

Disclaimer

These minutes reflect the actions taken by the Commission during its December 11, 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 December 22, 2020.

PINELANDS COMMISSION MEETING

MINUTES

December 11, 2020

The December 11, 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=IfzFubxk5YA>

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 Rudy Rodas.

Commissioners Absent

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

Call to Order

Chairman Prickett called the meeting to order at 9:34 a.m.

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

Executive Director Wittenberg called the roll and announced the presence of a quorum.

The Commission pledged allegiance to the Flag.

Minutes

Commissioner Lloyd asked that a portion of the November minutes be corrected. He said he requested that staff provide a memo about how it was determined that the Wrangleboro Road pipeline replacement in Hamilton Township was an exempt activity.

Executive Assistant, Jessica Noble said she would make the correction to the November 13, 2020 Commission meeting minutes.

Chairman Prickett presented the amended minutes from the Commission's November 13, 2020 meeting, including the closed sessions minutes. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Lloyd seconded the motion.

The open and closed session minutes from the November 13, 2020 Commission meeting, as amended, were adopted by a vote of 9 to 0.

Committee Reports

Commissioner Avery provided a summary of the November 17, 2020 Personnel and Budget Committee meeting:

The Committee adopted the minutes from the September 29, 2020 meeting.

The check registers, electronic disbursements and application fees covering August 2020 to September 2020 were reviewed. It was noted that the FY21 application fees are currently at 55% of the anticipated amount.

The Draft FY21 Budget was presented and the Committee recommended the budget for a vote by the full Commission.

There was no public comment and the Committee did not meet in closed session.

Executive Director's Report

ED Wittenberg provided an update on the following items:

- On December 9th, Commissioner Irick, Commissioner Lohbauer and Chairman Prickett participated in a site visit at Joint Base McGuire-Dix-Lakehurst to observe the areas where the Inadvertent Return (IR) occurred during the construction of the Southern Reliability Link gas pipeline. Representatives from New Jersey Natural Gas (NJNG) attended the site visit, including two of their consultants.
- During its November 24th meeting, the Pinelands Municipal Council discussed its efforts to restore the Payment In Lieu Of Taxes (PILOT) program. Assemblywoman Stanfield and representatives for Assemblyman Simonsen participated in the Municipal Council meeting and expressed their willingness to help. In support of the Council, the Commission staff prepared a resolution that

supports the reinstatement of the PILOT program, which was removed from the State FY 2021 budget.

ED Wittenberg said she would like to discuss the South Jersey Gas pipeline exemption once staff reports are completed.

Before moving on, the Commissioners who participated in the site visit expressed their appreciation for the opportunity to see the IR sites. They also said they did not see the presence of bentonite on the surface.

Commissioner Lloyd said since the spills were 20 months ago, he would have expected them to be cleaned up at this point. He was curious what they looked like when they occurred.

ED Wittenberg said the spills were cleaned up expeditiously.

Ernest Deman, a Supervising Environmental Specialist at the Commission, said that he was at the site of the first spill 24 hours after it happened. He said although he could still see a thin layer of a fine material, it was cleaned up extremely well in a short period of time.

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

- At the November Commission meeting, Fred Akers notified the Commission of cedar harvesting that was occurring in Hamilton Township. Mr. Akers subsequently submitted a letter to the Commission regarding the matter. Staff recently responded to Mr. Akers to advise him that staff had been at the site twice, once to observe the cutting of trees and another time with a member of the Hamilton Township Police Department. He said this remains a trespass and theft issue.
- Monroe Township notified the Commission that the revegetation of a wetlands buffer on the Cecil Fire Company property was completed on November 30, 2020. Staff verified that the revegetation did occur.
- In the fall of 2019, the Commission approved a solar facility at the Legler Landfill in Jackson Township. A Deed of Conservation Easement was required to protect a threatened and endangered plant species on the landfill parcel. Additionally, Jersey Central Power & Light is proposing an easement on the parcel. Staff is working with the applicant on the deed language to make sure it's consistent with the proposed easement.
- A call up hearing has been scheduled for an applicant who proposed a cell tower as an accessory use to the EMS/Fire Station in Chatsworth. Staff reviewed the approval from the Woodland Township Land Use Board and determined that it did not demonstrate that the proposed tower qualifies as an accessory use. If the tower is a principle use, it would have to adhere to the CMP's cellular plan rules.

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

- The septic pilot program amendments that the Commission adopted at its November Commission meeting were submitted to the Office of Administrative Law and will be published in the New Jersey Register on December 21, 2020. Staff discussed the amendments with Jonathan Meade of the National Park Service earlier this week. The Commission is required to submit the amendments to the Secretary of the Department of the Interior. Mr. Meade wanted to be sure that he understood what was required if something needed to be done on his end. The Pinelands Protection Act provides the opportunity for the Department of the Interior to either approve or disapprove the amendments within 90 days, and if no action is taken, the amendments are automatically approved.
- A meeting is scheduled for early next week with the Board of Public Utilities (BPU) to discuss its community solar pilot program. BPU will be launching its second round of community solar projects, and the Commission's staff wants to ensure better coordination while sharing the issues that the Commission faces when solar projects are proposed on uncapped landfills in the Pinelands Area.
- The Commission should be notified later this month about the possible designation of the Pine Barrens Byway as a National Scenic Byway.
- Staff participated in an advisory committee meeting for a grant that Pemberton Township received from the Delaware Valley Regional Planning Commission (DVRPC) referred to as the "Browns Mills Healthy Community Plan". The group of representatives included members from the Township, County, Deborah Hospital and Rowan College at Burlington County. During the meeting, they discussed the data that had been gathered and the elements of a healthy community as it relates to land use.
- The Commission was notified by the Mark Villinger of the Ocean County Planning Department that the Department of Defense is interested in updating its Joint Land Use Study for the Joint Base. The Commission participated in the study approximately 10-12 years ago. Burlington County is also participating in this effort. The study looks at noise, encroachment issues and better communication between the Joint Base and surrounding communities. The Department is also interested in doing a similar study for Warren Grove, however the lack of planning staff at Burlington County may delay it.

Commissioner Avery requested clarification on whether community solar projects can be proposed outside of the BPU pilot program. Director Grogan said she would ask that question at the upcoming meeting with the BPU.

Commissioner Lloyd asked if there was an update on the preservation of Fenwick Manor. Specifically, he asked why the New Jersey Historic Trust suggested that the contractor was not qualified to paint the building.

Director Grogan said staff has been in contact with the New Jersey Historic Trust (NJHT) since the Commission was notified that it was not selected for the grant. Staff is trying to understand the best way to proceed and determine what other assistance may be available. Staff has also been in contact with the New Jersey State Historic Preservation Office (SHPO). The selection process for the funding was highly

competitive and more well-known sites such as Ellis Island and Lucy the Elephant were recipients. Staff is still unsure why NJHT raised concern about the contractor.

Stacey Roth, Chief of Legal and Legislative Affairs, provided an update on the following matters:

- The South Jersey Transportation Authority has submitted a payment of \$500,000 for 2021. The annual payment is required by the amended Memorandum of Agreement and will be used toward land acquisition.
- Atlantic County has obtained Freeholder authorization to proceed with the acquisition of the new Grassland Conservation Management Area.
- Oral argument for the NJNG appeals, including the BPU's appeals and third party appeals will be heard by the Appellate Division on January 20th.

Paul Leakan, Communications Officer, provided information on the 2021 Pinelands National Reserve wall calendar, which features scenes of the Pine Barrens Byway and can be obtained free of charge at Jake's Branch County Park, Whitesbog Village and Wells Mills County Park. He added that he has been conducting and recording video interviews of past Commission employees and Commissioners. The interviews will be shared with the public in January as part of the 40th anniversary celebration of the Comprehensive Management Plan.

South Jersey Gas pipeline exemption

ED Wittenberg said at last month's Commission meeting there was a lengthy dialogue between staff and Commissioners about an exemption letter that was issued to South Jersey Gas (SJG) for a pipeline replacement project in Hamilton Township. She said there was confusion amongst staff and Commissioners about requests made during that discussion. She added that before the Division of Law is involved, it would be helpful to discuss the matter further and try to answer questions.

Commissioner Lloyd said he would like to have an explanation, in writing, of how staff applied the 4.1 exemption for the application.

DAG Miles advised the Commission that she does not have anything prepared to share with the Commission today on this matter. She said she would like clarification on what exactly the Commission wants, whether it's a legal memo or guidance. She added that at this time her schedule is extremely busy and based on the outcome of the discussion, it may take a while to prepare something should the Commission want formal guidance.

Ms. Roth said that staff started to look at how many exemptions letter requests the Commission has received for 7:50- 4.1(a)5 & 7:50- 4.1(a)6, which both relate to utility distribution lines. She said dating back to 1986, staff issued 35 requests for exemption letters for 7:50- 4.1(a)6. She said it seems most applicants are not requesting the exemption letter. She added that 7:50- 4.1(a)5 is used for sewer line replacements.

Commissioner Lohbauer said he still wants to know what ability the Commissioners have to override the staff's exemption determination.

Commissioner Irick said he spoke with Ms. Roth and he would like to see the exemption language in the CMP made clearer.

Ms. Roth said if the Commission would like to see changes to the 4.1 section of the CMP, it would require a rule change. She suggested that a good starting place would be a discussion at an upcoming Policy & Implementation Committee meeting.

Commissioner Irick said he would like to discuss 4.1 exemptions at a future P&I Committee meeting.

Commissioner Avery said he supports having a discussion about the 4.1 exemptions at an upcoming P&I meeting; however, he does not support making ad-hoc changes to the CMP. He also said we don't need advice from the Attorney General's office on how to do rulemaking. He said work requests to the AG's office come with a fee.

ED Wittenberg asked if DAG Miles should pursue a legal analysis on this matter.

Commissioner Lloyd clarified the next steps:

- Does the Commission want to proceed with rulemaking to change some of the exemptions in the CMP?;
- Staff will provide background and history of how the exemptions: 7:50- 4.1(a)5 & 7:50- 4.1(a)6 have been applied at an upcoming P&I Committee meeting; and
- If necessary, the Commission could then ask for guidance from the AG's office regarding the Commission's ability to look at staff's decisions and potentially override them.

Chairman Prickett requested that Commissioners contact him if they have matters they would like to see changed or discussed. He said matters like this should be discussed at the Committee level first.

Ms. Roth said she will provide a written analysis on how the exemption was applied for the SJG pipeline replacement and some past practice.

Commissioner Lohbauer said he still may want guidance from the AG's office but would wait to hear further from staff on the 4.1 exemption.

Public Development Projects and Other Permit Matters

Chairman Prickett presented a resolution recommending approval of solar projects at a middle school and a high school in Monroe Township.

Commissioner Lloyd made a motion Approving With Conditions Applications for Public Development (Application Numbers 1993-0731.005 & 2001-0438.006) (See Resolution # PC4-20-38). Commissioner Lohbauer seconded the motion.

Director Horner noted that some of the proposed development required an application to the Commission but roof-mounted solar is an exempt activity.

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 Public Development and Waiver of Strict Compliance applications.

No one from the public provided comment.

Ordinances Not Requiring Commission Action

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

- Barnegat Township Ordinances 2019-14, 2020-12 and 2020-13
- Galloway Township Planning Board Resolution 6A-2020
- Medford Lakes Borough Planning Board Resolution 3-2018 and Ordinances 665, 672 and 673
- Medford Township Ordinance 2020-20
- Monroe Township Ordinance O:26-2020
- Southampton Township Ordinance 2020-2
- Stafford Township Ordinances 2020-30 and 2020-31

No questions were raised.

Other Resolutions

Chairman Prickett presented a resolution in support of Payment in Lieu of Taxes.

Commissioner Lloyd made a motion To Support the Pinelands Municipal Council's Initiative to Reinstate the Payment in Lieu of Taxes Program (See Resolution # PC4-20-39). Commissioner Lohbauer seconded the motion.

Commissioner Pikolycky said this program affects both Pinelands municipalities and non-Pinelands municipalities that were relying on this money. The money in question is about \$2 million.

Commissioner Lloyd said he supports this effort.

Chairman Prickett said open space lands benefit all residents.

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

Chairman Prickett presented a resolution scheduling Commission meeting dates for 2021.

Commissioner Lohbauer made a motion Scheduling Regular Pinelands Commission Meeting dates for 2021 (See Resolution # PC4-20-40). Commissioner Lloyd seconded the motion.

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

Chairman Prickett presented a resolution to adopt the Fiscal Year 2021 Budget.

Commissioner Avery made a motion To Adopt the Pinelands Commission's Fiscal Year 2021 Budgets for the Operating Fund, the Kirkwood Cohansey Aquifer Assessment Study Fund, Katie Trust Fund and the Pinelands Conservation Fund (See Resolution # PC4-20-41). Commissioner Lohbauer seconded the motion.

ED Wittenberg said the FY2021 budget consists of four budgets: Operating, Kirkwood-Cohansey, Katie Fund and Pinelands Conservation Fund.

She said the Commission's fringe and indirect costs continue to grow while the state's supplemental funding remains the same. She said after some analysis from the Planning office, applications fees are being projected differently and more conservatively. ED Wittenberg reviewed staffing levels and FY 21 Initiatives (see attached slides for the full budget presentation). She added that now that the budget is complete, she will focus on contract negotiations.

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

General Public Comment

Richard Dann of the Communication Workers of America said the administration at the Pinelands Commission has refused to negotiate for the last nine months. He said he was encouraged to hear ED Wittenberg say she will be concentrating on negotiations.

Fred Akers of the Great Egg Harbor Watershed Association, thanked Director Horner and Rhonda Ward for their response regarding the Atlantic White Cedar matter on the South River in Hamilton Township.

Rhyan Grech of the Pinelands Preservation Alliance (PPA), thanked the Commissioners who attended the visit to see the IR sites. She said we may never know the extent of damage caused by the spills. She said during one of the clean-ups an unexploded ordnance was discovered and clean-up activities were suspended. She asked if the clean-up was ever completed. After reading portions of the Pinelands Protection Act, she said the Commission bears the responsibility of implementing the CMP. She said she believes the Commission can override staff's decision related to the South Jersey Gas main replacement exemption in Hamilton Township. She closed by commending the Commission's ability to hold meetings virtually.

Commissioner Lohbauer said during the site visit, Commissioners learned that the ordnance was detonated, and once the area was deemed safe, the clean-up in this particular area concluded.

Adjournment

Commissioner Lloyd moved to adjourn the meeting. Commissioner Earlen seconded the motion. The Commission agreed to adjourn at 11:43a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: December 22, 2020