

Disclaimer

These minutes reflect the actions taken by the Commission during its August 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 August 28, 2020.

PINELANDS COMMISSION MEETING

MINUTES
August 14, 2020

The August 14, 2020 Pinelands Commission meeting was conducted remotely. All participants were present via Zoom conference and the meeting was livestreamed through YouTube.

Commissioners Participating in the Meeting

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 participating were Executive Director Nancy Wittenberg and Deputy Attorney General (DAG) Kristina Miles and Governor's Authorities Unit representative Craig Ambrose.

Commissioners Absent

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

Chairman Prickett called the meeting to order at 9:33 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.

The Commission pledged allegiance to the Flag.

Minutes

Chairman Prickett presented the minutes from the Commission's July 10, 2020 meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Earlen seconded the motion.

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

Chairman Prickett said John Stokes, former Executive Director of the Commission, passed away in July. He asked Commissioner Lloyd if he would like to share a few words about Mr. Stokes.

Commissioner Lloyd said Mr. Stokes was a passionate and effective leader who held high standards for himself, staff and the Commission. He said the Pinelands lost another champion. He said Mr. Stokes negotiated \$13 million as part of an offset for the Connecticut power line application along the Garden State Parkway. He said the Pinelands Conservation Fund was created because of that money and thousands of acres have been protected over the years. He said the Pinelands is a better place because of John Stokes.

Commissioner Avery said that John Stokes played an integral role in the early years of the Commission when staff was trying to certify Pinelands municipalities. He said Mr. Stokes was a talented negotiator who was able to bring all towns into conformance. Commissioner Avery said Mr. Stokes was both his friend and colleague and he will miss him.

Commissioner Lohbauer said although he did not have the chance to work with Mr. Stokes he said he had reached out to him to seek advice. He said Mr. Stokes offered good insight and cared deeply about the preservation of the Pinelands.

Chairman Prickett said Mr. Stokes' passion for the Pinelands was clearly evident. He asked for a moment of silence in memory of Mr. Stokes.

Executive Director's Report

ED Wittenberg provided an update on the following items:

- Commission staff members continue to work from home and go into the office on an as-needed basis. Facilities staff members are currently working three days a week at the office, cleaning and maintaining the grounds. She said the recent storm produced a great deal of downed tree limbs on the Commission property, but no damage.
- A letter was sent to New Jersey Natural Gas (NJNG) after an Open Public Records Act (OPRA) request filed by the Pinelands Preservation Alliance with the New Jersey Department of Environmental Protection (NJDEP) found that an inadvertent return (IR) event had occurred in the Pinelands Area that NJNG had not notified the Commission about. She said NJNG responded and apologized for the oversight. The unreported IR incident occurred in the portion of the route where there had already been an incident.

Commissioner Lohbauer thanked ED Wittenberg for providing answers to questions he raised about spills that occurred during the NJNG pipeline construction. He said he had concerns about responses to the following two questions: did staff consider suspending the NJNG permit and did staff consider notifying the Commission of the IR incidents?

Commissioner Lohbauer said staff responded that the approval recognized the possibility of bentonite release and included provisions for IR incidents. He said the Commissioners should have been notified about the spills. He said during the application process he was led to believe that the spills would not occur and instead there were six spills over the course of 10 days.

ED Wittenberg said there was an expectation that the IR's could occur and the Executive Director's report acknowledged the potential for such incidents. She said she was unsure if the Commission could have suspended work on the pipeline. She said staff conducted site inspections and had discussions regarding the IRs with NJNG. The determination was that the incidents were handled in accordance with the permit.

Chuck Horner, Director of Regulatory Programs, provided information on the following regulatory matters:

- The Executive Director issued an emergency authorization for the construction of a 4,500 square foot addition to the Cecil Fire Company Station in Monroe Township. The Chairman of the Commission was consulted first and agreed that a public safety issue did exist. Had the construction not started their emergency vehicles would be subjected to the elements. The application is now complete and on today's agenda for public comment.
- An application has been received for the extension of sanitary sewer to two existing public schools in Pemberton Township. The sanitary sewer lines need to be extended through the Agricultural Production Area, where they are not permitted unless a public health hazard is identified. Staff issued a letter to Pemberton Township requesting additional information regarding the public health matter.
- A Certificate of Filing was issued to the Chatsworth Volunteer Fire Company for the construction of a communication tower. The tower will enhance emergency communications and cell phone coverage in the area.

Commissioner Christy asked for clarification on the Monroe Township emergency authorization application. He asked if the Board was notified of the emergency authorization decision.

Director Horner confirmed that approval was given to Monroe Township to proceed with its application for an addition to the municipal firehouse prior to Commission action. He said there is a provision in the Comprehensive Management Plan (CMP) that requires the ED to consult with the Chairman when a public health hazard, emergency or public safety

matter arises. The ED can then authorize development to occur prior to formal action by the Commission. He added that the authorization does not eliminate the need for the applicant to apply and receive approval from the Commission.

Chairman Prickett said going forward when emergency authorizations occur, notification will be sent to all Commissioners.

Susan R. Grogan, Director of Planning, provided an update on the following matters:

- The New Jersey Historic Trust had to postpone their site visit until the end of August. A site visit is required as part of the grant application to paint Fenwick Manor.
- With the end of the fiscal year, staff is currently working on the following: the annual Alternate Design System Pilot Program report, the Pinelands Development Credit Bank annual report and the annual update on Permanent Land Protection.
- The public comment period for the proposed amendments to the Alternate Design System Pilot Program has begun. A virtual hearing on those amendments is scheduled for September 2, 2020.
- Staff continues to make progress on stormwater amendments that the Commission will need to consider in response to NJDEP's recent stormwater regulations. The Policy & Implementation Committee will have recommendations to consider this fall.
- The Barnegat Bay Partnership received grant funding from the NJDEP to create watershed protection and restoration plans for the Toms River, Oyster Creek, Cedar Creek and Forked River watersheds. The Commission will participate as stakeholders on both efforts.

Commissioner Avery asked what types of activities the Barnegat Bay Partnership will be conducting.

Director Grogan said she will review the grant application and provide an update.

Chairman Prickett asked for an update on the Kirkwood-Cohansey rules.

Director Grogan said staff continues to work on a "second draft" and resolve some remaining issues and questions. She said staff must be able to implement the rules and work remains on that effort.

Stacey Roth, Chief of Legal and Legislative Affairs, said at the July Commission meeting she provided information regarding a renewed stay request from the Sierra Club. At the time the Commission received the request, HDD in the Pinelands Area was finished and the Commission issued a letter advising the matter is moot. On July 17th, the Sierra Club filed

a motion with the Appellate Division to obtain a Stay and supplement the record. The Commission filed an opposition brief arguing the issue was moot. The Appellate Division denied the motion to Stay and supplement the record on August 6th. Additionally, the substantive brief is complete, however the Court has yet to schedule oral argument.

Ms. Roth will reach out to the State Ethics Commission to see if virtual ethics training is a possibility for 2020.

Commissioner Avery said there have been some recent news articles about the illegal use of Off- Road Vehicles (ORVs). He asked Ms. Roth to provide information about the status of the bill to enhance penalties for illegal use of ORVs.

Ms. Roth said she would check on the status of the legislation.

Commissioner Avery asked if the Sierra Club and Pinelands Preservation Alliance (PPA) have outside counsel.

Ms. Roth said the Sierra Club is represented by The Eastern Environmental Law Clinic and PPA is represented by Paul Leodori.

Paul Leakan, Communications Officer, said the Commission has hosted 11 webinars since June. He said the webinars keep the public informed and engaged and serve as a great platform for people to share their research. The Commission's social media presence continues to grow.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution for the paving of existing trails at the Nesbit Recreation Complex in Pemberton Township.

Commissioner Lohbauer made a motion Approving With Conditions an Application for Public Development (Application Number 1993-0360.005) (See Resolution # PC4-20-24). Commissioner Pikolycky seconded the motion.

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

Chairman Prickett presented a resolution recommending approval of two public development applications: change of use at the former Green Bank School in Washington Township and the installation of stream scour countermeasures at the Mill Creek Bridge in Upper Township

Commissioner Lohbauer made a motion Approving With Conditions Applications for Public Development (Application Numbers 2000-0637.004 & 2019-0026.001) (See Resolution # PC4-20-25). Commissioner Christy seconded the motion.

Director Horner said the New Jersey Department of Transportation is proposing to install 4,900 square feet of concrete block around the stream bank and within the stream to protect the bridge from erosion.

He said the other application is for a change of use of the Green Bank Elementary School. He said the NJDEP plans to occupy 9,000 square feet of the building for office space. He explained that because a state agency is occupying the building, the New Jersey Department of Community Affairs (DCA) will issue permits. He noted that the public development report references a Certificate of Occupancy; however, after a lengthy discussion with DCA, a Certificate of Approval will actually be issued. He recommended adding language to the cover letter noting a Certificate of Occupancy is comparable to a Certificate of Approval in this instance.

Commissioner Lloyd asked if the Commission had ever done this before.

Director Horner said no, and the CMP does not speak to either document. However, staff has dealt with similar applications in the past. He added that with this application the Certificate of Approval will approve the architectural plans of the 9,000 square foot portion of the building to be occupied.

Commissioner Prickett asked about the on-site septic system and if there will more or less people in the building with the change of use from school to office.

Director Horner said wastewater is estimated and calculated based on NJDEP's regulations, which assign flow rates based on the use. He said wastewater flows for a school are typically calculated by the number of students and teachers. He said office space wastewater flows are usually based on the square footage. He said there will be less office personnel than students. He noted that the Burlington County Health Department is responsible for ensuring that the actual septic system has adequate capacity.

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 seven Public Development applications up for comment. There were no public comments.

Ordinances Not Requiring Commission Action

Chairman Prickett read the list of ordinances not requiring Commission action.

- Shamong Township Ordinances 2020-04 & 2020-06

No questions were raised.

Commissioner Avery advised Commissioners that they will be receiving an email from the Human Resources Manager regarding the Executive Director's annual evaluation.

General Public Comment

Fred Akers of the Great Egg Harbor Watershed Association said there may be money for the Commission with the recent signing of the Great American Outdoors Act. He said \$900 million is available through the Land and Water Conservation Fund and land in Hamilton Township was previously preserved with the use of money from this fund.

Rhyan Grech of the Pinelands Preservation Alliance said the NJDEP has made some personnel changes. She recommended inviting the Acting Director of Parks and Forestry to a future meeting. She said the number of accidents that have occurred during the SRL pipeline construction was not what was presented to the Commission by NJNG during the application process. She said PPA, the Sierra Club and members of the public raised the dangers of the pipeline construction to the Commission. She said sludge cannot be dumped into Pinelands wetlands. She said staff did not issue a violation notice, follow up or do a field investigation after the IR incidents occurred. She added that the quality of surface and groundwater must be protected and maintained and, as it relates to the SRL, that has not happened. She said had the Commission and public been made aware of the IR incidents in the Pinelands, a stay request may not have been moot and further incidents outside the Pinelands may have been prevented.

Commissioner Lohbauer thanked the conservation officers for their continued efforts to control illegal ORV use. He also read an excerpt of a social media post by Al Horner about a recent ORV incident.

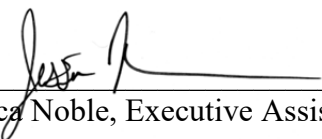
Commissioner Earlen said the last public comment that was provided went too far. He said for the commenter to insinuate that staff is to blame for the IRs and damage to people's homes is out of line.

Commissioner Howell said he echoed Commissioner Lohbauer's earlier comments about the IR incidents. He said he would have liked to have known about the incidents when they occurred.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Christy seconded the motion. The Commission agreed to adjourn at 10:52 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: August 28, 2020