

Disclaimer

These minutes reflect the actions taken by the Commission during its August 9, 2019 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 August 23, 2019.

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

MINUTES

**August 9, 2019**

Commissioners Present

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

Commissioners Participating by Telephone

Candace M. Ashmun & Jane Jannarone.

Commissioners Absent

Daniel Christy, Ed Lloyd, Gary Quinn and D'Arcy Rohan Green.

Chairman Prickett called the meeting to order at 9:35 a.m.

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

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 9 Commissioners who participated in the meeting.)

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

Minutes

Chairman Prickett presented the part 1 closed session minutes from the June 14, 2019 Commission meeting. Commissioner Pikolycky moved the adoption of the minutes. Commissioner Irick seconded the motion.

Commissioner Lohbauer asked that a comment he made during the open session be revised in the closed session minutes to reflect what he actually said which was that he questioned the need to discuss the matter in closed session.

Secretary's note: The June 14, 2019 Part 1 Closed Session Minutes were revised to reflect Commissioner Lohbauer's comment.

The part 1 closed session minutes from the June 14, 2019 meeting were adopted by a vote of 8 to 0.

Chairman Prickett presented the July 12, 2019 Commission meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Pikolycky seconded the motion.

The July 12, 2019 Commission meeting minutes were adopted by a vote of 8 to 0.

Commissioner Ashmun joined the meeting by phone.

#### Committee Chairs' Reports

Chairman Prickett provided an update on the July 17, 2019 Land Use, Climate Impacts and Sustainability Committee meeting:

The Committee was provided with two documents prepared by Commission staff: Possible Climate Change Actions Plan and Potential Impacts of Climate Change on the New Jersey Pinelands.

The Committee discussed next steps including quantifying both the impacts of climate change on the Pinelands and the benefits provided by the Pinelands. The need to identify three or four action items to focus on now was also discussed.

Staff provided an overview of recent solar applications in the Pinelands Area, including a map showing the location and size of each. Possible future speakers were discussed.

The Committee also heard from members of the public on the importance of areas covered by CAFRA, use of permeable materials and limiting fossil fuel infrastructure.

Chairman Prickett provided an update on the July 26, 2019 Policy and Implementation Committee meeting:

The Committee adopted the minutes of the June 28, 2019 meeting.

The Committee recommended certification of Monroe Township's 2018 Housing Element and Fair Share Plan and Ordinances O:14-2019, O:16-2019 and O:17-2019, amending Chapter 175 (Land Management) of the Township's Code with respect to affordable housing and adopting revised Redevelopment Plans for the Acme Shopping Center and Williamstown Square Redevelopment Areas.

The Committee received an update on Comprehensive Management Plan (CMP) solar energy facility rules and applications.

The Committee received a presentation on the New Jersey Community Solar Pilot Program.

### Executive Director's Reports

ED Wittenberg provided an update on the following items:

- Staff has been preparing the FY 2020 Budget, which will be shared with the Personnel and Budget (P&B) Committee that is scheduled to meet after today's Commission meeting. The budget will be presented to the full Commission at the September 13<sup>th</sup> meeting.
- Staff attended a webinar regarding the New Jersey Department of Environmental Protection's dispute resolution process and third party appeals.
- She met with Commissioner Christy to review Pinelands regulations.
- Staff met with Atlantic County regarding an existing Memorandum of Agreement (MOA) for Lake Lenape Park. The County has indicated the need to amend the MOA and staff has begun that process.

Director Liggett provided an update on the following:

- The Commission continues its review of water monitoring which is conducted in two stream systems in the southwestern portion of the Pinelands: the Great Egg Harbor River and the Mullica River. The stream monitoring results are compared to withdrawals to determine if there are any impacts.
- The Pinelands Infrastructure Trust Fund public hearing was held on July 31<sup>st</sup> and the only person to attend was the Pemberton Township Municipal Engineer. Staff and the NJDEP continue to work on a solution to allow funds to be allocated to projects involving water supply rather than just wastewater and transportation projects.

Director Chuck Horner provided information on the following regulatory matters:

- The Philadelphia Inquirer recently printed an article about seasonal agricultural employee housing at several Atlantic County farms. The article noted the conversion of agricultural buildings to seasonal agricultural employee housing. He said staff was notified of the issue from either the zoning officer or other sources. He said currently about 10 property owners have been notified by the Commission that an application for a change of use is required for converting an agricultural building into seasonal agricultural employee housing.
- Staff is working with a number of applicants regarding the clustering provision and how it relates to approved subdivisions in the Rural Development Area and the

Forest Area. Staff is also working with an applicant regarding a five lot subdivision in Medford Township dating back to the 1990's. As the project is nearing construction, Pinelands Development Credits (PDCs) must be purchased as required by current zoning. He noted that zoning protections under the Municipal Land Use Law expire after a certain period of time.

Stacey Roth, Chief, Legal & Legislative Affairs, said that at the July Commission meeting she provided information on the Science office's endocrine disruption study and access to Lake Mishe Mokwa. She said the issue has been resolved with the help of the Medford Lakes Borough attorney and a Right of Entry Agreement will be signed by both the Commission and Medford Lakes Colony Club. The Commission will replace the fish two to one.

Ms. Roth provided an update on litigation related to New Jersey Natural Gas (NJNG). She said Chesterfield Township, North Hanover Township and Burlington County reached a settlement with NJNG and as a result Chesterfield Township has withdrawn from the litigation. She said NJNG filed a motion for summary disposition against Bordentown Township alleging they did not have standing to be in the appeal. Substantive briefs and third party appeals from the appellants were filed on July 15, 2019. DAG Miles is drafting response briefs.

Ms. Roth advised the Commission of a violation that has occurred in Southampton Township. She said it's a commercial use on agricultural land including wetlands violations. She said the NJDEP was contacted and issued an Administrative Order/Notice of Civil Administrative Penalty Assessment (AO/NOCAPA). The attorney for the commercial business asked that the Office of Dispute Resolution at the NJDEP handle the matter. She said a conference call is currently being scheduled to discuss the case.

Commissioner Irick asked what type of commercial use has been established at the site.

Ms. Roth said it is landscaping business and added that the parcel is located in an Agriculture Production Area and is deed restricted.

#### Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution for improvements to Woodbine Borough's water treatment facility.

Commissioner Pikolycky left the dais and exited the meeting room because he is the mayor of Woodbine Borough.

Commissioner Lohbauer made a motion Approving With Conditions an Application for Public Development (Application Number 1986-1408.008) (See Resolution # PC4-19-26). Commissioner Earlen seconded the motion.

The Commission adopted the resolution by a vote of 8 to 0 with Commissioner Pikolycky recusing from the vote.

Commissioner Pikolycky returned to the meeting.

Chairman Prickett presented a resolution recommending approval for a two lot subdivision in Jackson Township.

Ms. Roth said Commissioner Avery will be recusing from this application because he is a member of the Ocean County Natural Lands Trust Fund and the next application was submitted by Ocean County.

Commissioner Avery left the dais.

Commissioner Lohbauer made a motion Approving With Conditions an Application for Public Development (Application Number 1981-1470.007) (See Resolution # PC4-19-27) Commissioner Earlen seconded the motion.

Chairman Prickett asked if Director Horner could provide additional information about the subdivision.

Director Horner said the County is proposing to create two lots with the subdivision. The subdivision meets the environmental standards and lot size requirements of the CMP. He said there is no standard in the CMP that requires that the lots be deed restricted. He added that one of the lots may be deed restricted in the future through the open space acquisition process.

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

Commissioner Avery returned to the meeting.

Chairman Prickett presented the next resolution recommending approval of six public development applications.

Commissioner Lohbauer made a motion Approving With Conditions Applications for Public Development (Application Numbers 1990-1174.011, 2000-0637.003, 2006-0322.002, 2008-0026.002, 2008-0026.003 & 2019-0053.001)(See Resolution # PC4-19-28). Commissioner Avery seconded the motion.

Commissioner Irick raised a question about Application No. 1990-1174.011 (Monroe Township's irrigation well). He asked if there was a provision in the CMP that would allow the Commission to request that the applicant drill from the Piney Point aquifer rather than the Kirkwood-Cohansey.

Director Horner said the regulations only address wells that withdraw large amounts of water from the Kirkwood-Cohansey. He said in instances with large withdrawals the Commission could require the applicant to address alternative sources. He said that because the proposed well will use less than 100,000 gallons of water a day, the applicant is not required to use a specific aquifer or provide alternatives.

Commissioner Irick said the proposed well can pump 175 gallons per minute which puts it over the 100,000 gallon a day limit.

Director Horner said the NJDEP issued a Water Use Registration for three existing wells in the Township including the proposed well for a total of four wells which are not to exceed 100,000 gallons per day cumulatively.

Commissioner Irick further asked if Monroe Township is required to report its water usage to the NJDEP as part of the Water Use Registration certificate.

Director Horner said staff would find out the answer. He said Commission staff is still recommending approval of the well regardless of the reporting requirements.

Commissioner Irick said that this type of irrigation well should not be using the Kirkwood-Cohansey aquifer and maybe the Commission should consider changing the rules to use the Piney Point aquifer for such wells.

ED Wittenberg added that the Kirkwood- Cohansey rule proposal begins to address the issues Commissioner Irick raised.

Director Horner said that the Township is required to report monitoring results for well usage to the NJDEP on January 31<sup>st</sup> of each year.

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

#### Planning Matters

Commissioner Ashmun left the meeting and ended the call.

Commissioner Avery said the subdivision application that he recused on involves a parcel of land that will be acquired by the Ocean County Natural Lands Trust. He said that Commissioner Ashmun, other Commissioners and himself worked on a special project called the Toms River Corridor Plan in the early 2000's. He said that the plan recommended that a number of parcels be acquired and preserved. He said he was pleased to announce that more land was acquired than was actually recommended. He congratulated Commission Ashmun on the completion of the project.

Chairman Prickett presented a resolution related to Monroe Township.

Commissioner Avery made a motion Issuing an Order to Certify the 2018 Housing Element and Fair Share Plan of Monroe Township, Ordinance O:14-2019, Amending Chapter 175 (Land Management) of the Code of Monroe Township, Ordinance O:16-2019, Adopting

the Acme Shopping Center Redevelopment Plan, 4<sup>th</sup> Amendment, and Ordinance O:17-2019, Adopting the Williamstown Square Redevelopment Plan, Amendment #1A (See Resolution # PC4-19-29). Commissioner Earlen seconded the motion.

Commissioner Irick had a question related to the density of units associated with Monroe Township Ordinance.

Chief Planner Grogan said the density for mobile home parks will remain the same which is eight units per acre. She said the density for mobile home parks has remained the same since the Township was originally certified back in the early 1980's. She said Ordinance O:14-2019 reduces the PDC requirement from 25% to 10% for mobile home parks in the Regional Growth Area.

Chief Planner Grogan explained the other PDC changes associated with the redevelopment areas. She said the Acme Shopping Center Redevelopment Area will increase PDC use from 25% to 30% of the units. The Williamstown Square Redevelopment Area will now permit residential development for a mixed use/cluster type project and require PDC use on 30% of the units excluding the affordable housing units. She said the ordinances allow for some adjustments to PDC requirements and implementation of the town's affordable housing obligation while maintaining consistency with the CMP.

The Commission adopted the resolution by a vote of 8 to 0.

#### Honoring Commissioner Giuseppe (Joe) Chila

Chairman Prickett read a resolution into the record recognizing Commissioner Chila's work at the Commission.

Commissioner Earlen made a motion Expressing the Commission's appreciation to Giuseppe (Joe) Chila for his service as a member of the Commission between February 2016 to January 2019 (See Resolution # PC4-19-30). Commissioner Lohbauer seconded the motion.

Commissioners expressed their appreciation for Commissioner Chila's service on the Commission.

The Commission adopted the resolution by a vote of 8 to 0.

#### Public Comment on Public Development Applications and Items where the record is open

No one from the public offered comment.

#### Ordinances Not Requiring Commission Action

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

- Buena Vista Township Ordinance 76-2019
- Monroe Township Ordinance O:15-2019

- Shamong Township Ordinances 2019-7 and 2019-8

No members of the Commission had questions.

Presentation: Pinelands Conservation Fund Land Acquisition Program

Ms. Robyn Jeney said the Pinelands Conservation Fund (PCF) has completed its 8<sup>th</sup> round of acquisition projects. She said the PCF was established in 2004 when the Commission entered into a Memorandum of Agreement with the Board of Public Utilities to allow an electric transmission line through the Pinelands where it was not permitted. She said when the Commission enters into a deviation MOA, the CMP requires “measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands that would be provided through a strict application of the standards of” the CMP. She added that often the offset is the in form of a monetary contribution towards permanent land protection. She said in 2005, PCF policies were adopted and allocated six million dollars for land acquisition projects. She said since that time additional money has been added to the Pinelands Conservation Fund. She said the grant projects have to have other funding sources. The PCF land acquisition program provides up to 33.3% of certified market value to projects. She explained the rationale and target areas for acquisition. She reviewed projects by county and provided details of some of the more notable projects. She added that just shy of 10 million dollars remain in the Federal 502 fund. She said when the Pinelands Protection Act was established money was designated for lands considered to have exceptional ecological properties. Legislation required that the Commission designate areas suitable of such acquisition. Many years ago the Commission identified 100,000 acres containing exceptional ecological value in several areas of the Pinelands, mostly in the southern portion of the Pinelands and southeastern Burlington County. About 88,000 of those acres have been acquired and permanently protected using about \$31 million in federal funds, separate from PCF acquisitions. See attached slides for further details.

Commissioner Howell asked how the certified market value is calculated.

Ms. Jeney said for projects over \$200,000 two appraisals are necessary and if the property is less than \$200,000 only one appraisal is needed. She said the NJDEP Green Acres program conducts an economic analysis for the appraisals and certifies fair market value.

Chief Planner Grogan announced that Robyn Jeney is leaving the Commission after 15-years for a position at a non-profit organization.

Chairman Prickett thanked Ms. Jeney for her work at the Commissions including the Off-Road vehicle data that she worked diligently on.

Chairman Prickett asked about the status of the 502 funds.

Chief Planner Grogan said the funds are appropriated by Congress and in the past number of years there has not been a feeling that funds would be released. She explained that the request would need to be initiated by state Legislators and Senators to be included in the federal budget.

General Public Comment

Michael Tamn said there has been public interest in the Pinelands for over 300-years. He provided an article from June 3, 1900 which mentioned an excursion by trail to Browns Mills, NJ. He also circulated an article dated April 4, 2019 from the Philadelphia Inquirer about an old pipeline in Pennsylvania that is leaking. He said the decisions made by the Commission will be around for future generations. Both articles are attached.

Jay Mounier said using the phone system at Commission meetings does not work. Rhyan Grech of the Pinelands Preservation Alliance asked if there was an update on the South Jersey Gas remand. She is curious about timing and future action the Commission may take on a resolution.

Commissioner Howell asked if the FY 20 Budget includes money for a phone system.

Ms. Jessica Lynch explained that although the microphones are new, the overhead speakers are much older. She said she has discussed a new audio system with three different vendors and it is very expensive.

Commissioner Lohbauer said he questioned the need to go into closed session regarding the South Jersey Gas matter in June and he questioned the need today.

DAG Miles said she would be providing additional attorney client privilege advice and there is ongoing litigation risk with discussing the matter in open session. She advised that the Commission can vote to waive its right to attorney client privilege advice.

Resolution to Retire into Closed Session

DAG Miles read a resolution to enter into closed session to discuss the South Jersey Gas matter.

Commissioner Irick made a motion to enter into closed session. Commissioner Avery seconded the motion. The Commission agreed to retire into closed session by a vote of 8 to 0, beginning at 11:15 a.m.

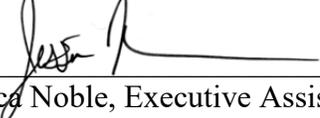
Return to Open Session

The Commission entered back into open session at 11:54 a.m. DAG Miles provided a summary of the closed session. She said the Commission discussed litigation related to the South Jersey Gas matter.

Adjournment

Commissioner Avery moved to adjourn the meeting. Commissioner Earlen seconded the motion. The Commission agreed to adjourn at 11:55 a.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: August 21, 2019