

Adopted January 30, 2015

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
Friday, October 31, 2014 – 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Sean Earlen (Acting Chairman), Candace Ashmun, Robert Jackson, Ed Lloyd, and Richard Prickett. *Note: Committee assignments are effective as of October 10, 2014*

MEMBERS ABSENT: Chairman Mark Lohbauer and Paul E. Galletta

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

Acting Chairman Sean Earlen called the meeting to order at 9:36 a.m.

- **Adoption of minutes from the September 26, 2014 CMP Policy & Implementation Committee meeting**

Commissioner Ashmun moved the adoption of the September 26, 2014 meeting minutes. Commissioner Jackson seconded the motion. Commissioner Prickett noted a typographical error at the top of page 5 (“last”, not “least”). Commissioners Ashmun and Jackson agreed to the revision to the minutes to correct that error.

Ms. Roth stated that, although Commissioners Lloyd and Earlen were not Committee members at the time of the September 26, 2014 meeting, as long as they had read the minutes, it was appropriate for them to vote. The minutes were adopted, with all Commissioners voting in the affirmative.

- **Executive Director’s Report**

**Buena Vista Township Ordinance 17-2014, amending Chapter 115
(Development Regulations) of the Township’s Code by adopting revised
sign standards**

Ms. Wittenberg said Mr. Tyshchenko would be presenting Buena Vista Township Ordinance 17-2014.

Ms. Grogan said Ordinance 17-2014 was more comprehensive than the sign ordinances previously reviewed by the Commission for Egg Harbor and Monroe townships as it deals with all types of signs, not just digital signs.

Commissioner Ashmun asked if, in general, there were a provision that a sign cannot be placed unless it meets all Comprehensive Management Plan (CMP) development standards, e.g., a sign could not be placed in the middle of a nest belonging to an endangered species.

Ms. Grogan responded that although on-site signs are exempt from application to the Commission, all CMP environmental standards must be met. The standards are contained in all Pinelands municipal ordinances. They apply to all development, whether or not a Pinelands application is required.

In response to a comment from Commissioner Jackson about violations, Ms. Grogan said the Commission staff typically works with the municipality on the investigation of any report of a violation.

Mr. Tyshchenko said Buena Vista Township Ordinance 17-2014 adopts revised standards for all signs in the various zoning districts of Buena Vista Township, including establishing new sign standards applicable to changeable copy and electronic message center (EMC) signs in certain nonresidential zones in the Township's Pinelands Villages and Pinelands Town. He said the ordinance establishes special standards for EMC signs including maximum luminance levels, a prohibition on scrolling, spinning, and rotating messages, and an obligation that all messages remain on the screen for at least eight seconds. All EMC signs must have automatic dimming controls for low level ambient light situations and off-site advertising is prohibited except for Township approved public information messages, he added.

In response to Commissioner Jackson's question as to an example of off-site advertising, Mr. Tyshchenko said that the sign must relate to the use on-site, e.g. Lowes cannot place an EMC sign advertising Target on its property.

Ms. Grogan added that these standards all apply to on-site signs. She said off-site signs are what one thinks of generally as billboards, and they are not permitted by Buena Vista's ordinance.

Mr. Tyshchenko said the standards adopted by Ordinance 17-2014 are consistent with those previously certified for Egg Harbor and Monroe Townships. However, staff is aware of the concerns of the public with respect to EMC signs in Pinelands Villages.

Mr. Tyshchenko made a PowerPoint presentation in which he provided photographs of the Pinelands Village Residence/Commerce (PVRC) and Pinelands Village Exclusive Industry (PVI) Districts in order to characterize the nature of the existing development and how EMC signs might impact these zones (*See Attachment A*).

Mr. Tyshchenko said there are four Pinelands Villages in Buena Vista Township, three of which have nonresidential zones where EMC signs would be permitted: Newtonville, Milmay and Richland. He said the fourth, Collings Lakes, is exclusively a residential zone in which these signs are not permitted.

Mr. Tyshchenko said Newtonville is the northernmost and most rural Village and there are few commercial uses in this PVRC District.

Mr. Tyshchenko said the PVI District in Milmay at the intersection of Tuckahoe Road and Broad Street includes the Milmay Tavern and Keppers Bar. He provided examples of the variety of existing signs at these establishments.

Mr. Tyshchenko said Richland Village, on Route 40, is the most developed of Buena Vista's Pinelands Villages. He showed examples of development in the PVRC District, including the Volunteer Fire Department, pool supply, antique and toy stores, a large agricultural building not in current use, and the Township Park.

Mr. Tyshchenko said, based on the non-residential character of these Villages and the nature of the permitted uses therein, the Executive Director believes that allowing changeable message and EMC signs in accordance with the standards adopted by Ordinance 17-2014 is consistent with the CMP. Certification of Ordinance 17-2014 is recommended.

In response to Commissioner Prickett's question regarding the eight-second pause between changes in message, Ms. Grogan said that eight to ten seconds seems to be a fairly common standard. In the absence of the Commission's own standards, this seems to be appropriate and one must remember that the speed limit is low in these villages.

In response to Commissioner Earlen's question if these standards are the same as for the sign ordinances certified recently, Ms. Grogan said the standards are quite similar and it is likely that Buena Vista looked at Monroe's standards in developing its own ordinance.

In response to Commissioner Prickett's question as to why Collings Lakes was not included in the ordinance, Ms. Grogan said there is no commercial zone in that Village. Mr. Liggett added that although it is located along the Black Horse Pike, there is no commercial zoning.

In response to questions from Commissioner Jackson regarding the sign lighting at night, Mr. Tyshchenko said that there are no absolute time restrictions; the dimming of the lights is related to ambient light conditions but the hours of the day are not regulated.

Commissioner Jackson moved the recommendation to the Commission of certification of Buena Vista Township Ordinance 17-2014. Commissioner Prickett seconded the motion and all voted in favor.

- **Review of a Memorandum of Agreement between the Pinelands Commission and The Richard Stockton College of New Jersey**

Mr. Liggett left the room. Ms. Roth explained that Mr. Liggett was recusing himself as he is an adjunct professor at The Richard Stockton College of New Jersey (“Stockton”).

Ms. Roth said that in September 2010, the Commission had approved Stockton’s Master Plan, a 20-year plan for proposed development at the College. Today, the Committee would be discussing a Memorandum of Agreement (MOA) for an alternative permitting process to allow for a streamlined permit review for development in the 10 campus development areas identified in the Master Plan.

Ms. Roth introduced Stockton representatives Mr. Charles “Skip” West (Director, Facilities Planning and Construction) and Mr. Donald Hudson (Associate Vice President for Facilities and Construction).

Ms. Roth gave a brief PowerPoint presentation including slides that had been presented during the approval process for the Master Plan (*Attachment B*). She said the MOA will allow staff to review and approve development within the 10 delineated development areas. No public development approvals will be presented to the Commission for action because the review will be completed at the staff level. This streamlined permitting process will apply only to development within the 10 development areas identified in the Master Plan. There will be limitations regarding the amount of permitted clearing and impervious cover based on the Stormwater Management Master Plan. This will provide Stockton with more flexibility in submitting its applications. Ms. Roth noted that all CMP standards must be met and that, in accordance with the requirements of the proposed MOA, Stockton would be required to provide staff with certain information at least 30 days in advance of commencing any new development, e.g., description of project, extent of clearing, detailed site plan, etc. as described on page 5 of the MOA.

Ms. Roth also reminded the Committee that through the certified 2010 Master Plan, Stockton had permanently protected environmentally sensitive lands located both-on and off-site through the filing of a deed restriction.

Commissioner Ashmun asked about the arrangements for suspension of the agreement should Stockton fail to meet its obligations under the MOA. She said the Commission will be depending upon the public (or the students) to see that the obligations of the MOA are met. It is imperative that a strong suspension be imposed if violations are found.

Ms. Roth responded that, as the Committee knows, the public came to the Commission in 2012 to make the staff aware of violations on the campus. She said current members of Stockton’s administration performed joint site inspections with staff and four violations were identified. Stockton came forward with plans to resolve those violations. She said

the Commission needed to be mindful that there has been an ongoing dialogue between staff and Stockton representatives.

Commissioner Ashmun said, in signing the MOA, the Commission is doing Stockton a favor and that she, for one, had a lot of concerns based on the College's past practices.

Ms. Roth reviewed the suspension procedures as described on page 8, including the obligation to provide a plan to resolve the violation with appropriate timelines and actual implementation of the strategies.

Commissioner Jackson said he shared Commissioner Ashmun's concerns regarding potential violations and said it will be difficult for the Commission to know what is occurring on campus.

Ms. Roth said this is a streamlined permitting process and if Stockton does not act in good faith, the MOA can be suspended or terminated.

Ms. Wittenberg added that staff will know of every project that is going forward and staff will be performing on-site reviews.

Referencing a slide indicating the location of a "stockpile area" (*Exhibit C; Attachment A to the Executive Director's Report on The Richard Stockton College of New Jersey's April 2010 Master Plan*), Commissioner Jackson asked if there were some sort of containment at that site.

Ms. Roth responded that she would review the Master Plan in order to answer the question.

Commissioner Ashmun stated that "suspension" had not been a word used traditionally by the Commission and she asked how Stockton would become "unsuspended." She also asked what role the Commission would play.

Ms. Roth responded that, following suspension, in order for the MOA to be reinstated, Stockton would need to provide a plan and a timeline with milestones as well as actual implementation of the corrective plan. Staff would update the Commission on the status of the reinstatement.

Commissioner Ashmun asked if there would be any role for the Commission in "unsuspending" the MOA. Commissioner Lloyd suggested there should be such a role, particularly for sufficiently egregious violations.

Ms. Wittenberg and Ms. Roth said language can be included in the MOA to address violations so egregious that the Commission should play a role in the outcome.

Commissioner Ashmun said there should be a public hearing prior to the reinstatement of

the MOA following a suspension. Ms. Roth said that one would need to look at the severity of the violation. She cautioned that a public hearing process could become unwieldy. She said she envisioned that the suspension provision would be adequate to prevent violations.

In response to Commissioner Ashmun's question as to when the public would have an opportunity to comment on a violation or suspension, Ms. Wittenberg said a notice could be provided and she would report to the Commission.

Commissioner Earlen asked what would happen with a normal application and is the Commission now creating a lot of process when it is not needed.

Ms. Roth responded that this is a change in process as the CMP has no enforcement provisions. With a violation, an application cannot be completed absent the resolution of that violation. Here the Commission is taking a stand by adding a timeline obligation.

In response to Commissioner Prickett's question if information regarding the staff review of the development applications is available to the public, Ms. Roth said all application materials are available. She added that, as with private development applications, there is no specific notice requirement.

From the audience, staff member Ms. Donna Graham, Operations Manager, stated an application status report is provided on the website every two weeks so any new applications from Stockton would be included on that report.

Commissioner Jackson stated that, theoretically, the information could be two weeks old, to which Ms. Roth responded yes, but staff has 30 days to review plans so there would still be sufficient time for public input.

Referencing page 12 of the MOA, Commissioner Lloyd observed the 60-day termination provision.

Referencing page 9 of the MOA, Commissioner Prickett asked for confirmation that Stockton would not be required to provide additional information regarding water quality or historic, archaeological, or cultural preservation. Ms. Roth responded yes, as part of the Master Plan process and certification, all those issues had been addressed.

Ms. Roth also confirmed for Commissioner Ashmun that the previous MOA with Stockton College was superseded by this proposed MOA.

Ms. Wittenberg stated that Stockton President Herman Saatkamp will attend the November Pinelands Commission meeting.

Commissioner Lloyd moved the recommendation to the Commission of approval of a Memorandum of Agreement between the Pinelands Commission and The Richard

Stockton College of New Jersey, with amended language to deal with reinstatement of the MOA following suspension due to a violation. Commissioner Jackson seconded the motion and all voted in favor.

- **Public Comment**

Ms. Fran Brooks, a resident of Tabernacle Township, said she appreciated this morning's discussion of MOAs and she appealed to the Commission as a public participant. She said the Commission needed to assure the public that transparency is in place with opportunity for full participation by the public. She said she was finalizing her comments on what she characterized as the draft public comment process and had concerns with the Buena Vista Township sign ordinance. She said there are conclusions being made in the Executive Director's report but the public has no opportunity to see them in advance. She said the public has been deprived of the ability to comment. By limiting comment, the Commission has been prevented from hearing any new information as it becomes available. She said at the October 10, 2014 Commission meeting, there was a recommendation to study digital signs and yet here is another ordinance recommended for certification without any such study. She said it would behoove staff to look at the State Department of Transportation (DOT) regulations regarding digital signs. This issue has been well studied by the Federal Highway Administration as well as the NJ DOT. She said the bottom line was there is no ability for the public to comment on the Executive Director's report. She provided written comment (*Attachment C*).

- **Other Items of Interest**

Commissioner Prickett commented on the World Water Monitoring Challenge held at Batsto on Friday, October 24, 2014. He said that staff did a wonderful job and the students had a great time. He said there needed to be a Pinelands school where students could learn through events such as this.

Ms. Wittenberg thanked Commissioner Prickett for his compliments.

Ms. Roth announced that the Committee needed to meet in closed session to discuss matters related to litigation. She stated that no action would be taken during this session.

At 10:45 a.m., Commissioner Lloyd moved that the Committee meet in closed session. Commissioner Prickett seconded the motion. Members of the public left the room.

The closed session began at 10:45 a.m.

The meeting reconvened in open session at 11:40 a.m.

Commission Earlen asked if there were any comments from the Committee. None were offered.

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

Certified as true and correct:



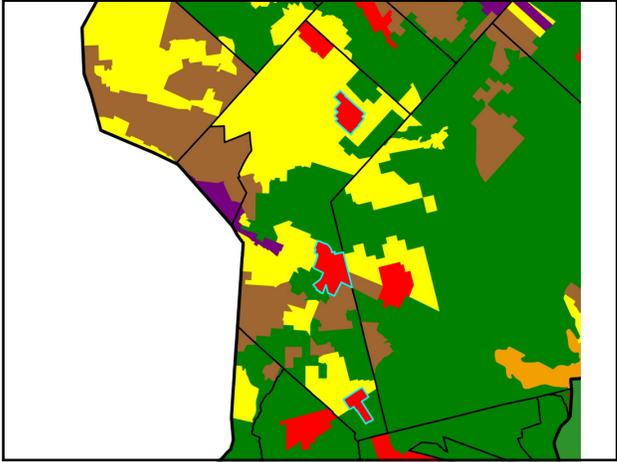
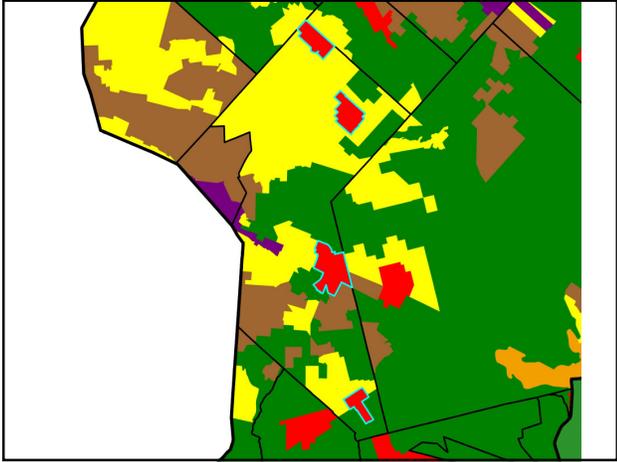
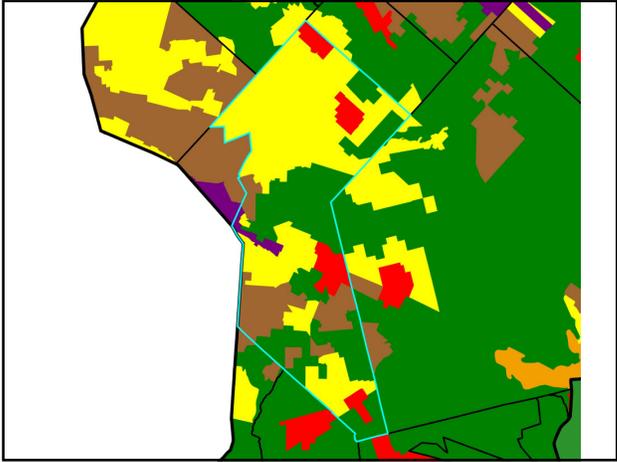
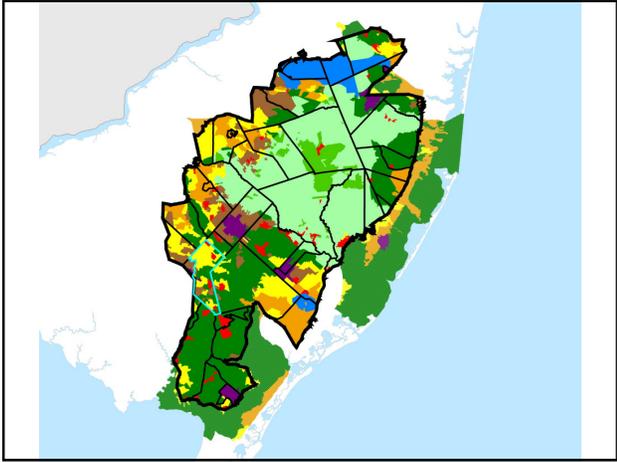
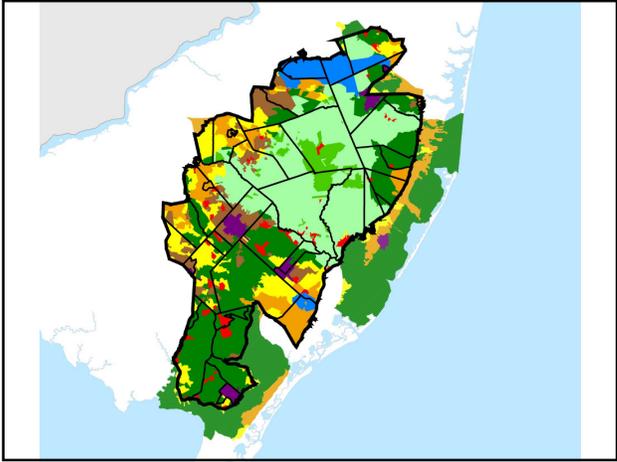
Betsy Piner, Principal Planning Assistant

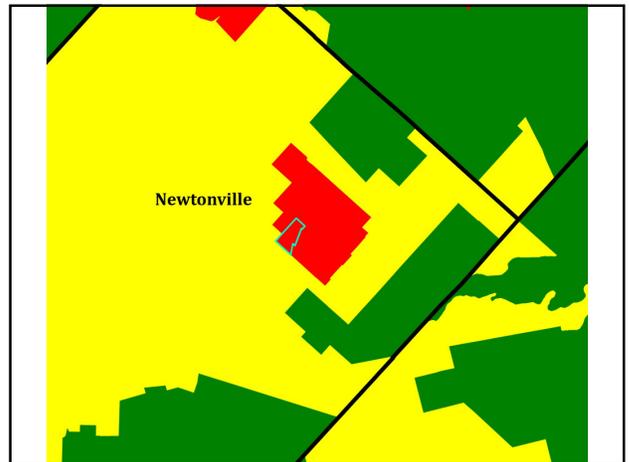
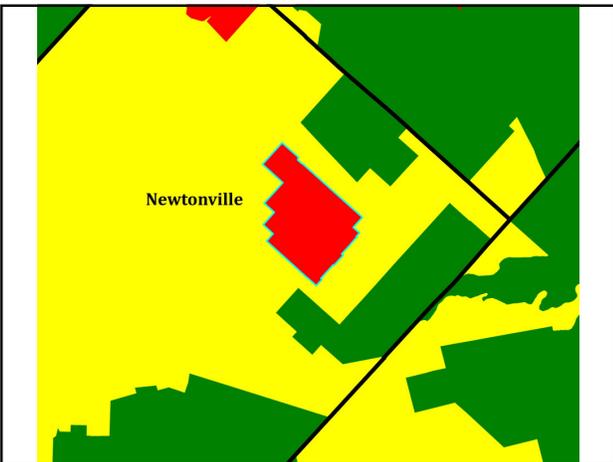
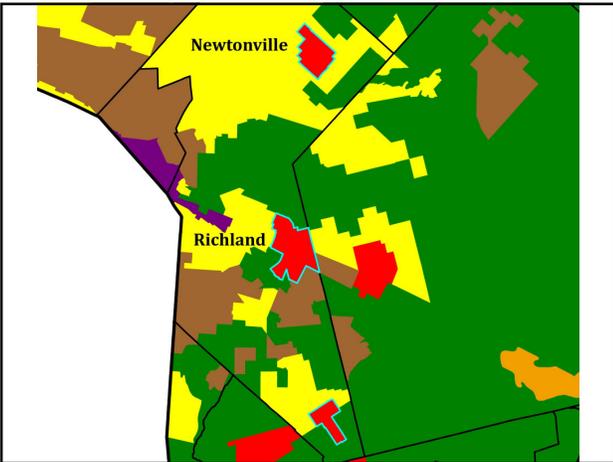
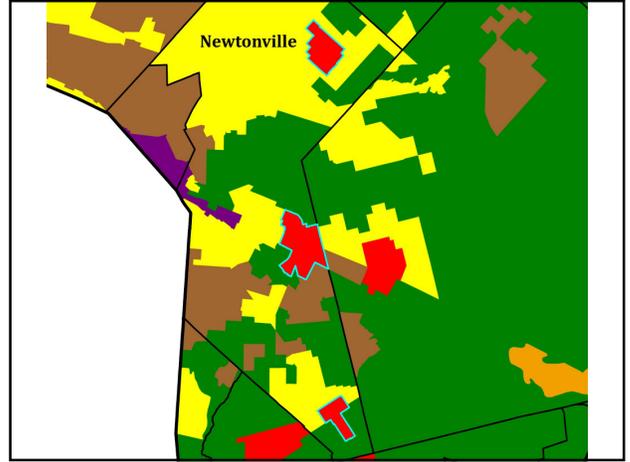
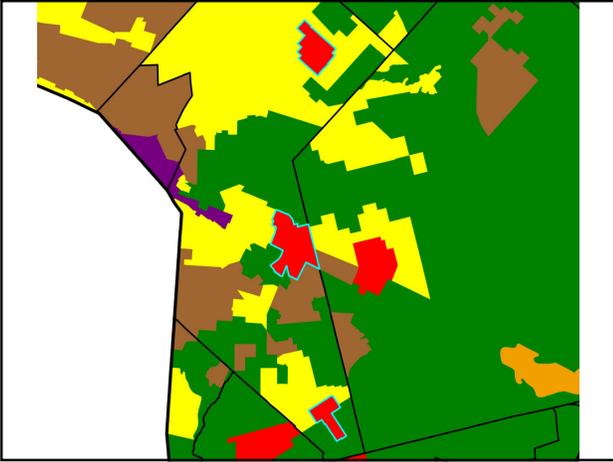
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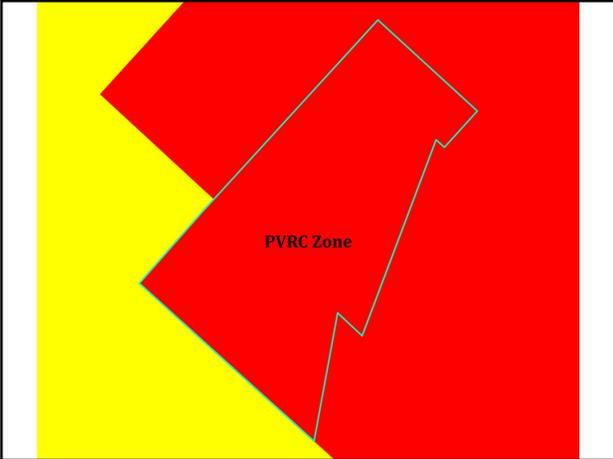
**Buena Vista Township
Ordinance 17-2014**

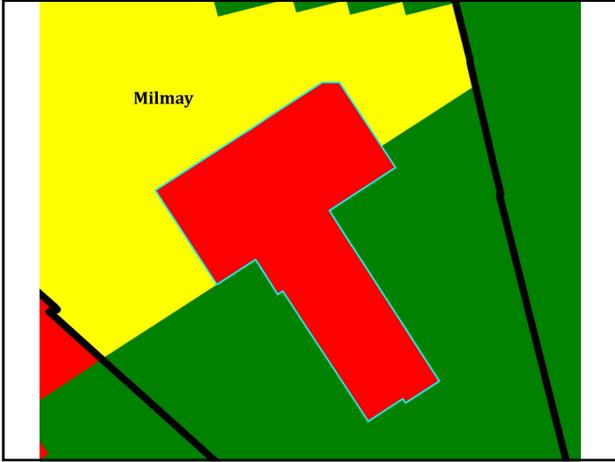


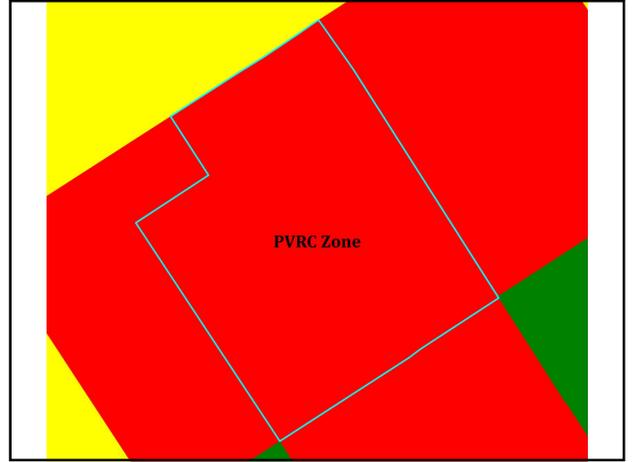
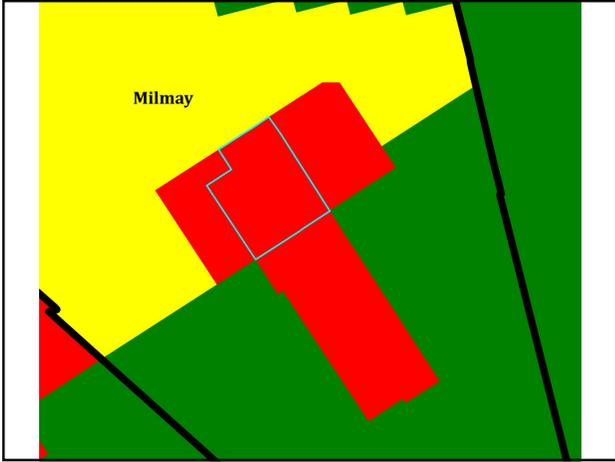
Policy & Implementation Committee Meeting
October 31, 2014



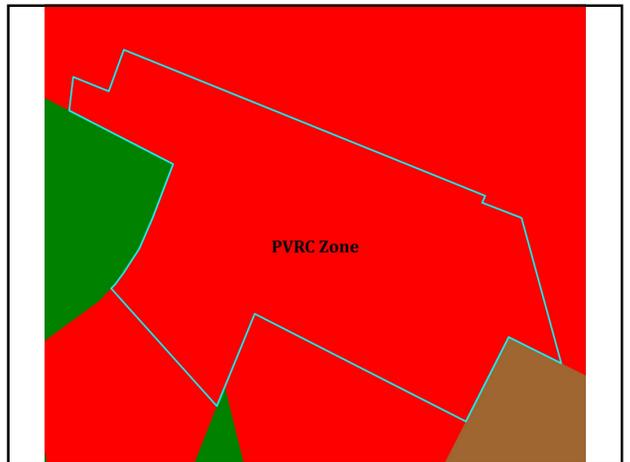
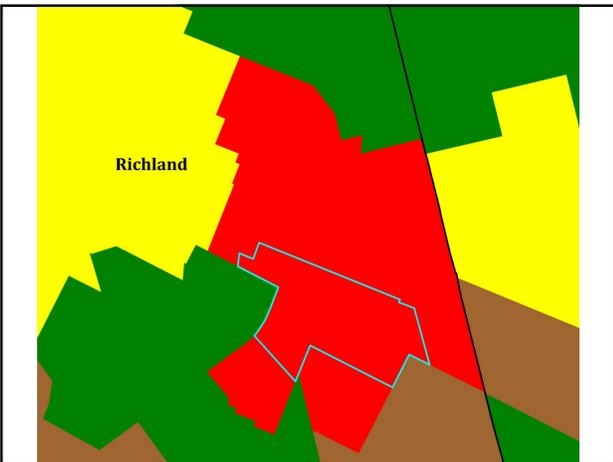
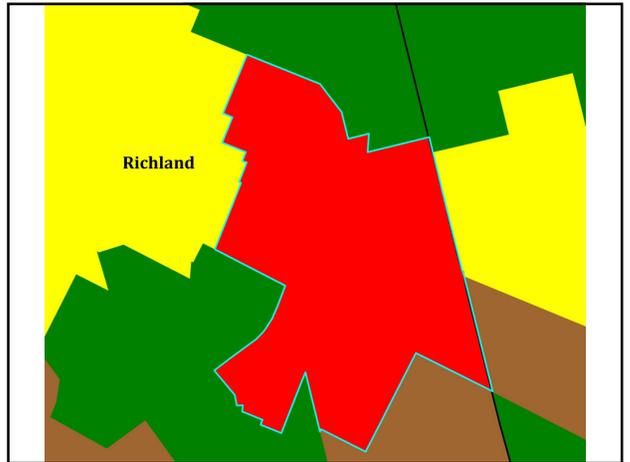


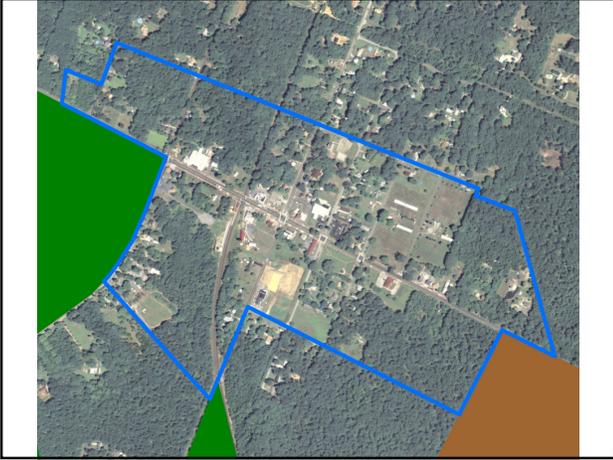


















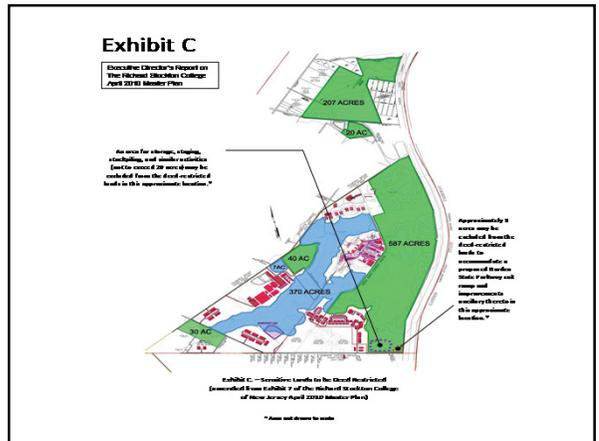
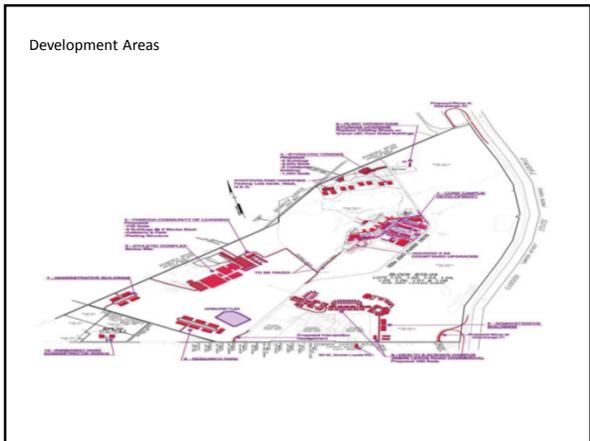




**Buena Vista Township
Ordinance 17-2014**



Policy & Implementation Committee Meeting
October 31, 2014





October 30, 2014

Mr. Mark S. Lohbauer, Chairman
Planning and Implementation Committee
New Jersey Pinelands Commission
Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey

CMP P&I Committee
October 31, 2014
Attachment C

Re: Comments on Draft Procedures for Public Comment

Dear Chairman Lohbauer and Committee Members:

I would like to take the opportunity to provide in writing the comments I made at the September 26, 2014 Planning and Implementation Committee meeting regarding the draft public comment procedures. My comments concern the proposed Public Notice Requirements, the Allowance of Public Comment On Staff Recommendations and OPRA Request Forms.

A. Public Notice Requirements.

1. The draft proposal would maintain the current 10-day period for notice of public hearings and maintain the existing 2-7-day period for the public to submit comments following hearings. The Notice periods of 10-days and 2-7 days are unreasonably short, and the 2-7 day period is subject to arbitrary enforcement. I recommend that the 30-day and 15-day periods of the Administrative Procedures Act (APA), N.J.S.A. 52:14B-1 be adopted.

It is not uncommon for these effective notice periods to be reduced substantially by the vagaries of mail delivery or by an intervening holiday which delays mail delivery. Reliance on notice by way of the Commission's website is also problematic. The Commission cannot reasonably assume that every citizen has a computer or that those who do will check it daily or even weekly. Yet, that would be required if a citizen had to respond to a 2-day, 7-day or even a 10-day notice?

2. The 2 to 7 day period for written comments following a public hearing is arbitrary. To my knowledge, there are no standards which establish when the period will be 2, 3, 4 days or longer. Instead, the period is established ad hoc. The uncertainty of this variable period of time is confusing and arbitrary. The lack of a standard is unacceptable. All parties would benefit from a known, predictable and reasonable timeframe. The credibility of the Commission suffers for lack of a clear and certain standard.

3. The 30-day and 15-day standards of the APA should be adopted. The APA provides for a 30-day public hearing notice and a 15-day written public comment period following a hearing. These are familiar, reasonable and effective time periods. They have satisfactorily served agencies and citizens of New Jersey for many years. Adoption of these standards by the Pinelands Commission would establish reasonable periods for public participation. In addition, it would conform Commission practices with the accepted state standard. This would address the criticisms from individuals and organizations that there is not adequate time to review applications, prepare for public hearing or provide written comments to the Commission.

B. Allow Public Comment on Staff Recommendations.

The Commission's current practice is to allow public comment to the staff, but to prohibit public comment on the subsequent comments made by the staff to the Commission. Staff comments bring new information to the public record. But, because the opportunity for public comment is now treated as closed, the public has no opportunity to comment on this new information. This practice also denies Commissioners the opportunity to evaluate the staff's comments in the crucible of a public forum.

A current example of this is the "Executive Director's Response" to the Buena Vista Township Sign Ordinance, 17-2014 (Findings of Fact, October 31, 2014, pp.5-7). The Response recommends that the ordinance be certified for various reasons. But, public comment is necessary to expose the specious reasoning of the Response. For example, the Response starts with a false premise:

To a greater or lesser extent, all illuminated signs, and for that matter, all illumination of any kind, constitutes a source of "light" or visual" pollution. As a result, all illuminated objects of any kind, detrimentally affect the viewsheds of the Pinelands Area" (Page 5, para. 1).

This statement does not stand up to reason. There are many illuminated objects that are not considered visual pollution. Jack-o-lanterns and Christmas trees are illuminated objects, but surely are not visual pollution. Another example is decorative street lighting. Many Pinelands villages, such as Medford, Vincentown, Marlton have spent hundreds of thousands of dollars on decorative street lights. They probably did so with the approval of the Pinelands Commission. None of these illuminated objects are "sources of visual pollution." They are illuminated objects which enhance public spaces in the Pinelands.

On the continuum between the obviously acceptable illumination by holiday lights and decorative streetlights and the obviously unacceptable illumination of a searchlight, there are a thousand points. The Response should have analyzed what is appropriate

in Buena Vista Township and determined where the EMC proposal fell on the continuum. That would have allowed it to make a rational recommendation to the Commission.

This was not done. Instead, the Response sticks with its premise that all light is bad and all light is the same. It states that:

However, there is no reason to believe that internally illuminated signs (like EMC signs) would produce a more detrimental effect on Pinelands viewsheds, or constitute a greater source of “light” or “visual” pollution than externally illuminated signs, which are, and always have been, permitted throughout the Pinelands area.

There are many reasons to believe that digital signs are different and would produce a more deleterious effect than a conventionally lit sign. The State regulations for outdoor advertising (N.J.A.C. 16:41C) already recognize this difference. They require a substantially greater spacing distance (3,000 feet, see N.J.A.C. 16:41C-8.8 (a)6.) between digital signs than is required between conventionally lit signs. On non-limited access highways, the spacing distance between digital signs is ten times the ordinary spacing distance required between conventionally lit signs. (N.J.A.C. 16:41C-8.7(c)2 and (d)1). On limited access highways, this spacing distance between digital signs is three times the distance required between conventionally lit billboards (N.J.A.C. 16:41C- 8.7(b)3).

Our everyday experience also tells us that there is every reason to believe that the quality of light from digital signs is different and more detrimental than the quality of light from conventional signs. Anyone who has driven on the New Jersey Turnpike at night has seen that the light from digital signs is far more piercing than conventionally lit signs. It easily cuts through fog and is visible from a great distance in ways that a conventional sign does not. And the video qualities of a digital sign is obviously and substantially different from a conventional static sign.

The Response also omits the recommendation on digital signs that it made in its 4th report on the implementation of the Pinelands CMP. At its October 10, 2014 presentation, staff recommended that the digital sign issue should be broadly examined. Thus, the Response on the Buena Vista ordinance is inconsistent with this recommendation and premature. The effects on rural character, especially in non-sewered villages, should be carefully studied.

For all of these reasons, the public needs to have the opportunity to respond to the entire public record, including the staff’s presentations. I understand that this was previously the practice. It should become the new practice. The prohibition of public comment on staff recommendations should be discontinued.

C. OPRA Request Form

A final issue regards the OPRA request form on the Commission's website and procedures for submission of requests. The form needs to be updated to conform with GRC decisions and case law. I would like to recommend several modifications. These are:

1. The OPRA form should be modified to allow requesters to submit requests by email and by fax. I have informally submitted requests by fax and they have been accepted. This option should be formalized. Email has also become the standard method for communication with state agencies and should be an appropriate option for submitting OPRA requests to the Commission.

2. The Open Public Records Act allows requestors to determine the method of delivery of a government record, whether by regular mail, fax or email. The form should be revised to include these additional options for requestors to receive government documents.

3. Because the Commission is updating its website, it would be beneficial for it to create a system that will permit a requestor to complete an OPRA form online and file it over the Internet. This ability would bring the Commission into conformance with other state agencies which now accept OPRA requests through the Internet.

In reference to Item 1, Page 2 in the Section titled "Important Information: Public Access to Government Records," I understand that the Commission can request that submitters use the Commission's form. However, *Renna v. County of Union* (App. Div. 2009) ruled that requestors can use their own form as long as it indicates that the submission is an OPRA request. Perhaps, the Commission's OPRA form can declare a preference for the agency form but also indicate the personal option.

Thank you for the opportunity to submit these comments.

Sincerely,

Fran Brooks
78 Moores Meadow Road
Tabernacle, NJ 08088
609-268-7007
brks627@gmail.com