

Disclaimer

These minutes reflect the actions taken by the Commission during its April 13, 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 May 1, 2018.

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

MINUTES

**April 13, 2018**

Commissioners present

Alan W. Avery Jr., Bob Barr, Giuseppe Chila, Paul E. Galletta, Jane Jannarone, Ed Lloyd, Mark Lohbauer, William Pikolycky, Gary Quinn, Richard Prickett, and Chairman Sean Earlen. Also present were Executive Director Nancy Wittenberg and Deputy Attorney General (DAG) Bruce Velzy. Governor's Authorities Unit representative Ed Caulfield participated by telephone.

Commissioners Absent

Candace Ashmun, Jordan P. Howell and D'Arcy Rohan Green.

Chairman Earlen called the meeting to order at 9:31 a.m.

DAG Velzy read the Open Public Meetings Act Statement.

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 11 Commissioners who participated in the meeting.)

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

### Minutes

Chairman Earlen presented the minutes from the March 9, 2018 Commission meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Barr seconded the motion.

The March 9, 2018 Commission meeting minutes were adopted by a vote of 11 to 0.

ED Wittenberg introduced Zobeida Concepcion, who was hired as the Commission's Human Resources Manager.

Chairman Earlen presented staff member Patrick Burritt with a certificate for his 10 years of service at the Commission.

Chairman Earlen noted that Commissioner Howell will be joining the Policy and Implementation Committee and Commissioner Pikolycky will be a member on the Personnel and Budget Committee.

### Committee Chairs' Reports

Chairman Earlen provided an update on the March 23, 2018 Policy and Implementation Committee meeting:

The Committee adopted the minutes of the January 26, 2018 meeting.

The Committee received an update on affordable housing in the Pinelands Area.

The Committee received an update on Plan Review Recommendations and CMP Amendments.

Commissioner Avery said the April 24, 2018 Personnel and Budget Committee meeting was canceled.

### Executive Director's Reports

ED Wittenberg updated the Commission on the following:

- The Edmunds accounting software is working out well after the initial installation. Staff has been trained on the requisitions module. She said Edmunds time tracking software will be installed in the coming weeks.
- The Auditors will be ready to begin the FY 2017 Audit in early May and estimate that the Audit will be complete by the end of August.
- Commissioners must file their Financial Disclosure Statements by the May 15, 2018 deadline.
- The permitting for the Pinelands exhibit center suffered a minor setback, but currently the Department of Community Affairs is determining the permit fee. Once the fee is paid, the permit will be issued and staff will meet with the contractor to determine a new schedule.
- Staff has scheduled an internal meeting to discuss proceeding with the Katie Garden enhancement project. She said the garden was planted in memory of a

Pinelands Commission staff member who died while working in the field. An Eagleton fellow designed a larger garden to encompass native Pinelands plants. The FY 2018 budget included funds for this project.

Director Charles Horner updated the Commission on the following items:

- Staff met with an applicant and the Assistant Secretary of Agriculture regarding the establishment of a retail farm market in an existing agriculture building. During that meeting staff explained what types of development activity related to agriculture require an application and what activities are exempt.
- The New Jersey Department of Environmental Protection (NJDEP) has submitted an application for forestry activities on about 60 acres in Pemberton Township. A pre-application meeting has been scheduled.
- A call-up hearing on a mining proposal is scheduled for April 24, 2018. He said the proposed development is inconsistent with the threatened and endangered species standards. He added that threatened and endangered species are making it more challenging for mining operations to expand and in some instances to continue mining.
- The Washington Township attorney requested assistance from staff regarding an issue related to the possible clearing of a wetlands buffer.
- He mentioned that staff spend a great deal of time trying to figure out zoning changes, the Permit Extension Act and the provisions of the Municipal Land Use Law (MLUL) and how all three relate to applications that have been inactive for many years.

Commissioner Lloyd asked Director Horner to elaborate on the forestry activities proposed by the NJDEP.

Director Horner said the NJDEP is proposing selective thinning on two different parcels. He added that a previous forestry permit expired and the NJDEP is applying for renewals for some of the forestry activities.

Commissioners had a discussion about the complicated task of processing older approvals in which any of the following could have an effect on an application: zoning change, the Permit Extension Act and the MLUL. Commissioner Lloyd suggested that a case currently pending at the NJ Supreme Court related to the MLUL and Highlands regulations might be relevant.

Chief Planner Susan Grogan said municipalities have been very active with zoning changes, master plans and redevelopment plans. She said Pemberton Township is considering four different redevelopment plans: the old Burlington County Community (BCC) College, a site across the street from the old BCC, Browns Mills and the Deborah Hospital.

Chief Planner Grogan said that the Pinelands Development Credit Bank is processing a number of sales and redemptions for Pinelands Development Credits (PDCs), many of which are for projects in Atlantic County. She said because of the recent spike in

development, old projects are resurfacing, which either originally had a PDC obligation or a change in zoning now requires PDC use.

Paul Leakan updated the Commission on the following items:

- There were over 600 attendees at the 29<sup>th</sup> annual Pinelands Short Course including Congressman Donald Norcross.
- The 2<sup>nd</sup> annual summer Pinelands Short Course is scheduled for July 19, 2018 at Stockton University's Kramer Hall in Hammonton.
- The Pinelands Commission's annual orientation for newly elected officials is scheduled for July 24, 2018. The meeting is held jointly with the Pinelands Municipal Council.

#### Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending approval for the demolition of three existing toll booths and the construction of two express lanes at the New Gretna toll plaza on the Garden State Parkway.

Commissioner Barr moved the adoption of a resolution Approving With Conditions an Application for Public Development and Certificate of Appropriateness (Application Number 1997-0257.016) (See Resolution # PC4-18-11). Commissioner Pikolycky seconded the motion.

The Commission adopted the resolution by a vote of 11 to 0.

Chairman Earlen presented a resolution recommending approval for the construction of a pedestrian walkway and the reconstruction of a fire and rescue building in Pemberton Township.

Commissioner Prickett announced he would recuse from voting on this resolution because he resides in Pemberton Township. He left the room.

Commissioner Galletta moved the adoption of a resolution Approving With Conditions Applications for Public Development (Application Numbers 1981-0586.008 & 2006-0440.002) (See Resolution # PC4-18-12). Commissioner Lohbauer seconded the motion.

Director Horner displayed a map of the proposed paved pedestrian walkway that will be constructed entirely on municipally-owned land. He said the walkway will begin on Broadway near the entrance to Burlington County's library (Pemberton Branch) and traverse through the woods to improve traffic safety in the vicinity. He said currently there is a lot of pedestrian foot traffic on the road and there are no sidewalks.

Director Horner noted that a homeowner who lives adjacent to the library has submitted an appeal to the Commission, citing environmental impacts and security because of how close the path will be to their home. Director Horner said a letter was sent to the homeowners advising them of the requirements of the formal appeal process. He also said he spoke with DAG Velzy regarding this matter and was advised that the homeowners are not an

interested party. Director Horner noted that a letter will be sent to the homeowners advising that they do not have standing.

Commissioner Lloyd asked who would be making that decision.

Director Horner said staff along with Counsel.

Commissioner Lloyd said that he disagrees with that decision and feels the homeowners do have a particularized property right. He also said he thinks the path is a great idea but was curious if it is an impermeable surface and if the Commission can suggest the applicant use a permeable type material for the path.

Director Horner said the path will be made of impermeable pavement.

Director Horner said the Comprehensive Management Plan (CMP) does not require an applicant to use a certain material. He said when staff reviews an application like this one, for example, staff makes sure that it is consistent with the stormwater management rules. However, staff can make suggestions to an applicant to consider alternate approaches.

Commissioner Barr asked why the homeowners are opposed to the pedestrian path.

Director Horner said the property owner's home fronts on an unimproved paper street that will now be developed with the pathway changing the area from wooded to cleared.

Commissioner Jannarone questioned how far the path would be from the homeowner's property line.

Director Horner estimated 20 feet from their property line.

The Commission adopted the resolution by a vote of 8 to 1. Commissioner Lloyd abstained from the vote and Commissioner Jannarone voted no.

Commissioner Prickett returned to the dais.

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:

- Lacey Township Ordinance 2018-04
- Monroe Township Ordinance O:02-2018

No members of the Commission had questions.

### Presentation

Chief Planner Grogan explained the conformance process the Commission uses to review municipal master plans and land use ordinance amendments. She explained the materials that need to be submitted for review. She said after staff reviews the submitted information, a determination is made as to whether the master plan or ordinance raises a substantial issue or does not raise a substantial issue. If a master plan or ordinance raises a substantial issue, formal Commission action is required.

Link to the presentation slides:

[http://www.nj.gov/pinelands/home/presentations/2018%20Conformance%20presentation%20\(PL%20edits\).pdf](http://www.nj.gov/pinelands/home/presentations/2018%20Conformance%20presentation%20(PL%20edits).pdf)

### General Public Comment

Jason Howell of the Pinelands Preservation Alliance requested that the Commission invite the Director of Parks and Forestry to provide an update on the Off Road Vehicle (ORV) situation at Wharton State Forest. He said volunteers have been building 10x10 bollards for when the time comes to place them at Wharton to protect certain areas. He said the ORV issue is about the same at Wharton.

Sharon Hobert of 2 Dover Place, Browns Mills, NJ said she has lived at the property for over 50 years. She said her house is located across from the library, which had negative impacts on the Coopers hawk population when it was built. She said the impermeable pathway will be 5 feet from her property line and will have a negative effect on the surrounding wildlife.

Leah Hackley of 35 Ogden Street, Browns Mills, NJ said the pedestrian pathway project will have a direct impact to her driveway. She also expressed concern for the wildlife, especially the breeding turtles.

### Other

Director Horner said that he spoke with the homeowners adjacent to the project. He said he explained the Commission's regulations and suggested the homeowner speak to Pemberton Township officials. Director Horner said he misspoke earlier, the project is in fact 5 feet from the homeowner's property line, not 20 feet. Director Horner added that the project remains in the municipal right of way.

Commissioner Barr said he may have voted differently had he known the proposed pathway would be closer than 20 feet to the house.

Commissioner Jannarone asked if the homeowners have any recourse.

Director Horner said a municipality is entitled to develop on municipally-owned land, including right of ways.

Commissioner Barr asked what the outcome would be if the Commission did not have enough votes to pass the resolution for the pedestrian pathway.

Director Horner said the application would be sent to the Office of Administrative Law where it would be reviewed for consistency with the Commission's rules.

Commissioner Lloyd said he believes the homeowners are an interested party and doesn't agree with staff's decision.

Commissioner Lloyd asked ED Wittenberg about meeting with the NJDEP to discuss Wharton State Forest.

ED Wittenberg said she will be reaching out to the Assistant Commissioner of Natural and Historic Resources soon.

Commissioner Barr asked why the homeowners are not considered an interested party.

DAG Velzy said that under the New Jersey Administrative Procedure Act (APA), in order for someone other than the applicant to qualify for a hearing, either the Pinelands Protection Act or constitutional right must be identified. He said New Jersey Courts have interpreted that term, and just because a homeowner is adjacent to a project does not entitle them to a hearing nor does it qualify them as having a particularized property interest. He noted that there was case in the Meadowlands known as Amico/Tunnel Carwash, and the courts have been consistent with that decision.

Commissioner Lloyd asked DAG Velzy if he was applying the Commission's regulations or the Administrative Procedure Act. He said his recollection is that the Commission did not adopt the change in definition of interested party.

DAG Velzy said he is applying the Administrative Procedure Act. He said the statute trumps regulations.

Commissioner Lloyd said that there was one decision in the Pinelands where the Office of Administrative Law upheld the interested party status for the challenger. He said he would provide DAG Velzy with the decision. DAG Velzy said he would review that case.

Adjournment

Commissioner Barr moved to adjourn the meeting. Commissioner Chila seconded the motion. The Commission agreed to adjourn at 11:03 a.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: April 25, 2018