

Disclaimer

These minutes reflect the actions taken by the Commission during its December 12, 2017 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 January 3, 2018.

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

MINUTES

December 12, 2017

Commissioners Present

Alan W. Avery Jr., Bob Barr, Giuseppe Chila, Paul E. Galletta, Ed Lloyd, Mark Lohbauer, Richard Prickett 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 Participating by Phone

Candace Ashmun.

Commissioners Absent

Jane Jannarone, Ed McGlinchey, Gary Quinn and D'Arcy Rohan Green.

Chairman Earlen called the meeting to order at 9:34 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 nine Commissioners who participated in the meeting.)

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

Minutes

Chairman Earlen presented both the minutes from the November 3, 2017 Commission meeting and the November 17, 2017 (open and closed session) Commission meeting. Commissioner Prickett moved the adoption of the minutes. Commissioner Barr seconded the motion.

The November 3, 2017 and the November 17, 2017 Commission meeting minutes were adopted by a vote of 9 to 0.

Honoring Commissioner William Brown

Chairman Earlen read a resolution into the record outlining Commissioner Brown's long history of work on the Commission. The resolution also noted Bill's career in local government and as an engineer at the Woodbine Developmental Center.

Commissioner Lloyd moved the adoption of a resolution Expressing the Commission's appreciation to William J. Brown for his service as a member of the Commission between March 1982 and October 2017 (See Resolution # PC4-17-44). Commissioner Lohbauer seconded the motion.

Commissioners voiced their appreciation for Commissioner Brown's public service on the Commission.

The Commission adopted the resolution by a vote of 9 to 0.

Committee Chairs' Reports

Chairman Earlen provided an update on the November 17, 2017 Policy and Implementation Committee meeting:

The Committee adopted the minutes of its October 24, 2017 meeting.

The Committee recommended Commission certification of Galloway Township Ordinance 1971-2017, adopting revised sign standards.

The Committee recommended the Commission approve an amended Memorandum of Understanding among Winslow Township, the Camden County Municipal Utilities Authority and the Pinelands Commission regarding water use in the Great Egg Harbor River watershed.

The Committee reviewed the public comment received to date on the proposed Comprehensive Management Plan (CMP) amendments.

The Committee received updates on the four current Pinelands Conservation Fund projects and granted extensions until May 1, 2018 for two that have completed appraisals but are unable to meet the December 1, 2017 deadline for other obligations. Of the two remaining projects, one anticipates closing by the end of November and the other is seeking additional funding and has until September 5, 2018 to complete the transaction.

Commissioner Avery said the Fiscal Year 2016 Audit report will be issued any day. He said the report identified two findings, one of which noted that the Commission needs to improve the monthly reconciliation process and the other finding dealt with testing the Commission's disaster recovery plan. He said the findings are the same as those identified in the FY 2015 Audit report. He said because of the back-to-back audits staff could not resolve the findings in time for the fiscal year 2016 audit.

Executive Director Wittenberg added that a server has been purchased to host the new accounting software that will assist staff in producing financial and other business services reports more efficiently. She said staff is working on procuring software necessary to test the disaster recovery plan.

Executive Director's Reports

ED Wittenberg said that she had a conference call with Mark Texel, who is the Director of the New Jersey Division of Parks and Forestry. She said Director Texel told her the New Jersey Department of Environmental Protection (NJDEP) plans to host a new round of stakeholder meetings in early 2018. She said the next steps regarding the use of the map approved by the Commission will be discussed with NJDEP soon. She said that at a future Commission meeting staff from the Commission science office will present data from a joint effort with the NJDEP and the Pinelands Preservation Alliance regarding a survey of ponds to identify the extent of off-road vehicle damage.

Commissioner Lohbauer and Commissioner Lloyd both expressed their interest in discussing maps for other state parks in the Pinelands.

Director Larry Liggett said the Long-Term Economic Monitoring report will be delayed. Staff has met with a users group and an experts group to discuss improvements that would enhance the report. He said the next LTEM report will include two years of data when it is complete.

Director Charles Horner updated the Commission on the following three items:

- Staff is reviewing an application to place a solar facility on top of a capped landfill. He said the application raises an issue with a threatened plant. He said staff is working with the applicant to determine the best approach.
- A progress report for the Right-of-Way Vegetation Management Plan will be distributed in January. He said the rights-of way are managed by Atlantic City Electric, Public Service Electric & Gas and Jersey Central Power & Light.

- He reminded Commissioners that staff continually works with Pinelands towns on municipal court issues, related to applicants who have violations on their property or have established structures without application.

Paul Leakan updated the Commission on the following items:

- The 2018 Pinelands National Reserve calendars have been distributed to Batsto, Brendan Byrne State Forest and Bass River State Forest. He said the calendars were also sent to all Pineland National Reserve municipalities and to state and federal legislators.
- The 2018 Pinelands Short Course has a total of 42 presentations lined up, 30 of them being new. John Bunnell and Marilyn Sobel both of the Science office will be presenters at the Short Course.
- He said the Commission's contractor and the state continue to work out the permitting requirements for the Visitor Center. He said the fabricator has been working on the actual exhibit. An image of the Jersey Devil that has been produced by the fabricator was displayed on the SmartBoard.

Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending approval for the construction of a 194.5 foot high wireless communication tower and associated equipment in Jackson Township.

Commissioner Galletta moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 1989-1126.007) (See Resolution # PC4-17-45). Commissioner Lohbauer seconded the motion.

Director Liggett said this is the first application that has been reviewed under Ocean County's amended safety tower plan.

The Commission adopted the resolution by a vote of 9 to 0.

Chairman Earlen presented a resolution recommending the approval for the demolition of a single family dwelling in Winslow Township.

Commissioner Avery moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 2017-0167.001) (See Resolution # PC4-17-46). Commissioner Barr seconded the motion.

Commissioner Prickett thanked staff for the picture of the structure to be demolished.

The Commission adopted the resolution by a vote of 9 to 0.

Chairman Earlen presented a resolution recommending approval for the replacement of 110 existing lattice towers with 110 monopoles in multiple southern Pinelands towns.

Commissioner Lohbauer moved the adoption of a resolution Approving With Conditions Pinelands Development Application Number 1981-0479.011 (See Resolution # PC4-17-47). Commissioner Chila seconded the motion.

Commissioner Lohbauer said the removal of the large steel lattice structure to be replaced with a single monopole, although taller than a lattice pole, is an improvement to the right-of-way.

Commissioner Lloyd said he hopes the replacement is a trend for other electric companies.

ED Wittenberg said the project is an upgrade for Atlantic City Electric and she did not know if other utilities would be proposing the same type of system upgrade.

Commissioner Lloyd suggested that maybe as part of the vegetation maintenance review process we can raise the issue.

The Commission adopted the resolution by a vote of 9 to 0.

Planning Matters

Chairman Earlen presented a resolution recommending approval of Galloway Township's ordinance 1971-2017.

Commissioner Galletta moved the adoption of a resolution Issuing an Order to Certify Ordinance 1971-2017, Amending Chapter 233 (Land Management) of the Code of Galloway Township (See Resolution # PC4-17-48). Commissioner Barr seconded the motion.

Chief Planner Susan R.Grogan said this ordinance will permit digital signs in the following management areas in Galloway: Regional Growth Area, Pinelands Town and Pinelands Village.

She said next the resolution on the agenda, the adoption of CMP Amendments, will authorize municipalities to allow digital technology in all management areas.

The Commission adopted the resolution by a vote of 9 to 0.

Chairman Earlen presented a resolution to revise and adopt a number of amendments to the Comprehensive Management Plan (CMP).

Commissioner Avery moved the adoption of a resolution To Revise and Adopt Amendments to the Comprehensive Management Plan in Accordance with the Administrative Procedure Act (Application Fees; Escrows; Application Procedures; Landfills; Water Quality; Signs; Alternate Design Wastewater Treatment Systems Pilot Program) (See Resolution #PC4-17-49). Commissioner Galletta seconded the motion.

ED Wittenberg stated that the Commission has been discussing the amendments now under consideration for adoption for many years. A detailed review of the public comments received on the amendments was provided at the November P&I Committee meeting. Three significant issues were raised. First, a number of commenters, including NJDEP, the NJ Farm Bureau, several Pinelands farmers and homeowners associations, raised concerns with the revised exemption for maintenance and creation of fire breaks. The original intent of the amendment was to clarify a terminology issue that was raised in working with NJDEP. The staff learned from the public comments that a great deal of clearing for fire management purposes is occurring in the Pinelands, on both public and private lands. Staff is recommending that adoption of this amendment be postponed until the Commission has had an opportunity to meet with all stakeholders and consider appropriate revisions. ED Wittenberg stated that the second issue raised by many commenters involves the change in definition from “interested person” to “interested party.” She said the Commission has needed to make this change for many years in light of the 1993 amendments to the Administrative Procedure Act. She said that the amendment does not change who has the right to appeal the Commission’s decisions; rather, it just aligns the CMP with current law. She stated that this had been confirmed with the Attorney General’s office.

DAG Velzy confirmed ED Wittenberg’s interpretation of the amendment. Commissioner Lloyd stated that he has a serious problem with the amendment because he believes it represents a significant change. He stated that at this point in time, he was not convinced the Commission needs to amend the CMP in response to the 1993 Administrative Procedure Act amendments. He indicated his preference was not to adopt this amendment because the Commission should not limit public participation. Commissioner Lloyd also stated that the Federal statute may affect what the Commission can do.

DAG Velzy stated that the courts have construed the 1993/1994 amendments to the Administrative Procedure Act very narrowly. Third-party hearing rights are very limited. He stated that the proposed amendment merely implements case law.

Ms. Roth reiterated that the amendment does not represent a substantive change. She stated that the amendment affects only adjudicatory hearings, not public hearings. A 2004 Appellate Court decision says that agencies do not have the right to grant appeals to people who don’t qualify as “interested parties,” no matter what the agency’s regulations may say. The amendment merely renders the CMP consistent with existing law.

Commissioner Lloyd acknowledged that the amendment would only affect adjudicatory hearings. He questioned whether the amendment was necessary if it would not result in any substantive changes. He stated that he would like the Attorney General’s office to investigate the Federal statute to determine what it might require. If the Federal statute supersedes state law, the Commission needs to know.

Ms. Roth stated that it is always best if regulations are consistent with existing law so as not to confuse the regulated community. She stated that concerns have been raised on several occasions recently about what the current language in the CMP means.

Commissioner Lloyd stated that while he understands State law, he believes the Federal statute also governs. He said he prefers to keep opportunities for public participation as broad as possible.

ED Wittenberg stated that staff has been advised that the amendment does not limit public participation.

Commissioner Lloyd stated that the Commission's federal mandate needs to be examined. The Commission should be promoting public participation and allowing challenges to its decisions.

Commissioner Avery stated that the rules need to be clear and straightforward. He questioned what process the Commission should follow moving forward with the amendments.

ED Wittenberg said that amendments can be removed upon adoption. Doing so should not represent a substantive change to the proposal. She suggested that the amendment could be adopted today, with an analysis of the Federal statute to follow.

Ms. Roth stated that the Commission was established by the State Pinelands Protection Act and is therefore a state entity governed by state law.

Commissioner Lohbauer stated that if the amendment flies in the face of the Federal statute, that is of significant concern.

Ms. Roth stated that the Federal statute does discuss public participation but does not speak to third-party appeals or adjudicatory hearing rights.

Commissioner Lloyd suggested that Ms. Roth's interpretation of the Federal statute was too narrow.

Commissioner Avery said that removing the amendment does not convey any additional rights to interested parties. He asked how a determination would be made about the applicability of the Federal statute.

Ms. Roth stated that the Commission would need to direct the Executive Director to consult with the Attorney General's office and obtain an opinion.

Commissioner Galletta stated that given Commissioner Lloyd's strong feelings on the matter, it might be best to remove the amendment for now.

ED Wittenberg reminded the Commission that we are currently in court on this very issue. The Federal statute has not been raised as part of those matters. It is a new issue that the Attorney General's office would need to investigate.

DAG Velzy stated that the court has determined that as long as people have the ability to participate at some point in the process, usually at the local level, that is sufficient. On matters such as the CMP amendments, people have the ability to submit written comments.

Commissioner Lloyd stated that the Federal statute was raised in the public comments and should be analyzed.

Commissioner Barr stated that this was a new issue he had not been aware of before.

Chairman Earlen asked whether the resolution could be amended. ED Wittenberg said yes, but she did not think it should. The amendment merely renders the CMP consistent with state law. If it turns out that there's an issue with the Federal statute, the Attorney General's office will identify it and then the Commission would be required to adhere to those requirements.

Ms. Roth stated that upon adoption, the amendments will be forwarded to the Department of Interior. If there are federal issues, the Secretary of the Interior can decline to sign off on the amendments. She stated that the amendment deals only with quasi-judicial matters. She noted the currently pending appeals involving denial of third-party appeal rights.

Commissioner Lohbauer suggested that the Commission should not act on the amendment while those appeals are pending.

Commissioner Chila stated the CMP should be amended to reflect the standards established by the courts and used since 2003.

Commissioner Lloyd moved to strike the change in definition from "interested person" to "interested party" from the amendments. Commissioner Prickett seconded the motion.

Commissioner Avery asked for clarification on the most efficient process moving forward with the amendments.

Ms. Grogan stated that the Commission should not sacrifice the substance of the amendments. If the "interested party" amendment needs to be removed in order for the remainder of the amendments to move forward, that's what the Commission should consider doing.

Chairman Earlen agreed. Commissioner Lloyd also indicated agreement, stating that the other important amendments in the proposal should go forward.

The Commission approved the motion to strike the definition of "interested party" from the amendments by a vote of 8 to 1.

ED Wittenberg stated that the third issue raised in the public comments involves elimination of the requirement that applicants and municipalities provide the Commission

with the names and mailing addresses of individuals who participate at municipal planning board meetings on applications for development in the Pinelands Area. She stated that there are ample opportunities for individuals concerned with development projects to obtain information about applications, register their concerns directly with the Commission and receive copies of the Executive Director's determinations. The Commission's website includes a status report on all active applications; it is updated weekly. Anyone concerned about an application can call or email the Commission for details or to receive notice of future Commission actions. There is no need to drive to the Commission office, speak at a Commission meeting or convey concerns through testimony at a municipal planning board meeting.

ED Wittenberg stated that staff will make all Pinelands municipalities aware of the change in notice procedures and the alternative measures already in place to ensure that information on applications is readily available directly through the Commission.

Commissioner Lohbauer stated that he originally had questions about this amendment but now understands that the Commission would not be curtailing public notice. He stated the amendment seems reasonable.

Ms. Grogan provided a detailed explanation of the normal private development application process.

Commissioner Lloyd stated that while he was not entirely comfortable with the amendment, he believes it was acceptable to move forward with adoption.

The Commission adopted the resolution, with the "interested party" definition removed from the amendments, by a vote of 9 to 0.

Other Resolutions

Chairman Earlen presented a resolution recommending approval of an amendment to an existing Memorandum of Understanding (MOU) with Winslow Township and the Camden County Municipal Utilities Authority.

Commissioner Lohbauer moved the adoption of a resolution Authorizing the Executive Director to Enter into an Amendment to an Existing Memorandum of Understanding Among the Pinelands Commission, Winslow Township, and the Camden County Municipal Utilities Authority Regarding the Winslow Township Wastewater Treatment Plant and Its Infiltration/Percolation Facility (See Resolution # PC4-17-50). Commissioner Galletta seconded the motion.

Director Liggett said that the original Memorandum of Understanding (MOU) came about because of the closure of the Winslow Township Wastewater Treatment Plant in Sicklerville. The Commission was asked to comment on the Water Quality Management Plan amendment that was required for the closure of the treatment plant. He said that staff had concerns that the closure of the treatment plant would have negative impacts on the Great Egg Harbor River. Through the original MOU, measures stipulated that Winslow

Township would no longer use Kirkwood-Cohansey water for future development and the Town would purchase 1.5 million gallons of water a day from New Jersey American. He said the Township's water use declined and the Town wanted credit for its measures to conserve water. After many meetings and discussions between the Commission and the Township of Winslow the MOU was revised and edited. He said the Policy and Implementation Committee supported the amendment to the MOU. Lastly, he said the Pinelands Preservation Alliance and the Great Egg Harbor Water Association support the First Amendment to the MOU.

Public Comment on MOU

Rich Bizub with the Pinelands Preservation Alliance, said the Alliance supported the original MOU and it supports the amendment to the MOU before the Commission today. He said the amendment will place monthly and annual caps on Kirkwood-Cohansey water usage. He said Winslow Township has done an excellent job conserving water over the last 10 years.

Mayor Barry Wright of Winslow Township thanked Commission staff for its effort on making the amendment to the MOU come to fruition. He said Winslow has spent a lot of money on water conservation and will continue those efforts.

Commissioner Prickett said he was curious if the Commission was able to recognize Communities or individuals or municipal government who have made efforts to significantly reduce water usage.

The Commission adopted the resolution by a vote of 9 to 0.

Chairman Earlen left the meeting at 11:06 a.m.

Public Comment on Public Development Applications

No members of the public spoke

Ordinances Not Requiring Commission Action

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

- Mullica Township Ordinance 9-2017
- South Toms River Borough Ordinance 9-17

No members of the Commission had questions.

Other Resolutions

Vice Chairman Galletta presented a resolution recommending approval of the 2018 Commission meeting dates.

Commissioner Avery moved the adoption of a resolution Setting Pinelands Commission meeting dates for 2018(See Resolution # PC4-17-51). Commissioner Barr seconded the motion.

The Commission adopted the resolution by a vote of 8 to 0.

General Public Comment

Micah Rasmussen of Upper Freehold Township, NJ raised questions regarding Commissioner McGlinchey's residency in Atlantic County and his ability to vote on the New Jersey Natural Gas Southern Reliability Link application. He provided a copy of the Declaration of Covenants signed by Edward McGlinchey required for a grant to elevate his home in Longport, NJ.

Rich Bizub with the Pinelands Preservation Alliance asked the Commission to make a resolution to propose and adopt CMP amendments related to the Kirkwood-Cohansey study. He reminded Commissioners that the discussion about the study began 33 years ago.

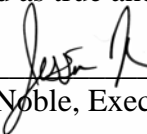
Commissioner Lloyd said he left the room because he recused himself from the New Jersey Natural Gas matter. He said that he hopes the Commission can move forward with the rule-making process regarding the Kirkwood-Cohansey study.

Georgina Shanley of Ocean City, NJ, said that the Commission should include amendments to the CMP related to climate change. She said the World Bank announced that it will no longer fund projects related to oil and gas extraction starting in 2019.

Adjournment

Commissioner Avery moved to adjourn the meeting. Commissioner Lohbauer seconded the motion. The Commission agreed to adjourn at 11:24 a.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: December 20, 2017