

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING
15 Springfield Road
New Lisbon, NJ

February 22, 2013 – 9:30 a.m.

ADOPTED MARCH 22, 2013

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Leslie Ficcaglia, Paul E. Galletta, Robert Jackson, Richard Prickett, and Candace Ashmun (1st Alternate)

STAFF PRESENT: Executive Director Nancy Wittenberg, Larry Liggett, Susan Grogan, Ed Wengrowksi, Paul Leakan, Robyn Jeney and Betsy Piner. Also present was Ms. Kerstin Sundstrom, with the Governor's Authorities Unit.

Chairperson Lohbauer called the meeting to order at 9:40 a.m.

1. Adoption of minutes from the January 25, 2013 CMP Policy and Implementation Committee meeting

Commissioner Galletta moved the adoption of the minutes of the January 25, 2013 CMP Policy and Implementation Committee meeting (open and closed session). Commissioner Ficcaglia seconded the motion and all voted in favor.

Ms. Wittenberg noted that Ms. Roth was out of the office today and asked that the sequence of the agenda be changed to accommodate Mr. Liggett who needed to leave the meeting.

2. Update on secondary impacts related to the improvement of Garden State Parkway Interchange 44

Mr. Liggett said that Ms. Roth had been working closely with the Atlantic County Counsel regarding the five nodes of land in the vicinity of Exit 44 of the Garden State Parkway (GSP) in an effort to discourage secondary impacts resulting from the expansion of the Exit to a complete interchange. (*See Minutes of the September 28, 2012 CMP Policy and Implementation Committee for background details of this matter.*) He said that he would provide an update but noted that any details on specific parcels would require that the Committee meet in closed session. He said that the County cannot sign contracts for land purchase without encumbering the funds and some \$2 million have been set aside for the acquisitions. He said that all but one of the landowners have agreed to have their lands appraised. The Commission wants the lands purchased outright but if the sellers are unwilling, then the issue becomes what will be done in the future.

The Turnpike Authority has said that construction on the GSP would begin in May but it will be another year before they are actually working in the area of this interchange which gives the acquisition project a little more time. If everyone agrees to sell, the project should be done in three years.

In response to Commissioner Prickett's question as to how many parcels are involved, Mr. Liggett said that there are perhaps 50 smaller parcels (about 20 are 1-acre parcels) in Galloway which are Township-owned and which Galloway has agreed to sell. There are also larger parcels along Pomona Road, including one with a development approval. If that project moves forward, that would mean that the zoning would be memorialized (in place as is current) which would be a good thing as there would be no need for the land to be purchased. Although outright purchase is preferable, some landowners might be amenable to selling an easement that memorializes or freezes the zoning.

Mr. Liggett said that once an agreement is in place, the project will move quickly. The Commission will see a public development application for the interchange improvements and a related secondary agreement regarding acquisition of the parcels.

3. Executive Director's Report

Shamong Township Ordinance 2012-09, Amending Chapter 110 (Land Development) of the Code of Shamong Township

Ms. Grogan said that Shamong Township Ordinance 2012-09 is the Township's response to the three sets of CMP amendments related to forestry, wetlands management and cluster development. As has been approved by the Commission in ordinances submitted by some other municipalities, Shamong has limited the application of the bonus density provision to only those property owners who can demonstrate the acquisition of additional lands since the effective date of the clustering rules (April 6, 2009).

Ms. Grogan also said that Shamong has chosen to retain two provisions of its previous cluster ordinance, one of which requires that clustering be permitted only on contiguous lands (consistent with the CMP) and the other which says that an application for clustered development must include all contiguous lands in common ownership. She said that the Commission has not seen this latter provision elsewhere but again, it is a statement affirming the goals of the clustering provisions and is consistent with the CMP.

In response to Commissioner Prickett's question about the acquisition of even a few vacant acres in order to obtain the bonus density, Ms. Grogan said that much depends upon the availability of adjacent lands. She said that she had tried to encourage the municipalities that have adopted this provision to consider the reality of such an obligation and how it would work on a practical level. Certainly someone can come in with very little additional land in order to qualify for the full bonus.

In response to Chairman Lohbauer's statement that the CMP doesn't define a minimum threshold for additional lands, Ms. Grogan confirmed that this is true; moreover, the Commission would be concerned if a municipality were to impose such a threshold.

Commissioner Ficaglia moved the recommendation to the Commission for certification of Shamong Township Ordinance 2012-09. Commissioner Jackson seconded the motion and all voted in favor.

4. Comprehensive Management Plan amendments: review of draft regulations to implement efficiency measures and extend the alternate design treatment systems pilot program

Commissioner Ashmun, Plan Review Committee Chairperson, stated that the documents provided in the packet were prepared by staff and reflect the discussions that have been ongoing by the Committee to increase efficiency.

Ms. Wittenberg reminded the Committee that the meeting packet contained the grid summarizing the proposed amendments that the Committee had seen previously.

Ms. Grogan said that today the Committee would be reviewing the draft rule but will not be asked to make a recommendation at this stage. There is more work to be done including a few tweaks to the text and the preparation of the background material which she is still writing. The draft rule proposal will be sent to the Governor's office for review before coming back to the P&I Committee and ultimately the Commission for authorization.

Ms. Grogan highlighted some of the key provisions of the draft regulations in order to provide further explanation (*Pages refer to pages of the February 13, 2013 draft proposal included in the meeting packet*):

- Page 1: under the fee section, a table replacing the text has been inserted to explain the construction costs related to non-residential development in order to make it clearer and easier to read
- Page 4: a new section (l) has been added to recognize general development plans and indicates that the fee obligation will be divided into two payments, one payment submission when the staff does the initial review and the second occurring when the Commission does its final review, in recognition that often this second full review may take place many years later, if at all. This will allow the Commission to capture some of the initial costs
- Pages 8-9: additions to the list of application exemptions. She added that ultimately, should the Commission adopt these rules, there would be an outreach effort to assure the municipalities that they would continue their oversight of Commission exemptions such as home occupations and change of use in RGA for projects on sewer where no further development is proposed.
- Pages 10-11: revisions to the existing public notice provisions including the elimination of publications in the newspaper. Ms. Grogan said that the Plan Review Committee wanted to update the practice to recognize the current state. By posting such notices on the Commission's web site, they were available for longer than just the single day of a print notice and could provide far more information than a newspaper ad.

The potential elimination of newspaper publication of public notices led to a discussion with a range of opinions from Commissioner Ficcaglia expressing concern for those who do not have computers to Commissioner Jackson stating that he was not comfortable with the notices

appearing only in one place, and to Commissioner Galletta supporting the elimination of newspaper publications as they are becoming archaic, with many newspapers are going out of business. Ms. Grogan noted that Ms. Jenev had just reminded her that if one wishes to be contacted directly for notices, one merely needs to contact the Commission and those arrangements can be made. She also said that if the Commission should authorize this provision of the rule proposal, then staff could include a notice in legal ads that the elimination from newspaper publication was under consideration.

Ms. Wittenberg suggested that perhaps an ongoing ad could appear in the newspapers indicating the Commission's web site and phone number.

Ms. Grogan said that although the discussion was focused on hearing notices, the proposal also eliminates certified mailing requirements and allows for distribution via email. She said that this is far more efficient and certainly a cost savings. She said that certified mail might still be used on some occasions. She said that when she writes the background material she will provide more information to help clarify some of these concerns. She then continued highlighting the remaining sections of the draft proposal:

- Page 14: under the current rules development approvals require a list of names, including addresses, of those who participated in local proceedings. These will no longer be required.
- Page 31: the duration of Letters of Interpretation (LOI) will be increased from a duration of 2 years to 5 years. This will be of benefit both to the Commission and to the holder of the LOI. If a Certificate of Filing is issued for a parcel holding an LOI for Pinelands Development Credits, a revised LOI is issued simultaneously, reflecting any changes in the allocation due to proposed development..
- Page 37: revisions to the wastewater standards to replace nitrate/nitrogen with total nitrogen and to extend the installation program for the alternate design wastewater treatment systems from August 2013 to August 2016.

Mr. Wengrowski said that DEP had just issued the Treatment Works Approval for the new pilot program systems and that had taken longer than had been anticipated. Given that the rulemaking process is so time consuming, he was concerned with the efficiency of extending the installation only until August 2016 so that enough systems can be installed to produce adequate data to support the monitoring program.

After a brief discussion, Chairman Lohbauer recommended an extension until August 5, 2018.

Mr. Wengrowski also explained the rationale behind the proposed replacement of nitrate/nitrogen with total nitrogen as all forms of nitrogen are a concern. Humans excrete ammonia and organic nitrogen, and virtually no nitrate/nitrogen. Ammonia and organic nitrogen are the forms of nitrogen that occur in wastewater released from septic systems; nitrates are present in fertilizer, such as that used on golf courses, but even when monitoring wells surrounding golf courses meet the current 2 ppm nitrate/nitrogen standard, there can be higher levels of ammonia present. By requiring the monitoring of all forms of nitrogen, as is the case with laboratory testing required of our pilot program septic systems, and compliance with a total

nitrogen standard, the rules will better reflect the monitoring that is actually occurring and provide protection from the various forms in which nitrogen can exist. He said that the New Jersey Builders Association expressed concern with a proposed total nitrogen noting that currently there is no surface or groundwater standard for total nitrogen. The builder representative has also indicated that the Commission's septic dilution model, models for nitrate, not total nitrogen. Mr. Wengrowksi indicated his disagreement with the builders interpretation of the model and stated that staff would meet with the builders to discuss their concerns.

Chairman Lohbauer invited public comment on the draft rules under discussion.

Ms. Theresa Lettman, with the Pinelands Preservation Alliance, said that PPA will oppose any change to public input in the rules. She said that she knows the public and felt that 80% of the items in the document remove the involvement by the public. She said that the print versions of public notices are put into a database by the NJ newspapers website and are available long after the publication and thus the Commission is paying not only for the print edition but also the online database. She also objected to the elimination of newspaper notices for MOAs and cell plans. She said that she understood the details but the public will not. She questioned the fees for violations by public agencies.

Ms. Grogan responded that currently fees for public agencies are half that of private development. New provisions will double the fee for applications submitted to resolve violations to recognize the extra work imposed upon staff. Private applications will continue to pay more than public agencies but the fees for resolving violations will double for both.

In response to Commissioner Ashmun's question as to what incentives there are to cure a violation, Ms. Grogan said that usually the party wants to do something else and the violation must be resolved before a new project can go forth. She said that often the fees are very small but on occasion, might be significant.

Commissioner Ficcaglia said that she really liked the idea of increased fees.

Commissioner Jackson addressed Ms. Lettman and said that he did not believe that the Commission was trying to block the public and Chairman Lohbauer added that it was a matter of perception.

Ms. Grogan said that the difficulty is really with understanding regulatory language. She said that the background material will help clarify the provisions.

Commissioner Ashmun said that it will take a year to go through the CMP amendment process and the Commission could modify its advertising as it goes through the process.

Mr. Jay Mounier, Franklin Township resident, said that the major impediment to the public notice process is the unwillingness of some to adjust to new technology. He said that the web notice is a free service and available to all.

Ms. Grogan said that no closed session would be needed.

5. Public Comment

Mr. Fred Akers distributed a document (*Attachment A to File Copy of these minutes*) regarding the use of off-road vehicles within the Pinelands, including two maps depicting permitted Enduro trails in the Pinelands Preservation Area and the Pinelands Southern Forest Area. He said that the trail routes were obtained from a number of the Enduro applications that had been approved by the Commission over the past several years but was by no means a complete record. He said that the use of trails within the Pinelands is a privilege, not a right. Also, he said that the Mayor of Maurice River Township had spoken at the last Pinelands Municipal Council meeting about the Township's interest in wanting an off road vehicle park. He said that in January 2010, he (Mr. Akers) had looked for sites for such a park, starting with Maurice River Township and could not find any suitable land that the Township didn't want to use for something else. He said that he felt that Mayor Pikolycky had done the Pinelands a service by establishing such a park in Woodbine in an area with no environmental issues.

Ms. Grogan said that she had been working for some time with Maurice River on this issue. She said that the Township needed to find a site outside the Forest Area but much of the lands of interest are privately owned.

Mr. Akers finished by saying that 1/3 of the federal funding to New Jersey for recreational trails is to be used for motorized vehicles.

6. Other Items of Interest

There being no additional items of interest, the meeting adjourned at 11:32 a.m. (moved by Commissioner Ficaglia and seconded by Commissioner Jackson).

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: February 28, 2013

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