

Disclaimer

These minutes reflect the actions taken by the Commission during its February 9, 2018 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 February 27, 2018.

PINELANDS COMMISSION MEETING
Richard J. Sullivan Center
Terrence D. Moore Conference Room
15 Springfield Road
New Lisbon, New Jersey

MINUTES

February 9, 2018

Commissioners Present

Alan W. Avery Jr., Bob Barr, Paul E. Galletta, Jordan P. Howell, Ed Lloyd, Mark Lohbauer, William Pikolycky, Richard Prickett, Gary Quinn and Chairman Sean Earlen. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Craig Ambrose and Deputy Attorney General (DAG) Bruce Velzy.

Commissioners Absent

Candace Ashmun, Giuseppe Chila, Jane Jannarone and D'Arcy Rohan Green.

Chairman Earlen called the meeting to order at 9:35 a.m.

DAG Velzy read the Open Public Meetings Act Statement.

The Commission and public in attendance pledged allegiance to the Flag.

Oath of Office

Chairman Earlen introduced and welcomed Dr. Howell and Mr. Pikolycky to the Commission.

DAG Velzy administered the oath of office to Dr. Jordan Howell, who will serve as Camden County's appointee on the Commission and to William Pikolycky, who will serve as Cape May County's appointee.

Commissioner Howell said he is excited to be a part of the Commission and looks forward to using his research over the past 10 years to find resolutions to Pinelands related issues.

Commissioner Pikolycky said its an honor to be representing Cape May County, and he looks forward to working with staff and Commissioners.

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 10 Commissioners present at the meeting.)

Minutes

Chairman Earlen presented the minutes from the January 12, 2018 Commission meeting. Commissioner Barr moved the adoption of the minutes. Commissioner Avery seconded the motion.

The January 12, 2018 Commission meeting minutes were adopted by a vote of 8 to 0. Commissioner Howell and Commissioner Pikolycky abstained from voting on the minutes.

Committee Chairs' Reports

Chairman Earlen provided an update on the January 26, 2018 Policy and Implementation Committee meeting.

The Committee adopted the minutes of the November 17, 2017 meeting.

The Committee recommended certification of the following:

Hamilton Township's Mays Landing Neighborhood Plan and Ordinance 1858-2017 revising zoning boundaries and permitted uses in Regional Growth Area zoning districts;

Jackson Township's 2017 Amended Housing Element and Fair Share Plan and Ordinance 22-17 amending permitted residential development in the RG-2 and RG-3 Zones; and

Manchester Township Ordinance 17-025 revising zoning boundaries and permitted uses in Regional Growth Area zoning districts.

The Committee was advised that the veto period for the adoption of CMP amendments will expire on January 31, 2018. The rules are scheduled to become effective upon publication in the March 5, 2018 edition of the New Jersey Register.

Executive Director's Reports

ED Wittenberg said that certain staff members have begun training on the Edmunds accounting software, and the system should be operational at the beginning of March.

ED Wittenberg mentioned that she met with Commissioner Howell and provided him with information about the Commission and his role as Commissioner and she said she had a telephone conversation with Commissioner Pikolycky.

ED Wittenberg noted that she attended the Pinelands Municipal Council meeting in January and there was a presentation on urban and neighborhood forests.

ED Wittenberg said that after a very long process the rules will be published in the New Jersey Register on March 5, 2018.

Director Larry Liggett said the Commission along with the New Jersey Department of Environmental Protection and the New Jersey Conservation Foundation is working with NASA on a project to determine fire risks in the Pinelands using satellite data. He said staff member Gina Berg has scheduled working phone meetings to occur every two weeks and the project is expected to be complete in about three months. He said when the study is finished, the Commission will have an additional tool to assess fire risk in the Pinelands.

Director Liggett said staff continues to work on the Long Term Economic Monitoring (LTEM) report. He said Rutgers University is evaluating the effectiveness of the LTEM report and will be providing the Commission with information soon. Staff is also considering an enhanced website for the LTEM program. The website will allow the public to access the LTEM data. He said the state of New Jersey has contracted with a company called Socrata and staff has previewed its products.

Director Charles Horner updated the Commission on the following items:

- Staff met with Pemberton Township about the possibility for two existing schools located near Fort Dix to connect to public sanitary sewer. He said the schools are currently served by an onsite wastewater treatment facility. He added that the schools are located in a management area that does not permit the extension of sanitary sewer unless it can be demonstrated that there is a public health hazard.
- Staff met with the Administrator of Stafford Township to discuss a road improvement project located on Route 72 in the vicinity of the stormwater basin projects that the Commission approved over a year ago. He said the Township Administrator indicated that the town is not proceeding with the development of the stormwater basin.
- Jackson Township has revised its original application to construct a solar project on an existing landfill to avoid impacts to a threatened and endangered plant species.

ED Wittenberg added that at the January Commission meeting questions were raised about the maximum height of trees for vegetation management. She said the New Jersey Board of Public Utilities' requirement is three feet.

Commissioner Lloyd said he remembered the Commission approving the Stafford basin project because homes were flooding.

Director Horner said that was in fact the case and the Township has taken some interim steps. For example, the Township cleaned stormwater pipes. He said according to the Administrator, the Township has plans to mitigate the existing stormwater basin.

Commissioner Lloyd said he would like to discuss the matter at another time.

Director Horner said he believes the Township would like to move forward with the basin project but funding is an issue.

Joel Mott updated the Commission on the following items:

- The Pinelands Short Course is scheduled for March 10th.
- The exhibit center project has made some progress. He said the shop drawings of the exhibits have been revised to include fire code information. He said the issuance of a permit is near and that staff will need to meet with the contractor to determine a new timeline and start date.

Commissioner Prickett said he is excited about sharing the story of Charles Beckwith at the Pinelands Short Course. Beckwith was the Director of the Cranberry substation from 1918-1944.

Commissioner Lohbauer asked if there was signage to direct and attract visitors to the exhibit center.

Mr. Mott said that he and Paul Leakan are currently working on a visitor use plan.

Ms. Stacey Roth provided an update on the Peg Leg Webb matter. She said the owner of a parcel in Jackson Township submitted an application to the Commission for a mining operation. A zoning change in Jackson Township occurred prior to the submission of the application, changing the zoning of the parcel to a Forest Area. New mining operations are not a permitted use in the Forest Area. The Commission prevailed in both the Office of Administrative Law and the Appellate Division. The property owner then sought certification in Supreme Court, where it was denied. The matter is now closed.

Commissioner Avery asked about the status of the Heritage Minerals CAFRA (Coastal Area Facilities Review Act) application that NJDEP held a public hearing on.

ED Wittenberg said there is a lot of history with the Heritage Minerals site which is located in Manchester Township between Route 37 and Route 70. She said the Commission entered into a settlement agreement with NJDEP and Hovsons (the developer) in 2004. She added that the site is located in the Pinelands National Reserve. She said she believes that NJDEP was required to hold a public hearing as part of the CAFRA application review process.

Ms. Roth provided information about the settlement agreement. She said the settlement designated a development area that was rezoned from a Forest Area to a Regional Growth Area. The agreement called for the preservation of 6,100 acres in the Pinelands Area.

Many extensions to the settlement have been signed over the years. In 2016, the NJDEP designated the development area as a Planning Area 2 under the State Plan. She said because the property owner did not preserve the appropriate lands, the Commission and the NJDEP decided no further extensions would be permitted. The property owner started the process to reinvigorate the Federal litigation. The Division of Law made a motion for summary judgment. The Federal magistrate has not rendered a decision on the State's motion and the matter continues in Federal Court. In the meantime, the applicant was allowed to move forward with its new CAFRA permit application. The new CAFRA permit proposes 4,000 units and 40,000 square feet of commercial development. She said the NJDEP had to hold a public hearing because once an application is deemed administratively complete a decision has to be made within 90 days. She said there are traffic issues associated with the development. She said that under CAFRA rules the Commission is a consulting party and will prepare a memo with comments. She said under the Coastal rules, the NJDEP fulfills the intent and goals of the Comprehensive Management Plan.

Commissioner Avery asked whether the settlement is currently in place.

Ms. Roth said she spoke with the DAG representing the NJDEP and the Commission about the status of the settlement and he indicated that the settlement has expired. However, she said the parties are in court and could commence new settlement negotiations. She added that the following obligations of the settlement have been implemented: the Management Area change from Forest Area to Regional Growth Area, amendment of the Water Quality Management Plan and the change of State Planning designation for the development area from Planning Area 5 to Planning Area 2.

Ms. Roth offered clarification that if a new settlement is negotiated, the Commission will need to take action on it.

Commissioner Lloyd asked if we could require the development to be clustered.

Chief Planner Susan R. Grogan noted that the original settlement designated a development area and it was in a way, a cluster development. The 1,000 acres were specifically sited for very dense development and the surrounding acreage in the Forest Area was to be preserved.

Commissioner Avery asked what has changed since 2004 that would allow the number of units to increase from 2,450 to 4,000 and what is the status of Manchester's zoning.

Chief Planner Grogan said Manchester Township was never a party to the settlement agreement. The Commission changed the management area boundary and the Township adopted amendments to its zoning plan to mirror the settlement agreement. She said Manchester Township's zoning ordinance references the settlement agreement. She said what Commissioner Avery is referring to is a redevelopment plan that Manchester Township and the property owner created and which encompassed a larger development

area and about 6,500 units. The Township adopted the redevelopment plan but the Mayor later vetoed the ordinance.

Chief Planner Grogan said the proposed 4,000 units in the CAFRA permit are inconsistent with Manchester Township's current zoning. She said that the Township has expressed an interest in having the Commission certify the zoning in the Pinelands National Reserve (PNR) portion of the Township, which is an optional process in the CMP. She said the Township would like to clean up a few areas where the Pinelands Management Area boundary, zoning and state planning designations don't match. She said this will give the Commission an opportunity to also discuss the zoning for the Heritage Mineral site.

Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending approval of three public development applications. He said the first application is to demolish a structure (an abandoned sewage treatment plant) in Jackson Township, the second application is for forestry activities on 13 acres in Wharton State Forest and the last application is for a guide rail with State Route 73 right-of-way.

Commissioner Galletta moved the adoption of a resolution Approving With Conditions Applications for Public Development (Application Numbers 1991-1108.011, 1991-1108.012 & 2017-0204.001) (See Resolution # PC4-18-04). Commissioner Avery seconded the motion.

Commissioner Prickett thanked Director Horner for the photos of the sewage treatment plant. He talked about the evolution of sewage treatments plants and the creation of health departments. He said that in instances where there were towns along a river or stream, the town downstream would sue the town up-stream to correct the problem of pumping raw sewage into the stream. He said this forced towns to construct sewage treatment plants.

Commissioner Lloyd said the Clean Water Act of 1972 allocated billions of dollars to fund regional sewage treatment plants.

Commissioner Lohbauer asked Director Horner about the precautionary steps the applicant is planning to take to ensure the protection of both threatened and endangered (T&E) plant and animal species regarding the forestry application at Wharton State Forest.

Director Horner said the T&E plant is known to grow in wetland habitats. The applicant is proposing that all forestry activities will be undertaken in uplands and will maintain a 100 foot buffer to wetlands. He added that the applicant is proposing to apply herbicide by hand in order to avoid irreversible adverse impacts to T&E snake and bird species.

The Commission adopted the resolution by a vote of 10 to 0.

Planning Matters

Chairman Earlen presented a resolution on Hamilton Township's Mays Landing Neighborhood Plan and Ordinance 1858-2017.

Commissioner Galletta moved the adoption of a resolution Issuing an Order to Certify the Mays Landing Neighborhood Plan and Ordinance 1858-2017, amending Chapter 203 (Land Use and Development) of the Code of Hamilton Township (See Resolution # PC4-18-05). Commissioner Lohbauer seconded the motion.

Chief Planner Grogan said the Mays Landing Neighborhood Plan is an amendment to Hamilton Township's Master Plan. She said Hamilton Township is trying to revitalize downtown Mays Landing by reusing the existing structures. She said that in an attempt to encourage redevelopment, the town has chosen to add and change some of the permitted uses to include bed and breakfasts, art galleries and museums, to name a few. She said the most significant change is to include mixed-use buildings as a permitted use. An example of this would be ground floor commercial use and an upper floor residential use. She said that if five or more units are proposed in the VC District, the redemption of Pinelands Development Credits (PDCs) will be required.

Commissioner Lohbauer was supportive of the ordinance and zoning change.

The Commission adopted the resolution by a vote of 10 to 0.

Chairman Earlen presented a resolution on Jackson Township's 2017 Amended Housing Element and Fair Share Plan and Ordinance 22-17 amending permitted residential development in the RG-2 and RG-3 Zones

Chief Planner Grogan said that staff has been working with Jackson Township for many years regarding the permitted uses of Jackson's Regional Growth Area. She said that at one point there was a push to rezone the RGA to a commercial zone, but that never came to fruition. She said there was another push to down-zone and then affordable housing issues arose. She said the Township had previously not done much to provide for affordable housing. The Township has signed a settlement agreement with the Fair Share Housing Center. She said Jackson had a prior affordable housing obligation of about 1,250 units and a prospective obligation of 1,247 new units. The majority of Jackson's affordable units are outside of the Pinelands Area. She said, however, Jackson has shown the court and documented in the housing plan a number of fairly significant residential projects. She said in order to accomplish that Jackson has to maintain its residential densities in the RG-2 and RG-3 zones. She said the Regional Growth boundary and densities will remain the same. She noted two changes in the ordinance: one pertains to housing type and the other addresses the need to accommodate opportunities for PDCs. There is a 30% mandatory use of credits in projects serviced by sewer in these zones.

She noted that PDCs have never been used in Jackson's RGA.

Commissioner Barr moved Issuing an Order to Certify Planning Board Resolution 2017-15, Adopting the June 2017 Amended Housing Element and Fair Share Plan of Jackson Township, and Ordinance 22-17, Amending Chapter 244 (Land Use and Development

Regulations) of the Code of Jackson Township(See Resolution # PC4-18-06).
Commissioner Lloyd seconded the motion.

Commissioner Avery said this portion of Jackson is the nicest section of privately owned forest in Ocean County and he was disappointed that it could not be acquired for preservation. He said affordable housing requirements have forced the density to be higher than is marketable.

The Commission adopted the resolution by a vote of 9 to 0, with Commissioner Howell abstaining from the vote.

Chairman Earlen presented a resolution on Manchester Township Ordinance 17-025 revising zoning boundaries and permitted uses in Regional Growth Area zoning districts.

Commissioner Lohbauer moved Issuing an Order to Certify Ordinance 17-025, amending Chapter 245 (Land Use and Development) of the Code of Manchester Township (See Resolution # PC4-18-07). Commissioner Lloyd seconded the motion.

Ms. Grogan displayed a map on the Smartboard of Manchester Township's Regional Growth Area. She said the four lots that are currently highlighted will be rezoned from PRC-1 to POR-L1. She said a number of years ago the lots were rezoned from non-residential to residential as part of a builder's remedy settlement agreement. The Township is now returning the lots to their prior zoning designation. The Township is calling the zone Office Research and Light Industrial. In order to comply with its fair share housing obligation, the Town will permit townhouses in the POR-L1 zone and in two other additional zoning districts. She added that if garden apartment or townhome projects are developed, the use of PDCs will be required.

Commissioner Lloyd asked if Manchester Township has a Fair Share Housing plan.

Chief Planner Grogan said yes, noting that the Commission approved it last year. She added that staff will provide an update on the status of affordable housing plans during a future P&I meeting.

The Commission adopted the resolution by a vote of 10 to 0.

Public Comment on Public Development Applications and Items where the record is open
No one from the public spoke.

Ordinances Not Requiring Commission Action

Chairman Earlen asked if any Commissioners had questions regarding the ordinances not requiring Commission action:

- Berlin Borough Ordinance 2017-15
- Lacey Township Ordinance 2017-18
- Ocean Township Planning Board Resolution 2017-7

No members of the Commission had questions.

General Public Comment

Jonathan Peters with City University of New York said the Long Term Economic Monitoring report needs to expand on tourism. He said as more land is preserved, job opportunities decrease.

Fred Akers of the Great Egg Harbor Watershed Association, said his organization has committed \$10,000 to a water study in Winslow to determine if stormwater runoff can be directed back into the aquifer. He also mentioned a parcel in Hamilton Township that he is involved in finding grant monies to acquire the property for preservation. He also noted the new proposal for off-shore oil and gas exploration in the northeast. He said Atlantic County is opposed to offshore drilling.

Katie Smith with the Pinelands Preservation Alliance, said PPA is a party to the Heritage Minerals federal litigation. She said the settlement agreement is not dependent on time and is still in effect. She said there is a provision in the agreement that if the state has not taken action by a certain date then Hovoson's has the right to open the federal litigation. She said she attended the NJDEP hearing and estimated about 200 people were in attendance. She said the public, who were mostly all opposed to the development, raised concerns about traffic.

Raven Potosky of Manchester Township raised concerns about the Heritage Minerals CAFRA permit.

Other

Chairman Earlen said that the Commission received sad news about a former Commissioner. He said Fran Witt passed away last week. Commissioners spent a few minutes sharing their admiration for former Commissioner Witt. Commissioner Witt will be remembered for his public service and his devotion to his family.

Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Prickett seconded the motion. The Commission agreed to adjourn at 11:04 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: February 21, 2018