

Disclaimer

These minutes reflect the actions taken by the Commission during its February 14, 2020 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 March 2, 2020.

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

MINUTES

February 14, 2020

Commissioners Present

Alan W. Avery Jr., Daniel Christy, Sean Earlen, Jordan P. Howell, Jerome H. Irick, Ed Lloyd, Mark Lohbauer, William Pikolycky, and Chairman Richard Prickett. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Craig Ambrose and Deputy Attorney General (DAG) Kristina Miles.

Commissioners Absent

Candace M. Ashmun, Jane Jannarone, D'Arcy Rohan Green and Gary Quinn.

Chairman Prickett called the meeting to order at 9:37 a.m.

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

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

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

Minutes

Chairman Prickett presented the minutes from the January 10, 2020 meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Irick seconded the motion.

The minutes from the January 10, 2020 meeting were adopted by a vote of 9 to 0.

Committee Chairs' Reports

Chairman Prickett provided an update on the January 24, 2020 Policy and Implementation Committee meeting:

The Committee adopted the minutes of the November 22, 2019 meeting.

The Committee recommended Commission certification of Folsom Borough's 2018 Master Plan Reexamination Report and Ordinance 07-2019.

The Committee reviewed the status of the Alternate Design Wastewater Treatment System Pilot Program and possible CMP amendments including: "graduating" one system from the pilot program; eliminating three additional systems due to lack of installations or underperformance; introducing up to six new technologies; and simplifying reporting requirements.

The Committee received an update on the status of the amendment to the Memorandum of Agreement with Atlantic County for development at Lake Lenape Park and its interest in lifting a portion of the deed restriction to allow a reconfiguration of the docks near the boat ramp. The County is identifying future needs, drafting metes and bounds descriptions and evaluating possible offsets.

The Committee reviewed rulemaking priorities. Staff noted that a retired DAG may be hired to assist with rulemaking. Some of the more urgent Comprehensive Management Plan (CMP) amendments could be ready within the next few months.

The Committee asked staff to schedule a meeting of the Land Use, Climate Impacts and Sustainability (LUCIS) Committee, to be followed by updates at perhaps three successive CMP P&I Committee meetings.

Executive Director's Reports

ED Wittenberg provided an update on the following items:

- The Governor recently released the Energy Master Plan, which can be found on the Board of Public Utilities website. The New Jersey Department of Environmental Protection has scheduled several stakeholder meetings as part of its Protection Against Climate Threats (PACT) initiative. Staff will be attending some of the meetings, and a LUCIS Committee meeting will be scheduled sometime in March.
- The Pinelands Municipal Council continues to be involved in supporting Payments in Lieu of Taxes (PILOTs). Pinelands towns and towns throughout the state are faced with the loss of tax revenue due to the preservation of land. The Council would like to see the program re-established.

Commissioner Pikolycky said the Governor would have to add the item into the budget.

Chairman Prickett said earlier this week, Mayor DeGroff of Woodland Township, sent a letter requesting the Commission's support to encourage Governor Murphy to reinstate the \$250,000 from the Garden State Land Preservation Trust Act. He said the letter was circulated to Commissioners and that he responded to the Mayor in writing.

ED Wittenberg said she has been researching different approaches to address the loss of tax revenue, including how other states handle the issue. She said conversations with the towns and public and private organization buying the land need to occur. She added that the amount of money and where it will come from needs to be discussed. She said she would continue to work with the Pinelands Municipal Council.

Commissioner Lohbauer said Pinelands communities who have dedicated lands to preservation should not be hindered financially. He suggested that the Council attend a future Policy and Implementation Committee to discuss the matter, and the Committee can make a recommendation to the full Commission to endorse action by the Legislature.

Commissioner Irick said he agreed and that he sees communities in South Jersey struggling to support their communities because they cannot create tax revenue due to a high percentage of public lands. He suggested the Executive Director and the Chairman send a letter to the Governor regarding PILOTs.

Commissioner Pikolycky said he would coordinate with the Council and Pinelands mayors about attending a Policy and Implementation Committee meeting.

Commissioner Lohbauer said the Governor recently signed legislation (S2252), expanding the use of electric vehicles. He said the he would like to see the Commission install a charging station on the property. He said the bill calls for 500 charging stations around the state.

Commissioner Irick said he would like to see high-use vehicles such as school buses and mail carrier vehicles converted to electric vehicles.

Director Susan R. Grogan provided an update on the following:

- On January 31st, representatives from the Pinelands Preservation Alliance, the Builders Association, and purveyors and private consultants attended a Kirkwood Cohansey stakeholder meeting where draft rules were reviewed by Commission staff. Attendees raised good questions, suggestions and discussion points. Staff will be consulting with U.S. Geological Survey and New Jersey Geological Survey regarding proposed modeling for new wells. In a couple of months, the draft rules will be presented to the Policy and Implementation Committee. The public will have more opportunities to comment on the rules since rule making is a public process.
- In October 2019, the Commission awarded funding to five Pinelands Infrastructure Trust Fund (PITF) projects. Funds were awarded to Winslow Township for a water and sanitary sewer extension project. Winslow Township advised the Commission

that it has withdrawn its application and would be proceeding without PITF funding due to timing constraints.

- Staff is preparing an application for federal designation of the Pine Barrens Byway. The application will include many photographs and letters of support, and it is due by mid-May.
- Staff is preparing a grant application for funds made available by the New Jersey Historic Trust for improvements to Fenwick Manor. The grant is open to state agencies. In order to be eligible, the structure must be on the Register of Historic Places. A special initiative for the 2020 grant round is women's history in New Jersey. Staff will include the important link to Elizabeth White and her ties to Fenwick Manor. A resolution will be presented to the Personnel and Budget Committee and the full Commission in March, authorizing the grant application. The application is due in mid-April.
- Recent legislation will now allow farms preserved through the Pinelands Development Credit (PDC) program to be eligible for grants from the State Agricultural Development Committee (SADC). Staff will provide SADC with a list of PDC preserved farms.

Chairman Prickett suggested that Fenwick Manor be added to the New Jersey Women's Heritage Trail.

Director Chuck Horner provided information on the following regulatory matters:

- On January 22nd, a conference call was held with the Woodland Township Mayor and Administrator. The Township continues to have an interest in economic development along Route 72, where the Township owns 100 acres. The parcel is located in an Infill Area where commercial and residential development are permitted. A threatened and endangered species survey has been completed but not submitted to the Commission.
- Staff will attend court proceedings on February 25th. A property owner in Hamilton Township has cleared land and established a residence without application to the Commission or the Township. The property owner has not filed an application with the County Health Department for wastewater disposal.
- An applicant that is proposing a 9,000 square foot commercial building in Buena Vista Township successfully redesigned its parking lot because it was encroaching in a wetlands buffer.
- A Certificate of Filing was issued for the establishment of soccer fields in an Agricultural Production Area in Shamong Township. Field sports are permitted based on a 2016 Amendment to the Pinelands Protection Act. A township meeting was well attended by residents. Staff has been notified that the applicant plans to withdraw its application.

Paul Leakan, Communications Officer, said there over 350 people signed up for the 31st Annual Pinelands Short Course. He noted that WHYY of Philadelphia is planning to attend and provide news coverage at this year's Short Course.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of a deicing pad at the Atlantic City International Airport.

Commissioner Pikolycky made a motion Approving With Conditions an Application for Public Development (Application Number 1983-5837.058) (See Resolution # PC4-20-04). Commissioner Avery seconded the motion.

Stacey Roth, Chief of Legal and Legislative Affairs, said that South Jersey Transportation Authority's (SJTA) Airport Director, the Airport's Engineer and SJTA's legal counsel are in the audience.

Commissioner Earlen said at the last meeting he requested an update on SJTA's obligations under the amended Memorandum of Agreement (MOA).

Ms. Roth said the deicing pad was part of the original 2004 MOA and was originally proposed at seven acres and has expanded to 12 acres. She provided a handout (attached) that lists each of SJTA's responsibilities and whether the Authority is in compliance. She reviewed each item of the Amended MOA.

She noted that on January 31st Commission staff, SJTA representatives and Atlantic County representatives met at a potential site for the new Grassland Conservation Management Area (GCMA). SJTA has modified its Airport Layout Plan (ALP) and received approval from the Federal Aviation Administration. SJTA is also making progress with regard to the frosted elfin butterfly habitat project. Ms. Roth answered some follow-up questions and said SJTA has fulfilled its monthly reporting requirement. She said she would provide additional information on the new GCMA at an upcoming Policy and Implementation Committee meeting.

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

Chairman Prickett presented a resolution recommending approval of forestry activities on 899 acres in Ocean Township.

Commissioner Avery made a motion Approving With Conditions an Application for Public Development (Application Number 1984-0514.008) (See Resolution # PC4-20-05). Commissioner Earlen seconded the motion.

Commissioner Avery said representatives from Ocean County Parks are present to answer any questions.

Commissioner Lohbauer commended the applicant for the plan. He appreciated that it was a multi-year plan, which is a good approach for wildfire prevention while maintaining the integrity of the forest. He raised concerns about patch cuts, which he said can later be used as access points for off-road vehicle users. He said the applicant is proposing to use felled

trees to create a barrier, which have sometimes proven to be ineffective. He asked Director Horner if the Commission could request the applicant to use an alternative barrier.

Director Horner said the majority of forestry applications received by the Commission are on private lands. The Commission doesn't receive many applications for forestry on public lands. He said trails are created in order for the harvest work to be completed. He said corduroy roads which are essentially log roads are used to harvest trees in wetland areas. The roads are removed once work is complete. He noted some trees will be left behind to prohibit ORV use. He suggested having a discussion on ORV barriers at a future Policy and Implementation Committee meeting. He added that yes the Commission can work with the applicant about requiring specific barriers.

Commissioner Lohbauer agreed with Director Horner's suggestion of discussing the matter at a future Policy and Implementation Committee meeting. He said he was interested in what the applicant had to say about protecting the forest from ORV use.

Geoffrey Lohmeyer, Ocean County said the project encompasses Wells Mills County Park and surrounding areas owned by Natural Lands Trust. He said the parks department is diligent about closing access to areas with stumps and logs or gates and guardrails to hinder ORV use. In addition, Park personnel work closely with the Ocean County Sheriff's office, which assists with patrolling the area for illegal off-road vehicle users.

Commissioner Avery said Ocean County takes land stewardship seriously. He said it's hard to have a uniform approach when discussing ORV barriers. He said the type of barrier is dependent on the site. He said the Ocean County Freeholders assigned a portion of the open space tax to a maintenance fund for this type of work.

Commissioner Lloyd said Ocean County is clearly doing good work. He said Commissioner Avery should err on the side of caution with regard to this application as a former employee of Ocean County and the Ocean County representative on the Commission.

Commissioner Avery asked how it was any different from a state-appointed Commissioner voting on a state project.

Ms. Roth, the Commission's Ethics Liaison Officer (ELO), asked for confirmation from Director Horner that the application was submitted by Ocean County and not the Natural Lands Trust.

Director Horner said the applicant is Ocean County.

Ms. Roth said it's best that Commissioner Avery recuse from the vote on this application because of his former involvement with the County.

Commissioner Earlen thanked Ocean County for its work.

Commissioner Lohbauer said if Commissioner Avery chooses to recuse from this application he would make a motion to move the application.

Commissioner Avery said he would recuse because the matter just came up and there are sufficient votes to move the application. He said his employment with the County was over a decade ago and we should be encouraging volunteerism in New Jersey not discouraging it.

Commissioner Earlen said he has questions about whether or not he can vote on Burlington County applications.

Ms. Roth said she needs time to review the matter and how it relates to voting on future applications. She added she will need to reach out to the State Ethics Commission.

Commissioner Avery left the dais.

Chairman Prickett asked Director Horner if the forestry plan was revised based on public comment made at the January Commission meeting.

Director Horner advised that the plan had in fact been revised.

Chairman Prickett said he reviewed the application and the plan helps to foster carbon sequestration. He said the Atlantic white cedar population will grow without competition. He said the plan will protect the pine forest from wildfires including the protection of threatened and endangered species and the development in the area.

Commissioner Lohbauer said he made the motion to move the application due to Commissioner Avery's recusal. Commissioner Earlen reaffirmed his second motion.

The Commission adopted the resolution by a vote of 8 to 0. Commissioner Avery recused from the vote.

Commissioner Avery returned to the dais.

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

Commissioner Lohbauer made a motion Approving With Conditions an Application for a Waiver of Strict Compliance (Application Number 2019-0138.001) (See Resolution # PC4-20-06). Commissioner Lloyd seconded the motion.

Director Horner said a waiver is required because the property does not meet the minimum lot size required for development using a standard septic system. He said the single family dwelling is proposed in a Regional Growth Area and they have met all the other standards to qualify for a waiver.

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

Planning Matters

Chairman Prickett presented a resolution related to Folsom Borough.

Commissioner Lohbauer made a motion Issuing an Order to Certify the Folsom Borough 2018 Master Plan Reexamination Report and Ordinance 07-2019, Amending Chapter 170 (Subdivision and Land Development) and Chapter 200 (Zoning) of the Code of Folsom Borough(See Resolution # PC4-20-07). Commissioner Pikolycky seconded the motion.

Director Grogan said Folsom Borough received financial and professional assistance from the Department of Community Affairs (DCA) in creating its new Master Plan. She said DCA has an Office of Local Planning Services that worked with Folsom officials for a number of years in creating the 2018 Master Plan Reexamination Report and Ordinance 07-2019. She noted that the Borough of Woodbine and Pemberton Township have also worked with DCA's Office of Local Planning Services.

She said the goal of the Master Plan and accompanying Ordinance is to create a new commercial zone along the Black Horse Pike. The new zone will include both existing and new development. She said much of the Borough is constrained by wetlands, the rezoning is a better reflection of existing conditions. She said 49 acres will be changed from a Forest Area to a Rural Development Area. She said as an offsetting measure the Borough will rezone 76 acres from the Rural Development Area to the Forest Area.

Commissioner Lohbauer raised concerns that there were no sewers to serve the new development. He asked if septic systems would be adequate for the proposed uses.

Director Grogan said even though the lots have wetlands in the rear portions, they are large lots and would be able to meet the Comprehensive Management Plan's groundwater quality standards.

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 read the list of Public Development applications up for comment. No one provided comment.

Ordinances Not Requiring Commission Action

Chairman Prickett asked if any Commissioners had questions regarding the ordinances not requiring Commission action.

- Jackson Township 2019 Master Plan Reexamination Report
- Washington Township Ordinance 2019-07
- Winslow Township Ordinances O-2019-024 and O-2019-025

No members of the Commission had questions.

Other Resolutions

Chairman Prickett presented a resolution regarding the Fiscal Year 2018 Audit report.

Commissioner Avery made a motion recommending approval To Accept the Fiscal Year 2018 Audit Report (See Resolution # PC4-20-08). Commissioner Pikolycky seconded the motion.

Commissioner Avery said each year the Commission is audited by the Office of Legislative Services. He said this is the second year the Commission has had no findings.

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

General Public Comment

Mark Demitroff of Richland Village spoke about the connection between Elizabeth White and the Olmstead Bothers. Mr. Demitroff handed out a copy of a February 7, 2020 letter from the Commission addressed to Mr. Demitroff in response to questions he raised at the January 10, 2020 Commission meeting. The handout also included a copy of November 23, 2011 letter from the Attorney General's office. He said properties in Richland Village are blighted. He continued to express his frustration with the term "redevelopment". He said no one understands redevelopment, including the Local Finance Board and the DCA. He added that he has no due process and redevelopment is the Commission's responsibility. He raised a question about credits at the Buena Borough Municipal Utilities Authority and the extension of sewer into Buena Vista Township.

Commissioner Irick asked if it was appropriate for staff to look into the Commission's responsibility regarding redevelopment.

Director Horner advised the Commission that a copy of the Commission's February 7, 2020 response to Mr. Demitroff was passed out to each Commissioner this morning. Director Horner explained that the Commission reviews and certifies municipal ordinances, zoning plans and redevelopment plans in the Pinelands Area that a municipality adopts. He said the Commission cannot administer the Municipal Land Use Law or the rules and regulations of other agencies.

Commissioner Irick asked if the Commission certifies plans in accordance with the CMP.

Direct Horner said yes.

Commissioner Lloyd said he found Paula Dow's letter to be consistent with Director Horner's letter.

Margit Meissner-Jackson, Ocean County Sierra Club, said Barnegat and Lacey townships are planning for an increase in their residential populations. She said the tree cutting at Bass River State Forest was the wrong decision. She said she received many calls from local residents who are very disappointed with tree clearing. She said there were other options.

Commissioner Lloyd said he had to leave. He apologized.

Commissioner Lohbauer thanked Ms. Meissner-Jackson for raising the Bass River Fire Tower issue. He said he would like to discuss the long term planning goals with the Forest Fire Service, including alternatives to fire towers. He said he doesn't want to be faced with making an emergency decision again.

Commissioner Irick said a recent news article stated that the Pinelands will have a catastrophic wildfire. He said the Commission was supposed to have conversations with the NJDEP after the Commission approved the tree clearing at Bass River State Forest. He said he would like to have a discussion with the Forest Fire Service at a Committee meeting to understand its wildfire prevention approach.

ED Wittenberg said the New Jersey Forest Fire Service was at the meeting this morning to hear about the Wells Mills Forestry plan application. She said she will invite them to an upcoming meeting to provide an update on their plans.

Jay Mounier, Franklin Township, NJ, said he was happy and thankful that farmers with PDC preserved lands will get the same treatment as farms preserved through the County Farmland Preservation Program. He commended the forestry plan for Wells Mills County Park. He said forest management is important for fire prevention but also for the overall health of the forest. He said New Jersey has too many overgrown forests and it's not safe. He said there needs to be more forest management on public and private lands. He said he heard about new legislation from former Commissioner Steve Lee. He said the legislation would require the NJDEP to complete forest stewardship plans on all state forests and wildlife management areas. He noted that there are currently no Pinelands farmers on the Commission.

Adjournment

Commissioner Earlen read a provision from the Conflicts of Interest Law for Special State Officers and asked if as a County representative he had to recuse on Burlington County applications.

Ms. Roth said recusal issues are fact-specific, and the mere fact that you live in the County or represent the County does not require recusal.

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Earlen seconded the motion. The Commission agreed to adjourn at 11:53 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: February 26, 2020

SJTA's Responsibilities Under the April 2019 Amended Memorandum of Agreement (MOA)				
	Obligation	Paragraph in Amended MOA	SJTA Compliance to Date	Date of Action
1	6 annual payments of \$500,000	3	Payments received in April 2019 and December 2020	Checks received April 15, 2019 & December 19, 2019
2	Acquire land within the Pinelands, of which at least 62 acres is already cleared and the cleared acreage is located at least 50 meters from any structure or forest edge.	4	SJTA entered into an agreement with Atlantic County for the County to assist it with finding appropriate site. Visit of potential site occurred on January 31, 2020.	MOA between SJTA and AC executed on December 17, 2019.
3	Fund the creation, dedication and long term maintenance of new GCMA	4	SJTA put \$2 million in its 2020 capital budget for establishment of the new GCMA and Frosted elfin butterfly habitat enhancement project.	Occurred in November 2019
4	Execute and File DCR for new GCMA to preserve in perpetuity	4	Must be done 90 days after site for new GCMA is acquired	
5	Fund enhancement of ~12 acre site in northeast quadrant of airport for Frosted Elfin Butterfly through planting of wild indigo	5	SJTA put \$2 million in its 2020 capital budget for establishment of the new GCMA and Frosted elfin butterfly habitat enhancement project.	Occurred in November 2019
6	Obtain FAA's approval to expand the "Forest Preservation Area" located in the northeastern portion of the airport to include not only the 12 acre frosted elfin butterfly site but also the area where frosted elfin butterfly has been documented	5	SJTA received formal approval from the FAA and this 12-acre area has been added to the ALP. The signed ALP was provided to the Commission in November.	Sent November 29, 2019
7	Provide copy of the revised ALP to the PC	5	Copy of revised and approved ALP provided to PC in November.	Sent November 29, 2019

8	Provide resolution from Board acknowledging SJTA's commitment to undertake and complete offsetting measures and provide time line for acquisition and creation of the GCMA and frosted elfin butterfly habitat enhancement project including deadlines below.	6	Resolution 2019-19 was executed by the SJTA on April 5, 2019	Copy of minutes approving the resolution wre sent to the Commission on April 10, 2019
9	Acquisition of new GCMA site within 1 year of SJTA's execution of the MOA (April 12, 2020)	6	As noted above, SJTA is working with AC to acquire an appropriate site.	
10	Establishment of new GCMA within 3 years of SJTA's execution of the MOA (April 12, 2022)	6		
11	Completion of Frosted elfin butterfly habitat enhancement project within 2 years of SJTA's execution of the MOA (April 12, 2021).	6	SJTA has another nursery capable of providing the wild indigo plants needed for the site. SJTA has reserved 200 plugs and nursery expects to have 1,500 plugs in June, which has also been reserved for SJTA.	Noted in the December 2019 Status Report
12	SJTA may request one, 6 month extension of 1 year deadline for acquisition of a site for the new GCMA. Request for extension must be submitted in writing by March 11, 2020.)	8		

13	45 days prior to commencing creation of new GCMA or Frosted elfin butterfly habitat enhancement project, SJTA has to submit info to the PC and cannot commence either project until submitted info and received approval from the ED	9 & 10		
14	If SJTA fails to acquire a parcel for the new GCMA within 1 year (or 1.5 years if extension granted), it must make an additional payment to the PC equal to FMV to acquire a GCMA site and the present day value of the costs that would be incurred to create and maintain the GCMA. PC will determine the payment amount based on info submitted by SJTA within 30 days of April 12, 2020 (or September 12, 2020 if extension granted.)	11 & 12		
15	Additional payment in lieu of creating new GCMA shall be provided to PC within 60 days of receipt of payment amount from the PC.	12		

16	Provide monthly status reports delineating steps taken to implement the offsetting measures (new GCMA & Frosted elfin butterfly habitat enhancements.) After acquisition of the site for the new GCMA, duration of submission of status reports may be changed by written authorization of the ED with concurrence of the chair.	18	Status reports have been received for July 2019 through December 2019 and January 2020	
17	MOA Amendment suspended if any of the annual payments not made or time-lines for the creation and maintenance of new GCMA or Frosted elfin butterfly habitat enhancement project are not met.	13		
18	If MOA is suspended for lack of payment or failure to meet deadlines associated with the new GCMA or Frosted elfin butterfly habitat enhancement project, the Commission may demand immediate payment of all remaining \$500,000 annual payments.	17		
19	Attend meeting of the P&I Committee as requested by the Committee to provide an update on efforts to satisfy offsetting obligations.	20		