



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 07

TITLE: Approving With Conditions an Application for a **Public Development** (Application Number 2011-0049.001)

Commissioner Haas moves and Commissioner Witt seconds the motion that:

WHEREAS, the Pinelands Commission has reviewed the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following application for a Public Development be approved with conditions:

2011-0049.001 OCEAN COUNTY, Jackson Township, Pinelands Village of Vanhiseville and a Pinelands Rural Development Area, 1,300 linear feet of road improvements to East Veterans Highway (Date of Report: March 26, 2012).

WHEREAS, no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received; and

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director; and

WHEREAS, pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period and Governor shall approve same, in which case the action shall become effective upon such approval; and

WHEREAS, the Pinelands Commission hereby determines that the proposed public development conforms to the standards for approving an application for Public Development set forth in N.J.A.C. 7:50-4.57 if the conditions recommended by the Executive Director are imposed.

NOW, THEREFORE BE IT RESOLVED that the following application for Public Development is hereby approved subject to the conditions recommended by the Executive Director.

2011-0049.001 OCEAN COUNTY, Jackson Township, Pinelands Village of Vanhiseville and a Pinelands Rural Development Area, 1,300 linear feet of road improvements to East Veterans Highway (Date of Report: March 26, 2012).

Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS			
Ashmun			X	Haas	X			Prickett	X		
Brown	X			Harris			X	Quinn			X
Earlen	X			Jackson	X			Rohan Green	X		
Ficcaglia	X			Lloyd	X			Witt	X		
Galletta	X			McGlinchey	X			Lohbauer	X		

Adopted at a meeting of the Pinelands Commission

Date: April 13, 2012

Nancy Wittenberg
Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Mark S. Lohbauer
Chairman



State of New Jersey

THE PINELANDS COMMISSION

PO Box 359

NEW LISBON, NJ 08064

(609) 894 7300

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

REPORT ON AN APPLICATION FOR
MAJOR PUBLIC DEVELOPMENT

March 26, 2012

Frank Scarantino, P.E.
Ocean County Engineer
Ocean County
P.O. Box 2191
Toms River, NJ 08754

Please Always Refer To
This Application Number

Re: Application #: 2011-0049.001
East Veterans Highway
Jackson Township

Dear Mr. Scarantino:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its April 13, 2012 meeting.

FINDINGS OF FACT

This application is for proposed road improvements within the above referenced right-of-way in Jackson Township. The proposed development is located in the Pinelands Village of Vanhiseville and in a Pinelands Rural Development Area.

East Veterans Highway is an existing two lane paved county road. Within the project area, the existing road averages approximately 26 feet in width. After widening, East Veterans Highway will continue to be a two lane road but paved to a width of approximately 32 feet. The proposed widening will begin just southeast of the East Veterans Highway/Bennetts Mills Road intersection and extend southeastwardly for 1,300 linear feet. The application also proposes the realignment of an existing curve along East Veterans Highway to improve traffic safety and improvement to two existing intersections with Honeysuckle Lane, a minor residential "loop" road.

www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us

Application Specific Information: AppInfo@njpines.state.nj.us 20110049.001*

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The proposed development will be located within existing maintained grassed and graveled shoulder areas. There are freshwater wetlands located within 300 feet of the proposed road improvements. No development will be located in wetlands. The applicant has demonstrated that there is no feasible alternative to the proposed development that does not involve development in wetland buffers that would result in a less significant adverse impact on wetlands. The applicant has demonstrated that the proposed development will not result in substantial impairment of the resources of the Pinelands. With the conditions below, all practical measures are being taken to mitigate the impact on the wetlands. The applicant has demonstrated that the need for the proposed development overrides the importance of protecting the wetlands. The applicant has represented that the proposed road improvements are necessary to improve traffic safety along the concerned portion of the road. Therefore, in accordance with the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.13), the proposed road improvements are permitted in wetlands buffers.

The applicant has indicated that the stormwater management standards of the Pinelands Comprehensive Management Plan (CMP) cannot be met at the site of the proposed development. This is because, considering traffic safety design issues, there is insufficient land available within the East Veterans Highway right-of-way to accommodate stormwater facilities. The CMP (N.J.A.C. 7:50-6.84(a)6.vi.(4)) provides that the Commission may grant an exception to the CMP stormwater management standards if an applicant demonstrates that the stormwater management standards cannot be met at a particular site. For the Commission to grant such an exception, the CMP requires that stormwater measures be proposed elsewhere in the Pinelands Area and within the same drainage area.

The applicant is currently completing an application with the Pinelands Commission for proposed improvements to the existing intersection of East Veterans Highway/Whitesville Road in Jackson Township (App. No. 2004-0082.001). The East Veterans Highway/Whitesville Road intersection is located within the Pinelands Area and within the same drainage area as the road improvements subject of this application. Application No. 2004-0082.001 proposes to construct a stormwater basin located immediately outside of the Pinelands Area, adjacent to the East Veterans Highway/Whitesville Road intersection. Application No. 2004-0082.001 also proposes to use an existing stormwater management basin located adjacent to Whitesville Road in the Pinelands Area. Both the existing and proposed basins will be utilized to offset the stormwater generated by the road improvements proposed in this application by collecting and infiltrating stormwater beyond that which would otherwise be required for just App. No. 2004-0082.001. The proposed stormwater facilities for App. No. 2004-0082.001 are sufficient to grant the CMP stormwater management exception for this application. The applicant has demonstrated that the road improvements proposed in this application are consistent with the stormwater management standards of the CMP.

The applicant completed a threatened and endangered plant species habitat assessment for the proposed development. The assessment determined that the project area does not contain suitable habitat for any threatened or endangered plant species. Based upon the proposed limits of disturbance, the location of existing development and a review of information available to the Commission staff, it was determined that a survey for the presence of threatened or endangered plant and animal species was not required.

Information available to the Commission staff did not provide sufficient evidence of significant cultural resources to require a full cultural resource survey.

PUBLIC COMMENT

This applicant provided the requisite public notice. Newspaper public notice was completed for the application on October 17, 2011. The application was designated as complete on the Commission's website on February 28, 2012. The Commission's public comment period closed on March 9, 2012. The Pinelands Commission has not received any public comments regarding the application.

CONCLUSION

The proposed development is a permitted use in a Pinelands Village (N.J.A.C. 7:50-5.27(a)1) and a Pinelands Rural Development Area (N.J.A.C. 7:50-5.26(b)10). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 & 6 of the CMP.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of twenty-four sheets, prepared by PDS, Inc., all sheets dated January 2011.
2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.
4. Silt fencing, hay bales or other appropriate measures shall be installed prior to construction to preclude sediment from entering freshwater wetlands and shall be maintained in place until all development has been completed and the area has been stabilized.
5. The applicant shall obtain Commission approval of App. No. 2004-0082.001 (improvements to the East Veterans Highway/Whitesville intersection) by July 26, 2012. The stormwater facilities proposed in App. No. 2004-0082.001 shall be constructed by March 26, 2013. If the stormwater facilities proposed in App. No. 2004-0082.001 are not on schedule to be constructed by March 26, 2013, Ocean County shall secure an amended Commission approval for App. No. 2011-0049.001 by September 26, 2012. That amend approval shall provide for stormwater management for App. No. 2011-0049.001 that is consistent with the stormwater management standards of the CMP (N.J.A.C. 7:50-6.84 (a) 6).

6. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

As the proposed development conforms to the standards set forth in N.J.A.C. 7:50-4.57, it is recommended that the Pinelands Commission **APPROVE** the proposed development subject to the above conditions.

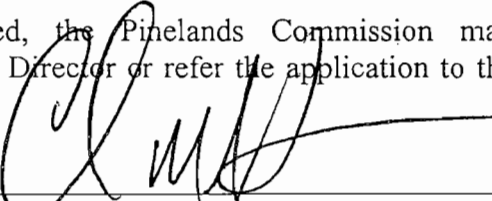
APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. a brief statement of the basis for the appeal; and
4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____


Charles M. Horner, P.P., Director of Regulatory Programs

CMH/ED

- c: Secretary, Jackson Township Planning Board
Jackson Township Environmental Commission
Ocean County Planning Board
Ian Borden, PDS, Inc.
Ernest M. Deman



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 08

TITLE: Approving With Conditions an Application for a **Public Development** (Application Number 1993-1011.005)

Commissioner Ficcaglia moves and Commissioner Uapl seconds the motion that:

WHEREAS, the Pinelands Commission has reviewed the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following application for a Public Development be approved with conditions:

1993-1011.005 TOWN OF HAMMONTON, Town of Hammonton, Pinelands Town of Hammonton, construction of a 1,728 square foot potable water treatment building (Date of Report: March 20, 2012).

WHEREAS, no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received; and

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director; and

WHEREAS, pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period and Governor shall approve same, in which case the action shall become effective upon such approval; and

WHEREAS, the Pinelands Commission hereby determines that the proposed public development conforms to the standards for approving an application for Public Development set forth in N.J.A.C. 7:50-4.57 if the conditions recommended by the Executive Director are imposed.

NOW, THEREFORE BE IT RESOLVED that the following application for Public Development is hereby **approved** subject to the conditions recommended by the Executive Director.

1993-1011.005 TOWN OF HAMMONTON, Town of Hammonton, Pinelands Town of Hammonton, construction of a 1,728 square foot potable water treatment building (Date of Report: March 20, 2012).

Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS			
Ashmun			X	Haas				Prickett	X		
Brown	X			Harris			X	Quinn			X
Earlen	X			Jackson	X			Rohan Greep	X		
Ficcaglia	X			Lloyd	X			Witt	X		
Galletta	X			McGlinchey	X			Lohbauer	X		

Adopted at a meeting of the Pinelands Commission

Date: April 13, 2012

Nancy Wittenberg
Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Mark S. Lohbauer
Chairman



State of New Jersey

THE PINELANDS COMMISSION

PO Box 359

NEW LISBON, NJ 08064

(609) 894 7300

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

**REPORT ON AN APPLICATION FOR
MAJOR PUBLIC DEVELOPMENT**

March 20, 2012

Stephen DiDonato, Mayor
Town of Hammonton
100 Central Avenue
Hammonton, NJ 08037

Please Always Refer To
This Application Number

Re: Application #: 1993-1011.005
Block 1709, Lot 30.01
Town of Hammonton

Dear Mayor DiDonato:

The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its April 13, 2012 meeting.

FINDINGS OF FACT

This application is for the construction of a 1,728 square foot building and the paving of a 3,604 square foot parking and access area on the above referenced 2.66 acre lot. The proposed development is located in the Pinelands Town of Hammonton.

There are two existing municipal potable water production wells located on the concerned lot. Well #5 is located in a 1,500 square foot building and Well #7 is located in a 200 square foot building. Radium has been detected in both wells at levels that exceed the State of New Jersey maximum contaminant level. The proposed 1,728 square foot building will contain a radium removal treatment facility to treat water from the two existing municipal potable water production wells. The treatment facility includes an absorption filter system that binds radium to a medium. The medium is then removed from the site by approved carrier for disposal at an appropriately licensed facility.

The applicant has demonstrated that the proposed development is consistent with the stormwater management standards contained in the Pinelands Comprehensive Management Plan

www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us

Application Specific Information: ApplInfo@njpines.state.nj.us 1 9 9 3 1 0 1 1 . 0 0 5 *

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(CMP). The applicant will be constructing a stormwater infiltration basin.

The proposed development will be located within existing maintained grassed and graveled areas. There are no wetlands located within 300 feet of the above referenced lot. The proposed clearing and soil disturbance appears to be limited to that which is necessary to accommodate the proposed development. The Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. The applicant proposes to utilize a seed mixture that meets this recommendation.

Based upon the proposed limits of disturbance, the location of existing development and a review of information available to the Commission staff, it was determined that a survey for the presence of threatened or endangered species of plants and animals was not required.

Information available to the Commission staff did not provide sufficient evidence of significant cultural resources to require a full cultural resource survey.

PUBLIC COMMENT

This applicant provided the requisite public legal notices. Newspaper public notice was completed for the application on January 4, 2012. Required notice to land owners within 200 feet of the above referenced lot was completed on December 29, 2011. The application was designated as complete on the Commission's website on February 27, 2012. The Commission's public comment period closed on March 9, 2012. The Commission has not received any comments regarding the application.

CONCLUSION

The proposed development is a permitted use in a Pinelands Town (N.J.A.C. 7:50-5.27(a)). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 & 6 of the CMP and the Town of Hammonton's certified master plan and land use ordinance.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of 12 sheets, prepared by Adams, Rehmann & Heggan, Inc. and dated as follows:
 - Sheet 1 – undated
 - Sheets 2 & 11 – December 30, 2011; revised February 13, 2012
 - Sheets 3-9 – December 30, 2011
 - Sheets 10 & 12 – December 30, 2011; revised January 5, 2012
2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Disposal of contaminated medium may only occur at an appropriately licensed facility.

4. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.
5. Prior to any development, the applicant shall obtain any other necessary permits and approvals.

As the proposed development conforms to the standard set forth in N.J.A.C. 7:50-4.57, it is recommended that the Pinelands Commission **APPROVE** the proposed development subject to the above conditions.

APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. a brief statement of the basis for the appeal; and
4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____


Charles M. Horner, P.E., Director of Regulatory Programs

CMH/ED

c: Secretary, Town of Hammonton Planning Board
Town of Hammonton Environmental Commission
Atlantic County Department of Regional Planning and Development
John Helbig
Ernest Deman



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 09

TITLE: Issuing an Order to Conditionally Certify Ordinance 37-2011, Amending Chapter 225 (Zoning) of the Code of Egg Harbor Township

Commissioner Mc Glinchey moves and Commissioner Jackson
seconds the motion that:

WHEREAS, on October 1, 1993, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Egg Harbor Township; and

WHEREAS, Resolution #PC4-93-139 of the Pinelands Commission specified that any amendment to the Township's certified Master Plan and codified Land Use Ordinances be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 (Submission and Review of Amendments to Certified Master Plans and Land Use Ordinances) of the Comprehensive Management Plan to determine if said amendment raises a substantial issue with respect to conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, Resolution #PC4-93-139 further specified that any such amendment shall only become effective as provided in N.J.A.C. 7:50-3.45 of the Comprehensive Management Plan; and

WHEREAS, on December 21, 2011, Egg Harbor Township adopted Ordinance 37-2011, amending Chapter 225 (Zoning) of the Township's Code by adopting requirements for the provision of affordable housing in the Pinelands Area; and

WHEREAS, the Pinelands Commission received a certified copy of Ordinance 37-2011 on December 29, 2011; and

WHEREAS, by letter dated January 20, 2012, the Executive Director notified the Township that Ordinance 37-2011 would require formal review and approval by the Pinelands Commission; and

WHEREAS, a public hearing to receive testimony on Ordinance 37-2011 was duly advertised, noticed and held on February 22, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m.; and

WHEREAS, the Executive Director has further found that Ordinance 37-2011 is not fully consistent with the standards and provisions of the Pinelands Comprehensive Management Plan; and

WHEREAS, the Executive Director has submitted a report to the Commission recommending issuance of an order to certify with conditions that Ordinance 37-2011, amending Chapter 225 (Zoning) of the Code of Egg Harbor, is in conformance with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Commission's CMP Policy and Implementation Committee has reviewed the Executive Director's report and has recommended that Ordinance 37-2011 be conditionally certified; and

WHEREAS, the Pinelands Commission has duly considered all public testimony submitted to the Commission concerning Ordinance 37-2011 and has reviewed the Executive Director's report; and

WHEREAS, the Pinelands Commission accepts the recommendation of the Executive Director; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for

review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that

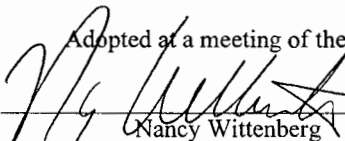
1. An Order is hereby issued to conditionally certify that Ordinance 37-2011, amending Chapter 225 (Zoning) of the Code of Egg Harbor, is in conformance with the Pinelands Comprehensive Management Plan.
2. To obtain full certification of Ordinances 37-2011 by the Pinelands Commission, Egg Harbor Township must amend Chapter 225 (Zoning) of its Code in accordance with Attachment A of this Order. The Township need not adopt the conditions in Attachment A verbatim; revisions comparable thereto or consistent therewith in intent may also be acceptable.
3. Egg Harbor Township shall have until August 11, 2012 to adopt and submit the revisions to Chapter 225 (Zoning) of its Code to the Pinelands Commission for approval pursuant to N.J.A.C. 7:50-3.45 and Attachment A hereto.
4. If the Township fails to submit the revisions to Chapter 225 (Zoning) pursuant to N.J.A.C. 7:50-3.45 and Attachment A hereto by August 11, 2012, or if such a submission is not fully certified by the Pinelands Commission, Ordinance 37-2011 shall be disapproved.
5. Any additional amendments to Egg Harbor Township's certified Master Plan and Land Use Ordinances shall be submitted to the Executive Director in accordance with N.J.A.C. 7:50-3.45 to determine if said amendments raise a substantial issue with respect to the Comprehensive Management Plan. Any such amendment shall become effective only as provided in N.J.A.C. 7:50-3.45.

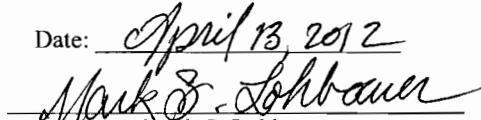
Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS			
Ashmun			X	Haas	X			Prickett	X		
Brown	X			Harris			X	Quinn			X
Earlen	X			Jackson	X			Rohan Green	X		
Ficcaglia	X			Lloyd	X			Witt	X		
Galletta	X			McGlinchey	X			Lohbauer	X		

Adopted at a meeting of the Pinelands Commission

Date: April 13, 2012


 Nancy Wittenberg
 Executive Director


 Mark S. Lohbauer
 Chairman

**ATTACHMENT A TO EXECUTIVE DIRECTOR'S MARCH 30, 2012
REPORT ON EGG HARBOR TOWNSHIP ORDINANCE 37-2011**

Adoption of the following amendments, or comparable revisions, to Chapter 225 (Zoning) of the Code of Egg Harbor Township will make Ordinance 37-2011 consistent with the Pinelands Comprehensive Management Plan:

1. Amend Section 225-44.E to read as follows:
 - E. Maximum density. The density of housing in any development hereafter constructed shall be not more than one dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

2. Amend Section 225-45E to read as follows:
 - E. Maximum density. The density of housing in any development hereafter constructed shall be not more than two dwelling units per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

3. Amend Section 225-46E to read as follows:
 - E. Maximum density. The density of housing in any development hereafter constructed shall be not more than three dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

4. Amend Section 225-47E to read as follows:

- E. Maximum density. The density of housing in any development hereafter constructed shall be not more than four dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

5. Amend Section 225-48E to read as follows:

- E. Maximum density. The density of housing in any development hereafter constructed shall be not more than five dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.



State of New Jersey

THE PINELANDS COMMISSION

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

**REPORT ON ORDINANCE 37-2011, AMENDING CHAPTER 225
(ZONING) OF THE CODE OF EGG HARBOR TOWNSHIP**

March 30, 2012

Egg Harbor Township
3515 Bargaintown Road
Egg Harbor Township, NJ 08234

FINDINGS OF FACT

I. Background

The Township of Egg Harbor is located in the southeastern Pinelands in Atlantic County. Pinelands municipalities adjacent to Egg Harbor Township include the Townships of Galloway and Hamilton and Estell Manor City in Atlantic County, as well as Upper Township in Cape May County.

On October 1, 1993, the Pinelands Commission fully certified the Master Plan and Land Use Ordinances of Egg Harbor Township.

On December 21, 2011, Egg Harbor Township adopted Ordinance 37-2011, amending Chapter 225 (Zoning) of the Township's Code by adopting requirements for the provision of affordable housing in the Pinelands Area. The Pinelands Commission received a certified copy of Ordinance 37-2011 on December 29, 2011.

By letter dated January 20, 2012, the Executive Director notified the Township that Ordinance 37-2011 would require formal review and approval by the Pinelands Commission.

II. Master Plans and Land Use Ordinances

The following ordinance has been submitted to the Pinelands Commission for certification:

- * Ordinance 37-2011, amending Chapter 225 (Zoning) of the Code of Egg Harbor Township, introduced on November 30, 2011 and adopted on December 21, 2011.



www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us

Application Specific Information: ApplInfo@njpines.state.nj.us

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This ordinance has been reviewed to determine whether it conforms with the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50 3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50 3.39.

1. Natural Resource Inventory

Not applicable.

2. Required Provisions of Land Use Ordinance Relating to Development Standards

Ordinance 37-2011 amends Chapter 225 (Zoning) of the Code of Egg Harbor Township by requiring that all residential development in the RG-1, RG-2, RG-3, RG-4 and RG-5 Zones provide for affordable housing. These five zoning districts permit residential development at varying densities and of various types within the Township's Pinelands Regional Growth Area. According to Ordinance 37-2011, any developer of residential housing within one of these districts who is proposing new residential development must construct, on site, a 20% affordable housing set-aside for low and moderate income households. Of that 20%, at least 13% of the units must be constructed for very low income households. All affordable units must be non age-restricted, unless otherwise approved by the Township Planning Board or Zoning Board of Adjustment. In addition, to the greatest extent possible, affordable units are to be disbursed throughout a development and located within buildings designed to be architecturally indistinguishable from the market-rate units within the same development.

Exempted from the affordable housing set-aside requirements described above are residential developments that received preliminary or final approval before the effective date of Ordinance 37-2011, unless those approvals expire or are amended to reflect substantial changes to the general terms and conditions on which preliminary approval was granted. Development by the Township is also exempted.

Ordinance 37-2011 further provides that residential developments in the RG-1, RG-2, RG-3, RG-4 and RG-5 Zones shall receive a compensatory bonus for providing affordable housing. This bonus is provided in the form of increased density as follows:

Zone	Base Density (du/acre)	Bonus Density (du/acre)
RG-1	1.0	1.5
RG-2	2.0	3.0
RG-3	3.0	4.5
RG-4	4.0	6.0
RG-5	5.0	7.5

The permitted base densities in the five residential zones remain the same as they are in the Township's currently certified zoning plan. Likewise, the maximum permitted densities (listed as "bonus density" on the above chart and in Ordinance 37-2011) remain unchanged. While previously these bonus densities were achievable only through the use of Pinelands Development Credits, they will now be made available to all developers of projects involving affordable housing in the Pinelands Area. The result is no change in overall residential zoning capacity within the Township's Regional Growth Area.

Ordinance 37-2011 represents Egg Harbor Township's response to P.L. 2008, Chapter 46, also known as A-500, which was adopted by the New Jersey State Legislature in July of 2008. This legislation calls for an affordable housing set-aside of 20% for all new residential development in the Pinelands Area, provided it is economically feasible. Egg Harbor Township has adopted the 20% set-aside requirement and provided developers with compensatory bonus density as a means of addressing economic feasibility issues. The Township chose to respond to the legislation in a way which does not affect permitted densities or zoning capacity in the municipality's RGA. Thus, no issues are raised in terms of the consistency of Ordinance 37-2011 with the land use and development standards of the CMP. There are, however, a number of revisions to Chapter 225 (Zoning) of the Township's Code which will need to be made to ensure internal consistency between Ordinance 37-2011 and the existing provisions of the code. These revisions relate to the way in which permitted density is expressed in Sections 225-43E, 44E, 45E, 46E and 47E, as well as the use of Pinelands Development Credits (discussed in further detail in Section 8 below).

With the adoption of the amendments contained in Attachment A hereto, or comparable revisions, this standard for certification will be met.

3. Requirement for Certificate of Filing and Content of Development Applications

Not applicable.

4. Requirement for Municipal Review and Action on All Development

Not applicable.

5. Review and Action on Forestry Applications

Not applicable.

6. Review of Local Permits

Not applicable.

7. Requirement for Capital Improvement Program

Not applicable.

8. Accommodation of Pinelands Development Credits

Ordinance 37-2011 amends Chapter 225 (Zoning) of the Township's Code by requiring that Pinelands Development Credits (PDC) be acquired and redeemed for 25 percent of the market rate residential units developed in the RG-1, RG-2, RG-3, RG-4 and RG-5 Districts. This 25% obligation applies regardless of the density at which any particular project is proposed or constructed. It also applies regardless of whether a developer chooses to take advantage of the compensatory bonus density provided by Ordinance 37-2011 for the provision of affordable housing. The use of PDCs is not required for those units in the RG-1, RG-2, RG-3, RG-4 or RG-5 Districts which are developed as affordable units.

Ordinance 37-2011 does not increase or decrease the amount of residentially zoned property in Egg Harbor Township's Regional Growth Area. Neither does the ordinance affect the maximum permitted densities or residential zoning capacity in the Regional Growth Area. Rather, Ordinance 37-2011 accommodates PDC use in a different manner than has traditionally been the case, in order to allow the Township to meet both its PDC and affordable housing obligations. Instead of providing a base density and providing developers with the opportunity to use PDCs to increase that density if they so choose, the Township has elected to make PDC use a mandatory component of all projects and utilize the bonus density program in an affordable housing context.

N.J.A.C. 7:50-3.39(a)8 specifies that in order to be certified by the Commission, municipal land use ordinances must provide for sufficiently residentially zoned property in the Regional Growth Area to be eligible for an increase in density to accommodate PDCs as provided for in N.J.A.C. 7:50-5.28(a)3. N.J.A.C. 7:50-5.28(a)7i then authorizes Pinelands municipalities to employ additional density bonus or incentive programs, provided such programs do not interfere with or otherwise impair in any way the required municipal program for use of PDCs. Additional flexibility is provided in more general terms in the introduction to subchapter 5 of the CMP which states that CMP standards may be refined by local agencies, provided that the objectives and goals the minimum standards represent will be achieved. In this context, the PDC requirements implemented by Ordinance 37-2011 are consistent with the Comprehensive Management Plan. While the 25 percent requirement applied to the RG-1, RG-2, RG-3, RG-4 and RG-5 Districts is not as high a number as would be provided through the more traditional zoning approach (where PDCs would account for 33 percent of the total number of permitted units), it is important to remember that the traditional base density/bonus density approach utilized

throughout the Pinelands Area only provides an *opportunity* for the use of PDCs. There is no requirement under the traditional approach that any PDCs be used in any particular development project. Ordinance 37-2011 *guarantees* a certain level of PDC use in association with any major residential development in four of the Township's Regional Growth Area residential zones, regardless of project density or number of units which are ultimately built. Given the greater certainty provided by this approach, the Executive Director believes that the PDC requirements adopted by Ordinance 37-2011 should be viewed as being consistent with Comprehensive Management Plan standards. It is worth noting that a similar approach has been adopted by other Pinelands municipalities (e.g., Hamilton, Manchester, Medford and Monroe Townships) in recent years and certified by the Commission.

In order to fully implement the new requirements for PDC use adopted by Ordinance 37-2011 and maintain internal consistency within Chapter 225 (Zoning) of the Township's Code, there are a number of sections in Chapter 225 which need to be amended. Specifically, Sections 225-44E, 45E, 46E, 47E and 48E, which set forth permitted base densities in the RG-1 through RG-5 Zones and reference the ability to increase density through the use of PDCs, need to be revised to reflect the 25% PDC requirement adopted by Ordinance 37-2011.

With the adoption of the amendments set forth in Attachment A hereto, this standard for certification will be met.

9. Referral of Development Applications to Environmental Commission

Not applicable.

10. General Conformance Requirements

Ordinance 37-2011, amending Chapter 225 (Zoning) of the Code of Egg Harbor Township, is not fully consistent with the standards and provisions of the Pinelands Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A hereto, or comparable revisions, this standard for certification will be met.

11. Conformance with Energy Conservation

Not applicable.

12. Conformance with the Federal Act

No special issues exist relative to the Federal Act. However, Ordinance 37-2011, amending Chapter 225 (Zoning) of the Code of Egg Harbor Township, does not fully comply with the standards and provisions of the Pinelands Comprehensive Management Plan.

With the adoption of the amendments set forth in Attachment A hereto, or comparable revisions, this standard for certification will be met.

13. Procedure to Resolve Intermunicipal Conflicts

Not applicable.

PUBLIC HEARING

A public hearing to receive testimony concerning Egg Harbor Township's application for certification of Ordinance 37-2011 was duly advertised, noticed and held on February 22, 2012 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing, at which the following testimony was received:

Eric Garrabrant, an attorney representing the Builder's League of South Jersey, urged the Commission not to approve Ordinance 37-2011. He then summarized his written comments (see Exhibit #1), stating that the CMP makes clear the purpose of using PDCs in the Regional Growth Area is to permit density in excess of what is normally permitted, to provide a bonus. PDC use is further intended to protect lands in the Pinelands sending areas. The CMP clearly prohibits a municipality from interfering with or impairing PDC use. Mr. Garrabrant noted that the Commission itself had made this clear in the Final Decision in the matter of D.D. Residential Ltd. Partnership v. the New Jersey Pinelands Commission. Municipal master plans and ordinances must contain provisions for 50% increases in density through the use of PDCs. Ordinance 37-2011 does not follow that mandate because it requires PDC use regardless of the intended density of a project and without regard to whether a developer is obtaining a density bonus. Mr. Garrabrant suggested that such an approach deprives the PDC program of its intended impact: to encourage or require more intensive development in RGAs.

Mr. Garrabrant stated that Ordinance 37-2011 does provide bonus densities, but these are for affordable housing purpose. The bonus in the RG-1 Zone, for example, allows density to increase from 1.0 to 1.5 units per acre. PDCs would be required even if a developer were not seeking the compensatory bonus for affordable housing. Mr. Garrabrant submitted that Ordinance 37-2011 clearing ignores the intent of the CMP because it requires PDCs for all residential development in the Township's five RGA zones,

regardless of density. He stated that the CMP mandates use of PDCs be coupled with increased densities.

Creigh Rahenkamp introduced himself as a Professional Planner representing the Builder's League of South Jersey. He then summarized his written comments (see Exhibit #2). He stated that while he understands the Commission is not in the business of enforcing Mt. Laurel decisions and affordable housing requirements, it is nevertheless important for the Commission to understand the issues. He then reviewed some of the history of the Mt. Laurel decisions, including COAH's establishment of minimum presumptive densities for affordable housing (6 units per acre with a 20% set-aside and, later, 4 units per acre with a 15% set-aside). He stated that Ordinance 37-2011 is inconsistent with the Mt. Laurel II decision because it requires a 20% set-aside at very low densities.

Mr. Rahenkamp stated that the bonus density provided by Ordinance 37-2011 is not sufficient and is merely a "mirage". The ordinance appears to provide a 50% increase in density, but the 25% PDC obligation and the 20% affordable housing set-aside must be taken into consideration. The effect is that 45% of the units in any project are subsidized units of some sort. There is no real compensatory bonus provided. In addition, there is no triggering mechanism for the bonus density. Developers are authorized to get the higher densities, but it will be difficult for many property owners to achieve them, as history has shown in Egg Harbor Township. Mr. Rahenkamp also submitted that cost-generative features are not permitted in affordable housing projects. Ordinance 37-2011 should have provided supplemental bulk standards for affordable units. Costs will end up being passed through to developers who then have an obligation to provide for very low income housing. It is likely going to be impossible to provide for-sale housing to very low income households. Rental housing units are needed. Finally, Ordinance 37-2011 requires that each developer be individually responsible for administration of the affordable units in his or her project. Usually, this administrative responsibility is a municipal obligation. This is a mechanical issue of concern.

Mr. Rahenkamp stated that in Egg Harbor Township, there are already thousands of single family detached units in the pipeline. It is therefore unlikely that people will go through the process for new development. The ordinance provisions for 20% affordable housing and 25% PDC use are just an illusion. He stated that while he understands the Commission's priority is to protect the environment, facilitating appropriate development in RGAs is a crucial component of that mission. The CMP requires a density of 3.5 units per acre in Egg Harbor, and provides for a range of densities. Mr. Rahenkamp submitted that the ratio between single family detached units and multi-family housing units is out of balance in the municipality. A previously approved reduction in density to 2.5 units per acre exacerbated the lack of higher density multi-family housing opportunities in the municipality. This is the most appropriate form of housing for affordable housing.

Mr. Rahenkamp suggested that there was a better way for the Township to meet its affordable housing obligations and be consistent with the CMP. He noted that the CMP permits municipalities to adopt additional density bonus programs and that affordable

housing is a legitimate reason for such a program. He noted that in order to receive Commission approval of the 25% reduction in density in 2001, the Township had to demonstrate that housing needs in the municipality were being met. Things have changed and the Court has determined that Egg Harbor Township is not meeting its obligation. The Township is now in violation of the 25% density reduction standards. In addition, demographic changes have occurred. All of this points to the need for a larger share of multi-family housing in the Township.

Mr. Rahenkamp referred to the Commission's Housing Task Force report, stating that this report concludes there are adequate areas for growth in the Pinelands but an increase in density is recommended. He noted although there are thousands of units authorized in Egg Harbor Township by the CMP, this number was reduced by a discretionary act of the Commission when it certified the Township's 25% downzoning years ago. Opportunities do exist for the Township to zone for six units per acre with a 20% set-aside instead of applying affordable housing requirements to low density areas.

Mr. Rahenkamp concluded by stating that the Commission should reject Ordinance 37-2011 and ask its staff to work with all interested parties on an alternative solution.

Theresa Lettman, representing the Pinelands Preservation Alliance, stated that she had reviewed Ordinance 37-2011 and did not understand how affordable housing comes into play with the CMP. She stated that it did not appear to her that there would be opportunities for affordable housing in Egg Harbor Township. The RG-4 and RG-5 zones are already built out or have outstanding approvals, so lands in these zones will not be subject to the new ordinance. It is likely that the ordinance will only apply in the RG-2 and RG-3 Zones. The RG-2 Zone had a high ecological integrity score. Therefore, she is concerned with the potential environmental impacts of the ordinance as it may force development into the more ecologically sensitive portions of the Township's RGA.

Peter Miller, Egg Harbor Township Administrator, stated that a builders remedy lawsuit was filed against the Township some five years ago. No ruling was made in that case and no findings have been made that the Township is not in compliance with affordable housing requirements. The Township has always felt that it provides a sufficient quantity of affordable housing through its existing housing stock, including 2,000 mobile homes which are rent controlled and affordable. A recent lawsuit prompted the Township to come up with an appropriate affordable housing plan, including a 20% set aside for inclusionary housing throughout the Pinelands Area. The Township's obligation is 763 new affordable units. Their Round 3 obligation will be approximately 237 new units.

Mr. Miller noted that he had served on the Commission's Housing Task Force along with Mr. Rahenkamp. He stated that affordable housing issues were discussed but that the Commission's position was that such matters were a municipal responsibility. The Commission would be responsible only for reviewing municipal master plans and ordinances when submitted. The CMP does not contain standards for affordable housing.

Mr. Miller continued by stating that for developers who choose to maximize their densities, Ordinance 37-2011 will actually result in a decrease in the PDC component of a project in terms of its percentage of overall density. He stated that the RG-4 and RG-5 zones are the best areas for affordable housing and these zones contain sufficient lands to enable the Township's obligations to be met. He stated that he would not be addressing the density reduction from 3.5 to 2.5 units per acre previously approved by the Commission, as that is not before the Commission for action today.

Mr. Miller stated that affordable housing is supposed to blend into the neighborhood and be "inclusionary". That is what Ordinance 37-2011 is trying to accomplish by requiring a 20% set aside in all projects. Some units will be affordable for moderate income households. Some units will be affordable for low income households. Not all affordable units need to be rental units or multi-family units. He noted that the typical mortgage in Atlantic County is \$125,000.

Mr. Miller stated that the backlog of units with prior approvals is a function of the recession. However, homes are now being built, including 200+ in 2011. The inventory of housing units "in the pipeline" is being reduced. It is now approximately 1,500 units.

Mr. Miller noted that before COAH was disbanded, they were supposed to develop Memoranda of Understanding with other agencies. The Commission drafted such an agreement; however, COAH refused to sign it. The Commission is still obligated to certify municipal ordinances and make sure the municipalities meet their constitutional obligations to provide affordable housing.

Mr. Miller asked that copies of the written comments submitted by the Builder's League of South Jersey be provided to the Township and that the municipality be permitted an additional two weeks to prepare a response. He concluded by stating that Ordinance 37-2011 provides reasonable opportunities for affordable housing without compromising the CMP. He noted that permitted densities in the RG-3, RG-4 and RG-5 Zones do meet the minimum presumptive densities established by COAH.

Ms. Grogan stated that copies of all written comments received by the Commission on Ordinance 37-2011 would be provided to Egg Harbor Township as quickly as possible. However, as indicated in the Commission's legal advertisements, the record would be closed on February 29, 2012. Any responses or additional comments which the municipality would like to make must be received by that date.

There being no further testimony, the hearing was concluded at 10:20 a.m.

Written comments on Ordinance 37-2011 were accepted through February 29, 2012 and were received from the following parties:

Eric C. Garrabrant, Esquire, on behalf of the Builder's League of South Jersey (see Exhibit #1)

Creigh Rahenkamp, P.P., on behalf of the Builder's League of South Jersey (see Exhibit #2)

Laura Smith-Denker, Staff Attorney, Fair Share Housing Center (see Exhibit #3)

Joseph Johnston, P.E., P.E., C.M.E., Remington & Vernick, on behalf of Egg Harbor Township (see Exhibit #4)

EXECUTIVE DIRECTOR'S RESPONSE

A number of issues with Ordinance 37-2011 have been raised by the Builder's League of South Jersey (see Exhibits 1 and 2) which warrant response. Among these are: (1) the contention that Ordinance 37-2011 violates the CMP because it does not provide for density bonuses through the use PDCs; (2) the assertion that Ordinance 37-2011 is inconsistent with COAH's rules and will not result in the production of affordable housing; and (3) the suggestion that the Commission should require Egg Harbor Township to increase the permitted densities in its RGA zones and provide greater opportunities for the development of multifamily housing. Ms. Lettman's concern about development potential in and pressure on the RG-2 Zone in Egg Harbor Township is also addressed below.

Contrary to the assertion made by Mr. Garrabrant in Exhibit #1, the CMP does not give property owners "the right to increase the density of the development through the use of Development Credits". Rather, the CMP requires Pinelands municipalities to adopt land use ordinances which provide sufficient opportunities for the use of PDCs within their Regional Growth Areas. Traditionally, this has been done through the establishment of base and bonus densities that apply to the residential zoning districts within a municipality's RGA. Developers in such zoning districts then have the opportunity to use PDCs if they wish to achieve the maximum permitted density. In some cases, municipalities have chosen not to provide opportunities for the use of PDCs in certain zones, due to land tenure patterns and/or a desire to accommodate higher levels of PDC use in other locations. In other cases, municipalities have chosen to require the use of PDCs at extremely low densities, with additional bonus density provided for other purposes (e.g., to encourage age-restricted housing). Still other municipalities have chosen to require the use of PDCs as a percentage of the market rate units in projects of a certain size or in certain zoning districts. In recent years, the Commission has reviewed and certified ordinances from Hamilton, Manchester, Medford, Monroe and Stafford Townships which establish minimum percentages of PDC use ranging from 16.7 to 30 percent of the market rate units in a project. In most cases, this approach was selected as a means of accommodating a municipality's affordable housing obligations, while still providing opportunities for the use of PDCs in sufficient number as to be consistent with the CMP. Egg Harbor Township has decided to meet its PDC zoning obligation in this fashion as well.

Utilization of a different approach does not represent a violation of the CMP. In fact, the CMP expressly acknowledges that municipalities have the latitude to do so. As discussed in Section 8 of this report, the CMP contains various requirements for the accommodation of PDCs within Pinelands RGAs. Notably, N.J.A.C. 7:50-5.28(a)3 provides that municipalities should zone in such a way as to allow for density increases of 50% above the permitted base density in their RGAs. Of equal importance is the fact that the CMP also provides municipalities with the ability

to adopt additional bonus programs as long as they do not interfere with or impair the PDC program. Moreover, N.J.A.C. 7:50-5 expressly provides that the specific programs of this subchapter (which includes RGA density and PDC requirements) can be refined by local agencies, provided that the objectives and goals the minimum standards represent will be achieved. Further, municipalities may adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of the CMP. These “municipal flexibility” provisions have long been relied upon by the Commission when reviewing and approving municipal master plans and ordinances which contain standards which differ in some way from those set forth in the CMP. As was concluded in Section 8, the Executive Director believes that the PDC provisions adopted by Ordinance 37-2011 are consistent with the CMP. They guarantee a certain level of PDC use, regardless of project density. This means that the Commission will no longer have to hope that developers choose to build above the permitted base density in any of Egg Harbor Township’s zoning districts, much less at the maximum permitted density. As the Builder’s League of South Jersey itself has acknowledged in its written testimony, a developer’s ability to obtain site plan approvals at the “zoning limit” is a rarity in the RGA. The new system put in place by Ordinance 37-2011 removes much of the uncertainty surrounding PDC use in Egg Harbor Township’s RGA. Every residential project approved under the ordinance will contain a PDC component, something which is certainly of benefit to the Pinelands program as a whole. Ordinance 37-2011 does not just bring greater certainty, it will also result in an increase in the number of PDCs redeemed in Egg Harbor Township.

As for the contention that Ordinance 37-2011 fails to provide sufficient compensatory benefits to those developers who are required to produce affordable housing and is inconsistent with COAH’s rules, such issues are beyond the Commission’s purview. It is not for the Commission to determine whether an ordinance is consistent with COAH’s rules, just as it is not COAH’s responsibility to determine whether an affordable housing plan is consistent with the CMP. Mr. Rahenkamp also submits that the ordinance will fail to produce affordable housing in Egg Harbor Township. This, too, is beyond the Commission’s jurisdiction. In fact, the Pinelands Protection Act (N.J.S.A. 13:18-12 and 15) specifically precludes the Commission from considering the number of affordable housing units in its review and approval of municipal master plans, municipal land use ordinances and applications for development. The Township has determined that it will meet its affordable housing obligation through use of a 20% set aside in the Pinelands Area, which is precisely what P.L. 2008, Chapter 46 directs municipalities to do. There may well be different and/or better ways for the Township to meet its obligation, including increases in permitted density, changes in housing types, designation of affordable housing zones, application of different percentages of PDC use by zone, etc. The Commission’s only role is to review what the Township has adopted in terms of its consistency with the CMP. As has been stated previously, but for some minor revisions which need to be made to existing sections of Chapter 225, Ordinance 37-2011 is consistent with the CMP.

The Builder’s League of South Jersey also suggests that the Commission should require Egg Harbor Township to increase the permitted densities in its RGA zones and provide greater opportunities for the development of multifamily housing. Specifically, Mr. Rahenkamp states that the Commission should require the Township to “provide additional multifamily zones of sufficient size to respond to the affordable housing obligation through the normal compliance mechanism of 20% set-asides in higher density zones and to reflect the widely known

demographic changes facing our region". Mr. Rahenkamp also refers to the Commission's Housing Task Force recommendations for higher densities and establishment of centers within RGAs. The Executive Director agrees that many of the Housing Task Force recommendations are worthwhile but they have yet to be implemented by the Commission through amendment to the CMP. In addition, it is worth noting that the increased density recommended by the Housing Task Force (3.7 units per upland acre) would have little effect in Egg Harbor Township where the density currently prescribed by the CMP equates to a total of 3.75 units per upland acre. Providing opportunities for multifamily housing is also something which the Executive Director supports. Significant efforts were made in 2002 to ensure that such opportunities existed in the Township's higher density zones, with the result being that townhouses are a permitted use in the RG-4 and RG-5 Zones and garden apartments are a permitted conditional use in the RG-5 Zone. Egg Harbor Township is free to add multifamily housing as a permitted use in any or all of its other residential zones. Likewise, the Township could choose to increase the permitted densities in any of its RGA zones. The Commission could certainly certify such ordinance amendments. For the time being, however, the Township has chosen to accommodate its affordable housing obligation within the currently certified densities and zoning boundaries of its RGA. That approach is fully consistent with the CMP, although it may or may not be optimal in terms of the provision of affordable housing.

Finally, Ms. Lettman expressed a concern with the potential environmental impacts of Ordinance 37-2011 on lands in the Township's RG-2 Zone, given the high ecological integrity of these lands and the number of outstanding development approvals in higher density zones. While the Executive Director recognizes Ms. Lettman's concern, Ordinance 37-2011 raises no real issues in this regard. The ordinance does not increase permitted densities in the RG-2 Zone nor make it any more likely that a developer would choose to pursue a project in the RG-2 Zone. Indeed, development in the RG-2 Zone will remain a challenge, given the constraints imposed by wetlands and required wetlands buffers. Clustering of residential development (already permitted by Chapter 225) will need to occur in order for the permitted density to be achieved. Ordinance 37-2011 does not provide any incentives for developers to seek out the RG-2 Zone, but that may be the logical result if less constrained lands in higher density zones have already received approvals. The high ecological integrity of lands in the RG-2 Zone was recognized by the Commission several years ago when a number of management area changes were under consideration. However, those changes were ultimately not pursued and the RG-2 Zone remains in the RGA where residential development is permitted and expected.

CONCLUSION

Based on the Findings of Fact cited above, the Executive Director has concluded that Ordinance 37-2011, amending Chapter 225 (Zoning) of the Code of Egg Harbor Township, does not fully comply with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to conditionally certify Ordinance 37-2011 of Egg Harbor Township.

SRG/CEH
Attachments

**ATTACHMENT A TO EXECUTIVE DIRECTOR'S MARCH 30, 2012
REPORT ON EGG HARBOR TOWNSHIP ORDINANCE 37-2011**

Adoption of the following amendments, or comparable revisions, to Chapter 225 (Zoning) of the Code of Egg Harbor Township will make Ordinance 37-2011 consistent with the Pinelands Comprehensive Management Plan:

1. Amend Section 225-44.E to read as follows:

E. Maximum density. The density of housing in any development hereafter constructed shall be not more than one dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

2. Amend Section 225-45E to read as follows:

E. Maximum density. The density of housing in any development hereafter constructed shall be not more than two dwelling units per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

3. Amend Section 225-46E to read as follows:

E. Maximum density. The density of housing in any development hereafter constructed shall be not more than three dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

4. Amend Section 225-47E to read as follows:

- E. Maximum density. The density of housing in any development hereafter constructed shall be not more than four dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

5. Amend Section 225-48E to read as follows:

- E. Maximum density. The density of housing in any development hereafter constructed shall be not more than five dwelling unit per one acre, unless the development qualifies for a compensatory bonus pursuant to Section (*insert reference to Section 4.A(2) of Ordinance 37-2011*). Pinelands Development Credits shall be required for 25% of the units in every development, excluding any units which are made affordable for low and moderate income households in accordance with the rules and policies of COAH. One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units, rounded up to the next highest increment of a quarter Pinelands Development Credit.

ERIC C. GARRABRANT, ESQUIRE
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Email: eric.garrabrant@flastergreenberg.com

February 21, 2012

**VIA FAX (609) 894-7330
& ELECTRONIC DELIVERY**
New Jersey Pinelands Commission
15C Springfield Road
P.O. Box 359
New Lisbon, New Jersey 08064

**Re: Builder's League of South Jersey
Egg Harbor Township – Proposed Ordinance 37-2011**

Dear Sir or Madam:

This firm represents the Builder's League of South Jersey, and we submit this correspondence in anticipation of Wednesday's hearing concerning Egg Harbor Township's proposed Ordinance 37-2011 (referred to herein as the "Ordinance"). Please note that we anticipate presenting verbal and written testimony in addition to this letter, and are writing to specifically address the portions of the proposed Ordinance which relate to the Pinelands Comprehensive Management Plan (the "CMP"). This letter does not constitute a statement of our entire position regarding this proposed Ordinance.

Section 4.A(3) of the Ordinance, entitled "Pinelands Development Credit Requirements," requires the purchase of PDC's for 25% of all units constructed in certain residential zoning districts, and specifically provides: "One-quarter of a Pinelands Development Credit (i.e., one right) shall be purchased and redeemed for every four non-income restricted units..."

This section of the proposed Ordinance violates the CMP, which at N.J.A.C. 7:50-5.41, expresses the "purpose" of the Pinelands Development Credit Program, and first acknowledges that most "land use and development of the Pinelands is concentrated in Regional Growth Areas...". This section of the CMP then indicates that "...landowners in the Preservation Area District, Special Agricultural Production Areas and Agricultural Production Areas..." will be provided "...with an opportunity to secure an additional beneficial use of their lands without the risk of damaging the essential ecological character of the Pinelands," through the purchase of Development Credits.

The CMP provides a formula which is to be applied when Credits are used in these enumerated districts, and then permits that in a Regional Growth Area, such as Egg Harbor Township, such Credits may be used "...for securing a density bonus of...four dwelling units per credit," above that which would otherwise be permitted.

The CMP clearly permits Development Credits to be used in a Regional Growth Area, so that a landowner may increase the density of a project above what the CMP would otherwise provide. This purpose is made explicit at N.J.A.C. 7:50-5.28, which discusses the "minimum standards governing the distribution and intensity of development and land use in 'Regional Growth Areas,'" and then provides at (a)3: "...that (in a Regional Growth Area) the total amount of residential development permitted...is exceeded by at least 50 percent through the use of Pinelands Development Credits...."

In its October 8, 2010 "Final Decision" articulated in the matter of *D.D Residential Ltd. Partnership v. New Jersey Pineland's Commission*, (2010 WL 8022133), this Commission made clear that:

Master plans and land use ordinances in municipalities with Regional Growth Areas...must contain provisions that allow the established density to be exceeded "by at least 50%" through the use of Pinelands Development Credits, (N.J.A.C. 7:50.28(a)(3)).

This Commission further articulated that:

A municipality may not "interfere with" or "otherwise impair in any way" the "use of Pinelands Development Credits." (N.J.A.C. 7:50-5.28(a)(7)(I))

These credits are clearly intended to be used as a tool to permit growth in appropriate areas such as those designated for "Regional Growth, with *N.J.S.A. 13:18A-31*, providing:

the intent of the pinelands development credit program is to provide a mechanism to facilitate both the preservation of the resources of this area *and* the accommodation of regional growth influences in an orderly fashion.

Egg Harbor Township's proposed Ordinance both "interferes with" and "impairs" the use of such credits, by requiring their purchase for any residential development, regardless of whether greater density is intended or planned. In fact, the Proposed Ordinance even goes so far as to ignore the purpose of the Pinelands Development Credits by granting a "density bonus" for developers who create affordable housing, while still requiring the purchase of such credits "...whether or not a developer seeks to utilize the compensatory bonus density..." permitted when such affordable housing is constructed.

In short, the CMP gives a property owner the right to increase the density of a development through the use of Development Credits. The Ordinance requires such purchase regardless of the intended density, thereby violating both the letter and spirit of the CMP.

Very truly yours,
FLASTER/GREENBERG, P.C.



ERIC C. GARRABRANT, ESQUIRE

ECG:lm



**Executive Director's Report
on EHT Ord. #37-2011
March 30, 2012 Exhibit #2**

February 22, 2012

Pinelands Commission
15C Springfield Road
New Lisbon, NJ 08064

RE: Egg Harbor Township Ordinance 37-2011
Comments in Opposition, Builders League of South Jersey

Please accept this letter as a supplement to the testimony that we provided to the Township prior to the adoption of the ordinance and to our testimony and at the hearing convened on February 22nd by the Pinelands Commission. Ordinance 37-2011 imposes affordable housing setbacks and mandatory PDC purchases, while offering (but not assuring) a limited increase in base density across all of the residential zones in the Regional Growth Area. This ordinance raises concerns that are related to the provision of affordable housing, the requirement of mandatory PDC's, and contradicts important provisions of the CMP. Eric Garrabrant, Esquire, is addressing the mandatory use of PDC's directly as that is essentially a legal issue. This letter addresses the issues relating to the provision of affordable housing even though we understand that this is not a central focus of the Commission and we will be providing a more detailed response on these issues directly to the court reviewing the Township's housing compliance plan. However, a brief discussion of these issues is necessary to provide context for the important issues that the CMP is responsible for in ensuring that the Regional Growth Area provides a suitable variety and choice of housing in "appropriate patterns".

CONCERNS RELATING TO THE PROVISION OF AFFORDABLE HOUSING

After Mount Laurel II, builders remedies were granted to landowners to remedy constitutional non-compliance in local zoning. The heart of the "bargain" created by the Court was that a landowner would be released from the low density imposed by zoning, but would be required to provide 20% of the total units as affordable units under strict pricing controls. The "windfall" created by the rezoning was assumed, and did in fact, cover the costs of the subsidy. After the adoption of the Fair Housing Act in the mid-1980's, the Council on Affordable Housing had to develop a methodology to review municipal plans in which inclusionary zoning would be provided directly. For the first allocation round (1987-1993), COAH's rules required a presumptive minimum density of 6 units per acre with a 20% setback. This was coupled with provisions that would allow a landowner to demonstrate that this density was too low in a particular circumstance. In contemplating its rules for the second allocation round (1993-1999), COAH responded to the nature of

Pinelands Commission

RE: EHT Ordinance #37-2011, Comments of the BLSJ

February 22, 2012

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housing markets in that decade by creating a lower density option conducive to single family development, with a presumptive minimum density of 4 units per acre with a 15% setback. In providing guidance at lower densities, COAH also suggested that 10% might be acceptable at a density of 3 units per acre. Clearly, the imposition of a 20% setback in all zoning districts – starting as low as 1 unit acre – is inconsistent with case law or COAH's rules.

In its as yet incomplete efforts to address housing needs after 1999 (sometimes referred to as the third round), COAH introduced the concept of "growth share". Under this model, municipalities would be required to provide a percentage of whatever growth they authorized through zoning as affordable housing. Many municipalities took the approach that each development would be required to provide the "growth share" rate in each project (which was in the low teen's). The Appellate Division has rejected COAH's use of a model that did not allocate need in advance and rejected the pass-through nature of these ordinances as they do not provide either a suitable compensating benefit for the landowner or a realistic opportunity for housing to actually result. Much else about COAH's rules were also rejected and these matters are currently before the Supreme Court.

Ordinance 37-2011 fails for the reasons already articulated by the courts related to pass-through, growth-share ordinances in general. Going beyond simple pass-through, it imposes a 20% setback – the norm from a prior era for higher density/multifamily development – and applies it in pass-through fashion to very low density single family districts.

The argument that Ordinance 37-2011 deals with these issues through a theoretical increase in density fails for at least three reasons.

First, 80% of the "bonus" is either the subsidized units or units for which PDC's were purchased. Of the theoretical 50% bonus that a landowner might enjoy under the ordinance, 20% are the affordable homes that require subsidy. A further 20% are market-rate units for which government collects fees via the PDC program (25% of the market-rate units). This portion is a concern for two reasons. Obviously, the additional profit available to support the subsidy is diminished by the cost of the PDC credit, and more subtly, this is no "bonus" at all as landowners are already allowed to increase density under present zoning by purchasing PDC's – this is not a new benefit to the landowner. As a result, a landowner gets a 10% bonus to assist in covering the subsidy costs and the ordinance imposes the obligations whether or not any density bonus is actually achieved. At best, this means one more profit-making unit for two subsidized units. The actual bonus from which unrestricted and untaxed revenue can be realized is tiny compared to the imposed obligations.

Second, there is no surety that the bonus is real. The one thing that experience has taught us in the Pinelands Regional Growth Area is that getting site plan approvals at the zoning limit is a rarity. Many landowners will feel the sting of the obligations without any benefit.

Third, the ordinance includes a series of cost-generative and difficult features. For example, the ordinance provides no special bulk standards for the affordable units so that these deeply subsidized homes need to be provided on conforming lots. The ordinance passes through the municipal requirement under A500 to provide homes affordable to "very low income" households, which is impossible in for-sale communities. Each developer is individually responsible to market to and qualify income restricted buyers/tenants, which is properly a municipal function. Age-restricted developments are required to provide "family" subsidized units. These and other detailed issues raise costs and frustrate compliance.

As it relates to the provision of affordable housing, Ordinance 37-2011 fails to provide a compensating benefit, is inconsistent with COAH's rules, and most importantly, will fail to produce affordable housing in a municipality with approximately 1,500 already approved single family homes as estimated by Mr. Miller that are not so cost burdened. As we further learned at the hearing conducted by the Pinelands from the input of the PPA, nearly all of the lands in the higher density districts are within this already-approved category. This ordinance attempts to create the illusion of compliance without the prospect of any results.

CONCERNS RELATED TO THE CMP AND THE MANAGEMENT OF REGIONAL GROWTH AREAS

The Pinelands Protection Act requires the Commission to take very significant steps to protect sensitive resources and area, but it also requires that the Commission provide for growth areas that will "*encourage appropriate patterns of compatible residential, commercial and industrial development in or adjacent to the areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the Pinelands environment from the individual and cumulative adverse impacts thereof*". In short, "appropriate patterns" and "growth influences" are simply expressing the notion that housing types in the regional growth area need to reflect the need for various types and forms of housing to meet actual needs. NJAC 7:50-5.28(a)1&3 establishes maximum areawide densities for municipalities (3.5 units per acre for Egg Harbor Township), and requires that municipalities "permit development to occur within a range of densities" and that "a reasonable proportion" of the land area permit single family detached residences. The CMP provides 9 recommended density ranges for zoning districts.

Pinelands Commission

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Also playing a role is NJAC 7:50-5.28(a)7, which authorized Egg Harbor Township to receive a reduction in its areawide density allocation to 2.5 units per acre, which it achieved a number of years ago. The result of the reduction in the average was the near elimination of higher density zoning districts. Simply put, Ordinance 37-2011 is the outcome when affordable housing advocates attempt to craft a way to get affordable housing against the backdrop of low density, single family zoning.

The solution to this policy dilemma rests in NJAC 7:50-5.28(a)7i and 7iii(3)(D). Under the first provision, municipalities are explicitly authorized to employ "additional density bonus or incentive programs" and under the latter, the reduction in areawide density was conditioned upon a showing that the Township provided a variety of housing types to meet present and future housing needs. Whatever the situation may have been when the density reduction was reviewed by the Commission in the past, conditions have changed dramatically. Not the least, a court has determined that the Township has failed to meet its constitutional obligation to provide appropriate housing. There is a clear mismatch between the zoning districts now provided by the Township and its obligation under the constitution, and further in comparison to the actual demographic needs of our region. Smaller household sizes, fewer families, lower household incomes, all indicate that housing demand in the coming decades will be more akin to the 1980's with its emphasis on multifamily rather than what we have experienced over the past 20 years as the baby boomer generation passed through family formation and into middle age. Simply put, the present zoning pattern in Egg Harbor Township does not "accommodate reasonable growth influences" and is violative of the Act.

In short, there are thousands of units authorized by the CMP to be constructed within Egg Harbor Township that have been previously put in abeyance under a discretionary provision. The Commission would be acting in the interest of and furthering the requirements of the CMP to require Egg Harbor Township to provide additional multifamily zones of sufficient size to respond to the affordable housing obligation through the normal compliance mechanism of 20% setbacks in higher density zones and to reflect the widely known demographic changes facing our region. The Commission's own Housing Task Force pointed out that while the land area of the growth area was sufficient to meet projected needs, there is a chronic and persistent mismatch between the zoning in place and the actual needs of our people. The Task Force recommended centers or sub-areas that would have average densities of at least 4.5 units per acre to facilitate a more reasonable balance between single family and multifamily units in a fully developed growth area. The Commission also spent considerable time and resources studying the urban design/density that should be achieved in a growth area. Most planners would consider acre and half acre lots as the dominant zoning in a growth area to be a self-evident oxymoron.

Pinelands Commission

RE: EHT Ordinance #37-2011, Comments of the BLSJ

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Thank you for reviewing these issues. We understand that as a result of the affordable housing litigation, the court-appointed Master, the Township and Pinelands staff have been working for some time on approaches to zoning for affordable housing. Unfortunately, this ordinance is a devil's brew resulting from public agencies "working it out" without the engagement of the private sector. Affordable housing advocates get a theoretical setaside, Pinelands staff got mandatory PDC's into an ordinance, and the net effect will be that nothing gets built and neither agenda is advanced while the legitimate needs for housing for our people are ignored. We can do better. And, with the Commission's rejection of Ordinance 37-2011, coupled with direction to your staff to work with the interested parties, I'm confident that we will.

Sincerely,

A handwritten signature in black ink, appearing to read 'Creigh Rahenkamp', with a long horizontal flourish extending to the right.

Creigh Rahenkamp, NJPP



**Executive Director's Report
on EHT Ord. #37-2011
March 30, 2012 Exhibit #3**

Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.

February 27, 2012

Betsy Piner, Principal Planning Assistant
Pinelands Commission
15 Springfield Road
PO Box 359
New Lisbon, NJ 08064
VIA EMAIL: planning@njpines.state.nj.us

Re: Egg Harbor Township Ordinance 37-2011

Dear Betsy:

Please accept this letter as Fair Share Housing Center's (FSHC) comments regarding Egg Harbor Township's Ordinance 37-2011. FSHC, founded in 1975, is New Jersey's only public interest organization dedicated solely to the preservation and growth of the Mount Laurel doctrine. We work to ensure that every municipality in New Jersey provides its fair share of low- and moderate-income housing in order to promote housing opportunities for all New Jerseyans and racially and economically diverse communities.

We support this Ordinance because it implements a 20% set-aside for low and moderate income housing and compensates for this requirement with density increases. As the court process to ensure Egg Harbor Township's compliance with their fair share obligations proceeds, there may need to be more changes to the zoning in Egg Harbor to provide more opportunities, including development in appropriate areas of the Township and additional increased densities.

Thank you for your attention to this matter.

Sincerely,

Laura Smith-Denker
Staff Attorney

REMINGTON & VERNICK ENGINEERS

EDWARD VERNICK, PE, CME, President
CRAIG F. REMINGTON, PLS, PP, Vice President

Executive Director's Report
on EHT Ord. #37-2011
March 30, 2012 Exhibit #4

EXECUTIVE VICE PRESIDENTS
Michael D. Vena, PE, PP, CME, (deceased 2006)
Edward J. Walberg, PE, PP, CME
Thomas F. Beach, PE, CME
Richard G. Arango, PE, CME

AND AFFILIATES

DIRECTOR OF OPERATIONS
CORPORATE SECRETARY
Bradley A. Blubaugh, BA, MPA

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(412) 263-2210 (fax)

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(856) 303-1249 (fax)

February 29, 2012

Susan Grogan, P.P.
The Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064

RE: **Ordinance No. 37-11**
Township of Egg Harbor
Atlantic County, New Jersey

Dear Mr. Grogan:

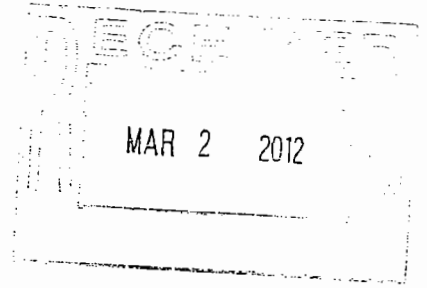
I have reviewed the letter prepared by Craig Rahenkamp opposing the Township of Egg Harbor's Ordinance No. 37-11 regarding affordable housing in the regional growth areas in the Township. The Township has worked together with the Pinelands Commission in drafting the ordinance. The draft ordinance was provided to the Pinelands Commission for review and comment before adoption. Based upon the comments received from the Pinelands Commission, the Township adopted the ordinance with the compensatory bonuses for affordable housing as well as the requirements for purchasing Pinelands Development Credits (PDC's) for 25% of the market rate units.

The 20% set aside requirement for affordable housing in the regional growth areas is based upon the requirements contained in P.L. 2008 c. 46 that 20% of the residential units constructed be reserved for occupancy by low or moderate income households. In addition, the Township's Housing Element & Fair Share Plan addressed this requirement and anticipated that 20% of the units in the Pinelands portion of the Township would be set aside for affordable housing purposes. The Township utilized this as a component of meeting their affordable housing obligation.

The ordinance does not reduce the density in the Pinelands portion of the Township. The ordinance will provide for more density in developments which are subject to the ordinance since Pinelands Development will be required. Currently developments can be built utilizing the base density in the zone without the need to purchase Pinelands Development Credits. Also the ordinance does not diminish the opportunity for utilizing Pinelands Development Credits within the Pinelands portion of the Township. With the purchase of Pinelands Development Credits the allowable lots sizes are reduced to allow for greater density, which provides for more opportunity to provide affordable housing.

The argument that a requirement for a 20% set aside in a zoning district at 1 unit per acre is not valid. As provided in Ordinance 37-2011 any development where a 20% set aside is required would have base densities ranging from 1.5 dwelling units per acre to 7.5 dwelling units per acre.

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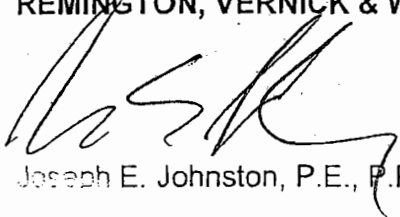


It is obvious that a compensatory benefit is realized in the allowance to construct units at a higher density in each zone with a reduced number of PDC's being required with the set aside.

Should you have any questions or require additional information, please do not hesitate to contact me in our Pleasantville office.

Sincerely,

REMINGTON, VERNICK & WALBERG ENGINEERS

A handwritten signature in black ink, appearing to read 'J. Johnston', is written over the typed name below.

Joseph E. Johnston, P.E., P.P., C.M.E.

Cc: Peter Miller, Administrator
Marc Friedman, Esq.
Jeffrey Surenian, Esq.



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-12- 10

TITLE: To Approve the Pinelands Commission's 2011 Annual Report

Commissioner Ficcaglia moves and Commissioner Rohan Green seconds the motion that:

WHEREAS, in September 2006, then Governor Corzine issued Executive Order #37; and

WHEREAS, Executive Order #37 called for the preparation and approval of a comprehensive report concerning the operations of each State authority; and

WHEREAS, the report shall set forth the significant actions of the Commission; and

WHEREAS, since the report is to be done on an annual basis and it includes much of the same information as the Commission's Annual Report, which is required by the Pinelands Protection Act, the two reports were combined in 2007, 2008, 2009, 2010 and now in 2011 as a cost savings measure to eliminate waste and promote efficiency as called for in Executive Order #37; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that the attached 2011 Annual Report be approved, submitted to the Governor's Authorities Unit and posted on the Commission's web site.

Record of Commission Votes

AYE NAY NP ABS				AYE NAY NP ABS				AYE NAY NP ABS			
Ashmun			X	Haas	X			Prickett	X		
Brown	X			Harris			X	Quinn			X
Earlen	X			Jackson	X			Rohan Green	X		
Ficcaglia	X			Lloyd	X			Witt	X		
Galletta	X			McGlinchey	X			Lohbauer	X		

Adopted at a meeting of the Pinelands Commission

Nancy Wittenberg
Nancy Wittenberg
Executive Director

Date: April 13, 2012

Mark S. Lohbauer
Mark S. Lohbauer
Chairman