

Adopted April 27, 2018

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
March 23, 2018- 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Sean Earlen, Robert Barr, Ed Lloyd and Richard Prickett

MEMBER ABSENT: Candace Ashmun and Paul E. Galletta

OTHER COMMISSIONER PRESENT: Jordan Howell (as a non-member of the Committee, Commissioner Howell did not vote on any matter)

STAFF PRESENT: Executive Director Nancy Wittenberg, Larry L. Liggett, Susan R. Grogan, Brad Lanute, Paul Leakan and Betsy Piner. Craig Ambrose, with the Governor's Authorities Unit, was present via conference call until 11 a.m.

1. Call to Order

Chairman Earlen called the meeting of the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee to order at 9:40 a.m.

2. Pledge Allegiance to the Flag

All present pledged allegiance to the Flag.

3. Adoption of minutes from the January 26, 2018 CMP Policy & Implementation Committee Meeting

Commissioner Barr moved the adoption of the January 18, 2018 meeting minutes. Commissioner Lloyd seconded the motion. The minutes were adopted with all Committee members voting in the affirmative.

4. Update on affordable housing in the Pinelands Area

Mr. Lanute gave a presentation on the status of affordable housing matters in the Pinelands Area since the 2015 New Jersey Supreme Court decision known as Mount Laurel IV. Mr. Lanute distributed a document entitled Affordable Housing Summary-Pinelands Area Municipalities, dated March 23, 2018 (The presentation slides and handout are attached these minutes and also posted on the Commission's web site at:

<http://www.nj.gov/pinelands/home/presentations/Affordable%20Housing%20Update%20-%20P&I%203.23.pdf>).

Mr. Lanute gave a brief overview of the basis of affordable housing law in New Jersey. He described the Mount Laurel doctrine and said that all municipalities in New Jersey have a constitutional obligation to create a realistic opportunity for the development of a municipality's fair share of the regional need for affordable housing. He said in 1985, the New Jersey legislature adopted the Fair Housing Act (FHA), which established the Council on Affordable Housing (COAH) to administer a program for estimating the housing needs statewide and by region, establishing methods for municipalities to determine their housing obligation and to administer the substantive certification and mediation process. He stated that while application is voluntary, a municipality that receives substantive certification is afforded greater legal protections against exclusionary zoning lawsuits.

Mr. Lanute described the events that led up to the March 2015 New Jersey Supreme Court decision known as Mount Laurel IV, in which the Court instructed the trial courts to assume the responsibilities of COAH. He said that those municipalities that had received, or were in the process of applying for substantive certification from COAH under the invalidated third round rules, were eligible to petition the Court for the judicial equivalent of substantive certification. He stated that in order to receive substantive certification, municipal planning boards must adopt a Housing Element and Fair Share Plan and municipal governing bodies must adopt implementing ordinances. Mr. Lanute said the Commission's role is to ensure that CMP regulations are acknowledged in advance, where possible, during the court deliberations on drafted plans and ordinances. He said that upon adoption of plans and implementing ordinances, the Commission reviews them under the CMP's municipal conformance process.

Mr. Lanute briefly reviewed the summary status of municipalities in the Pinelands Area as described in the handout. He then summarized a selection of ordinances recently certified by the Commission that have implications for affordable housing within the Pinelands Area, including permitted densities and affordable housing set-aside requirements and permitted housing types. He noted that these were ordinances that were reviewed by the Committee in previous meetings.

Commissioner Lloyd said there had been a major decision rendered by Judge Mary Jacobson regarding the affordable housing obligation of Princeton and West Windsor and that, unless appealed, will dictate methods for establishing the obligations of municipalities statewide. He

characterized today's presentation as antiseptic in that it glossed over a very long history of resistance in New Jersey to providing affordable housing that continues today. He said that he believed COAH was a failure due to the political resistance against it. He said this judgment means finally there appears to be some progress.

Ms. Grogan said the new system seems to have prompted many towns to do something with regard to affordable housing. She stated that staff has seen a number of towns willing to work with the Fair Share Housing Center to reach agreements on housing plans, mostly planning for development in areas outside of the Pinelands Area. She said it is particularly evident in Ocean County, where growth is occurring. She said Jackson Township had done nothing regarding affordable housing for decades and now has a huge affordable housing obligation with many new projects coming. She said that Pinelands Area municipalities are generally limiting their proposed affordable housing activity to the Regional Growth Area (RGA).

Chairman Earlen said that the process has been terrible as the housing obligations are a moving target, and that as municipalities rush to develop their affordable housing plans, they find that there were missed opportunities.

Commissioner Barr said, as Chairman of the Ocean City Housing Authority Board of Commissioners, he knows that his municipality has an obligation of 1,000 units yet there is no way to meet it as the community is pretty much built out.

In response to Commissioner Lloyd's question if the Commission should speak with Kevin Walsh (Executive Director, Fair Share Housing Center), Ms. Grogan said staff met with Mr. Walsh and learned that there were not many Pinelands municipalities of concern to his organization. She said Mr. Lanute had confirmed the numbers he presented today with Fair Share Housing Center. She also said the Commission had asked that Fair Share Housing provide copies of settlement agreements to the Commission; however, they have not done so. She said one municipality passed along a portion of its housing obligation to the Pinelands Commission, with the expectation that the Commission would transfer or accommodate that obligation elsewhere in the Pinelands Area. She said staff advised both Fair Share Housing and the municipality that the Commission has no rules, mechanism or authority to carry out such a transfer, and upon that advice the municipality amended its Housing Plan.

Ms. Grogan said that staff often does not see the settlement agreements between Fair Share Housing and the municipalities until after they have been signed. Often, the agreements and recommended Housing Plans do not recognize or accommodate PDC obligations.

In response to Commissioner Howell's question regarding the relationship of affordable housing to PDCs, Ms. Grogan said that, typically, it is sewer development in the Regional Growth Area where such high density projects can be accommodated. She said PDC opportunities must be provided in new high density zones. She said the Commission has allowed municipalities to apply PDC obligations only to the market-rate units in a project. However, the Commission has

been firm that Pinelands rules do not recognize affordable housing as a means of avoiding the use of PDCs. She said recent rezonings have included mandatory PDC obligations of 20% to 30% of market-rate units as a way of permitting higher densities than the CMP requires and exempting affordable units.

Ms. Grogan said the staff is usually able to suggest options that balance PDC obligations with the municipality's need to provide for affordable housing. She also said some consultants and court masters contact the Commission regarding housing obligations but often the Commission does not learn about a settlement agreement until after it has been signed.

Ms. Grogan said PDC prices are currently low, in the \$8,000 to \$9,000 range, whereas in the past, they were between \$30,000 and \$40,000 per right.

Mr. Liggett said that some municipalities have agreements in place that defer a portion of their affordable housing obligation to the future. For example, Mullica Township, where there is no centralized sanitary sewer system, relied on this approach.

Commissioner Prickett said it would be good for the municipalities to reach out to the Pinelands Commission and Commissioner Lloyd added that it might be worthwhile for a letter to be sent to the towns.

Ms. Grogan said that staff is working with a few remaining towns that have a Regional Growth Area, including Monroe and Medford townships and is hoping to hear from those municipalities such as Tabernacle, Southampton and Shamong that have not provided for affordable housing yet have considerable vacant lands.

In response to Commissioner Howell's question regarding how a town can discharge its affordable housing obligation when it has environmentally sensitive lands, Ms. Grogan said that obligations can be adjusted due to specific on-site environmental constraints, and that new development is not always required. The rehabilitation of an existing mobile home park can help a municipality to meet its obligation, as can the conversion of existing housing to group homes.

In response to Commissioner Lloyd's question regarding municipalities that are built out, Ms. Grogan said settlement agreements recognize the lack of vacant land. Such municipalities have been asked to adopt ordinances requiring affordable housing if redevelopment occurs in the future.

5. Update on Plan Review Recommendations and CMP Amendments

Ms. Grogan provided an update on the 2014 Plan Review Report and subsequent activity. *Attachment C to these minutes and also posted on the Commission's web site at:*

<http://www.nj.gov/pinelands/home/presentations/Plan%20Review%20Update%20March%202018.pdf>

Ms. Grogan described the Plan Review process and how staff uses the Report's list of recommendations to guide its work. She described the status of the various recommendations, some of which were adopted as CMP amendments in 2014 and others more recently, while still others are under development.

Ms. Grogan said two issues from the most recent set of CMP amendments (effective March 5, 2018) needed to be re-addressed after they were withdrawn and not adopted. She said the prescribed burning/fire break provisions became very controversial and staff will be meeting with the appropriate parties, e.g., the New Jersey Department of Environmental Protection (NJDEP) and the Department of Agriculture, to discuss the criteria and alternatives for an effective program. She said the other matter related to the definitions of interested party vs. interested person in relation to who has the right to participate formally in the Commission's decision-making process. The matter will be discussed at an upcoming Commission meeting. She said, among other things, the new rules retained requirements for the Commission to do newspaper advertising and also mandated the posting of public notices on the Commission's web site.

Ms. Grogan went on to describe the other recommendations, including imposition of expiration dates on certain documents, such as old waivers that were issued for development that would not be permitted under current rules. Also, she said Evesham Township remained interested in pursuing protection for the headwaters of the Black Run, a proposal the Committee had endorsed some years ago. She said the Township would like more flexibility, that the landowners' representative seems to be engaged and that staff will be pursuing the project.

Ms. Grogan said that another recommendation is to put application requirements for Enduro recreation permits into the rules.

Ms. Wittenberg added that the Commission currently has ways of denying recreation permits to "bad players". Also, the Commission can require the sponsors of an Enduro event to obtain approval from private landowners for routes traversing their properties.

Ms. Grogan said enhancements to the PDC program have been developed and legislative changes for the PDC Bank have been introduced in the Senate and Assembly.

Mr. Liggett said every time attempts are made to simplify the PDC program, there are three competing interests (landowners, municipalities and builders) that make it difficult to achieve any changes.

Ms. Grogan noted a relatively recent increase in the purchase of PDCs, possibly for a number of affordable housing projects.

Mr. Liggett said the increase in PDC purchases has not yet resulted in a corresponding increase in prices.

(Mr. Ambrose disconnected from the conference call at 11 a.m.)

Mr. Liggett said other amendments will relate to the protection of water supply and quality, in response to the Kirkwood-Cohansey Aquifer study. He said many of the projects in Atlantic County, particularly Hamilton, Galloway and Egg Harbor townships, will have the largest water demand as some old approvals are moving forward and new wells or allocations may be required. He said the stream flow must be sustainable to protect wetlands and that wastewater recharge may become necessary, although issues of recharge in Hammonton and Buena Borough have occurred due to the unsuitable nature of the soils. However, he said, the Commission is committed to finding water supplies to serve the RGA.

Ms. Wittenberg said she felt that I/I (infiltration and inflow) and conservation measures needed to be pursued and was hopeful that NJDEP will be more aggressive with implementation of the State's water supply plan.

Ms. Grogan said the Commission has a data sharing agreement with NJDEP for animal species, but not for plant species. It is important that both agencies share the same information. She said additional recommendations relate to the protection of roadside habitat and native vegetation.

Among revisions to the public comment process, Ms. Wittenberg noted that although some evening Commission meetings had been scheduled in the past, they were poorly attended and it was difficult to obtain a quorum so the practice ceased.

Commissioner Prickett said he felt the Commission was very interested in accommodating the public and suggested perhaps the issue of night meetings might be re-evaluated periodically, perhaps every three years.

Ms. Grogan said the Commission needs to address the procedures for applications submitted by public utilities that qualify for MLUL preemption as well as other private development applications that do not require municipal or county permits.

Ms. Wittenberg noted staff was surprised to realize the number of applications the Commission receives for private development on public property. Ms. Grogan added that as these are considered private applications, they receive certificates of filing but often no municipal approvals. Therefore, the full Commission does not see them.

Ms. Grogan said the Commission needs to evaluate the success of the Forest and Rural Development Area cluster development requirements. There are a number of projects with old approvals that are being revived and are now subject to the 2009 clustering standards. Thus far, the clustering rules have not spurred a lot of new development.

In response to Commissioner Prickett's question if the Commission receives feedback from the municipalities on the benefits of cluster development, Ms. Grogan said, yes, as they recognize the lower infrastructure costs. However, some municipalities have in the past viewed cluster development unfavorably as the smaller lot sizes allow developers to more easily fit all of the permitted units on a parcel.

Ms. Grogan said an additional amendment is needed to eliminate the August 5, 2018 installation deadline for the Septic Pilot Program. She said the rulemaking process is so lengthy that any amendment could not be effective by that date in any case.

Referencing the Right of Way Pilot Program, Ms. Wittenberg said the utilities want to use herbicides, which is permitted for agriculture and forestry operations, but not for utilities. She said this has opened up a discussion and she wanted to learn of the genesis of the herbicide ban.

Commissioner Lloyd said he felt that this discussion had been extremely helpful and asked that the presentation be shared with the entire Commission.

Ms. Wittenberg said staff is gearing up and will spend the next year completing work on the recommendations of the Fourth Plan Review.

6 Public Comment on Agenda Items

Mr. Fred Akers, with the Great Egg Harbor River Association (GEHRA), said that Green Acres and Atlantic County have contributed towards GEHRA's acquisition of a property in Mays Landing. He thanked the Commission for its letter of support for the impervious cover reduction study in Winslow Township. He said Rutgers has completed the draft assessment and their assumption is that *all* impervious cover is directly related to stormwater runoff. He said, in the Pinelands, new development must keep the runoff on site and he asked if one can calculate the effectiveness of existing stormwater management basins. Finally, he said, as the Pinelands Commission has an appropriation in the budget of the Department of the Interior, he encouraged the Commission to write a "Dear Colleague" letter to Congress advocating for maintained funding as his organization has done.

Ms. Katie Smith, with the Pinelands Preservation Alliance (PPA), thanked the staff for the presentation on CMP amendments and said that her organization was excited to hear of the potential Black Run protection and water supply amendments.

In response to Ms. Smith's question if there have been any further discussions with NJDEP regarding Wharton State Forest, Ms. Wittenberg said there had been none.

Also, Ms. Wittenberg said that the Commission has a National Park Service contact but no Federal representative has been assigned by the Department of the Interior.

Commissioner Prickett recognized the success of the 29th Annual Pinelands Short Course at Stockton University on March 10, 2018. He said the programs were well received and everyone seemed to enjoy the programs.

There being no other items of interest, Commissioner Barr moved the adjournment of the meeting and Commissioner Lloyd seconded the motion. The meeting was adjourned at 11:50 a.m.

Certified as true and correct:



Betsy Piner,
Principal Planning Assistant

Date: April 11, 2018