



State of New Jersey
DEPARTMENT OF STATE
NEW JERSEY STATE PLANNING COMMISSION
P.O. Box 820
TRENTON, NEW JERSEY 08625-0820

PHILIP D. MURPHY
Governor

THOMAS K. WRIGHT
Chairman

SHEILA Y. OLIVER
LT. GOVERNOR

DONNA A. RENDEIRO
Executive Director/Secretary

**New Jersey State Planning Commission
Minutes of the Meeting Held on May 5, 2021
Zoom Video Conference**

CALL TO ORDER

Chairman Wright called the May 5, 2021 video conference of the New Jersey State Planning Commission (SPC) to order at 9:34 a.m.

OPEN PUBLIC MEETINGS ACT

It was 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

Bruce Harris, Public Member
Danielle Esser, Director of Governance, NJ Economic Development Authority
Douglas Fisher, Secretary, Department of Agriculture
Edward J. McKenna, Vice Chair, Public Member
Elizabeth Terenik, Public Member
Andrew Swords, Designee for Diane Gutierrez-Scaccetti, Commissioner, Department of Transportation
Melanie Willoughby, Designee for Tahesha Way, Secretary of State, Department of State
Nick Angarone, Designee for Shawn LaTourette, Acting Commissioner, Department of Environmental Protection
Sam Kaplan, Designee for President, Board of Public Utilities
Shanel Robinson, County Commissioner Director, County Member
Gina Fischetti, Designee for Lt. Governor Sheila Oliver, Commissioner, Department of Community Affairs
Thomas Wright, Chairman

Others Present

See Attachment A

PLEDGE OF ALLEGIANCE

Chairman Wright asked everyone to stand for the Pledge of Allegiance.

APPROVAL OF MINUTES

Chairman Wright asked for a motion to approve the Minutes with corrections of the April 7, 2021 meeting. Vice Chair McKenna made the motion, and it was seconded by Commissioner Harris. With no further discussion or questions, Chairman Wright asked for a roll call vote: Ayes: (11) Danielle Esser, Sam Kaplan, Secretary Fisher, Andy Swords, Bruce Harris, Nick Angarone, Edward McKenna, Shanel Robinson, Elizabeth Terenik, Melanie Willoughby, Thomas Wright. Nays: (0). Abstains: (1) Gina Fischetti. The April 7, 2021 minutes were approved.

CHAIR'S COMMENTS

Chairman Wright commented that today is the start of conversations and discussions on Woolwich's TDR program and that he's looking forward to hearing from all of the Commission members and the public around this issue. There has been a lot of discussion around mechanisms for protecting and preserving open space to achieve the goals of the State Plan. No action will be taken today, but we will start a conversation for a better understanding of the complications around these programs.

EXECUTIVE DIRECTOR'S REPORT

The Executive Director has been invited to consult on a NEPA process under Section 106 of the National Historic Preservation Act (NHPA) regarding a wind energy project called the Empire Wind Project. It will benefit New York but since it is located 12 miles offshore of Long Branch. If approved, would consist of up to 240 wind turbines, two offshore substations, inter-array cables, up to two submarine export cable routes, and up to three export cable landfall areas in New York. This is something the state should be involved with and we are in the process of scheduling a call with DEP and BPU for their input. The Bureau of Ocean Energy Management (BOEM) serves as lead Federal agency under the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

The Director reminded the Commissioners and Designees that their Financial Disclosure Form must be submitted and that they must do so prior to May 15. Steven Karp is retiring on August 1 which will be a huge loss to the Office.

Millstone has been endorsed, one Opportunities and Constraints Report has begun (Allentown), we received pre-petition document and a pre-petition meeting pending for Woodstown, Salem County, is possible for May 25. The Office received an intent to pursue from Cape May Point and we are awaiting pre-petition materials. We received a verbal reconfirmation from Avalon, and we are awaiting formal letter.

There are about 7 towns that are not far behind of Millstone. Morristown and Vernon are closest. Manchester, Stafford, Upper, Plumsted and Allentown are next.

The Office has begun tracking those municipalities that are expiring in 2021 that are not part of the originally expiring Centers:

- One decision is unknown (Woolwich)
- One prepetition meeting is in process (**West Cape May**, targeting May 11)
- One prepetition meeting was held (**Middle Township**, April 27th)

New to the process:

- Two decision are unknown - Kingwood and Trenton.

OPA is seeing Interest in the regional/county planning process. Preliminary discussions have occurred with four counties with different profiles, the most recent being largely urban. This presents a unique opportunity to address topics such as equity, environmental justice, green energy and solar opportunities and warehouse sprawl regionally.

Three NJ Register notices are being prepared for the three recent map amendment approvals – Millstone, Lakewood, and Holmdel. Holmdel's map amendment was not effective until the Township Council passed the

required ordinance protecting the Critical Environmental Sites that were placed as part of the approved map amendment. That ordinance was passed last week.

Settlement discussions in the Holmdel matter were not successful. As a result, the Hazlet appeal will continue. We await the brief schedules. At this point there is no action needed by the State Planning Commission.

The Office received the map amendment proposal from PSEG for the industrial node in support of the South Jersey wind port. The application has been deemed complete and it is anticipated to be presented to the PIC in May.

The Rule Update process is on the agenda today for discussion and action. The process and the topics were approved by the PIC in April.

A draft of the FEMA Bootcamp Charter is circulating internally and includes a mission statement, timeline, pre-work assignments and objective outcomes. There is conversation around changing the name from "Bootcamp" as it is inconsistent with requiring some preliminary planning prior to being eligible for the program. Two steering committee meetings have been held to date. It is anticipated that the program can begin in the fall, with (hopefully) some in-person sessions.

All municipal/student introductions have occurred for the next technical assistance program being offered in conjunction with Rutgers. The municipalities participating are Gloucester, Stafford and the 4 Wildwoods (as a region). The program anticipates local assistance through at least August. The next step after introductions is the development of a workplan for review and approval. We received a request from an SPC Commissioner to see if the program would be available to Atlantic City. While we originally are focusing on Plan Endorsed communities, we are discussing the opportunity with Rutgers.

A meeting was held with EDA and DCA to discuss training for EDA's new GIS function in support of the ERA. EDA's new staff member has begun developing their platform based on OPA's previous application but still has work to do to get it fully functional. We continue to offer technical assistance to EDA as needed.

NJDEP released for public comment the draft Climate Change Strategy document on Earth Day. There will be an approximate 30-day public comment period and two public webinars were announced for May 4th and May 5th.

Earlier this year, the Office participated in a Leadership Summit hosted by AARP to encourage states to participate in the AARP Network of Age-Friendly Communities. The Department of Human Services and AARP announced on Monday, May 3rd that New Jersey became the 9th state accepted into the program. At that time, the Governor executed Executive Order 227 created an Age-Friendly Advisory Council that is directed to develop a blueprint of best practices for advancing age-friendly practices across the State. While the SPC or OPA was not specifically identified to participate in the Advisory Council, I would submit that there should be representation on this Advisory Council as there are substantial land use implications related to this topic, such as safe, walkable streets, better housing and transportation options and access to key services.

S3688 – Provides for regional economic impact report and review by affected municipalities for certain proposed retail warehouse developments. The Bill has been added to the Senate Community and Urban Affairs Committee agenda for May 6th. The Office provided comments that were forwarded to the Front Office.

A total of 414 subscribers received the Spring issue #2 of OPA's newsletter, *News You Can Use*. The newsletter had a 40.2% open rate and 28.13% of those clicked on one or more of the links. Sixteen emails bounced and 23 unsubscribed but some of these unsubscribers clicked through many links; staff is researching both issues. We received four replies from partners with new content suggestions. Staff is considering issuing "alerts" or "bulletins" to promote time sensitive news that can't wait for the next issue.

Nick Angarone from NJDEP commented that on April 22nd the State released the Climate Change Strategy Resiliency and extended an invitation to join the webinar at 6:00 p.m. Public comment will be taken until May 21st. A public outreach effort will begin in June.

Chairman Wright thanked Nick for the invite and commented that he's glad that NJDEP is on the lead to address some of the issues pressing environmental concerns. He commented on the important work.

Andy Swords from NJDOT asked the Director to share the information about the wind energy project as she mentioned on her report. Mr. Swords expressed NJDOT's interest due to a possibility of future activity in NJ.

Chairman Wright referred to Walter Lane for the presentation on advancing regional planning at the county level. This presentation can be found on: https://nj.gov/state/planning/assets/docs/meeting-materials/spc/materials/spc_materials-2021-5-5.zip

Commissioner Robinson expressed to be grateful to be part of the Somerset team and thanked Mr. Lane for the presentation.

Commissioner Harris asked Mr. Lane about the incentives offered to the municipalities. Mr. Lane commented that by working together there will be additional resources to be offered. As an example, with the new Economic Recovery Act is making sure that the State business economic development incentives are offered to all the towns that make sure that planning areas one and two, endorsed plans and designated areas received high priority with those incentives.

Andrew Swords from NJDOT commented that municipalities do not have to spend their municipal aid only on resurfacing and that there are many other opportunities with that funding. Also, NJDOT has a local aid resource center and encouraged all to check into it. Mr. Swords offered Mr. Lane NJDOT's support.

NEW BUSINESS

Approval of Resolution 2021-10 - Rule Update Proposal

Director Rendeiro commented that the proposal is limited to the approval to the timeline and the topics. The resolution authorizes the Director to do all the administrative functions related to the rule update process. The goal is to modernize the rules, incorporate environmental justice and equity and to make cross acceptance and other procedures less difficult to accomplish by adding technology that was not around when these rules were put into place. Director Rendeiro referred to Matt Blake for the presentation.

This presentation can be found in the following:

https://nj.gov/state/planning/assets/docs/meeting-materials/spc/materials/spc_materials-2021-5-5.zip

Director Rendeiro commented that this is a very aggressive timeline and that the goal is to have the rules adopted by the end of this year. The Director commented that after meeting with the interagency group and the PIC, there were some comments received like asking to implement technology and resources. She said that the office will cover the topics first and address the language as we move along in the process.

Commissioner Esser suggested to take in consideration any update to any Agency programs and opportunities. Director Rendeiro commented that the intent is to inform and have a base line definition of Smart Growth that can provide a consistent message regardless of the department or agency that is using it. Chairman Wright commented that the resolution simply lays out the guidelines of the rules.

Commissioner Esser asked if the municipalities that are going through the process of plan endorsement, will their extensions expire in June?

Director Rendeiro answered that extension will expire 180 days after the executive order 103 is revoked. There are two levels of State Emergency. The general State of Emergency that was placed with executive order 103 that stays in place until the Governor revokes it and the Health Care State of Emergency that the Governor has to renew every thirty days. As soon as the Governor revokes executive order 103, the Centers will expire 180 days after that revocation.

Commissioner Esser asked if the rule process is to help streamline Plan Endorsement? Director Rendeiro explained that it will streamline the process to make renewal of endorsement, but it has nothing to do with the current extension.

Andrew Swords from NJDOT asked about the resolution, is exhibit-A referred to rule making timeline list of items and goals?

Director Rendeiro answered that it's correct.

Gina Fischetti from NJDCA asked how the notice of proposal done? Director Rendeiro answered that before giving it to the general public, feedback was received from the Interagency group, the PIC meeting, and any other internal process. There are also informal discussions with some planning partners including NJ Future, County Planners Association, and others. The notice will be out in the NJ Register which will become the public input process. There are two comment periods. One is the preproposal which will have a thirty-day public comment period and the other one is the notice of proposal with the final documentation with a sixty-day public comment period.

With no further comments from the Commission or the public, Chairman Wright asked for a motion to approve Resolution 2021-10, Vice Chair McKenna made the motion, and it was seconded by Bruce Harris. With no further discussions or questions, Chair Wright asked for a roll call vote: Ayes: (12) Danielle Esser, Sam Kaplan, Secretary Fisher, Andy Swords, Bruce Harris, Nick Angarone, Edward McKenna, Gina Fischetti, Shanel Robinson, Melanie Willoughby, Elizabeth Terenik, Tom Wright. Nays: (0). Abstains: (0). The Resolution 2021-10 was approved.

Discussion: Woolwich Township Transfer Development Rights Program

Director Rendeiro commented that this is a complicated issue. This presentation was given to the last PIC meeting and wanted to bring the SPC up to date on where we are and what analysis has been done and to get input on other issues and open items the office still continues to work on.

The Township of Woolwich was endorsed by the SPC in April 2008. Due to various extensions, they do expire this year. At a meeting in October 2020 to begin the biennial review, the Township officials requested to eliminate the TDR program and to be released from any obligation under their agreement with the State Transfer Development Rights Bank (TDR Bank). Director Rendeiro mentioned that John Gillespie a representative from Woolwich was on the call and will have the opportunity to speak.

The Township of Woolwich does not believe that it's in their best interest to continue the program. They did not get the results that they anticipated from the program for a variety of reasons. They are asking to unwind their TDR program and to be relieved from the obligation of the \$5 million grant that was giving to them. The office wanted to make sure that there were not going to be any unintended consequences and to be able to identify some of the issues that may be identified before any determination is made.

They have two PIAs. The traditional PIA and a PIA specific to TDR. OPA reviewed the status of actions within both PIAs to determine the Township's performance in maintaining consistency with the State Plan. Of the 32 Township responsibilities on the General PIA, 28 have been completed, are ongoing, or on target to meet their deadline. Of the 15 Township responsibilities on the TDR PIA, 14 have been completed, are ongoing or on target to meet their deadline.

Several grants were awarded to the Township in anticipation of completing TDR. Our research to date, has indicated grant funding or financing from the New Jersey Infrastructure Trust was approved but never expended. DVRPC provided a planning grant for them to do a study related to TDR. Both the NJ Infrastructure Bank and DVRPC have indicated that there are no outstanding obligations on the part of the Township.

The largest grant, for \$5 million, was awarded by the TDR Bank to fund the purchase of credits, which was to be reimbursed upon the sale of the credits to private development. None of these credits, however, were offered to or purchased by potential developers. Woolwich was required (and did) match the expenditure with a \$2 million investment in the purchase of TDR credits.

The credits were purchased by the Township with both the \$5 and the \$2 million dollars but never sold to a developer. The issue with the repayment is that according to the contract, it is required if those credits were never sold to a developer. That is one major outstanding item to be addressed that is not within the purview of the SPC. In order for the State TDR bank to determine whether they want to relieve that obligation, the office need to go through a consistency review in to determine what the next step is in terms of Plan Endorsement for the Township.

Several land use accommodations were given by NJDEP in anticipation of the completion of the TDR program. Two Sewer service Areas and Receiving Areas in certain environmentally sensitive areas were granted in anticipation of conservation. One is the Northern end Receiving Area which has boundaries that are essentially concurrent with the center that Woolwich has. Right now, there have broken ground on sewers, they have contracts in place for certain warehouse developers and they also have a project in the Center for affordable housing. The affordable housing was the result of a court settlement. Those projects are well under way. There is a Southern Receiving Area called Auburn Road which is located in an extremely environmentally sensitive area and within the 25 acre that NJDEP is reviewing.

In terms of the lawsuit, the builder of the affordable housing lawsuit is suing the Township under the Builders Remedy Lawsuit, but the developer also challenged the TDR statute. Director Rendeiro commented that it is an absolute requirement that the pending lawsuit be either settled or, at a minimum, all state involvement must be dismissed with prejudice.

There are a number of smaller issues that will be addressed with renewing Plan Endorsement; There have been a few items that have come to the Commission's attention but that the two items that need to be discuss are what will happen with the outstanding credits and moving forward by suggesting Woolwich renew their Plan Endorsement, renew their Center boundaries so they can continue to do the development that is anticipated in the larger Northern Receiving Area. There are many smaller items will be address in the normal Plan Endorsement process.

In the next meeting, we are going to be asking the Commission to determine whether or not they are consistent with the State Plan based on a Township's commitment to go through PE again and to determine a path forward in terms of the new PE requirements, address the sewer service area and at that point we will have enough information to forward a determination to the State TDR Bank so they can make a determination on what happened to the obligation of the \$5 million grant.

John C. Gillespie, Special TDR Counsel for the Township of Woolwich spoke - "Anyone familiar with the TDR program knows that it is a very difficult program. Chesterfield Township in Burlington County is the only one that successfully implemented TDR under the original statute back in 1986". Mr. Gillespie said that he has being an attorney for Chesterfield for the past 30 years and that he was very involved in the development of TDR during the ninetieths and finally when it was adopted in 1998.

Mr. Gillespie commented that in late 2019 and early 2020 he tried to review the Woolwich situation on how to salvage this legislative scheme. He was not aware of the lawsuit over TDR or that the State declined to become involved in that litigation side by side with the Township to defend TDR.

For the past 13 years, Woolwich Township has been struggling to make this work and that developers are not interested, the farmers are not interested, and this is a big part of the TDR puzzle. The \$5 million dollars that was used purchase credits were just to try to solve something but again part of the purpose of TDR program is to get away from public funding for farmland preservation and to let the developers do it. Here we are having a municipality with the State's participation paying for the credits and still no private investment. I don't see how the SPC is going to suddenly resurrect something that nobody has been able to rectify for all these years.

Mr. Gillespie commented that Woolwich has never provided anything that shows Rt 322 sewer Service Area being approved by NJDEP in consideration for TDR. Woolwich has developed substantially, they spent \$18 to \$20 million dollars of their own money on infrastructure on the sewer at RT 322. They had hoped to get sewer from a joint municipality, but they decided not to pursue it. The Town went to the County of Gloucester and NJDEP for assistance.

Mr. Gillespie commented that he will be happy to take any questions and agreed with Director Rendeiro that there is a lot of work that need to be done.

Director Rendeiro spoke. There are couple of observations. There had not been a market for the credits for a developer to purchase them partially because there is no sewer service, there is no information on what is causing this delay. In addition, there were other conservation methods like farmland preservation programs, other ways they were able to conserve some property. They were committed to preserving 5,000 and in fact they did conserved 3,000 thousand acres. There has been some progress and one of the important things the office wants to make sure as consistency is determined is how to ensure that those additional acres plus the acres that had already conserved are conserved in perpetuity. There will be a lot of things that will be addressed through the renewal process. If in fact it's determined that TDR should be unwound, at a minimum I will ask the municipality to go through PE to keep their center boundaries either as they are or slightly different so that they can continue to work with what they are currently doing in the northern area. I question whether the Southern area should remind as a sewer service area but NJDEP is looking at it today but given the fact that the ground is broken on sewers, they have contracts, they have affordable housing in that northern area those boundaries are consistent with the center but in order for them to keep that center they do need to go through PE process.

Questions will be address during the PE process. For example, the office will be looking for an updated ROSI (Recreation and Open Space Inventory), we will be looking for a Farmland Preservation Plan. How do they intent to meet the goals in the intent and the spirit of TDR by making sure those areas are conserved in perpetuity.

Secretary Fisher spoke. When Woolwich came to the TDR program with the \$5 million, they were very excited and thought that it was crucial and that they had a plan to utilize those credits and that they would be sold in the open market before they increased density. Are there any opportunities to sell these credits for the higher density?

Mr. Gillespie answered that there is no interest on increasing densities.

Director Rendeiro spoke. If we are looking to do PE, obviously one of the goals in PE is to focus on center-based development making sure that the density is concentrated in the center; A lot of the negotiation that we go through during PE is what exactly should that number be, based on the individual circumstances within the Township. Whether density is increased, stays the same or reduced in the center has to be taking into an account with insuring that the environs are protected, and that density is not going to spill out into areas that should not be develop".

Secretary Fisher spoke. If all the credits were sold to the Township, then the Township had to buy the credits from the landowners. What was the makeup of the landowners? John said that there were no farms involved. If there were no farms involved, none of these credits came from the farm community. Director Rendeiro commented that she is not sure and that she will get back to the commission with an answer.

Chairman Wright agreed with the Director and commented that this was over this period of time when there was an enormous amount of growth in which residential development did occur in this town in which the funding that the State provided for preservation was used to acquire development credits but then those credits were never sold back into the market. The development that did happen over this time were all essentially on existing permitted density or did other things change they envisioned when this program was setup. Clearly an enormous amount of development did take place but not through the purchase of those credits. What I will be asking as a Commissioner is where did that development take place and was it already zoned for that or were there other things going on at that time that essentially diminished the value of those credits?

Director Rendeiro spoke. My understanding is that density was given regardless of whether there were TDR credits. The historical development in the Township was given the density without requiring the TDR purchases. The second piece is the affordable housing project went to the courts and the Court determined that the affordable housing did not need to comply with the TDR program.

Secretary Fisher asked if the down zoning happened at the same time? Director Rendeiro answered that yes. There was down zoning with 12 acre lots on descending areas.

Commissioner Esser spoke. I understand that the town's PE is set to expire and understand that the Township wants to leave TDR but I'm not sure how they relate to one another. The SPC does not have the authority to relieve them from TDR requirements.

Director Rendeiro spoke. When the Township was endorsed in 2008 a large part of the MOU is the understanding that TDR will move forward. In order for the TDR bank to make a determination on whether or not to relieve the obligation of for example the grant of \$5 million dollars, they asked us if the Township is consistent. If we let PE expire, they will lose their Center, an acknowledgement that they are consistent with the state plan, the ability to get sewer service for that project, they will lose any advantage to any of the NJDEP accommodations related to PE. If the Township chooses to participate in PE, we can say that they would be consistent with the State Plan and that gives the TDR Bank the ability to make their determination. The plan endorsement process is no different than any other municipality, this one just has an added component of TDR.

Commissioner McKenna spoke. I believed that there are many unanswered questions that it's been very informative and as a member of the Commission for a long time and I am familiar with TDR, but as the Director said there are so many moving parts that I almost suggest if necessary, we should have a special meeting. We need more information".

Chairman Wright spoke. The intention here was just to introduced this topic to the Commission and I invite the members of the Commission who have an specific question to share then with Donna and staff so as they prepare information for future conversations".

Director Rendeiro agreed with Chairman Wright.

ADJOURNMENT

With no further comments from the Commission or the public, Chairman Wright asked for a motion to adjourn. Edward McKenna made the motion, and it was seconded by Andy Swords. The meeting was adjourned at 11:41 a.m.

Respectfully submitted,



Donna Rendeiro, Secretary
State Planning Commission
Dated: June 2, 2021

ATTACHMENT A
NEW JERSEY STATE PLANNING COMMISSION ATTENDEES
DATE: MAY 5, 2021 TIME: 9:34 AM

Steven Gleeson - DAG
Matt Baumgardner - NJDEP
Anthony Soriano - Morris County
Andrew Gold - Pinelands Preservation Alliance
John Gillespie – TDR Counsel - Woolwich Twp.
Tori Kem -