Reports

ED Wittenberg provided an update on the following items:

- Staff met with a communications solution firm to discuss the conference equipment in the Terrence D. Moore Conference room. A request for proposals for audio and conferencing equipment will be generated and go out for bid at the beginning of the year.
- A call has been scheduled with the Governor's Washington D.C. office to discuss the Section 502 funding.
- The Pinelands Municipal Council met on November 26. At that meeting a representative from the Department of Transportation provided an update on the Pine Barrens Byway. The Council also discussed payment in lieu of taxes on preserved land and its impacts on municipalities.

Director Larry Liggett provided an update on the following:

- Staff continues to finalize the Kirkwood-Cohansey rule proposal. A stakeholders meeting is currently being scheduled for late January.

Director Chuck Horner provided information on the following regulatory matters:

- On December 4th, staff met with representatives from Public Service Electric & Gas (PSE&G). He said PSE&G requested the meeting to discuss time frame limitations associated with vegetation prescriptions from the Right-of-Way (ROW) Pilot Program to limit the impacts to threatened and endangered species and wetlands. The New Jersey Department of Environmental Protection requires Best Management Practices on ROW spans. PSE&G is concerned that the overlapping regulations will impact its ability to properly manage the vegetation in the ROW. Staff will be reaching out to the NJDEP to determine if the BMP's are a regulation. PSEG expressed an interest again in using herbicides to control vegetation in the ROW.
- It is our understanding that Jackson Township has denied a large residential development application in the Regional Growth Area. This is the same application where the Commission was notified that threatened and endangered species were found on the parcel. If the approval was denied, the Commission would not review that denial.
- The Commission has received two inquiries about the installation of guardrail type barriers to be installed in utility Rights-of-Ways through state park lands. He added that based on the size of the barriers, no application is required to the Commission.

Commissioner Lloyd asked who applied to install the barriers.

Director Horner said the New Jersey Conservation Foundation has inquired about installing barriers for which they received a grant in the Forked River Wildlife Management Area in Lacey Township. PSE&G previously inquired about installing similar barriers in the ROW in the Waterford Township portion of Wharton State Forest.

Chief Planner Susan R. Grogan provided the following updates:

- In late November, staff issued the Implementation Report for the Alternate Design Wastewater Treatment System Pilot Program. The key recommendation is continue the Pilot Program. The other recommendation includes the removal of three systems because they are either not being used or not functioning properly. Additionally, new systems will be invited to participate in 2020, along with changes to simplify reporting requirements. All of the changes will require amendments to the Comprehensive Management Plan (CMP).
- The NJDEP contacted the Commission and requested a meeting on coordination matters and to discuss issues and concerns. NJDEP also held a similar meeting with the Highlands Council. The meeting was successful and more regular meetings between the Commission and NJDEP will be scheduled.

Commissioner Lohbauer said he was pleased that regular coordination meetings between the Commission and the NJDEP will be taking place and he expressed an interest in attending the meetings.

Chief Planner Grogan provided an update on the Pine Barrens Byway:

She said many years ago the Commission hired a consultant to prepare a Corridor Management Plan in an effort to receive state designation for a scenic byway that is now known as the Pine Barrens Byway. The Byway is a 122-mile route that navigates through five counties and 16 municipalities in the southern portion of the Pinelands. The Byway received state designation and the next step was to form a managing entity. The managing entity was originally comprised of a representative from each town and county; unfortunately, the managing entity has not functioned well and in recent years has failed to hold meetings.

More recently, the NJDOT has hired a marketing firm to promote and create awareness of all state byways. The plans include a new website and brochure. The NJDOT expressed concerns about the lack of a managing entity for the Pine Barrens Byway. After having no success with determining a managing body, the Commission has decided it will now serve as the entity.

As the managing entity, the Commission will conduct an annual meeting and update the website with Byway news. The visitor center already includes a map of the Byway route. The opportunity for national designation of the byway can also be pursued.

Commissioners briefly discussed options for managing the Byway.

Communications Officer Paul Leakan said staff archeologist Tony McNichol spoke about the Head of the River cemetery in Estell Manor at the Commission's final speaker series. He said he hopes to be scheduling future speakers. He said the 31st annual Pinelands Short Course will be held on March 14, 2020 at Stockton University and will feature 42 presentations.

He provided information about live streaming Commission meetings, including the average number of users who live stream the meeting. He said the Commission has been live streaming Commission meetings since July 2017. He said the meetings are archived on YouTube for future viewing.

Commissioner Lloyd said he would like to see the P&I Committee and the Land Use, Climate Impacts and Sustainability Committee meetings live streamed. Staff and Commissioners were unsure about live streaming the Personnel and Budget Committee due to the confidential nature of topics that the Committee discusses.

ED Wittenberg said she was apprehensive about live streaming speaker series presentations because the objective is for the speaker to have an audience and for the attendees to view the exhibit. She said staff can record the presentations and post the video later.

Ms. Roth said she was informed this morning of a possible recusal on the resolution addressing the South Jersey Gas remand. She said she spoke with the Mark Holmes, the Executive Director of the State Ethics Commission, who agreed that recusal of the Commissioner was required. She said she will need to discuss the matter further with Mr.

Holmes and the Attorney General's office. She said with the recusal of the Commissioner, there isn't a quorum of the Commission to vote on the South Jersey Gas remand resolution today.

Chairman Prickett asked if the rule of necessity can be used to vote on this matter.

Ms. Roth advised that the rule of necessity was available to the Commission, however permission to use the rule would require approval from the Attorney General's office. She added there was not enough time to have the conversation this morning with the appropriate individuals.

Commissioner Lloyd said, in his opinion, he doesn't believe the rule of necessity applies in this instance. He said just because Commissioners choose not to attend meetings does not mean the Commission can use this provision.

Ms. Roth explained the rule of necessity. She said if a conflict is preventing a board from having the appropriate number of votes required to take an action, an assessment would be carried out to determine if the rule of necessity should be used. She said it is only invoked when an action must occur.

DAG Miles added that the rule of necessity is rarely used. She said it is essentially overruling recusal advice. She said she doesn't have the authority to permit the rule of necessity.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of a two lot subdivision and no further development in Medford Township.

Commissioner Lohbauer made a motion Approving With Conditions an Application for Public Development (Application Number 1985-0725.003) (two lot subdivision in Medford Township) (See Resolution # PC4-19-42). Commissioner Avery seconded the motion.

Director Horner said the parcel in question is a privately owned half-acre lot; a quarter acre of the lot will be obtained by Medford Township to be used as a public parking area.

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

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

Chairman Prickett read the list of Public Development and Waiver applications up for comment.

Rhyan Grech of the Pinelands Preservation Alliance provided comments on the South Jersey Transportation Authority (SJTA) application for the development of a deicing apron (#1983-5837.058). She said SJTA should be in full compliance with the requirements of

the 2019 Amended Memorandum of Agreement (MOA) before the Commission authorizes approval of the deicing apron. (Comments are attached).

Ms. Roth said staff is working with SJTA to ensure it is in compliance with the requirements of the amended MOA. She added that SJTA recently submitted to the Commission a copy of the amended Airport Layout Plan for the Atlantic City Airport signed by the FAA.

Ms. Roth added that Amended MOA does not require SJTA to have created the new Grassland Conservation Management Area (GCMA) before it can move forward with development applications that were permitted under the prior MOA. She added that finding the right amount of land for the habitat will take some time. The amended MOA permits SJTA to request a one year extension of the deadline to acquire a site for the new GCMA.

In response to Commissioner Howell's questions, Ms. Roth said the first payment from SJTA was received almost immediately after execution of the MOA. She said the Commission asked for and received a monthly status report from SJTA in August. She said SJTA is working towards meeting the requirements of the MOA.

Commissioner Howell noted that he would not vote on any development application at the airport unless it has been demonstrated that SJTA is meeting all requirements of the agreement. He said the amended MOA disrupted a conservation area and he wants to ensure that the disruption is not permanent.

Commissioner Lohbauer agreed with Commissioner Howell's comments. He expressed reluctance to approve development if SJTA is not meeting its obligations. He said the protection of threatened and endangered species is an important goal of the Commission.

Ms. Roth stated the Executive Director's report will address the SJTA MOA and public comment received for the application.

Ordinances Not Requiring Commission Action

Chairman Prickett asked if any Commissioners had questions regarding the ordinances not requiring Commission action.

- Egg Harbor City Ordinance 11-2019
- Egg Harbor Township Ordinance 31-2019
- Manchester Township Ordinance 19-026
- Monroe Township Ordinance O:48-2019
- Upper Township Ordinance 0-16-2019
- Washington Township Ordinance 2019-02

No members of the Commission had questions.

Other Resolutions

Chairman Prickett presented a resolution to adopt meeting dates for 2020.

Commissioner Avery moved the resolution scheduling Regular Pinelands Commission Meeting dates for 2020. Commissioner Earlen seconded the motion (See Resolution # PC4-19-43).

ED Wittenberg pointed out that the April Commission meeting will be held the first Friday of the month rather than the usual second Friday.

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

Chairman Prickett said the next resolution is to extend the Right-of-Way Vegetation Maintenance Pilot Program.

Commissioner Lohbauer moved to the adoption of a resolution To Extend the Electric Transmission Right-of-Way Vegetation Maintenance Pilot Program. Commissioner Lloyd seconded the motion (See Resolution # PC4-19-44)

Director Horner said the pilot program came to fruition in 2009 when utilities in the Pinelands were having difficulty maintaining the vegetation in Rights-of-Way. The utilities were trying to find a balance of protecting wetlands and threatened and endangered species habitat while providing reliable electric service in the Pinelands. He reviewed a timeline of events over the last decade, which included the Commission adopting a report and amendment to the CMP for the pilot program. He said staff has provided progress reports on the pilot program to the Commission. He said the pilot program is set to expire at the end of December. He said the Vegetation Management Plan outlines prescriptions for 3,000 spans, which are the areas between two transmission poles. He said Regulatory Programs staff inspects the ROW spans and the Science office provides the analysis of the plots within a span. The Vegetation Management Plan has allowed the utilities to do their work, and the spans remain typical of Pinelands habitat. Staff is recommending a two-year extension of the pilot program to allow further evaluation.

Commissioner Irick expressed concerns about the utilities request to apply herbicides in the ROW.

ED Wittenberg said two utilities are interested in applying herbicides.

After a brief conversation about the application of herbicides, ED Wittenberg made it clear that before any utility is permitted to use herbicides, the matter would come back to the Commission for a vote.

Commissioner Lohbauer was appreciative for the clarification about the use of herbicides. He added that he was under the impression from the ROW presentation at the P&I Committee that the analysis has shown a resurgence of some threatened and endangered plant species.

Commission staff clarified that at this time the conclusion that the pilot program has caused threatened and endangered species to flourish cannot be made.

Ms. Jean Montgomerie said that there was a known presence of American Mistletoe in six spans which resulted in requiring a threatened and endangered species survey prior to vegetation management. She said whether the plant was always there or not is unknown.

Director Horner closed by stating that the Vegetation Management Pilot Program has been successful.

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

South Jersey Gas Remand Resolution

Commissioner Prickett announced there would not be a vote on the South Jersey Gas resolution today.

Other

ED Wittenberg announced that long time Commission staff member Director Larry Liggett will retire effective January 1, 2020. ED Wittenberg said Director Liggett's creative way of thinking is irreplaceable.

Chief Planner Grogan said Director Liggett joined the Commission in 1988 and had previously worked for the City of Wilmington. She spoke about the days when she and Director Liggett shared an office in the attic of Fenwick Manor.

Commissioners shared their appreciation for Director Liggett's work over his extensive career at the Commission.

General Public Comment

Jeff Tittel of the Sierra Club congratulated Director Liggett on his retirement. He said the NJDEP issued a report on climate impacts and sea level rise. He said the climate crisis is happening faster than initially thought. He said the state needs to transition to clean energy and stop using fossil fuels. He said the Commission needs new appointments. He said the South Jersey Gas resolution needs to move forward and asked for an amendment to the resolution to include language denying the application. He hopes the Pinelands Commission will begin working on climate change regulations.

Rhyan Grech of the Pinelands Preservation Alliance said she hopes the Commission will work on some climate change initiatives in 2020, such as curbing emissions. She wished Director Liggett well in his retirement.

Margo Pellegrino of Medford Lakes congratulated Director Liggett on his upcoming retirement. She said she enjoyed talking with Director Liggett about birds. She spoke about a local farm where purple martins left after an application of pesticides. She read pieces of a recent NY Times article *Natural Gas Boom Fizzles as a U.S. Glut Sinks Profits*.

Arnold Fishman of Medford Lakes said the resolution to address the South Jersey Gas remand is not strong enough. He said the resolution should rescind the prior approval; deny the application with prejudice in conformance with the Administrative Procedures Act and the CMP.

Margit Meissner Jackson of the Ocean County Sierra Club said by 2100, areas east of Route 9 will be under water. She said the barrier islands are sinking. She said there is enough development on Long Beach Island. She said ever since she installed solar panels on her property she hasn't had an electric bill.

Bill O'Neil of Ocean City said he hopes the Commission votes to end the South Jersey Gas pipeline.

Commissioner Lloyd said the Governor announced that the state of New Jersey will purchase 1,400 acres in Cumberland County, known as Holly Farm. He said the property has many different bird species, including threatened and endangered species. He said although the property is outside of the Pinelands it is pinelands habitat.

Commissioner Avery said the Holly Farm was very important to former Commissioner Brian McFadden, who was from Cumberland County. He said the late Commissioner McFadden would have been pleased with the news of the purchase.

Commissioner Lohbauer said it's important for the Commission to take action to mitigate climate change. He said he hope the Commission settle on climate language to include in the CMP in the first quarter of 2020.

Resolution to Retire into Closed Session

DAG Miles read a resolution to enter into closed session to discuss collective bargaining and a personnel matter.

Commissioner made a motion to enter into closed session. Commissioner seconded the motion. The Commission agreed to retire into closed session by a vote of 9 to 0, beginning at 11:26 a.m.

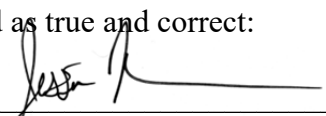
Return to Open Session

The Commission entered back into open session at 12:16 p.m. DAG Miles provided a summary of the closed session. She said the Commission was provided an update on the collective bargaining process and a personnel matter.

Adjournment

Commissioner Quinn moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 12:17 p.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: December 23, 2019