

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
January 6, 2014 – 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Paul E. Galletta, Robert Jackson, Richard Prickett and Candace Ashmun (1st Alternate, via telephone).

MEMBER ABSENT: Leslie Ficcaglia

OTHER COMMISSIONERS PRESENT: Ed McGlinchey and Joseph DiBello

STAFF PRESENT: Executive Director Nancy Wittenberg, Susan R. Grogan, Stacey Roth, Paul Leakan, Jessica Noble and Betsy Piner. Also present was Ms. Kerstin Sundstrom, with the Governor's Authorities Unit.

Chairman Lohbauer called the meeting to order at 9:35 a.m.

1. Adoption of minutes from the November 22, 2013 CMP Policy & Implementation Committee meeting and December 4, 2013 meeting

Commissioner Galletta moved the adoption of the November 22, and December 4, 2013 meeting minutes. Commissioner Prickett seconded the motion and all Committee members voted in favor.

2. Pinelands Conservation Fund – Acquisition

Ms. Grogan said that the Clarke Project in Upper Township had closed resulting in the expenditure of all the Pinelands Conservation Funds that had been designated for Cape May County.

Unfortunately, despite the best efforts of the Trust for Public Land (TPL) the anticipated December 18, 2013 closing of the Clayton project has been delayed and the allocation expired on December 31, 2013. This project is a 196-acre project in Manchester and Jackson Townships within the Toms River Corridor project area. She said everything was lined up for closing except for some last minute details but closing has been complicated by the fact that some of the Clayton owners are out of town and unable to sign the paperwork. She said that TPL is requesting a 30-day extension until January 31, 2014.

In response to Chairman Lohbauer's question if perhaps a 60-day extension would be preferable so that the Committee didn't have to deal with this again, Ms. Grogan said that she has been assured that the 30-day extension is adequate; also, it puts pressure on all parties to close on the property. She said when the funds were allocated, the Commission understood that the project was ready to move ahead; otherwise, the funding might have been allocated to one of several other good projects. Ocean County is funding much of this project and will be seeking Department of Defense (Readiness

and Environmental Protection Initiative-REPI) funds after the fact so there is money available for projects in Ocean County. She said if other hurdles should arise, she'd be reluctant to recommend yet another extension. She also noted that the Commission's contract with Conservation Resources Inc. (CRI) expired on December 31, 2013. CRI President, Michael Catania, is still willing to help where he can by reviewing documents but after this project is done, it is the Commission's own limited staff that will be doing all future acquisition projects.

Commissioner Jackson moved the granting of a 30-day extension until January 31, 2014 to TPL for the acquisition of the Clayton Project in Manchester and Jackson Townships. He added that if, after 30 days, the project has not closed, the Commission will look for other projects on which to spend those funds. Commissioner Galletta seconded the motion and all Committee members voted in favor.

3. Review of the proposed Memorandum of Agreement between the Pinelands Commission and the Board of Public Utilities

Chairman Lohbauer announced that the Committee had received the staff report on the proposed Memorandum of Agreement (MOA) between the Pinelands Commission and the Board of Public Utilities, most of which was the response to public comment. He said it was his suggestion that the Policy and Implementation Committee (P&I) consider advancing the MOA to the full Commission without a recommendation. He said this had been a very controversial issue and that every Commission member had been engaged. He said it would seem almost trivial for this Committee to make a recommendation.

Commissioner Galletta stated that he concurred as did Commissioner Ashmun, who said the issue was too important for the Committee to make a recommendation, and she moved that the matter go before the full Commission without any recommendation from P&I.

Following an outburst from the audience, Commissioner Jackson said that everything the Commission does will be publicly disseminated at some point, and he asked that members of the public not interrupt the meeting as there is always an opportunity for public comment.

Chairman Lohbauer clarified that for the issue of the proposed MOA, the record is closed and no additional comment would be received although in general terms, Commissioner Jackson is correct.

Commissioner Jackson asked about the process. He asked if the Committee were to determine that the matter should be denied, could the staff still take the MOA to the full Commission.

Commissioner DiBello arrived at 9:50 a.m.

Ms. Roth said the Committee serves in an advisory capacity to the Commission. The report was provided to the Committee as a courtesy. The application must advance. Anything requiring the consideration of the full Commission must move forward. It is not the staff making that decision; it is a matter of law.

Commissioner Jackson asked if there were a better way to go through the MOA process and streamline it to reduce this "craziness."

Ms. Roth said the Committee may want to discuss this in 2014.

Commissioner Prickett said he agreed that the matter needed to be before the full Commission. Also, he asked what documents were available to the public.

Commissioner McGlinchey received confirmation that, if a stop-work order is recommended by the on-site project manager (an individual to be hired by the Commission), then that decision will be made by the Executive Director, not by the Commission. Also he asked that all contractors be advised that no construction equipment, personal vehicles etc. could park on private property without permission. Although it does not necessarily need to be a provision of the MOA, the manager needs to know of the Commission's interest in seeing that such trespassing not occur.

Commissioner Jackson said he was troubled by the appearance of conflict. In an apparent reference to events that transpired at the December 13, 2013 Commission meeting, he stated that he did not understand why there was no conflict of interest in the relationship between the Board of Public Utilities and South Jersey Gas yet one of his fellow Commissioners was required to recuse himself from the matter. He said it needed to be resolved if there truly were a reason for such recusal and that he was offended that one of the Commissioners was recused over an issue over which he had no control.

In response to Commissioner Galletta's question if Commissioner Jackson were as concerned when he, Commissioner Galletta, was denied the opportunity to speak about Pinelands Development Credits (PDCs), Commissioner Jackson responded, "yes, absolutely".

Commissioner Galletta said that for eight years he has had to recuse himself from discussion of PDCs. While he wants to represent his agricultural colleagues, he must abide by a decision with which he does not agree.

Chairman Lohbauer said he too failed to see why Commissioner Galletta could not vote on PDC matters. The Commission is a large body with many interests represented and he felt that the variety of opinions were valuable. However, he said that it was not for the Commission to decide the validity of these recusals and Commissioner Lloyd has said that he will appeal this determination. Chairman Lohbauer added that the Commission should, at least, have had the opportunity to hear Commissioner Lloyd's opinion.

Commissioner Jackson said he would rather hear an opinion than have it removed from discussion. He said that integrity was very important to him and he saw no conflict with Commissioner Lloyd's intent.

Chairman Lohbauer called for a second to Commissioner Ashmun's motion that the proposed MOA be considered by the full Commission without a recommendation from the Policy and Implementation Committee. Commissioner Galletta seconded the motion and all Committee members voted in favor.

Ms. Wittenberg said that late on Thursday (January 2, 2014), a draft Executive Director's Report on the MOA was emailed to all Committee members and alternates. She said that the intent was, once any changes requested by the Committee were made, that the document, along with the resolution, be posted on the Commission's web site. She noted that since last Thursday, a number of typographical errors, word changes and non-substantive changes had been made to the document. Thus, the copies provided this morning were slightly different than what had been transmitted previously.

Ms. Wittenberg asked if the Commissioners had any interest in seeing any of the previous presentations at Friday's Commission meeting. Committee members indicated that they were looking forward to an open discussion among all the Commission members but had no interest in a repeat of any of the previous presentations.

In response to Commissioner Jackson's question if the applicant would pursue another route if the Commission were to deny the MOA, Ms. Wittenberg said she saw no other routes that would pass regulatory limits and that she had no idea what the applicant would do.

Ms. Wittenberg summarized the volume and nature of the public comment received. *See Attachment A, to file copy only, of these minutes).*

Mr. Leakan projected the Commission's web site related to public comment on the MOA on the Smart Board so all present could see the documents were available on line.

Ms. Wittenberg highlighted the items presented by the public. Among the concerns cited, the letters of support focused on energy reliability, job creation, preventing future power loss, improved air quality and lower energy costs. The opposition to the MOA discussed legal concerns, better routes, threatened and endangered species, air and water degradation, fire safety, potential explosions, equivalent level of protection and precedent setting. All these comments were consistent with the comment provided at the meetings.

Chairman Lohbauer said he had read the report and felt all the Committee members were well informed.

4. Public Comment

Chairman Lohbauer invited public comment on any matter other than the pipeline as that record is now closed.

Mr. Fred Akers, with the Great Egg Harbor Watershed Association, asked about the exporting of 1.5 million gallons per day of water from the Pinelands pursuant to the Memorandum of Understanding between the Commission and the Camden County Municipal Utilities Authority. He said such a diversion may have an impact on stream flow in the Great Egg Harbor River watershed, some 15,000 acres of which are in urbanized areas outside the Pinelands. He said he was not against the project but asked if the required stream gauges were installed as required to provide base line stream data and ongoing monitoring reports.

Ms. Wittenberg said that Mr. Liggett, who is out of the office, could follow up with more detail but Ms. Grogan had told her yes, the project monitoring is in place.

Ms. Margit Meissner-Jackson referenced Mr. Akers concern with water supply and said Sandy Batty, Executive Director, Association of New Jersey Environmental Commissions (ANJEC) had noted in her organization's fall quarterly report that the State had not kept up with its water supply inventory. It is supposed to be updated every five years but hasn't been done since 1996. If water is being diverted in Camden County, how does one know how much is available, she asked. She said she would write to New Jersey Department of Environmental Protection (NJDEP) Commissioner Bob Martin to find out why it hasn't been done.

Ms. Wittenberg said the Commission has also been frustrated by the NJDEP's failure to issue the Water Quality Management Plan.

Mr. Arnold Fishman commented on procedure and noted a December 24, 2013 court decision in Bergen County indicating that documents in support of an agenda must be released to the public at the same time they are released to the deliberative body. He said, going forward, he believed the Commission should make documents more readily available to the public.

Ms. Roth responded that she was familiar with the case and it relates to the Open Public Meetings Act. Also, as the Committee is an advisory body, it does not apply here.

Ms. Blanche Krubner said she shared Commissioner Jackson's concerns over what had occurred with Commissioner Lloyd at the December, 2013 Commission meeting. She said that the Commission needs to maintain its independence and referenced changes at the Highlands Commission. She said that two Deputy Attorneys General (DAGs) superseded Ms. Roth at that December meeting and peremptorily and arbitrarily removed Commissioner Lloyd from the meeting. She said it did not appear that he was being treated fairly. She asked the Commissioners to think about the independence of the body.

Ms. Margo Pellegrino read a statement regarding the pipeline. When she refused to stop speaking after repeated requests from Chairman Lohbauer, Ms. Roth asked all Commissioners to vacate the room.

There was a brief recess.

The meeting resumed at 10:25 and Chairman Lohbauer said that as public comment on the pipeline is closed, any additional attempts to address the issue will lead to the adjournment of the meeting.

Ms. Marilyn Miller asked if information about the Pinelands Conservation Fund project in Jackson and Manchester Townships was available on line. Ms. Grogan said much of the information remains confidential until an agreement is reached in order to protect negotiations. However, if Ms. Miller wished to provide an email address after the meeting, she would forward information to her and asked that Ms. Piner provide a link to any relevant Committee minutes.

Ms. Peg Sturmfels, with Clean Water Action, NJ, said she served on a local board in her community and was appalled by the mandated recusal of a Commission member. She said she was concerned it could also happen at the local level. It was important that the diversity of opinions be preserved in order for boards to remain independent. When she started to speak on renewable energy, Chairman Lohbauer reminded her that the record was closed.

Ms. Marianne Clemente, a Barnegat Township resident, said the public had come today to listen to what the Committee had to say and was disappointed that there was no discussion.

Chairman Lohbauer reminded the public that the record is closed.

Ms. Becky Free, with the Pinelands Preservation Alliance, said because of the interest in the upcoming Commission meeting (January 10, 2013), would the public be accommodated. She said that her organization was telling people to come.

Chairman Lohbauer said the Commission would do its best and one could see how the seating had been adjusted to allow for a larger audience.

Mr. Arnold Fishman asked if the Commission would consider tabling the pipeline MOA at Friday's meeting if Commissioner Lloyd's appeal has not been resolved by then.

Mr. Tom Mahedy said exporting water out of the Pinelands is a terrible precedent and that privatization of public water is happening throughout the world. Also he said, based on the comments of Commissioner Jackson, it is clear that an intermediary is directing the Commission and that the DAGs broke the law in front of everyone to send a message. He said there should be no vote without Ed Lloyd present and that he (Commissioner Lloyd) has no financial interest in this matter. As for agricultural matters, there may be a financial conflict. He asked for transparency at the public meetings in general and said the location of Friday's meeting could be changed.

The meeting adjourned at 11:42 a.m. (moved by Commissioner Jackson and seconded by Commissioner Galletta).

Certified as true and correct:



Betsy Piner, Principal Planning Assistant

Date: January 8, 2014

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