

Disclaimer

These minutes reflect the actions taken by the Commission during its January 8, 2021 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 15, 2021.

PINELANDS COMMISSION MEETING

MINUTES

January 8, 2021

The January 8, 2021 Pinelands Commission meeting was conducted remotely. All participants were present via Zoom conference and the meeting was livestreamed through YouTube: <https://www.youtube.com/watch?v=hIO74j0rBHc>

Commissioners Participating in the Meeting

Alan W. Avery Jr., Daniel Christy, Shannon Higginbotham, Jordan P. Howell, Jane Jannarone, Ed Lloyd, Mark Lohbauer, William Pikolycky and Chairman Richard Prickett. Also participating were Executive Director Nancy Wittenberg and Deputy Attorney General (DAG) Kristina Miles and Governor's Authorities Unit representative Joy-Michelle Johnson and Rudy Rodas.

Commissioners Absent

Jerome H. Irick, Gary Quinn and D'Arcy Rohan Green.

Call to Order

Chairman Prickett called the meeting to order at 9:33 a.m.

DAG Miles read the Open Public Meetings Act Statement (OPMA).

DAG Miles swore-in Burlington County's new representative, Shannon Higginbotham.

Chairman Prickett welcomed Commissioner Higginbotham.

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

The Commission pledged allegiance to the Flag.

Minutes

Chairman Prickett presented the minutes from the Commission's December 11, 2020 meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Avery seconded the motion.

Chairman Prickett noted that there was a missing word on page 87. Jessica Noble advised that she would correct the December 11, 2020 minutes.

The minutes from the December 11, 2020 Commission meeting were adopted by a vote of 9 to 0.

Committee Reports

There were no Committee meetings held in December. Commissioners discussed scheduling conflicts related to the Land Use, Climate Impacts and Sustainability Committee.

Executive Director's Report

ED Wittenberg said the Commission offices lost power during a storm in late December. The storm also caused some trees to fall down, one of which caused minor damage to a gutter. The tree will be removed. She also reported that one staff member tested positive for Covid-19. The staff member quarantined and the buildings were thoroughly cleaned, since the staff member had been in the office along with other staff. Employees who were in the building on that day were notified.

Chuck Horner, Director of Regulatory Programs, provided information on the following regulatory matters:

- Staff members have been working with Galloway Township officials regarding a violation matter. Development occurred in the Tilton Road area of the township without application to the Commission or receiving municipal permits. The matter will be in municipal court on January 14th.
- Staff continues to spend time on an application for a communications tower in Chatsworth. A public hearing has been scheduled for the application because it has not been demonstrated that the proposed tower qualifies as an accessory use to an existing EMS/ Fire Company. A communications tower is only permitted if it is determined to be an accessory use or if the tower is sited as part of the Comprehensive Management Plan's (CMP) cellular plan rules.
- Staff worked with an applicant to resolve an issue regarding language in the threatened and endangered (T&E) deed restriction at the Legler Landfill solar development site in Jackson Township. The applicant provided a draft T&E deed

restriction to the Commission staff that proposed a utility company easement through a portion of the T&E deed restricted area. The Commission staff advised the applicant that the proposed utility company easement was not consistent with the Commission's regulations. The applicant and staff worked together to come up with a revised T&E deed restriction. Construction of the solar facility is expected to begin shortly.

- Staff participated in a virtual meeting to resolve a zoning issue in Egg Harbor Township. A residential development application received approvals many years ago, lots were created and over time the zoning changed on the created lots.

Commissioner Howell asked Director Horner to provide more details about the zoning matter in Egg Harbor Township.

Director Horner said the Municipal Land Use Law (MLUL) provides development approvals with protection from zoning changes for a certain number of years. He said in this instance a residential development project was approved in the early 2000's, many years passed and the zoning protection under the MLUL expired. The residential development no longer meets current density and lot size requirements. He said in most instances staff find a resolution to the matter, sometimes requiring the applicant to purchase Pinelands Development Credits (PDCs).

Stacey Roth, Chief of Legal and Legislative Affairs, said the MLUL established a very specific time period for protection of local approvals. She said zoning changes aren't a problem for the developers who continue to work on their projects. She said from a legal perspective a developer can argue vested rights, because they have spent a large amount of money on the project. It becomes an equitable estoppel argument against the state and it is very case-specific.

Susan R. Grogan, Director of Planning, said when working with a municipality on zoning changes related to zoning boundaries and lot size, staff tries to identify projects that may have old approvals. Staff request municipalities do their own research regarding old approvals in order for them to be aware of potential situations like Director Horner just described.

Director Grogan provided an update on the following items:

- Notification for possible designation of the Pine Barrens Byway as a National Scenic Byway has been delayed.
- The CMP amendments for the septic pilot program took effect on December 21, 2020. The next step is to prepare model ordinances for Pinelands municipalities. Municipalities will have one year to adopt the ordinance.
- Staff continues to work on draft stormwater management policies. The New Jersey Department of Environmental Protection's (NJDEP) stormwater regulations take effect in early March. The NJDEP recently emailed all municipalities in New Jersey a model ordinance that caused confusion for Pinelands towns. Staff will be

- advising Pinelands Area municipalities to disregard NJDEP's email as it does not apply to them.
- Staff met virtually with the New Jersey Board of Public Utilities (BPU) to discuss BPU's community solar pilot program which is currently in round two. Staff shared the Commission's application process and the CMP's standards for solar facilities. The BPU has plans to incorporate the community solar pilot program as permanent rules.
 - The Pinelands Development Credit Bank remains busy processing sales and redemptions. A recent sale was for \$15,000 per right.

Commissioner Howell asked if the PDC price increase could be attributed to anything in particular.

Director Grogan said she believes the price has increased because there is a higher demand for PDCs right now. She said development has picked up over the last couple of years and it has helped the price become more competitive.

Commissioner Avery asked if a community solar project could proceed without subsidies from the BPU.

Director Grogan said she asked that question during the meeting with BPU and confirmed that community solar projects not selected by BPU as part of its pilot program can still be constructed. They would not be eligible for subsidies or incentives from BPU.

Stacey Roth said the Commission was notified that Atlantic County completed its acquisition of a property for the South Jersey Transportation Authority's new Grassland Conservation Management Area (GCMA). The acquisition was required under the 2019 First Amendment To The February 26, 2004 Memorandum Of Agreement (MOA) Between The New Jersey Pinelands Commission And The South Jersey Transportation Authority.

Paul Leakan, Communications Officer, provided information on the messaging campaign created to celebrate the CMP's 40th Anniversary. The CMP turns 40 on January 14th, and the Commission will celebrate the milestone by sharing 10 newly filmed video interviews with former Commissioners and staff members who created and/or adopted the plan. As part of the celebration and messaging campaign, the Commission will also create and share dozens of posts that chart the history, implementation and success of the plan on the Commission's Facebook page and Instagram site during the next few months. Mr. Leakan also said the Commission is once again hosting free, educational webinars. Lastly, he said the Commission just shared a link to a newly created Pine Barrens Byway website that was created by a consultant for the New Jersey Department of Transportation.

Commissioner Avery said it's a shame that some very instrumental people who were involved in the success of the CMP are no longer with us.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of recreational improvements at West End Park in Pemberton Township.

Commissioner Lohbauer made a motion Approving With Conditions an Application for Public Development (Application Number 1982-3514.004) (See Resolution # PC4-21-01). Commissioner Jannarone seconded the motion.

Director Horner said staff and the township worked for some time to come up with the approach outlined in the public development report for the construction of several recreation fields. He said the site is a fallow farm field but under the CMP, a portion is considered a wetland. Chairman Prickett asked what percentage of wetlands would be disturbed. Director Horner said the pilings for the boardwalk will be the only disturbance to wetlands and it is expected to be about 1,100 square feet.

Commissioner Lloyd said he was concerned about the possibility of heavy construction equipment disturbing the wetlands.

Director Horner said he didn't think there would be any heavy machinery but staff would raise the concern with Pemberton Township officials.

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

Chairman Prickett presented a resolution recommending approval of a Waiver of Strict Compliance for the development of a single family dwelling.

Commissioner Lohbauer made a motion Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 1989-0219.001) (See Resolution # PC4-21-02). Commissioner Lloyd seconded the motion.

Director Horner said this application is for a Waiver of Strict Compliance that was approved in 2007. He noted that Waivers are only valid for five years. He said the Waiver is for the minimum depth to the season high water table for a septic system and the minimum buffer to wetlands. He noted that an alternate design septic system would be required, just as it was in the 2007 Waiver.

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 said there were no Public Development or Waiver of Strict Compliance applications on the agenda.

Ordinances Not Requiring Commission Action

Chairman Prickett read the list of ordinances not requiring Commission action.

- Berkeley Township Ordinances 19-44-OAB & 20-37-OAB
- Southampton Township Ordinances 2020-08, 2020-09 & 2020-11
- Wrightstown Borough Ordinance 2020-08

No questions were raised.

Presentation

Chief Scientist John Bunnell outlined the importance of studying snake species in the Pinelands. He reviewed each of the five snake research projects the Commission's science office is working on and described some of the preliminary results. Some of the research is accomplished through radio telemetry, which involves surgically implanting radio transmitters into snakes and using a receiver and antenna to locate the snakes on a regular basis. The research focuses primarily on corn snakes, kingsnakes, and pine snakes (for further details see attached the presentation slides). The entire presentation can be viewed on YouTube : www.youtube.com/watch?v=hIO74j0rBHc

General Public Comment

While waiting for public comment, Commissioner Lohbauer invited Commissioner Higginbotham to join the LUCIS Committee.

Rhyan Grech, of the Pinelands Preservation Alliance (PPA), said she looks forward to the videos and postings that the Commission staff will share for the 40th Anniversary of the CMP. She said she hopes the Commission will consider protecting the Black Run headwaters and focus on stopping Off-Road Vehicle (ORV) destruction in 2021. She said it's important for the Commission to work with the NJDEP and adopt a map of roads.

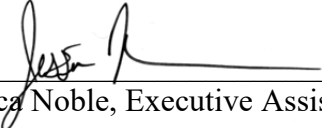
Commissioner Lohbauer said he would be sharing a YouTube video of Jeeps causing damage in the Pinelands.

Mr. Bunnell said he recently spoke with NJDEP representatives and they plan to resume blocking individual sites that need protection from ORVs.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Jannarone seconded the motion. The Commission agreed to adjourn at 11:34 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: January 15, 2021