



## *State of New Jersey*

DEPARTMENT OF COMMUNITY AFFAIRS

STATE PLANNING COMMISSION

OFFICE OF SMART GROWTH

PO BOX 204

TRENTON NJ 08625-0204

RICHARD J. CODEY  
*Acting Governor*

SUSAN BASS LEVIN  
*Commissioner*

CHRISTIANA FOGLIO  
*Chair*

ADAM J. ZELLNER  
*Executive Director*

**New Jersey State Planning Commission  
Minutes of the Meeting Held December 1, 2004  
Thomas Edison College  
Prudence Hall  
101 West State Street  
Trenton, New Jersey**

### **CALL TO ORDER**

The December 1, 2004 meeting of the New Jersey State Planning Commission was called to order by Christiana Foglio, Chair at 9:45 a.m. on December 1, 2004.

### **OPEN PUBLIC MEETINGS ACT**

Dan Reynolds, Deputy Attorney General announced that notice of the date, time and place of the meeting had been given in accordance with the Open Public Meetings Act.

### **ROLL CALL**

#### **Members Present**

Michele Byers, Executive Director, New Jersey Conservation Foundation  
Dan Ryan, Designee for Commissioner Bradley Campbell, Department of  
Environmental Protection  
John Eskilson, Public Member  
Curtis Fisher, Governor's Office (arrived at 10:05 a.m.)  
Roberta Lang, Designee for Secretary Charles Kuperus, Department of Agriculture  
Marilyn Lennon, Public Member (arrived at 9:49 a.m.)  
Brent Barnes, Designee for Commissioner John Lettiere, Department of Transportation  
Marge DellaVecchia, Designee for Commissioner Susan Bass Levin, Department of Community  
Affairs (arrived at 9:50 a.m.)  
Robert Smartt, Designee for State Treasurer John E. McCormac, Department of Treasury  
Edward McKenna, Jr., Public Member  
Thomas Michnewicz, Public Member  
George Pruitt, Public Member  
Jason Kirin, Representative for Acting Secretary Virginia Bauer, Commerce & Economic Growth  
Commission  
Christiana Foglio, Chair and Public Member

#### **Not Present**

Peter Lazaropoulos, Public Member

Others Present (See Attachment A)

*PLEDGE OF ALLEGIANCE*

Chair Foglio asked everyone to stand for the Pledge of Allegiance.

Adam Zellner presented and thanked former Chairman Tim Touhey and former Commissioner David Fisher with plaques in recognition of their service on the State Planning Commission.

Comments were received from various Commissioners and the public thanking both Tim Touhey and David Fisher for their work.

*APPROVAL OF MINUTES*

Chair Foglio asked for a motion to approve the minutes. John Eskilson so moved and Edward McKenna seconded the motion. Chair Foglio asked for a roll call vote of the minutes of the October 20, 2004 meeting. Ayes: (7) Michele Byers, John Eskilson, Curtis Fisher, Roberta Lang, Brent Barnes, Marge Della Vecchia, George Pruitt. Nays: (0). Abstains: (6) Dan Ryan, Marilyn Lennon, Bob Smartt, Edward McKenna, Thomas Michnewicz, Christiana Foglio.

The minutes did not receive enough affirmative votes to pass. Dan Reynolds noted for the record that the advice of the Attorney General's office is that individuals who were not present at a meeting can nevertheless vote to approve minutes, if they are satisfied based upon their discussions with other members of the Commission that were present at the meeting that the minutes are accurate. Those that have abstained should not feel obligated to vote. Edward McKenna and Dan Ryan reversed their votes from an abstention to a yes. The minutes were approved.

**EXECUTIVE DIRECTOR REPORT, Adam Zellner, Director**

Mr. Zellner reported that at the last State Planning Commission he was asked to provide an update on the Wanaque petition. He noted the petition was filed under the former executive director and there are two separate issues. The first issue dealt with a planning area change; that area is now in the Highlands Preservation Area. So, it is no longer subject to the State Planning Commission, and the Highlands Council will take over. The second issue we are still looking into right now is to make sure that the appropriate procedures were followed. There will be an update for the next meeting as to whether those procedures were followed correctly.

*CHAIR'S COMMENTS, Christiana Foglio*

Chair Foglio introduced herself and noted that she is a planner, a graduate of Rutgers with a Master's in Planning. She was the economic development director and the city's planner for New Brunswick in the late 80's-early 90's. She was the president of the New Brunswick Development Cooperation, the head of the NJ Housing Mortgage and Financing Agency and the chair of the Council on Affordable Housing, and for the last 12 years she has been an affordable housing developer. She hopes to bring some balance to the Commission and she is very committed to the State Plan and planning in New Jersey. She intends to listen to all of the issues and agendas that are placed before the Commission and hopefully help the Commission to move with the same momentum it has over the last several years.

Chair Foglio placed on the table for approval Resolution No. 2004-12 – Approval of Annual Meeting Schedule of State Planning Commission for 2005. Edward McKenna moved the resolution and John Eskilson seconded the motion. Chair Foglio asked for a roll call vote. Ayes:

(13) Michele Byers, Dan Ryan, John Eskilson, Curtis Fisher, Roberta Lang, Marilyn Lennon, Brent Barnes, Marge Della Vecchia, Bob Smartt, Edward McKenna, Thomas Michnewicz, George Pruitt, Christiana Foglio. Nays: (0). Abstains: (0).

## **COMMITTEE REPORTS**

### **Plan Implementation Committee, Michele Byers, Chair**

Michele Byers moved Resolution 2004-13 – Approval of Petition to Amend the State Plan Policy Map submitted by Hovson’s, Inc. and Heritage Minerals, Inc. for the Heritage Minerals Tract in Manchester Township. Ms. Byers moved the resolution; Edward McKenna seconded. Ms. Byers noted that she had to recuse herself from the discussion and the vote. She explained that her organization is not part of the litigation nor has a position on it; however, it may at some point be involved in some fashion with the disposition of some of the property to be preserved.

Bill Harrison, Office of Smart Growth gave a summary of the petition. He explained that the map amendment was a result of a settlement of litigation between the property owner, the Pinelands Commission and the Department of Environmental Protection (DEP). There were a number of lawsuits that have been filed regarding this tract. This petition was to resolve that by basically switching areas of Planning Area 2 and Planning Area 5. He explained that approximately 1,000 acres of the property was disturbed as a result of a previous mining operation and the map amendment is putting that property within Planning Area 2 and the wooded portion in Planning Area 5. The Plan Implementation Committee recommended to keep Planning Area 2 connected the larger Planning Area 2 that is located in the northeastern Ocean County and southeast Monmouth County that in turn is connected to a Planning Area 1 in Monmouth County, in order to remain consistent with the mapping policies of the State Plan. He noted that a revised Resolution was handed out that changes the acreages slightly to reflect that proposed change in the map amendment and some additional surveying work that the applicant did.

John Eskilson questioned if the municipality was part of the litigation. Mr. Harrison noted that there was separate affordable housing litigation that the property owner brought against the municipality. They were not part of the litigation that the property owner brought against the State agencies. Mr. Harrison explained that there was a 90-day public comment period, and the municipality under the Commission’s Rules was entitled to request a public hearing. During that comment period the Office of Smart Growth did not receive any comments from anyone, including Manchester Township, and there was no request for a hearing from Manchester Township or anyone else.

Lewin Weyl, Deputy Attorney General representing the Department of Environmental Protection followed up on Mr. Eskilson’s question. He noted that the litigation goes back about eight years; the applicant submitted the application to DEP along with a number of others in 1994. When a resolution was finally reached, a public hearing was held in Manchester Township and there was substantial interest. The draft proposed settlement was revised by the DEP and the Pinelands Commission with the property owner to accommodate municipal concerns in terms of impact to schools in compliance with regulations. The settlement was then entered into and notice was given to all interested parties, including the municipality and municipal attorney. They received no appeals on the settlement, which provided for this map amendment being the first step in the process of the petitioner getting the necessary approvals from DEP.

Richard Hluchan, is the attorney for Hovson’s and Heritage Minerals, which are the petitioners in this matter. Mr. Hluchan noted that after the settlement was arrived at in principle the DEP and the Pinelands held a public hearing in Manchester Township last December. It was a packed house, and there were many comments. In response to those comments the DEP and Pinelands Commission insisted that various revisions be made to the settlement agreement, which were negotiated and agreed to. The settlement was then signed by a US District Court

Judge and as already indicated there have been no challenges or appeals to the settlement. He explained that his client was required to petition the State Planning Commission (SPC) to readjust the planning area lines so that the area designated as PA 2 would be the same as the development area that was agreed to with DEP, which is essentially the mined out area. All the balance of the tract will be designated PA5. As a result of the settlement, approximately 6,500 acres are being designated PA5 and will ultimately be donated to the State or to a conservation entity as public open space. He explained that when the petition was filed in June they gave notice directly to Manchester Township and to many other public entities as required by the Rules. Notice was published, with a 90-day comment period. No comments were received one way or the other, nor was there a request for a hearing. The DEP, Pinelands Commission and Mr. Hluchan feel that this is an appropriate exercise of both their authority and the authority of the SPC. He further noted that someone from Manchester may ask for a delay in the matter but felt it was not necessary; the Rules were followed.

Thomas A. Thomas, planning consultant for Manchester Township noted that the Township is regulated to a good extent by the Pinelands and CAFRA rules and regulations. He noted that the township was not part of the litigation between Hovson's and the State of New Jersey and Federal Government. He explained that the Township is involved in litigation on a Mt. Laurel settlement with is a separate issue in terms of the township litigation. He further noted that the township had anticipated that the settlement would be resolved by this point. That is why no formal request was made for a public hearing; it appeared that everything was going along very well. However, as of yesterday settlement discussions are still continuing and are hoped to be completed by the end of the month. He noted that when the settlement is completed it will total nearly 5,000 dwelling units and Hovson's will account for approximately 2,400 units. There are three other litigants that will have almost 1,500 units. When this is completed 500 affordable housing units will be involved in the final settlement. The township would like the SPC to know that through the years the township has cooperated extensively with the DEP, Pinelands Commission and the SPC. He also explained that the township had worked with the agencies on Manchester's master plan. However when the settlement was announced it was a major departure from the master plan, which had been discussed and agreed to by all the agencies. On behalf of the township committee and the mayor he asked that the SPC simply table the final approval of the amendment for one month in order to allow for Manchester to finalize the settlement agreement and discussion with the special master and the court on the major matter of the Mt. Laurel settlement.

Chair Foglio opened the floor for questions and a lengthy discussion ensued regarding what the consequences would be if the Commission approved the planning area change, how it would affect the Mt. Laurel settlement and what would happen in that one month period.

Chair Foglio asked for a roll call vote on Resolution No. 2004-13. Ayes: (12) Dan Ryan, John Eskilson, Curtis Fisher, Roberta Lang, Marilyn Lennon, Brent Barnes, Marge DellaVecchia, Bob Smartt, Edward McKenna, Thomas Michnewicz, George Pruitt, Christiana Foglio. Nays: (0). Abstains: (1) Michele Byers. Both Mr. Eskilson and Mr. McKenna voted yes as long as the Commission keeps their minds open and receptive if for some reason Manchester felt that they needed to come back to the Commission.

Chair Foglio placed on the table Resolution 2004-14 Authorizing Execution of the Memorandum of Understanding Between and By the New Jersey State Planning Commission and the Council on Affordable Housing. Edward McKenna moved the resolution and John Eskilson seconded the motion.

Adam Zellner reported that none of the changes that were adopted in the Council on Affordable Housing rules are inconsistent with the agreed upon MOU with the State Planning Commission and COAH and recommends that the State Planning Commission approve the resolution.

There were no comments from the Commission or the public. Chair Foglio asked for a roll call vote on Resolution No. 2004-14. Ayes: (13) Michele Byers, Dan Ryan, John Eskilson, Curtis Fisher, Roberta Lang, Marilyn Lennon, Brent Barnes, Marge DellaVecchia, Bob Smartt, Edward McKenna, Thomas Michnewicz, George Pruitt, Christiana Foglio. Nays: (0). Abstains: (0).

Ms. Byers noted that she voted "yes" because the Commission is talking about consistency with the MOU. She is still not convinced that the new COAH rules will actually effectuate the goals of the State Plan. Her vote in no way is endorsing the new COAH rules, and she doesn't feel that is the intent of the resolution, which is simply to authorize the MOU.

## **PRESENTATION**

Tom Schulze, Director NJ Transit Project Team gave a presentation on THE Tunnel – Access to The Region's Core.

## **PUBLIC COMMENTS**

Tom Dallessio, Regional Plan Association, welcomed Christiana Foglio and Thomas Michnewicz to the State Planning Commission. Mr. Dallessio noted that the Regional Plan Association was working with a number of partners to not only advance the tunnel but also to advance the idea of a new funding source for the Transportation Trust Fund and would like to report back to the Commission in a couple of months on their progress.

## **COMMISSIONER REPORTS**

Commissioner reports consisted of those present welcoming both Christiana Foglio and Tom Michnewicz to the Commission. Marge DellaVecchia also welcomed back Marilyn Lennon who had been unable to participate due to an illness.

Chair Foglio noted that she was going to make a minor change on the Commission's agendas. She would like to institute agenda reviews which would allow for members prior to the meeting to talk about the agenda and perhaps flesh out questions for Bill that don't necessarily need to take up meeting time, if they are non-debatable issues and are technical questions. She feels that this review helps to keep the board moving forward.

With no further comments from the Commission or the public, Chair Foglio asked for a motion to adjourn, motion was so moved, all were in favor. The meeting was adjourned 11:17 a.m.

Respectfully submitted,

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Maura K. McManimon  
Acting Secretary and Executive Director

Dated: December 28, 2004