

Adopted 8/28/2020

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

This meeting was conducted remotely

All participants were present via Zoom conference

The public could view/comment through Pinelands Commission YouTube link:

<https://www.youtube.com/channel/UCBgpC8sbR3Acrjo7ppxs3Uw>

Meeting ID: 833 5477 1666.

**June 26, 2020 - 9:30 a.m.**

**MINUTES**

**MEMBERS IN ATTENDANCE:** Chairman Richard Prickett, Sean Earlen, Jordan Howell, Jerome H. Irick, Ed Lloyd, and Mark Lohbauer

**STAFF PRESENT:** Nancy Wittenberg, Stacey P. Roth, Susan R. Grogan, Marci Green, Charles Horner, Paul Leakan, Jessica Lynch, April Field, Ernest Deman, Jessica Noble, and Betsy Piner. Also present was Craig Ambrose, with the Governor's Authorities Unit.

**1. Call to Order**

Chairman Prickett called the meeting to order at 9:32 a.m. and all Commissioners and staff participating in the meeting were identified.

**2. Adoption of minutes from the May 29, 2020 CMP Policy and Implementation Committee meeting**

Commissioner Lohbauer moved the adoption of the minutes of the May 29, 2020 Committee meeting. Commissioner Irick seconded the motion and the minutes were adopted with all voting in favor.

**3. Executive Director's Report**

**Barnegat Township Ordinance 2020-5, amending Chapter 55 (Land Use) by revising standards for condominium developments in the C-N (Neighborhood Commercial) Zone in the Regional Growth Area**

Mr. Leakan presented Exhibit #1 from the Executive Director's Report on Barnegat Township Ordinance 2020-5, a map depicting the Township's C-N (Neighborhood Commercial Zone) within the Regional Growth Area (RGA), outlined in red.

Ms. Grogan identified the portion of the C-N Zone located in Barnegat's Regional Growth Area (RGA) at the edge of the Pinelands Area along West Bay Avenue and just north of the large residential development, Ocean Acres. She said over the years, the Township has adopted ordinances to permit a variety of development types in the C-N Zone, including mixed use and apartments. Condominiums were added as a conditional use in 2017 through Ordinance 2017-12. She said Ordinance 2020-5 revises standards applicable to condominium development. Whereas in 2017, condominium development in the C-N Zone was required to redeem Pinelands Development Credits (PDCs) for 25% of the units, Ordinance 2020-5 exempts units made affordable to low- and moderate-income households from this PDC obligation, provided that such affordable units do not exceed 20% of the total number of units in a proposed development. She said there is no obligation to develop affordable housing in this zone but a developer may choose to do so with the maximum 20% of units. Ms. Grogan said there is no change in the density or number of units permitted. She said similar exemptions of a small number of affordable housing units from a PDC obligation has been approved by the Commission elsewhere.

Ms. Grogan said only one property in the C-N Zone meets the conditional use standards for condominium development. Based on permitted density, 148 units could be permitted on the site. Ordinance 2020-5 would permit a maximum of 29 affordable units (20% of the total) to be excluded from the PDC obligation. The remaining 119 market-rate units would require the purchase and redemption of 30 rights (7.50 PDCs).

She said staff is recommending approval and noted that the public hearing for Ordinance 2020-5 was the first conducted remotely through Zoom. Although no comments were received, technically the proceedings ran well. She said there is an active project being conducted for this site and PDCs have been purchased.

In response to Commissioner Lloyd's question regarding the reference to 10 low income units under paragraph 2, section 2 of the Executive Director's Report, Ms. Grogan said a maximum of 10 units can be made available to low income households as opposed to moderate income households. The maximum total number of affordable units is 29 but the Township has determined that only 10 should be available to low income households. She said the Commission has seen such limits fairly often and it is based on bedroom size. She said the applicant will need to document the number of affordable units in the project as part of the application process.

In response to Commissioner Lloyd's question if there is a definition of low income vs. moderate income, Ms. Grogan said yes, and that it varies by region. She said it is likely cross-referenced in the Township's affordable housing plan. She noted that Barnegat has signed an agreement with the Fair Share Housing Center and has shown how it will meet its obligation. She said any affordable housing generated by this project will be extra.

Commissioner Earlen said many towns are planning for the next round.

Ms. Grogan said Ordinance 2020-5 is specific to condominium development in the C-N Zone. The Township has an affordable housing ordinance that applies throughout the municipality.

Commissioner Earlen moved that the Committee recommend Commission certification of Barnegat Township Ordinance 2020-5. Commissioner Lohbauer seconded the motion and all voted in favor.

### **3. Discussion of current CMP procedures for the Commission's review of municipal and county approvals**

Ms. Wittenberg said, as part of the Committee's ongoing discussion regarding the Commission's relationship with the "gap" rules, (primarily those applications determined by the Board of Public Utilities [BPU] to be exempt from municipal review) she thought it would be helpful to review the CMP's current "call-up" process, and how it is used to resolve issues and elicit public input.

Mr. Horner made a presentation (*Attachment A to these minutes and posted on the Commission's website at:*

<https://www.nj.gov/pinelands/home/presentations/Pinelands%20CMP%20Process%20Governing%20Review%20of%20Final%20County%20or%20Municipal%20Permits%20or%20Approvals.pdf>)

He reviewed the process in eight steps, emphasizing that it applies only to municipal and county approvals for private development applications. He provided a hypothetical example of a developer of a commercial building who submits a final municipal site plan approval to the Commission. Upon receipt, staff must determine if the project meets the standards of both the certified municipal ordinance and the CMP. Mr. Horner suggested, for example, the site plan might show that a stormwater pipe has been extended to discharge into wetlands. Since this raises a substantial issue, the applicant is notified that a Commission staff public hearing is required to resolve this issue. At this point, the applicant is also given the option to go before the New Jersey Office of Administrative Law (OAL) for a hearing.

Mr. Horner said the applicant can resolve the issue by revising the plans or, if s/he chooses to proceed with the staff hearing, must provide notice in the newspaper and to those within 200' of the subject property.

Mr. Horner said the hearing is conducted typically by the Executive Director at the office, although he recalled an instance some years ago when another staff member had conducted the hearing due to a perceived conflict of interest of the then Executive Director. He said the hearing is a formal affair with testimony offered into the record by the applicant and staff. Also, he said, the hearing is recorded.

Mr. Horner said, following the hearing, the Executive Director issues a report to the Commission with a recommendation as to how to proceed (approval, approval with conditions, or denial of the application). He said the process concludes with the Commission reviewing the report and voting on the recommendation.

Mr. Horner said it is very rare for an application to go through the entire process. He said typically, the applicant tries to resolve the issue and the revised plan is returned to the local planning board to review whatever amendments address the issue.

Ms. Wittenberg said there had not been a single call-up hearing that went through the entire process in the past ten years that she has served as Executive Director. The issues are resolved in advance, often not even getting to the hearing stage.

Ms. Roth said it is the choice of the applicant to go to OAL. She said the staff hearing does not involve cross examination but it is an information exchange. There is no swearing in and the public can submit comment. She said the hearing process is fully described at N.J.A.C. 7:50-4.3.

In response to Commissioner Lohbauer's question if there were anything in the staff hearing process that differs from that of OAL, Ms. Roth said DAG Miles was researching the Administrative Procedure Act (APA) and evaluating that.

Commissioner Lloyd asked if there were statistics as to how many issues had been resolved through the call-up hearing and how many had gone before OAL. He said, in any case, he did not think this was the process to fill the "gap." He also noted that nothing in slide numbers six and seven reference the inclusion of the public.

Ms. Roth said if members of the public appear at the hearing, they may be heard. Any member of the public may attend and submit testimony

Mr. Horner concurred and said he had not identified the role of the public on the slides because typically there is no public in attendance.

Ms. Wittenberg said staff is not suggesting that this process will work to meet the "gap" issue; staff is just providing information.

Mr. Horner recalled a couple of cases in which the Executive Director opened the hearing and offered a resolution to an issue and the applicant responded to resolve it.

Ms. Roth said the hearing officer asks the questions of the witnesses and staff provides the information as to why an application is not consistent. She said the Executive Assistant opens and closes the hearing, records it, and identifies the exhibits.

In response to Commissioner Irick's question as to what happens if the Commission does not agree with the recommendations of the Executive Director, Ms. Roth said then the matter is automatically sent to OAL and then to the appellate division. She said she thought the

Commission should have the right to approve or deny the recommendation of the Executive Director but currently the rules mandate that the matter go to OAL.

Commissioner Irick asked if the Commission should consider altering that provision.

A discussion ensued with Commissioner Lloyd requesting that staff provide a memo outlining any potential changes to the process to allow the Commission to make the final decision.

Ms. Roth then corrected her previous description of the process, confirming that the Commission does have the ability to approve, approve with conditions or disapprove private development applications following public hearing. Automatic referral to OAL occurs only if the Commission does not agree with the Executive Director's recommendation on a public development application.

In response to Commissioner Irick's question, Ms. Roth said she did not know of other applications for which municipal planning board review was pre-empted such as with the BPU approvals, leading to this gap issue. She referenced his concerns expressed at prior meetings regarding the Commission's ability to respond to concerns of neighbors regarding a school parking lot matter. She said the Commission cannot expand beyond its authority, beyond what is in the CMP.

Mr. Horner said the outcome of public development applications is determined by the Pinelands Commission, that of private applications is determined by staff, and the third category is that of the BPU exempt applications. He said that is the universe of all applications. He said the Commission does not address issues such as traffic and noise because those are not CMP standards.

Ms. Roth said that if issues are not in the Pinelands CMP, they cannot be used as the basis for Commission approval or disapproval. She added that the school parking lot matter was not a Pinelands issue, rather one for the local Board of Education or the Department of Education.

Commissioner Irick said he felt that the Commission didn't look at the same issues for public and private applications and he felt that was a gap.

Ms. Roth responded that public or private, staff look at all CMP standards and certified Pinelands ordinances. She said staff has no ability to look at other issues when reviewing applications.

Chairman Prickett said that it was important to get the public involved and he asked how the public is notified.

Mr. Leakan displayed the Commission's website page related to applications, <https://www.state.nj.us/pinelands/appli/status/> and noted one can view the status of applications, and that they are updated automatically on a daily basis.

Mr. Horner said that the text of each application is color coded to indicate its status related to the public comment period. He said not all applications are updated unless there is a change in status.

Chairman Prickett said this is a terrific public service.

Mr. Leakan said, in addition, members of the public can request to be notified via email of any application status updates and many municipalities, attorneys, etc. are on that list.

In response to Chairman Prickett's question as to how the Commission would move forward, Ms. Wittenberg said staff will provide an update on its research at the next meeting.

#### **4. Public Comment**

*Due to the lag time of the YouTube meeting, some brief discussion took place while the Committee awaited any calls from commenters. Chairman Prickett held the comment period open to accommodate any late callers.*

Ms. Wittenberg said about a week ago, New Jersey Natural Gas (NJNG) had an issue with its horizontal drilling on the Southern Reliability Link (SRL) pipeline. She said an "inadvertent return" (*unintended transfer of drilling mud to the surface*) had occurred outside the Pinelands but that all the underground work in the Pinelands has been completed.

Commissioner Lloyd reminded everyone of the Zoom tribute to Commissioner Candace Ashmun at 5 p.m. on Sunday, June 28, 2020.

Commenter #1: Ms. Rhyan Grech, with the Pinelands Preservation Alliance (PPA), referencing the discussion of the gap rules, reiterated PPA's concern that any new Commission review process contains all the elements of a municipal planning board hearing including an evidentiary hearing with sworn testimony and cross-examination. She also referenced the incident along the SRL, including the condemnation of a home damaged by the "inadvertent return" in Upper Freehold and the release of drilling mud into the stream. She said also, an empty home may have been flooded and a sinkhole has formed in a Plumsted road along the route. She said although Burlington County has issued a stop work order, the trenching and laying of pipe is ongoing.

Chairman Prickett thanked Mr. Leakan for the news articles that he issues regularly.

Mr. Leakan said that as part of the Speakers Series, Ms. Jen Bulava, Burlington County naturalist, will be speaking on "Lich-en the Fungus Among Us" next Thursday (July 2, 2020). He said that the Speakers Series serves as a substitute for the canceled Summer Short Course as it allows an opportunity to provide programming for people who want to be involved with the Pinelands. He described the literature/fact sheets available online.

Commenter #2: Ms. Agnes Marsala, a Chesterfield resident, commented on the NJNG pipeline and said the permit should be rescinded and that the Commission should protect the Pinelands.

Commissioner Lohbauer thanked Paul and Joel for the terrific webinar series.

Ms. Wittenberg asked the Committee to recognize that not all staff has the opportunity to do the happy and fun things of the Communications office and that a lot of other work, some not so fun, is done behind the scenes.

Commissioner Prickett commended staff for making the operations look easy.

There being no further business, Commissioner Lohbauer moved the adjournment of the meeting. Commissioner Howell seconded the motion and all agreed. The meeting adjourned at 11:07 a.m.

Certified as true and correct:

A handwritten signature in cursive script, appearing to read "Betsy Piner", is written over a horizontal line.

Date: July 7, 2020

Betsy Piner  
Principal Planning Assistant

## **Pinelands Comprehensive Management Plan Process Governing Commission Review of Final County or Municipal Permits and Approvals**

**STEP ONE:** Upon receipt of final county or municipal permit or approval, the Executive Director must determine within 15 days whether the final approval raises a substantial issue with the minimum standards of the applicable municipal land use ordinance and the Pinelands Comprehensive Management Plan.

**STEP TWO:** If a substantial issue is raised, the Commission staff sends a letter scheduling a Commission staff public hearing. (The same letter also provides the applicant with the option of proceeding to the New Jersey Office of Administrative Law for a hearing instead of a Commission staff public hearing.)

**STEP THREE:** The applicant must provide public notice of the Commission staff public hearing in the newspaper and to all property owners with 200 feet of the parcel.

**STEP FOUR:** The Executive Director typically conducts the Commission staff public hearing.

## **Pinelands Comprehensive Management Plan Process Governing Commission Review of Final County or Municipal Permits and Approvals**

**STEP FIVE:** During the public hearing, the applicant and the Commission staff provide the Executive Director with information to address the substantial issue raised by the final permit or approval.

**STEP SIX:** After the public hearing, the Executive Director reviews the record of the public hearing and issues a report on the application to the full Pinelands Commission.

**STEP SEVEN:** The Executive Director's report recommends approval, approval with conditions or denial of the application.

**STEP EIGHT:** The full Commission considers the record of the public hearing and the Executive Director's recommendation and votes on the Executive Director's recommendation.