

*Adopted April 25, 2014*

**CMP POLICY & IMPLEMENTATION COMMITTEE MEETING**

Richard J. Sullivan Center  
Terrence D. Moore Room  
15 C Springfield Road  
New Lisbon, New Jersey  
March 28, 2014 – 9:30 a.m.

MINUTES

**MEMBERS IN ATTENDANCE:** Chairman Mark Lohbauer, Leslie Ficcaglia, Robert Jackson, Richard Prickett and Candace Ashmun (1<sup>st</sup> Alternate)

**MEMBER ABSENT:** Paul E. Galletta

**OTHER COMMISSIONERS PRESENT:** Ed Lloyd (*as a non-member of the Committee, Commissioner Lloyd participated in the discussion but did not vote on any matter*)

**STAFF PRESENT:** Executive Director Nancy Wittenberg, Larry Liggett, Susan R. Grogan, Charles Horner, Ernest Deman, Ed Wengrowski, Paul Leakan, and Betsy Piner.

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

**1. Adoption of minutes from the February 28, 2014 CMP Policy & Implementation Committee meeting**

Commissioner Jackson moved the adoption of the February 28, 2014 meeting minutes. Commissioner Prickett seconded the motion and all Committee members voted in favor.

**2. Discussion of Stafford Township's proposal to locate a stormwater basin in the Pinelands Forest Area**

Chairman Lohbauer welcomed Stafford Mayor John Spodofora.

Ms. Wittenberg said today staff is asking the Committee to evaluate a number of approaches to an issue with which it has been struggling. Staff is not looking for a decision or vote today.

Mr. Horner introduced Mayor Spodofora who, in turn, introduced Township Administrator Jim Moran and, with CME Associates, Mr. John Hess, Mr. Trevor Taylor and Mr. Paul Kittner, Jr. Mayor Spodofora said he hoped that the Township would receive direction today as to how to proceed with its need for a new stormwater basin.

From a map displayed on the Smart Board (and included in the meeting packet), Mr. Horner oriented the Committee to the location of the Ocean Acres residential development along the north side of Route 72. He said the development itself is within the Regional Growth Area (RGA,) where most types of development are allowed. However, on the south side of Route 72, all the lands are in the Forest Area (FA), limiting the types of development that can occur. He emphasized that today's discussion would not be an evaluation of the application itself as, ultimately, depending upon how the application proceeds, the application will be before the full Commission. The staff is asking help to identify the most appropriate means to move forward.

Mr. Horner said the issue relates to drainage problems in Ocean Acres. The existing stormwater management basin is undersized and sometimes flooding occurs in the streets and even in people's homes. He said, to resolve the problem, the Township is proposing an 11-acre stormwater management basin on municipally-owned land on the south side of Route 72, in the Municipal Land (ML) Zone within the FA. The Township has done some preliminary work and believes the site would meet environmental standards. However, it is not a permitted land use. Mr. Horner said the packet memo identifies five potential alternatives to deal with the issue (#1-Memorandum of Agreement (MOA); #2-treat as public service infrastructure; #3-application to be submitted by another public agency as a safety improvement and allowed under 50% expansion of pre-1982, nonconforming land use; #4, compelling public need waiver; and #5, zoning ordinance amendment).

Mr. Horner addressed Alternative #2 and suggested treating a stormwater basin like any other type of development that meets the Comprehensive Management Plan (CMP) definition of "public service infrastructure". He noted that this usually involves linear development such as sewer, water supply and roads. He said if one were to apply Alternative #3, another public agency such as the Department of Transportation, could apply for the proposed basin as a necessary safety improvement to Route 72. Under the 50% expansion of a pre-1981 nonconforming use, a series of calculations would be needed to determine if an 11-acre stormwater basin would meet the conditions, but it was highly likely given the length of Route 72. In response to Commissioner Prickett's question as to how the 50% rule would apply, Mr. Horner said typically if there is a two-lane road, the addition of a third lane would be a 50% expansion.

Mr. Horner said staff believes that Alternatives #4 and #5 are also possible approaches. He asked the Township to make its presentation and confirmed for Commissioner Jackson that Ocean Acres pre-dates the CMP.

Ms. Wittenberg said the Commission had contracted with an outside engineer to respond to staff questions about the location of the basin and if locating it on vacant lands within the RGA on the north side of Route 72 would be more appropriate. The draft report has been received but not yet thoroughly evaluated by staff.

Mr. Trevor Taylor provided a presentation (*Attachment A to these minutes*) on the Township's interest in expanding the existing stormwater basin (referenced to as the Neptune Basin due its location on Neptune Drive) into the Forest Area. He said this is the next step in a number of overall stormwater improvements to Ocean Acres. He provided much information about

Stafford's record as an environmental steward and listed previous efforts to address flooding problems, including the adoption of a number of ordinances intended to control run-off, improve water quality and prevent pollutants from reaching Barnegat Bay. The runoff from Ocean Acres floods Route 72 and impacts populations of Swamp Pink on the south side of the road at a speed and volume to destroy them. The existing basin discharges to Eight-Mile Branch and then to Mill Creek and ultimately Barnegat Bay. Under the Township's proposal, the existing basin will discharge, by gravity, to a proposed seven-acre basin across the road and no pumps will be required because this is the natural direction of flow. The additional basin will slow the discharge considerably and mitigate the impacts of 100-year storms.

In response to Commissioner Jackson's question as to why the basin didn't comprise the full 11-acres of the parcel, Mr. Taylor said that factors such as the distance from Route 72, the depth, the right-of-way, and the slope are among the many factors in determining the basin area.

Mayor Spodofora said the Township is proposing a bio-retention system with native plants at the bottom and along the sides of the basin in order to capture an entire range of hazards in the run-off. The new basin will act in unison with the existing basin on the north side of Route 72.

In response to a question from Commissioner Lloyd, Mr. Taylor said there will be two box culverts, one 30" and one 36", side by side, to convey the water from the existing to the proposed basin. The proposed basin will be roughly 15' deep and will capture phosphates, nitrates, heavy metals, particulates, etc. and prevent them from being carried downstream.

In response to a question from Commissioner Ashmun regarding build-out in Ocean Acres, Mr. Moran said, of 5,000 lots, about 100 lots remain vacant. Roughly 1,000 homes were built under Stafford's new stormwater regulations. The Ocean Acres development continues into Barnegat Township, which has similar regulations. The Barnegat portion of the development is also a contributor to run-off.

In response to Commissioner Ficaglia's comment that the existing plants at this site cannot tolerate wetlands, Mayor Spodofora concurred but said this was a natural stream area before the houses were built and sweet bay magnolias and cedars prevailed. He said the proposed basin would return the area to its previous natural state.

In response to Commissioner Ashmun's question if there were absolutely nowhere else to site a basin, Mr. Taylor said that several alternatives had been evaluated. There are homes on the periphery of the existing basin. It would require the removal of some 15 to 20 of those homes in order to achieve the same basin volume. In addition, there are roughly 38 vacant lots within the RGA to the North but their acquisition would cost roughly \$2.4 million.

Mr. Moran said not only did the Township look at estimated costs, but also at lost tax ratables.

Mr. Taylor said that soil borings had been done on the vacant RGA lands and determined, due to the lower elevation, the need for a pump station if the basin were located there.

Mr. Moran said all lands to the east of the project are already developed or comprise the existing basin. On the south side of Route 72, with the exception of the Township-owned Block 26, Lot 10, all the lands are privately owned and within a protected area.

Mayor Spodofora said the proposed basin has been designed to account for all development, both existing and projected, including Barnegat Hills and Ocean Acres. He said the Township's post-development stormwater management plan requires homeowners to address any increases in impervious surface before adding decks, patios etc. to their properties.

In response to Commissioner Prickett's question regarding the flow to Barnegat Bay, Mayor Spodofora said there are limited areas where the water can go and ultimately pollutants are going to the fish nurseries of Barnegat Bay. He said that 70% of Stafford is open space but the Township cannot solve the pollution issue on its own.

Mr. Moran said all stormwater that is not captured runs downstream. All water from the Neptune Basin will travel to Eight Mile Branch, then to Mill Creek and Barnegat Bay.

Commissioner Ficcaglia asked if it would not be advantageous to the Township to use the vacant lands to the North and West of the existing development as homes obligate the municipality to provide services and schools.

Mr. Moran responded that the cost of construction will be three times as much at that site and 30 developed lots would have little impact on services or the cost of infrastructure.

Mayor Spodofora said the elevation is critical. The Township wanted to direct the flow to follow the natural course of the water.

Mr. Taylor said that a 2.5" rain event creates flooding. The new basin will benefit all the residents in the overall drainage basin of 350 acres. He reviewed the alternatives and summarized by saying that all alternative sites were less efficient and more costly than the proposed site. There are no threatened/endangered species on the subject lot. He listed the approvals received to date.

In response to Commissioner Prickett's question, he said that the Commission had been copied on all permit applications so staff had been kept informed.

Mr. Moran said the Township had anticipated mitigation requirements and is proposing to offer other Township-owned lands.

Mr. Horner said the Committee has received much information but he reiterated that staff did not want a vote, merely guidance. He said that if the approach is a Waiver of Strict Compliance, there is a compelling public need and staff would be required to look at alternatives, a strenuous test. The Commission's consultant's draft report suggests that one alternative might be slightly better but the Commission and staff will need to evaluate the costs. He suggested that if one alternative costs \$1 million and another is \$5 million, what constitutes a feasible or better solution. When is cost considered, if at all? For example, when staff evaluates a waiver

application, should fiscally-capable municipalities be treated differently than those that are fiscally-challenged? He said staff believes that cost should be a factor to be considered.

Commissioner Jackson said he wanted the Commission to be consistent in following its rules and protecting the Pinelands. He said he didn't know why a dollar factor should be part of the decision.

Mayor Spodofora said that Stafford Township had taken a hit from Superstorm Sandy and had lost some \$200 million from its tax base. He said as a small town, it was not able to fund a \$5 million project. The cost has to be considered. He said that if he can't do anything to resolve this problem, the damage will continue. He said he wanted to fix a problem beyond the Pinelands and Barnegat Bay. In addition, he had to deal with the municipal fiscal cap. He said that his decision has to be made with cost as a factor.

Commissioner Jackson said he heard the mayor but that costs were not what he looked at in making a decision.

Mayor Spodofora said Stafford feels strongly about protecting the environment and the Bay. He said the runoff causes erosion and flooding will get worse as more development occurs.

Mr. Horner said he felt everyone wanted to address the situation but the Commission needs to determine the appropriate path.

In response to Commissioner Ashmun's question regarding how much of Ocean Acres was within the basin, Mr. Moran and Mr. Taylor said roughly 1100 homes of the total 5,000 are within the basin. There are five drainage basins throughout Ocean Acres and drainage issues have been resolved in all these areas except for the portion addressed through the proposed expansion of the Neptune Basin.

In response to Chairman Lohbauer's question regarding the Commission's obligation to consider cost as a factor when evaluating a project, Mr. Horner said that it was his personal opinion. He said, in most cases, there is almost always an alternative if there is enough money.

Ms. Wittenberg said the issue is if the proposed basin is "better" than other alternatives in the Pinelands. Staff wants to review the consultant's report and see if there are additional issues.

Commissioner Prickett asked, even if these alternatives cost more, will they work? He said the goal is to solve the problem.

Commissioner Ficaglia said the 11-acre basin in the FA seems to be better because of the natural flow of the water.

Chairman Lohbauer said all the alternatives offered were within the growth area. He said the Committee had not heard about the impact of building the basin in the FA. He said he wanted to know the potential impacts of construction.

Mayor Spodofora said that a basin in the FA would result in 11 acres of disturbance but, a \$5 million alternative in the RGA, which the Township could not afford, would lead to the deterioration of hundreds of acres downstream.

Mr. Horner said, through the waiver process, the applicant would have to address impacts. He said staff believed the proposed basin would meet environmental standards.

Ms. Grogan addressed Alternative #5, a zoning ordinance amendment. She said the basin lands are in the ML District and if the Township were to amend the permitted uses in the ML District, the Commission could approve it by applying the municipal flexibility provision of the CMP. She said, in the past, the Commission has been able to use those provisions to better match local conditions and deal with situations that the CMP could not anticipate. However, typically flexibility is not used to address one parcel, but an area or a situation. In a case where it is so specific that it applies only to a single parcel, this would establish a precedent in the FA. She said she envisioned other municipalities proposing amendments to deal with comparable situations.

Ms. Grogan said staff agreed there was a compelling public need. But the Commission works hard to make sure these incursions do not occur. She said she believed the waiver process is designed to address the situation. The Commission needed to consider precedent and applicability elsewhere.

Commissioner Ficcaglia said she thought the waiver was the way to go as it requires a high standard of proof.

In response to Chairman Lohbauer's question to the Committee if anyone were interested in pursuing a zoning amendment, no one responded in the affirmative.

Chairman Lohbauer asked why there was no interest in the MOA approach. He said that although he understood the sensitivity to MOAs (*due to the recent controversial proposed pipeline MOA*), it seemed the best approach in this situation.

Ms. Wittenberg said that she felt there was a compelling public need.

Chairman Lohbauer said it appeared that a zoning change was not a good option, a waiver of strict compliance was possible, and the use of an MOA was his suggestion.

Mr. Horner said he felt differently about the zoning option and believed the municipal flexibility provision was appropriate under these circumstances. He said he thought this is a case where the Commission is permitting infrastructure to serve a pre-existing development.

Commissioner Ashmun said she felt it was sad that, when the Commission first discussed Ocean Acres, the basin calculations had not been done properly.

Mr. Moran and Mayor Spodofora concurred that the pre-existing development was poorly engineered.

Commissioner Lloyd said he appreciated that staff had brought this issue before them but now the question is how to answer.

Commissioner Jackson said he liked what Ms. Grogan had said and was against a zoning amendment. He said a waiver of strict compliance was his preferred approach.

Chairman Lohbauer said he viewed the waiver tool as the one with the highest hurdles to meet. He said he recognized this serious problem and commended staff for bringing it before the Committee. He said the waiver approach requires there to be no alternative.

Commissioner Jackson said the use of a waiver will not set a precedent, and Commissioner Ficcaglia said she felt the burden of proof is highest with a waiver of strict compliance.

In response to Commissioner Ashmun's question regarding where the undeveloped lands to the north of the existing basin drained, Mr. Hess said there are a couple of sections of the Four-Mile Branch (showing a faint outline on the map) and the balance of the area drains into it. He referenced the three party agreement with Walters Homes and said the drainage from those homes will also go to Barnegat Bay. This is why planning for this basin is needed now.

In response to Commissioner Ashmun's statement that she didn't want to see a report of poor engineering done initially, Mayor Spodofora said that Stafford had been pro-active and is trying to correct the "sins of the past." He said the Pinelands Area portion of Stafford was nearly built-out and the Township had passed post-development ordinances to try to control runoff.

In response to Commissioner Prickett's question if the consultant's report addressed the ability of the basin to handle run-off, Ms. Wittenberg said, yes, but it does not take it to the level of a 100-year storm. She said the consultant was asked to evaluate the area in the RGA north of Route 72. The report indicates that it is "slightly better" at additional cost but staff still needs clarification.

Mayor Spodofora said the Township is restricted by the lands it owns. He said in a 100-year flood, the two basins will allow slower release of stormwater and substantially reduce pollutants.

Commissioner Ashmun said the Commission needed to weigh the issues of rezoning or waiver.

Chairman Lohbauer said the majority of the Committee supports the waiver approach, some may be interested in a zoning amendment and one supports an MOA. He said he commended the Committee for this exercise and thanked the team from Stafford for its elaboration of the situation.

Mayor Spodofora thanked the Committee and said he felt it was a good discussion with great questions and that he appreciated the opportunity to appear before them today. He said the

Township wanted to reduce flooding and its impacts on Barnegat Bay and he hoped that the Commission would work to reduce the non-point pollution that is killing Barnegat Bay.

Mr. Horner said, if Ms. Wittenberg agrees, staff will recommend an approach to Stafford as to how to proceed and then, ultimately, an application will be voted upon by the full Commission

Commissioner Lloyd said that in his experience, project costs are often included and he believed that an evaluation of the project should and could include cost.

Ms. Wittenberg said staff would use the term “better” not “feasible” in evaluating alternatives in the Pinelands Area, noting that “better” is a rare regulatory term.

Chairman Lohbauer said that he, for one, was not yet convinced that cost was an element to be considered. He said that a waiver of strict compliance presents the highest hurdle.

In response to questions from the Committee, Ms. Roth said that if the application takes the waiver route, the Commission would receive all the information related to costs and how much better one site might be than another.

Chairman Lohbauer again thanked staff for having involved the Commission from the beginning of the process.

### **3. Public Comment**

Mr. Bob Filipczak provided Chairman Lohbauer with a copy of a paper entitled “Basins as Public Policy” (*Attachment B to File Copy of these minutes*) and displayed a series of plans related to stormwater basins at Exits 41 and 44 of the Garden State Parkway. He said there are many cases where basins have replaced healthy forests when there was no evidence of flooding problems. He described such a situation as an environmental travesty and asked the Commission to consult with Rutgers University soil scientists and investigate why these unnecessary basins are being developed.

Dr. Lee Rosenson, with the Pinelands Preservation Alliance and the New Jersey Audubon Society, said he felt uneasy about this morning’s conversation. He felt it inappropriate for the discussion to have taken place in the applicant’s presence and, as no Committee member had indicated “none of the above”, it was apparent that this was a pre-approval for the project.

Chairman Lohbauer responded that no Committee members had indicated how they would vote. The discussion was in terms of the CMP in order to give advice, not to the applicant, but to the staff.

Commissioner Lloyd added that he had made no judgment and the Committee has no record before it. He said he appreciated staff raising the issue and believed the Commission should be involved with determining the appropriate process.



Commissioner Jackson said he thought he had been clear. He appreciated the applicant's input and the Commission wanted to be transparent. Through a discussion such as this, the Commission will know what the process is moving forward.

Ms. Margo Pellegrino, Medford Lakes resident, said she was interested in the run-off issue because ultimately, all run-off goes to the ocean. She noted the lack of foresight when Ocean Acres was developed. She said she believed climate impact needs to be addressed in the CMP and that back bay flooding has been worse than that coming from the ocean.

**4. Other Items of Interest**

There being no other items of interest, the meeting adjourned at 12:10 p.m. (moved by Commissioner Jackson and seconded by Commissioner Prickett.)

Certified as true and correct:

  
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Betsy Piner, Principal Planning Assistant

Date: April 15, 2014

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