

Disclaimer

These minutes reflect the actions taken by the Commission during its January 11, 2013 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 January 24, 2013.

PINELANDS COMMISSION MEETING¹

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

MINUTES

January 11, 2013

Commissioners Present

Candace Ashmun, Bill Brown, Joe DiBello, Sean Earlen, John Haas, Leslie Ficcaglia, Paul E. Galletta, Gary Quinn, Robert Jackson, Ed McGlinchey, Richard Prickett and Chairman Mark Lohbauer. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit Liaison Kerstin Sundstrom and Deputy Attorney General Kristen Heinzerling.

Commissioners Absent

Fran Witt, Ed Lloyd and D'Arcy Rohan Green.

Chairman Lohbauer called the meeting to order at 9:34 a.m.

DAG Heinzerling read the Open Public Meetings Act Statement.

Ms. Wittenberg called the roll and announced the presence of a quorum. (There were 12 Commissioners present.)

¹ Please note that all attachments are maintained with the original minutes, but are not attached to copies. For information about attachments, please contact the office.

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

Minutes

Chairman Lohbauer presented the December 14, 2012 Commission meeting minutes. Commissioner Galletta moved the adoption of the minutes. Commissioner Prickett seconded the motion.

The minutes of the December 14, 2012 meeting were adopted by a vote of 10 to 0, with Commissioner Brown and Commissioner Quinn abstaining.

Committee Chairs' Reports

Plan Review Committee

Commissioner Ashmun updated the Commission on action from the December 14, 2012 meeting and advised the Plan Review Committee would not meet on February 8, 2013.

The Committee approved the November 9, 2012 meeting minutes.

- Staff updated the Committee on its progress in drafting the Plan Review Report.
- Staff indicated that the first-round rule proposal, which will include items intended to increase staff efficiency as well as a necessary update to the alternate design septic system pilot program requirements, is being drafted.
- The Committee and staff reviewed the list of revised and new development exemptions to be included as efficiency items in the first-round rule proposal.
- The Committee and staff discussed several of the topics raised by public commenters. Although many good ideas and suggestions were provided, the Committee will select the most critical concerns for the staff to address. Staff will then develop a second-round, more substantive rule proposals regarding these critical items. PDC enhancements, use of Kirkwood-Cohansey Aquifer Study data and Black Run Watershed protection measures have already been identified as the first few critical topics.

The next steps:

- Staff will provide the first few drafted Plan Review Report chapters to Committee members once it is about halfway complete.
- Staff will provide information to the Committee regarding the data being requested from the MIS office for the Plan Review Report.
- Committee members will continue to consider which topics should be addressed in the second, more substantive rule proposal package.
- The Committee requested that a summary of the first-round rule proposal be provided to the full Commission for its review and support.

Policy and Implementation Committee

Commissioner Ficcaglia updated the Commission on action from the January 4, 2013 Policy and Implementation Committee meeting:

The Committee adopted the minutes of the November 30, 2012 meeting.

The Committee recommended that the Commission take action on the ordinance and master plan amendments submitted by the following municipalities as listed on the agenda:

- Certification of documents submitted by Barnegat and Egg Harbor Townships and Waterford Township's December 2010 Master Plan and Ordinance 2012-15.
- Conditional certification of documents submitted by Maurice River Township and Waterford Township Ordinances 2012-13 and 2012-14.

Executive Director's Reports

Ms. Nancy Wittenberg updated the Commission on the following:

- The efficiency study is progressing and LEAN measures are being implemented in other departments than just Regulatory Programs.
- Staff continues to spend a fair amount of time working on Plan Review.
- A new staff member Joe Sosik, has joined the Planning office. The Commission was also introduced to new Governor's Authority Unit liaison, Kerstin Sundstrom.
- Ms. Wittenberg referenced the Plan Review First Round Rule Proposal Summary (included in this month's Commission packet). Ms. Wittenberg reviewed each of the 32 items listed in the document, which the staff and Committee have determined as the easier, immediate action items.

Mr. Horner updated the Commission on the following:

- The Commission has received a request from the Borough of Lakehurst to store storm- related debris at its public works yard. The debris will be from the Borough only and will be stored on a paved area.
- Staff met with representatives from Owens Corning on their groundwater contamination cleanup efforts. Owens Corning operated an insulation manufacturing plant in Berlin Borough. Operations at this plant have ceased. Staff will provide comments to the DEP regarding the Commission's standards and how they relate to the cleanup activity.

Public Development Projects and Other Permit Matters

Please note that during the meeting Commissioner Ashmun suggested separating out the Shamong Public Development application. It was agreed to separate the Public Development applications into two resolutions rather than one as originally presented to the Commission.

Commissioner Galletta moved the adoption of a Resolution Approving With Conditions Applications for Public Development (Application Numbers 1985-0104.014, 1991-

0822.002 & 2012-0123.001) (See Resolution # PC4-13-01). Commissioner Jackson seconded the motion.

The Commission adopted the resolution by a vote of 12 to 0.

Commissioner Ficcaglia moved the adoption of a Resolution Approving With Conditions an Application for a Public Development (Application Number 1987-0959.004) (See Resolution # PC4-13-02). Commissioner Earlen seconded the motion.

Commissioner McGlinchey said he did not support this application because Shamong Township developed the parcel in question without application to the Commission. Additionally, he said, the development that took place, and the proposed development, is not accessory to the two residential developments.

Mr. Horner said that given the circumstances of the application, Commission staff did its best to make a recommendation to the Commission that addressed all concerns.

Mr. Horner provided a brief history of the two residential developments that were both approved by municipal resolutions in the early 1990's (see attached aerial). The Commission issued letters of no further review on each municipal application. He said that each resolution alludes to a recreation area, noting that the Planning Board would subsequently determine the details of what would be developed.

Commissioner Galletta agreed with Commissioner McGlinchey's frustration but was in support of the recreation fields and staff's recommendation.

Commissioner Prickett asked why the Commission would not require that eight acres currently developed for recreational use, in addition to the 19 acres (as currently required as a recommended condition of the approval), be deed restricted.

Mr. Horner said the eight acres will encompass the existing and proposed recreational uses. He also said the Commission could require that a deed restriction be imposed on the eight acres to ensure that the concerned area is only utilized for recreation.

The Commission agreed to add a whereas clause to the resolution, requiring a deed restriction to be imposed on the active eight-acre recreation area.

The Commission adopted the resolution by a vote of 11 to 1, with Commissioner McGlinchey voting no.

Resolutions Relating to Municipal Ordinances

Commissioner McGlinchey moved the adoption of a Resolution Issuing an Order to Certify Barnegat Township Resolution P-2011-9, Adopting the Township's April 2011 Master Plan, and Ordinances 2012-05, 2012-06, 2012-07, 2012-09, 2012-10 and 2012-22,

Amending Chapter 55 (Land Use) of the Code of Barnegat Township (See Resolution # PC4-13-03). Commissioner Earlen seconded the motion

Ms. Susan Grogan said that Barnegat Township sought and was granted Plan Endorsement from the State Planning Commission. As a result, the Township has submitted a new Master Plan and several ordinances for a portion of Barnegat that is in the Pinelands National Reserve (outside of the state-designated Pinelands Area). She described the process for areas located within the Pinelands National Reserve but outside the state-designated Pinelands Area. She said there is coordination between DEP, the State Planning Commission and the Pinelands Commission to ensure any changes being made to maps are consistent with each entity. Because these involve management area boundary changes, only the Commission, not the staff, can approve these changes. This is done through a CMP amendment or through the conformance process. Barnegat has chosen to use the conformance process and requested the Commission to certify the Township's zoning plan for areas in the Pinelands National Reserve.

Ms. Grogan said the second part of the ordinance (2012-22) deals with Ocean Acres, a pre-existing subdivision in the Regional Growth Area. Ms. Grogan said in 2004 many applications were coming into the Commission, and Ordinance 2004-23 established a specific plan to preserve the more environmentally sensitive areas and develop on other areas where appropriate. She said that Barnegat Township Ordinance 2012-12 amends the Township Zoning Map by rezoning about 38 vacant acres (135 lots) from the RC (Residential Conservation) Zone to the RH (Residential High) Zone. She said this rezoning stems from the 2004 agreement the Commission entered into with the Township and developer, Mark Madison, LLC.

Commissioner Prickett asked for details on the thoroughness of the threatened and endangered species study (which was a condition of the three party agreement) performed in the overlay area that is now being rezoned.

Mr. Horner said the survey consisted of a two seasons over two years, for a total of four seasons. He said an extensive amount of fence and trapping was installed, well in excess of what would normally be required.

The Commission adopted the resolution by a vote of 12 to 0.

Commissioner Prickett requested some follow up information on best practices on conducting threatened and endangered snake surveys.

Mr. Horner said he would report back to the Commission with that information.

Commissioner Galletta moved the adoption of a Resolution Issuing an Order to Certify the 2012 Amendment to the Housing Element and Fair Share Plan of Egg Harbor Township and Ordinance 37-2012, Amending Chapter 225 (Zoning) of the Code of Egg Harbor Township (See Resolution # PC4-13-04). Commissioner McGlinchey seconded the motion.

Ms. Grogan said this ordinance and Master Plan amendment from Egg Harbor Township is in response to a builder's remedy lawsuit. She said that staff had worked with the Township and Mr. Phil Caton, the court-appointed Master, for a collaborative solution. She said the ordinance does build in a mandatory requirement for the use of PDC's in the new affordable housing zone.

The Commission adopted the resolution by a vote of 12 to 0.

Commissioner Prickett moved the adoption of a Resolution Issuing an Order to Conditionally Certify Resolution 2012-09, Adopting the August 2012 Master Plan Reexamination Report and Update, and Ordinance 620, Amending the Land Development Regulations Ordinance of Maurice River Township (See Resolution # PC4-13-05). Commissioner Ficaglia seconded the motion.

Ms. Grogan said this is the Township's response to the Commission's forestry, clustering and wetlands management amendments to the CMP. She said that the Township has made some changes to the clustering rules, specifically limiting the calculation of bonus density to uplands only. Therefore, the recommendation is for conditional certification.

The Commission adopted the resolution by a vote of 12 to 0.

Commissioner McGlinchey moved the adoption Issuing an Order to Certify Waterford Township's December 2010 Master Plan and Ordinance 2012-15, Amending Chapter 176 (Land Use, Development and Zoning) of the codified Land Use Ordinances of Waterford Township, and to Conditionally Certify Ordinance 2012-13, Amending Chapter 176 (Land Use, Development and Zoning) of the codified Land Use Ordinances of Waterford Township and Ordinance 2012-14, Amending the Zoning Map for Waterford Township(See Resolution # PC4-13-06). Commissioner Jackson seconded the motion.

Ms. Grogan said that Ordinance 2012-15 is Waterford's response to the forestry, clustering and wetlands management amendments to the CMP. Ordinance 2012-13 adopts standards for solar energy facilities. However, staff has asked the Township to clarify some items, thus staff is only recommending a conditional certification. Ordinance 2012-14 deals with changes to the Zoning Map, mostly recognizing existing public ownership. The map also reflects some management area changes, specifically rezoning the parcel of land that houses the Archway School from a Rural Development Area to a Regional Growth Area. She said the Regional Growth Area will be slightly smaller, as a result of all the management area changes.

Commissioner Galletta asked about the total net loss for the Region Growth Area.

Ms. Grogan said approximately 70 acres.

Commissioner Gallatta asked about the PDC loss.

Ms. Grogan said there will be a slight loss in opportunities for PDC use.

Commissioner Galletta was in favor of the resolution but not the loss of PDC's.

The Commission adopted the resolution by a vote of 12 to 0.

Public Comment on Agenda Items and Pending Public Development Applications

Theresa Lettman of the Pinelands Preservation Alliance provided comments on the conservation easement in the Ocean Acres section of Barnegat Township (see attached comments).

Carleton Montgomery of the Pinelands Preservation Alliance commented on the three-party agreement the Commission entered into with Barnegat Township and the developer. Mr. Montgomery said the agreement was done in secret, with no public comment and the contract committed the Commission to do specific things in the future if the developer could come up with negative T&E survey results. He said it was very unwise of the Commission to enter into such a contract. He said the Commission is a good policy-setting agency and regulator and that is what the Commission should stick to. He hopes in the future the Commission will not enter in such agreements, and he hopes that Commissioners will not approve things they have not seen before.

Other Resolutions

There were no other resolutions to vote on this month.

Ordinances Not Requiring Commission Action

There were no ordinances of no substantial issue to report on.

Public Comment on Any Matter Relevant to the Commission's Statutory Responsibilities

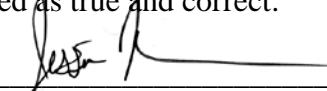
Fred Akers of the Great Egg Harbor River Council talked about implications of the water quality MOU which the Commission entered into with DEP. Mr. Akers passed out a Commission press release from December 11, 2009 (see attached). The release announced the Commission's agreement with CCMUA to stop a source of pollution. He asked why the Commission would provide an opportunity for 47 Villages to have sewage treatment plants when they are a source of pollution.

Jay Mounier, Franklin Township provided comments on Pinelands Development Credits. He said that although the Waterford Township report discusses the loss of thirty rights with the elimination of the Regional Growth Area, he agrees with the report. He wanted to make a distinction between the sale of PDC's and the obligation to use PDC's, and that today in the current PDC program are two very different things. He also described some historical research that he had done on PDC usage, in Ocean County, where very few PDC's have ever been used. Changes to the PDC program remain necessary.

Adjournment

Commissioner McGlinchey moved to adjourn the meeting. Commissioner Jackson seconded the motion. The Commission agreed to adjourn at 11:30 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: __January 22, 2013__