

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey
October 23, 2013 – 1:30 p.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Paul E. Galletta, Robert Jackson, and Richard Prickett

MEMBERS ABSENT: Leslie Ficcaglia

OTHER COMMISSIONER PRESENT: Ed Lloyd (*Commissioner Lloyd participated in discussion but did not vote on any matter.*)

STAFF PRESENT: Executive Director Nancy Wittenberg, Larry Liggett, Susan R. Grogan, Stacey Roth, Paul W. Tyshchenko, Paul Leakan, Robyn Jeney, Jessica Noble and Betsy Piner. Also present was Ms. Kerstin Sundstrom, with the Governor’s Authorities Unit.

Chairman Lohbauer called the meeting to order at 1:39 p.m.

1. Adoption of minutes from the September 27, 2013 CMP Policy & Implementation Committee meeting

Commissioner Prickett moved the adoption of the September 27, 2013 meeting minutes. Commissioner Galletta seconded the motion and all Committee members voted in favor.

2. Pinelands Conservation Fund – Acquisition

Ms. Anne Heasly, with Conservation Resources, Inc. (CRI) made a presentation to the Committee. (*See Attachment A*)

Ms. Heasly said of the 3 projects approved by the Committee in the 2012 Round, Maple Root River (75 acres in Ocean County) had closed, Zemel (2,438 acres in Burlington County) was likely to close in the second quarter of 2014, and Clayton (196 acres in Jackson Township) was requesting an extension.

Ms. Heasly said the Toms River Plan had identified the lands in the Clayton Project to be of high natural resource value. The Trust for Public Land (TPL) is the acquisition organization and it is awaiting certification of the market value (CMV) for the property. There was no quorum for the last meeting of the Ocean County Natural Lands Trust at which the receipt of the CMV will

occur. As the closing should occur before the end of the year, CRI is recommending an extension until January 3, 2014.

Ms. Heasley said The Nature Conservancy (TNC) is the acquisition organization for the Clarke project, a 268 acre parcel in Cape May County adjacent to the Belleplain State Forest. The property will be owned and managed by the NJ Division of Parks and Forestry. The balance of the Cape May County Funds will be applied to this project. TNC is executing the agreement with the Commission, and the State is ready to close on the property. CRI is recommending an extension until January 3, 2014.

Ms. Grogan said these are great projects that are very close to closing.

Ms. Heasley said of all sources of Pinelands Conservation Fund funding for acquisition projects, only \$768,042.00 remains. The remaining funds are restricted to purchasing the parcels identified in the approval with the Turnpike Authority, which allowed the widening of the Garden State Parkway.

Ms. Grogan said that if those Turnpike agreement parcels cannot be acquired, the money will be re-allocated at some point in the future.

Commissioner Galletta moved that the Committee grant extensions through January 3, 2014 for the Clayton project in Ocean County and the Clarke project in Cape May County to meet all conditions of the grant agreements, including closing on the properties. Commissioner Prickett seconded the motion and all voted in favor.

3. Executive Director's Reports

Amendment to the Comprehensive Plans for Cellular and Personal Communications Service (PCS) Facilities on behalf of Sprint Spectrum L.P. and its Affiliates for Wireless Communications Facilities in the Pinelands

Mr. Paul Tyshchenko, Commission Principal Planner, made a presentation on Sprint Spectrum's application for an amendment to the Comprehensive Plan for local communications facilities within the Pinelands Area. (*See Attachment B*)

By way of background, Mr. Tyshchenko explained some of the Comprehensive Management Plan (CMP) standards related to the siting of cell towers. He also discussed the original "cell plan", its four amendments and the Commission's review process for cell towers.

Mr. Tyshchenko said that the Sprint Plan calls for 74 sites, all but one of which is a site approved in a previous plan. The single, entirely new site is located on an existing clearing at the rear of a tree farm in the Preservation Area District (PAD) of Manchester Township. He showed examples of the kinds of maps used to illustrate gaps in signal propagation coverage in a given area and how such gaps might be eliminated by the addition of a new tower. He provided slides demonstrating the anticipated viewshed of the proposed tower, noting that due to the heavily

forested surroundings, it was likely there would be only a few small areas from which the tower would be visible. He said that because this proposed tower does not meet the siting criteria for towers in the PAD, at the time a development application is submitted, the tower will undergo an alternatives analysis in order to determine whether techniques such as stealthing/camouflaging or the use of multiple shorter towers might reduce the visual impact.

In response to Commissioner Galletta's question, Mr. Tyshchenko said that Sprint's tower is proposed at 150' but could be scaled up to 200' as required by the CMP and consistent with the co-location policy that requires that all providers share their towers.

In response to Chairman Lohbauer's question as to the viewshed, Mr. Tyshchenko said that the evaluations were done for a tower at the maximum 200' and only one tiny area of visibility to the southwest of the tower would be eliminated if it were built to 150' instead.

In response to Commissioner Prickett's question, Mr. Tyshchenko said, at this time, the GIS analysis shows no apparent issue with threatened or endangered species or wetlands. However, a more in-depth review will be done when a development application is submitted.

In response to questions from Commissioner Lloyd, Mr. Tyshchenko said that the general approval of a cell tower plan or amendment allows the provider to apply for a specific site. Absent a site in an approved plan, structures located anywhere outside the Regional Growth Area and Pinelands Towns cannot be taller than 35'. Through the Commission's Development Review process, site-specific concerns pertaining to our rules will be identified and addressed. In terms of cell plans, if certain CMP criteria cannot be met, the Commission is not required to deny the Plan unless there are so many and such egregious deviations that the Commission feels it cannot approve the amendment as proposed. He said the applicants will be subject to a second level of review (the alternatives analysis) that will allow the Commission to work with the applicant to determine the best method of meeting the standards. No consultant was hired for review of this plan as it involved only a single new site. By reviewing the parameters of previous plans and looking at the range of acceptable levels of coverage (in decibels per milliwatt), staff determined that Sprint's acceptable level of coverage was more liberal than that of previous plans, so the hiring of a radio frequency expert did not seem necessary.

Mr. Liggett said staff reviews cell plans as enabling measures to allow towers to proceed. Also in many cases, other structures may become available and the towers may not ultimately be necessary. He confirmed Commissioner Prickett's suggestion that such structures might be water towers or warehouses.

In response to Chairman Lohbauer's question if the viewshed were from public parks, Mr. Tyshchenko said that the largest area to the northwest is New Jersey Department of Environmental Protection (DEP) land where "no trespassing" signs are posted prominently. Thus, he did not believe it was a public park, although it was certainly public land. A small area to the east is an area of private homes, and on the southwest is lowland wetlands/cranberry bogs.

Commissioner Jackson moved the recommendation to the Commission of certification of the Sprint Spectrum LP amendment to the Comprehensive Plans for Cellular and PCS Facilities. Commissioner Galletta seconded the motion and all voted in favor.

Ms. Roth said that the public comment period had closed on the cell tower application.

In response to Commissioner Prickett's question as to how the public becomes aware of the public comment opportunity, Ms. Grogan said that the Sprint amendment had received a formal public hearing on September 10, 2013 with all the associated newspaper advertising and mailings to the municipalities and interested parties. The record is closed before a report is prepared to allow staff to incorporate and respond to any public comment. This is the same process used for all ordinances, cell plan amendments and the like. *(Note: all Pinelands municipalities and interested parties were notified of the hearing on August 27, 2013 and the hearing was posted on the Commission web site and advertised in the Commission's four official newspapers on August 29 and 30.)*

Ms. Roth added that this process was no different than that for public development applications.

5. Public comment

Chairman Lohbauer said, although the proposed South Jersey Gas (SJG) pipeline was not on today's agenda, a large number of individuals wished to speak about the matter. During the course of public comment, Chairman Lohbauer asked the public to confine their comments to three minutes in order to accommodate everyone. Ms. Noble kept track of the time.

Mr. Jeff Tittel, New Jersey Director of the Sierra Club, said today the Governor was in Woodbridge at a groundbreaking ceremony for a gas power plant, one of three that have broken ground this year. He said that New Jersey's energy demands have been dropping but there is much new electrical power being generated in New Jersey. The re-firing of the B.L. England (BLE) plant is becoming less and less necessary as New Jersey becomes more energy efficient. He said next month, revised off shore wind rules will be released for 1,100 MW of wind power along the coasts of Atlantic and Cape May Counties. Even with the potential that the Oyster Creek Nuclear power Station might go off-line, there is no need for more electricity so why build the gas line, he asked. He said this plant would be a long-term emitter of pollutants. Furthermore, Memoranda of Agreement (MOAs) are with government agencies. If the Commission approves an MOA with the Board of Public Utilities (BPU), a regulatory agency, the standard is lost and a Pandora's Box will have been opened. All sorts of applicants will try to push through MOAs, e.g., the Casino Control Commission might want to build a casino at Batsto. He asked the Commission not to give away the Pinelands Protection Act and to protect the Pinelands as the legislation demands.

Dr. Mark Thomas, with Friends of the Rancocas, a group of 75 landowners within the Forest Area (FA) of Pemberton Township, said at its 49th annual meeting last week, the Friends had adopted a unanimous statement opposing allowing this waiver to the CMP. He said granting an approval for the pipeline is permitting the destruction of the environment and will result in

fragmentation of the FA into six segments along its proposed route. He asked the Committee to reject the request by SJG.

Mr. Tom Mahedy said he had experience with the Fort Monmouth MOA process and with the NJ Economic Development Authority, and he had health and environmental concerns with the SJG project. He also objected to the time limits for speaking and said the law should be changed to allow public comment after a record has been closed. He said gas line accidents will lead to fewer jobs, and many are opposed to this project. He asked the Commission to stop the insanity and not enter into an MOA.

Mr. Arnold Fishman, Medford Lakes, NJ resident, said that SJG had shown three potential routes for the gas line but found only one acceptable. As demonstrated at the last Commission meeting (*October 11, 2013*), there is an alternative route that has not been considered. He said that decommissioning the fossil fuel dinosaur (*the B.L. England plant*) would be the best thing for the Pinelands and he asked the Commission to reject an MOA.

Ms. Temma Fishman, said she had nothing to add to the comments presented already.

Dr. Steven Fenichel said he didn't believe anything needed to be added but the public should not have to be here in the first place. He said he was concerned that the staff has been meeting with the corporation behind closed doors and decisions were being made without any science behind them. He said that Ms. Piner had assured him that the four-minute video link he had prepared would be provided to the Commission members shortly and it would totally neutralize the reasons presented by Mr. May (*see minutes of July 26, 2013 P&I Committee meeting*) as to why the SJG project should go forward. He said the Commission was here to protect, preserve and enhance the Pinelands, but it appears that government is being influenced by money; there seems to be no one who is looking after the needs of the citizens (*Note: on October 24, 2013, Ms. Noble emailed the video clip to all Commission members.*)

Dr. Ted Gordon, Southampton Township resident and botanical consultant, quoted from the Pinelands Protection Act and the Commission's mission to preserve, protect and enhance the significant resources of the Pinelands. He said that when he served on the Commission some 10 years ago, he always made that his guide to his decision on any application. He said that an MOA is a means of circumventing the well thought out Comprehensive Management Plan (CMP). Furthermore, an MOA is for government entities, not for private businesses. He urged the Commission to stop using the MOA process to kill the CMP.

Ms. Janet Jackson-Gould, Medford Township resident, asked the Commission to listen to the thoughtful comments of ordinary citizens and consider the many environmental reasons for opposing the gas line. She said the repowering of the B.L. England plant to a full time plant will increase the air pollution. She said perhaps the real reason for the repowering the plant was to allow shipment of gas overseas. She said an MOA was an end-run around the CMP and that the Commission needed to take a stand to prevent environmental destruction instead of knuckling under to private interests.

Mr. Jim Tweed, Ocean City, NJ resident, said that he liked big corporations and that he had retired from one, but if the Commission relies only on the studies provided by the energy company, it is inviting itself to be misled. The results all depend upon the design and conclusions of the study. The Commission is opening itself to being duped by professional and persuasive presentations, he said. He said the Commission's core value is the preservation, protection and enhancement of the Pinelands. The benefits of cheap energy should be irrelevant and have no weight on the Commission's decision.

Ms. Marie Tomlinson, Ocean City, NJ resident, asked the Commission to reject the request for a waiver to allow the pipeline. She said she was terrified of the potential impact of this proposed pipeline.

Mr. Bill Wolfe, with Public Employees for Environmental Responsibility (PEER), said he had been told that Open Public Records Act (OPRA) requests could be met informally, and he had submitted a letter on October 15 yet still not received a response. (*Ms. Roth answered that a response was being prepared*). He said that today's presentation on the Sprint application had been decided in-house and followed the same pattern as the evaluation of the pipeline. He said that previously Ms. Roth had said she was negotiating an MOA with the BPU but there is no jurisdiction to allow such an MOA. He said he had asked the Commission to hire its own consultant and has asked about the Commission's review process. He said he wanted an opinion from the Attorney General's office regarding climate change and air quality impacts. He said he wanted a written response prior to the Commission going through the MOA process.

Ms. Marilyn Miller, Toms River Township resident, said she was not technologically savvy and does not receive information from the Commission unless it is forwarded by the Pinelands Preservation Alliance (PPA). She said that the cell tower discussed earlier in the meeting is on public land and there are environmental impacts. She said, as a former employee of Fort Monmouth, she commended all here in the audience today. She asked that the Commission stop and think about what it was doing and that it needed to protect this ecological jewel.

Ms. Marianne Clemente, Barnegat Township resident, said that she felt the facial expressions of some staff members were insulting to the public. She said at a meeting she attended yesterday regarding Superstorm Sandy-related issues, she had been told that the Commission could approve an MOA in closed session.

Chairman Lohbauer responded that any action on an MOA would take place in open session.

Ms. Clemente said the Commission's duty was the preservation, protection and enhancement of the Pinelands and asked how it could consider an MOA. She said Governor Christie had opposed the creation of a coastal commission that would function similarly for the coast as the Pinelands Commission functions in the interior for the preservation of this jewel.

Ms. Barbara Miller, Upper Township resident, said that the fracking process has detrimental impacts on water and air and she did not want to use the electricity that comes from this process.

Ms. Margit Meissner-Jackson, with the Ocean County Sierra Club, said that putting a 24” pipeline through the protected Pinelands will disturb the area. She said, based on the 2006 MOA with Stafford Township, anything in an MOA is a means of circumventing the rules. She said an MOA is inconsistent with protecting the Pinelands and she cited concerns with saltwater intrusion, disturbance in the development of compression stations, the lack of need for more power and exportation of gas overseas. She asked the Commission to protect the Pinelands.

Mr. Greg Vizzi said he opposes the pipeline and its potential damage. He said that the politically motivated loophole will undermine the credibility of the Pinelands Commission.

Professor Ron Hutchison said he was impressed with the quality of the statements today. He noted that Ms. Miller, an earlier speaker, had done her research and converted from electricity to solar and geothermal energy sources. He said as a scientist he thought he could speak the truth to the powers in control but the Board does not believe in climate change and how it would affect the Pinelands. He said he is dismayed by the reaction and the Commission needs to take into account the impacts of the pipeline in terms of the carbon footprint and the millions of dollars in societal costs.

Ms. Georgina Shanley, Ocean City resident, said this has been a difficult process since it started in June. The public had thought this was an open process but it is as though the Commission is out of the loop and has no input into the process. She said she still had no idea what was going on and cited previous meeting minutes regarding consideration of an offset. She asked what could possibly offset the impacts of a pipeline. She asked the Commission to uphold the 1978 legacy of Governor Brendan Byrne and take an MOA off the table.

Mr. Milo Turk, Absecon resident, certified Rutgers Environmental Steward, and intern for PPA, said that the concern is not just with the hydraulic fracking but also the horizontal directional drilling (HDD). He expressed concern with a bentonite blow-out and destruction of the Kirkwood/Cohansey aquifer.

Mr. Richard Fellows, Tuckahoe, NJ resident, said that the proposed route will go right through his front yard and that when he had questioned SJG about the route, he’d been told that this was the cheaper route. He said he supported the environmental concerns stated already. Also, gas fires cannot be put out. He said the pipeline will fail; we just don’t know when. He raised a document that he described as an 18-page list of pipeline failures, just within the 21st century.

Captain Joel Fogel, with the US Merchant Marine and many other organizations, said the Pinelands was established as a special place and New Jersey has an image to preserve. He said water is what it is all about as one cannot drink oil or gas.

Ms. Anne Carroll, with the Philadelphia chapter of Move-On, said the pipeline is dangerous and that much fracking has stopped in Pennsylvania because there is too much natural gas. She said the plan is to create coastal ports and big supertankers to export liquefied natural gas to China. She said that this project is not worth the risk of destroying our water supply.

Ms. Carol Seftel, Camden County resident, said the public expected the Commission to be the voice for the Pinelands and asked that they not approve this project with its negative impacts.

Ms. Donna Henry, Galloway Township resident, said that the Pinelands is environmentally sensitive and a pipeline will violate the CMP. If the pipeline is approved, it will create suffering and the next generation will inherit the mistake of this Commission. She asked the Commission to do the right thing and not set this dangerous precedent.

Mr. Brandon Henry, Galloway Township resident and high school student, said the Forest Area is a sensitive area and a pipeline will destroy resources and increase pollution.

Miss Tatum Henry, Galloway Township resident, said she did not want to see the Commission ruin the Pinelands and said she was concerned about global warming. She said we need more clean energy, not more fossil fuel.

Ms. Margo Pellegrino said rules are rules and must be obeyed. The pressure will continue to grow but the Commission must not cave and the public will continue to call for the preservation of the Pinelands. This is our rugged wild area; can't we just keep it, she asked.

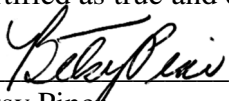
Ms. Sharon Finlayson, with the New Jersey Environmental Federation, noted that nearly everyone who spoke today had pleaded with the Commission to do its job. She said that because the forces that are trying to undermine the CMP are so powerful, the Commission was all that stood between protecting the Pinelands and destroying it. She asked that the Commission stand up to its commitment to protect the Pinelands.

Ms. Emily Reuman, with Food and Water Watch, read statements from two individuals urging the Commission to protect the Pinelands and uphold Brendan Byrne's legacy. She said the only reason she could see for the pipeline was political as there is plenty of energy in New Jersey. She said this past weekend was the "global frackdown" consisting of 300 events on six continents opposing the fracking process. People want to move to renewable energy. She said she had been told that the MOA was a done deal but she hoped it was not as that would render questionable the transparency of the Commission.

Ms. Celie Horne, South Toms River Borough resident, said we have a shared responsibility to leave the planet in better shape for succeeding generations. She asked each Commissioner to consider his/her own children and grandchildren and then take responsibility for their futures when they voted.

There being no other items of interest, the meeting adjourned at 3:40 p.m. (moved by Commissioner Galletta and seconded by Commissioner Prickett).

Certified as true and correct:



Betsy Pinet,
Principal Planning Assistant
/CS15A

Date: October 31, 2013