

Disclaimer

These minutes reflect the actions taken by the Commission during its November 13, 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 November 30, 2020.

PINELANDS COMMISSION MEETING

MINUTES

November 13, 2020

The November 13, 2020 Pinelands Commission meeting was conducted remotely. All participants were present via Zoom conference and the meeting was livestreamed through YouTube. <https://www.youtube.com/watch?v=4thQzihjaxk>

Commissioners Participating in the Meeting

Alan W. Avery Jr., Sean Earlen, Jerome H. Irick, Jane Jannarone, Ed Lloyd, Mark Lohbauer, William Pikolycky, Gary Quinn and Chairman Richard Prickett. Also participating were Executive Director Nancy Wittenberg and Deputy Attorney General (DAG) Kristina Miles and Governor's Authorities Unit representative Rudy Rodas.

Commissioners Absent

Daniel Christy, Jordan P. Howell and D'Arcy Rohan Green.

Call to Order

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

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

Chairman Prickett 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 October 9, 2020 meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Jannarone seconded the motion.

The minutes from the October 9, 2020 Commission meeting were adopted by a vote of 8 to 0.

Commissioner Pikolycky joined the meeting.

Committee Reports

Chairman Prickett provided an update on the October 30, 2020 Policy and Implementation (P&I) Committee meeting:

The Committee adopted the minutes of its September 25, 2020 meeting.

The Committee recommended that the Commission adopt the rules related to the alternate design septic system pilot program.

The Committee discussed staff shortages and the related workload and concluded that Commissioners were willing to offer expertise if needed. The November 20th P&I Committee meeting has been canceled.

Commissioner Lohbauer provided an update on the October 30, 2020 Land Use, Climate Impacts and Sustainability (LUCIS) Committee meeting:

The Committee adopted the minutes of its October 7, 2020 meeting.

The Committee further discussed a draft resolution that would allow the Commission to consider the effects of climate change in future policy decisions and potential Comprehensive Management Plan (CMP) amendments. The resolution will be considered during today's meeting. Two members of the public provided comment during the October 30th LUCIS Committee meeting.

Executive Director's Report

ED Wittenberg provided an update on the following items:

- Staff will present the Fiscal Year 2021 Budget during the Personnel and Budget Committee Meeting on November 17th. The full Commission will vote on the budget during the December Commission meeting. The Commission has been down a number of staff members for some time and it will present a challenge in Fiscal Year 2021 as staff members potentially shift their work based on the LUCIS Committee's priorities.

- Staff was reminded as they prepared to send the CMP amendments to the Secretary of the Interior, that a federal designee still has not been formally appointed to the Commission. The CMP amendments will be sent to the individual at the National Park Service who has served as the contact in lieu of a formal designee.

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

- The New Jersey Historic Trust notified the Commission that it will not be providing grant funding to paint Fenwick Manor. The Trust expressed concern that Fenwick Manor needed work to stabilize the structure and that painting the building didn't seem prudent at this time. The Trust suggested that the Commission apply for another grant to develop a preservation plan for Fenwick Manor. Staff will be contacting the Trust soon to get more details. The plan will most likely reveal the need for expensive rehabilitation of the structure. The New Jersey Historic Trust also expressed concern about the qualifications of the contractor.
- The CMP turns 40 on November 21, 2020. The Commission formally adopted the CMP on that date in 1980. A virtual, 40th birthday celebration is planned for January 2021, the CMP went into effect in January 1981. Director Grogan said she reviewed some of the minutes from November 1980 and said it was amazing to see how many hours and meetings were spent drafting and discussing the CMP.

Stacey Roth, Chief of Legal and Legislative Affairs, reminded Commissioners that they must complete annual ethics training by November 19, 2020.

Paul Leakan, Communications Officer, said the Commission has hosted 24 webinars since June and they have been viewed over 5,000 times. The 2020 webinar series will conclude this month and resume in January. He said the 2021 Pinelands National Reserve calendar is nearing completion before heading to the printer. He provided an update on social media numbers and said the most popular post was about the ground penetrating radar survey conducted by staff at St. Mary's of the Assumption Cemetery in Mullica Township. Also, Mr. Joel Mott will present his Pinelands 101 presentation virtually to 7th grade students in Galloway Township.

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

- A Certificate of Filing was issued for the conversion of the Atco Speedway to an office and auto auction. The applicant can now proceed to Waterford Township for its local approvals.
- A Certificate of Filing was also issued for a communications tower at the Woodland Volunteer Fire & EMS building in Chatsworth. The Commission staff is currently reviewing an approval that it recently received for the tower.
- A Certificate of Filing was issued for an approximately 8-acre parking area at an existing warehouse facility in Winslow Township. Staff worked closely with the town on the application. The parking area will be used for tractor trailers.
- Pemberton Township has submitted information for a proposed 8,000 linear feet of sanitary sewer extension to serve two existing schools on Fort Dix Road. The sewer line would have to travel through Pinelands Management Areas where sewer

is not permitted unless it is determined that there is a public health concern as defined in the CMP. The schools are currently served by on-site wastewater treatment plants that discharge treated effluent into an adjacent stream.

Commissioner Avery asked what stream the treatment plant is discharging into.

Mr. Ernest Deman said the stream is known as Indian Run.

Chairman Prickett said he believes Indian Run is a tributary of the Rancocas. He also said if a sewer line is permitted and constructed, it will connect to a wastewater treatment plant in Birmingham which is then released into the Rancocas.

Director Horner said Birmingham is a portion of Pemberton Township that is outside of the Pinelands Area.

Director Horner said the Commission adopted a resolution approving an application for an addition to a fire company in Monroe Township during its September meeting. Staff determined that an existing violation had never been addressed. The Township cleared a portion of a wetlands buffer and placed storage containers in a wetlands buffer. The Commission approved the application but raised concerns about the violation. Director Horner said that Township attorney Katrina Register, Mayor Richard DiLucia and Township Engineer Joseph Raday have joined today's meeting via Zoom.

Chairman Prickett welcomed the representatives from Monroe Township and thanked Ms. Register for sending a letter that provided an update to the Commission on the violation matter.

Mayor DiLucia apologized for not attending the October Commission meeting. He also expressed apologies over the violations. He said the storage containers were removed from the buffer on November 6th and the buffer area that was cleared will be revegetated before November 30th.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of two solar projects in Monroe Township.

Commissioner Lohbauer made a motion Approving With Conditions Applications for Public Development (Application Numbers 1986-1336.003 & 2003-0032.003) (See Resolution # PC4-20-35). Commissioner Jannarone seconded the motion.

Director Horner said both of the proposed solar facilities are accessory, which means the electricity generated will be used on the parcel. He noted that the solar proposed at the municipal building will be elevated over the parking lot and the solar at the municipal utilities authority will be constructed in a grassy area. He said trees will not be cleared for either solar project.

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

Planning Matters

Chairman Prickett presented a resolution recommending the adoption of CMP amendments related to the Septic Pilot Program.

Commissioner Pikolycky made a motion To Adopt Amendments to the Comprehensive Management Plan in Accordance with the Administrative Procedure Act (Water Quality; Alternate Design Wastewater Treatment Systems Pilot Program) (See Resolution # PC4-20-36). Commissioner Lohbauer seconded the motion.

Director Grogan said the amendments will be filed with the Office of Administrative Law (OAL) next week. The amendments will be published in the New Jersey Register in mid-December, at which point they will take effect. After the rules are published, the Commission's Environmental Technologies Coordinator, Ed Wengrowski, will put a call out for new advanced septic technologies to join the pilot program.

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 said there are two Public Development applications, both of which are from Monroe Township, that the public can provide comment on.

No one from the public provided comment.

Ordinances Not Requiring Commission Action

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

- Berlin Borough Ordinance 2020-008
- Little Egg Harbor Township Ordinance 2020-05
- Medford Township Ordinances 2020-17 and 2020-18
- North Hanover Township Joint Land Use Board Resolution 2020-12
- North Hanover Township Ordinances 2020-08 and 2020-09
- Waterford Township Ordinance 2020-11

No questions were raised.

Other Resolutions

Chairman Prickett presented a resolution that the LUCIS Committee recently worked on related to climate change in the Pinelands Area.

Commissioner Lohbauer made a motion To Establish the Objectives of the Pinelands Commission Relative to Climate Change in the Pinelands Area and the Responsibilities of the Commission's Land Use, Climate Impacts and Sustainability Committee (See Resolution # PC4-20-37). Commissioner Lloyd seconded the motion.

Commissioner Lohbauer thanked Director Grogan for drafting the resolution, and he provided highlights of the resolution. He said currently there is no language in the CMP that addresses climate change. He said the greatest defense to climate change is carbon sequestration. He said the vast Pinelands forest will help combat climate change. He explained the four action items listed in the resolution.

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

General Public Comment

Fred Akers of the Great Egg Harbor Watershed Association, said New Jersey is pushing for dredge spoils that have been removed from the coast to be placed in the Pinelands National Reserve (PNR) and farms in the Pinelands. He said he has done some research and he found that it's best to keep spoils in regional systems and surrounding areas. He also said that about 200 cedar trees have been removed along the South River in Hamilton Township. He said he will be reaching out to staff in hopes of finding out additional information about what is happening on the multiple parcels where the tree removal occurred.

Ms. Roth provided an update to Commission regarding dredge spoils. She said although the Commission does not have primary jurisdiction over Coastal Area Facility Review Act (CAFRA) permits in the Pinelands National Reserve, the Commission reviews and provides comment to the NJDEP to ensure that the goals, intent and objectives of the Pinelands Protection Act and the CMP are met. She added that staff reached out to the Assistant Commissioner of Land Use at the NJDEP to schedule a meeting to broadly discuss the placement of dredge spoils in the PNR. Staff feels that dredge spoils do not belong in the PNR because they do not meet CMP water quality standards.

Director Horner said the removal of cedar trees that Mr. Akers mentioned is actually being investigated by the Hamilton Township Police Department as theft.

Rhyan Grech, of the Pinelands Preservation Alliance (PPA), said the NJDEP is permitting New Jersey Natural Gas (NJNG) to continue horizontal directional drilling (HDD) for the Southern Reliability Pipeline. She said at the October Commission meeting Director Horner reported on a South Jersey Gas (SJG) application for the replacement of a natural gas main in Hamilton Township. She said PPA does not believe this application is an exempt activity. She said this is not a replacement project, because the applicant is proposing a gas main and there will be an increase in pipe size. She said there are threatened and endangered species concerns and wetlands in the vicinity. She said the applicant is proposing HDD, which she said has a 50% failure rate.

ED Wittenberg said Director Horner and Stacey Roth will provide additional information on this application.

Director Horner said first it would be helpful to quickly review the 4.1 section of the CMP, which lists and defines activities that do not require an application to the Commission. He said that if an applicant is undertaking one of the 23 exemptions, there is no requirement to contact the Commission. In some instances, applicants request a letter from the Commission to confirm that their project or proposed development is exempt. Director Horner provided examples of some of the activities that are considered exempt from Commission review.

He said staff relied on the exemption in 7:50- 4.1(a)6 of the CMP to determine the project was exempt. Director Horner displayed an aerial of the proposed gas line.

Ms. Roth said the South Jersey Transportation Authority requested that SJG use HDD rather than trenching on the Atlantic City Expressway.

At the request of Commissioner Irick, Ms. Roth provided a definition of distribution line and said the CMP covers all utilities under one definition, not just gas. She added that she looked at the Board of Public Utilities definition, which uses the federal code of regulations. She said a gas distribution line is anything that is not a gathering line or transmission line. She said the size of the pipe is not relevant because the exemption states the distribution line must serve areas that are “effectively developed.” She said the project involves replacement of a gas distribution line in a developed area and in a Pinelands Management Area where public service infrastructure is permitted.

Commissioner Lohbauer asked if the Commission could override the staff’s exemption determination and review the application.

Ms. Roth said this is a private development application that is not eligible for the exemption from municipal approvals provided by the Municipal Land Use Law (40:55D)-19). She added that staff has consistently interpreted the CMP exemption for utility distribution lines in this manner. She said the Commission would need to do a rule change to modify the exemption rules. She noted that the proposed development does meet all CMP environmental standards and there is nothing in the CMP that prohibits HDD. She said the only way the Commission would review the application is if the staff issued a Certificate of Filing and subsequently determined that the municipal approval raised substantial issues.

Commissioner Lohbauer said he is having difficulty accepting that the Commission cannot review this application, especially because of inadvertent returns from HDD during the SRL pipeline.

Ms. Roth said she understood his position, but the regulations cannot be changed without the appropriate administrative process. She noted the Metromedia case.

Commissioner Lloyd requested that Ms. Roth provide a memo to Commissioners on how staff determined the pipeline replacement was an exempt activity from the Commission. He said he believes the Commission is not bound by staff's interpretation of the CMP. He said he supports a rule change.

Commissioner Avery said he appreciates the concern raised by the member of the public and he respects Commissioner Lohbauer's opinion on the matter. However, he believes staff has applied the exemption appropriately. He said he is not interested in making amendments to the plan because of one application.

Commissioner Irick suggested that maybe the Commission should re-examine all of the exemptions outlined in the 4.1 section of the CMP.

The matter was discussed further and the difference in opinion remained. DAG Miles said that the question of the Commissioner's authority and jurisdiction was raised throughout today's discussion. She said she would like to look at that matter further and provide guidance at an upcoming meeting. She said it would be considered legal advice and provided during closed session.

Commissioner Lohbauer asked what happens to the application while the Commission awaits guidance from the Attorney General's office.

Ms. Roth said she doesn't believe the Commission has the ability to suspend the exemption.

Commissioner Lloyd disagreed and said he would be interested in amending the CMP to make the exemption much clearer.

Jeff Tittel of the Sierra Club said the SRL pipeline is an intrastate pipeline providing reliability. He said the inadvertent returns violate the Clean Water Act. He said the Commission has a responsibility to protect the aquifer. He said the Commission should deal with the request for a stay and remove the utility exemption from the CMP.

Resolution to Retire into Closed Session

DAG Miles read a resolution to enter into closed session to discuss collective bargaining and a personnel matter.

Commissioner Lloyd made a motion to enter into closed session. Commissioner Lohbauer seconded the motion. The Commission agreed to retire into closed session by a vote of 9 to 0, beginning at 11:35 a.m.

Return to Open Session

The Commission entered back into open session at 12:08 p.m. DAG Miles provided a summary of the closed session. She said the Commission was provided an update on the collective bargaining process and an employment matter.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Avery seconded the motion. The Commission agreed to adjourn at 12:10 p.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: November 30, 2020