

Disclaimer

These minutes reflect the actions taken by the Commission during its January 10, 2014 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 February 3, 2014.

PINELANDS COMMISSION MEETING¹

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

MINUTES

January 10, 2014

Commissioners Present

Candace Ashmun (participated by telephone), Alan W. Avery, Jr., Bill Brown, Joe DiBello, Sean Earlen, Leslie Ficcaglia (participated by telephone), Paul E. Galletta, D'Arcy Rohan Green, Robert Jackson, Ed McGlinchey, Richard Prickett, Gary Quinn, Fran Witt and Chairman Mark Lohbauer. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit Liaison Amy Herbold and Deputy Attorneys General (DAGs) Helene Chudzik and John Renella.

Commissioners Absent

Ed Lloyd

Chairman Lohbauer called the meeting to order at 10:04 a.m.

DAG Chudzik read the Open Public Meetings Act Statement.

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.

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

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

Committee Chairs' Reports

Policy & Implementation Committee

Chairman Lohbauer updated the Commission on action from the January 6, 2014 Policy and Implementation (P&I) Committee meeting:

The Committee adopted the minutes from the November 22, 2013 and December 4, 2013 meetings.

The Committee granted a 30-day extension to the Trust for Public Land to acquire the Clayton property in Jackson and Manchester Townships, a project funded through the Pinelands Conservation Fund.

The Committee advanced the proposed Memorandum of Agreement (MOA) with the Board of Public Utilities (BPU) to the full Commission without a recommendation.

Personnel & Budget Committee

Chairman Lohbauer said the Personnel and Budget Committee will meet on February 4, 2014.

Plan Review Committee

Chairman Lohbauer said the Plan Review Committee would meet on February 14, 2014 following the Commission meeting.

Minutes

Chairman Lohbauer presented the December 13, 2013 Commission meeting minutes. Commissioner Jackson moved the adoption of the minutes. Commissioner Prickett seconded the motion.

The minutes of the December 13, 2013 Commission meeting were adopted by a vote of 12 to 0, with Commissioner Quinn and Commissioner Rohan Green abstaining.

Executive Director's Reports

Mr. Charles Horner updated the Commission on the following:

- He said the Commission would be working with municipal officials to resolve a clearing violation in Barnegat Township. The property owner received an "ineligible right to farm" determination from the Ocean County Agricultural Development Board.
- Staff met with a large mining operation that owns over 7,000 acres in the southern portion of the Pinelands to discuss and develop a habitat conservation plan.

- An issue has come to the Commission's attention regarding agricultural fields in Camden and Atlantic County being utilized as recreation fields. Staff is working with the different parties involved to resolve this matter.

Other

Chairman Lohbauer said he would like to discuss the matter of recusal. He said Commissioner Lloyd was asked to recuse himself from the proposed natural gas pipeline matter and he addressed the matter briefly at the December Commission meeting. Chairman Lohbauer said Commissioner Lloyd was unable to attend today's meeting and he requested that a statement be read into the record. Chairman Lohbauer then read the statement, which is attached to these minutes.

Chairman Lohbauer said a member of the public raised concerns about conflicts of interest for two other Commissioners with regard to the pipeline MOA. He said after consultation with the Attorney General's office and the Commission's Ethics Liason Officer (ELO), no conflict was found.

Chairman Lohbauer invited each of these Commissioners to make a statement.

Commissioner Rohan Green said that she is aware of the allegation that someone has suggested she needs to recuse herself because of her investments. She said after consulting with both the Commission ELO and the Attorney General's Office, she has been advised that there is no conflict of interest and there is no need for recusal.

Commissioner Brown said after seeking advice from both the Attorney General's Office and the Commission ELO, no reason for recusal has been determined.

Public Development Projects and Other Permit Matters

Commissioner Galletta moved the adoption of a Resolution Approving With Conditions Applications for Public Development (Application Numbers 1981-1833.070, 1983-6262.006, 1986-0119.021, 2010-0047.004 & 2013-0032.001)(See Resolution # PC4-14-01). Commissioner Earlen seconded the motion.

The Commission adopted the resolution by a vote of 14 to 0.

Commissioner Prickett said he lives in Pemberton and he did not want there to be an appearance issue. He left the room for the discussion and vote on the Public Development Resolution.

Commissioner Ficcaglia moved the adoption of a Resolution Approving With Conditions Applications for Public Development (Application Numbers 2011-0157.001 & 2013-0154.001) (See Resolution # PC4-14-02). Commissioner Jackson seconded the motion.

The Commission adopted the resolution by a vote of 13 to 0, with Commissioner Prickett not participating in the vote.

Commissioner Prickett rejoined the meeting.

Mr. Horner said the resolution to approve a Waiver of Strict Compliance will not be acted on today at the request of the applicant (Resolution Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 2011-0140.001)).

Memorandum of Agreement

Commissioner McGlinchey moved the adoption of a Resolution Authorizing the Executive Director to Enter into a Memorandum of Agreement with the Board of Public Utilities Regarding Construction of Approximately 15 miles of a 22-Mile, 24-Inch Natural Gas Pipeline in the State Designated Pinelands Area. Commissioner Galletta seconded the motion.

Chairman Lohbauer asked his fellow Commissioners if they had any comments.

Commissioner Prickett read a statement, which is attached to these minutes.

Commissioner Galletta said that a few years ago he experienced a prolonged power outage at his blueberry farm. Based on this he said he doesn't feel the grid is strong enough, thus we need to keep the BL England plant running. He has witnessed BL England polluting the air for years. He said he agrees with the equivalent protection component in the MOA to preserve land and closed by stating that the pipeline will be going under an existing road shoulder thus there will be a minimal impact to the Forest Area.

Commissioner Earlen said he feels using an MOA to run gas infrastructure through the Forest Area is an appropriate mechanism. He said he supports the project because no wetlands or habitat will be disturbed. He also said future development will not be encouraged because of the gas pipeline and believes that the amount of acres to be preserved in the southern forest is an adequate equivalent protection.

Commissioner Jackson raised a number of issues regarding the MOA that made him feel uncomfortable, starting with that fact that South Jersey Gas is a business rather than a government entity. He was not sure collaborating with a business was something that should be done. He said that South Jersey Gas should have come to the Commission first, not last. He said the creation of jobs and a strong grid are not in our purview. He said he will be making his decision based on the rules and his personal integrity.

Commissioner Brown stated that he lives within 1,800 feet of the BL England Plant and has suffered for 40 years with the pollution. He said the gas line will reduce the pollution by at least 50 %.

Commissioner DiBello said that he represents the federal perspective on the Commission.

He said this application is very complex and controversial. He said the National Park Service has concerns with the process, the use of the MOA, and whether the equivalent level of protection is sufficient. (Please see the attached formal statement which was submitted by Commissioner DiBello after the meeting).

Commissioner Avery said he was concerned by comments that said the MOA was not the correct measure to process the proposal. He said when he was reviewing the South Jersey Gas file he found a memo from the previous Executive Director regarding MOA's. He said that, in the past, there have been four similar cases in which the Commission has entered into a MOA with a public entity where the work was performed by a private entity. He said he does not believe this is a unique path.

Commissioner Quinn said he feels there are more positives with this project than negatives. He said deviations to plans do happen. He said in the coming years we could be faced with a shortage of electricity with the closure of Oyster Creek. He commended the Commission staff for all the work that has gone into this project. He said he has read all the material that has been given to him and because the proposal is being developed in the road shoulder and there are no negative impacts to habitat, he supports this project.

Commissioner McGlinchey compared MOA's to a use variance. He said as long as MOA's don't become the rule and they remain exception to the rule, he is not opposed.

Chairman Lohabuer said he is very proud of this Commission, in the past couple of months we have showed patience as we listened to hours of public comment, he commended staff and he thanked the public and read a statement that is attached to these minutes.

Chairman Lohbauer read a statement from Commissioner Ficcgalia that is attached to these minutes.

Chairman Lohabuer requested the roll be called to vote on this matter.

Ms. Jessica Noble started with Commissioner Ashmun.

Commissioner Ashmun read a statement which is attached to these minutes statement.

Commissioner Ashmun: No
Commissioner Avery: Yes
Commissioner Brown: Yes
Commissioner DiBello: Nay
Commissioner Earlen: Yes
Commissioner Ficcgalia: No
Commissioner Galletta: Yes
Commissioner Jackson: No
Commissioner McGlinchey: Yes
Commissioner Prickett: No
Commissioner Quinn: Yes

Commissioner Rohan Green said since the day Governor Christie appointed her to this Commission, not a day goes by that she doesn't feel grateful for the honorable privilege. Commissioner Rohan Green said Governor Christie often uses the word principles, as did Commissioner Ashmun today. She said her principles guide her and are her compass. "I feel duty bound to honor the sacred mission of the Pinelands Commission. I do not support this MOA and I vote No.," she said.

Commissioner Witt: Yes

Chairman Lohbauer: No

Chairman Lohbauer said the resolution did not carry.

The motion for the Resolution Authorizing the Executive Director to Enter into a Memorandum of Agreement with the Board of Public Utilities Regarding Construction of Approximately 15 miles of a 22-Mile, 24-Inch Natural Gas Pipeline in the State Designated Pinelands Area failed (See Resolution # PC4-14-03).

Public Comment on Agenda Items and Pending Public Development Applications

No public comment was offered.

Ordinances Not Requiring Commission Action

Chairman Lohbauer asked if any Commissioner had questions regarding the ordinance not requiring Commission action:

- Waterford Township Ordinance 2013-13

No members of the Commission had questions.

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

Michael Sheridan thanked Commissioners for dealing with the public the past couple of months and upholding the CMP.

Jeff Tittel said today was victory for the Pinelands Commission and the democratic process and emphasized the importance of independent Commissions.

Wilson Klein questioned why the meetings are held during the day.

Chairman Lohbauer said that this year we will have two night meetings.

Fred Akers said the public development application approved today forgave Buena Vista Township for some of its violations.

Chris Jage, New Jersey Conservation Foundation, said he is pleased that many of the votes made were based on purview.

Tom Mahedy said he was disappointed with the recusal of Commissioner Ed Lloyd. He thanked the Commissioners who voted against the BPU MOA.

Commissioner Ashmun signed off.

Arnold Fishman said his faith in government was restored today.

Temma Fishman thanked Commissioners for upholding the CMP.

Emile DiVito, New Jersey Conservation Foundation, said he was pleased with today's outcome. He raised concerns about future MOA's and hopes that they are reserved for extreme instances.

Margo Pellegrino apologized for her past bad behavior and said her faith has been restored after today's vote.

Bridget Reilly thanked Commissioners for all the work that has been done to come to the conclusion on the MOA decision.

Ted Gordon commended Commissioners for their hard work. He said the vote today was not about the pipeline but rather whether the MOA is an appropriate outlet for the project.

David Pringle, NJ Environmental Federation, thanked Commissioners and said this is what a democracy looks like.

Glenn Klotz said today was a victory for democracy and thanked the Commissioners, the public and the four Governors.

Bill Wolfe applauded Commissioners for honoring the integrity of the CMP. He also raised concerns about the project coming back to the Commission for a waiver of strict compliance.

Dan DeRosa, Environment New Jersey, thanked Commissioners for their vote today and protecting the Pinelands from the pipeline.

Katherine Harrelson thanked Commissioners for their thorough review of the issue and following the democratic process.

Marianne Clemente thanked Commissioners for doing a wonderful job.

Richard Fellows thanked Commissioners for their service and commended them for their decision.

Carleton Montgomery, Pinelands Preservation Alliance, was happy that the Commissioners viewed the MOA issues as an important one. He said the recusal process

needs to be resolved and clarified. He questioned the purpose and function of Committee meetings. He said the Commission needs to ensure, when warranted, an independent expert investigation/review is done. He said it is now a great time for the Commission to focus on Plan Review.

Jim Rapp thanked Commissioners and reminded them our national treasures need to be protected.

Peg Sturmfels thanked all the Commissioners for braving the weather and for their service.

Mike Newhaus thanked Commissioners.

Doug O'Malley, Environment New Jersey, thanked Commissioners for listening to the public in the past months and thanked Commissioners who voted to protect the Pinelands.

Krissy Hawks, Surfrider Foundation, said that by protecting the Pinelands, you are protecting the water and, in turn, protecting our precious ocean and beaches.

Dianne Wexler expressed thanks to the Commissioners.

Blanche Krubner said she was grateful to all Commissioners because they voted with their conscience and was happy with the outcome this morning.

Ron Hutchison thanked Commissioners for their extreme patience the past 6 to 8 months. He said he hopes that the future will encompass an in-depth look at climate change in the forest ecosystem.

Beverly Budz expressed thanks to the Commissioners.

Adjournment

Commissioner Prickett said he is skeptical of unanimous decisions. He thanked his fellow Commissioners for their comments because he always learns from the perspectives of others.

Chairman Lohbauer said he has great respect for Commission staff and the MOA was an extraordinary piece of work.

Commissioner McGlinchey moved to adjourn the meeting. Commissioner Ficaglia seconded the motion. The Commission agreed to adjourn at 11:51 a.m.

Certified as true and correct:

Jessica Noble, Executive Assistant

Date: _____