

Disclaimer

These minutes reflect the actions taken by the Commission during its February 24, 2017 meeting. Although these minutes have been approved by the Commission, no action authorized by the Commission during this meeting, as reflected in these minutes, shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of these minutes has been delivered to the Governor for review, unless prior to expiration of the review period the governor approves same, in which case the action shall become effective upon such approval. These minutes were delivered to the Governor on March 8, 2017.

PINELANDS COMMISSION MEETING

Crowne Plaza
Grand Ballroom
2349 West Marlton Pike
Cherry Hill, New Jersey

MINUTES

February 24, 2017

Commissioners Present

Alan W. Avery Jr., Bob Barr, Bill Brown, Giuseppe Chila, Paul E. Galletta, Frank Hays, Jane Jannarone, Mark Lohbauer, Ed McGlinchey, Richard Prickett, Gary Quinn and Chairman Sean Earlen. Also present were Executive Director Nancy Wittenberg, Governor's Authorities Unit representative Lisa LeBoeuf and Deputy Attorney Generals (DAG) Sean Moriarty and Timothy Malone.

Commissioners Participating by Phone

Candace Ashmun, Ed Lloyd and D'Arcy Rohan Green.

Commissioners Absent

None.

Chairman Earlen called the meeting to order at 9:38 a.m.

DAG Moriarty read the Open Public Meetings Act Statement.

Ms. Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 15 Commissioners who participated in the meeting.)

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

Minutes

Chairman Earlen presented the minutes (open and closed session) from the January 23, 2017 Special Meeting and the January 24, 2017 Commission Meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Brown seconded the motion.

The minutes of the January 23, 2017 Special Meeting (open and closed session) and the January 24, 2017 Commission Meeting were adopted by a vote of 14 to 0. Commissioner Rohan Green abstained from the vote.

Committee Chairs' Reports

Commissioner Avery provided an update on the February 7, 2017 Personnel and Budget Committee Meeting:

The Committee adopted the minutes from the August 2, 2016 meeting.

Staff reviewed the check registers, electronic disbursements and application fees covering July to December 2016. Ms. Jessica Lynch reviewed the accounting software proposal which will be discussed with the Audit Committee. Fixed assets for disposal and surplus were also explained. Michelle Russell provided an update on employee actions.

The Committee did not have a Closed Session.

Executive Director's Reports

Mr. Larry Liggett said a transformation has occurred in the cellular service market; wireless service providers are interested in upgrading service in high capacity areas within the public right-of-way. He said staff met with Verizon Wireless and will be meeting with Mobilitie, another wireless infrastructure provider. The companies are interested in locating antennas on existing telephone poles. Staff is looking at the Comprehensive Management Plan's current rules on wireless communication facilities and will determine if new rules are required. Staff is also in the process of drafting a letter to municipalities, offering guidance on this type of development.

Mr. Chuck Horner updated the Commission on the following:

- On February 14, 2017, Commission staff met with Tabernacle Township officials to discuss the development of a new public works facility. Staff also met with the Mayor of Woodbine on February 14, 2017 to discuss the regulatory requirements associated with the development of a recreation facility.

Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending the approval of four public development applications.

Commissioner Galletta moved the adoption of a resolution Approving With Conditions Applications for Public Development (Application Numbers 1987-1121.004, 1993-0341.007, 2016-0035.001 & 2016-0147.001)(See Resolution # PC4-17-02). Commissioner McGlinchey seconded the motion.

Commissioner Prickett requested a brief overview of the four public development applications.

Mr. Horner provided a brief overview of the public development applications listed on the first resolution:

- Barnegat Township is proposing the construction of a bicycle path on the south side of West Bay Avenue;
- Evesham Township is proposing a two mile hiking trail in the southern portion of the town;
- Shamong Township is proposing a municipal cemetery on a parcel of land located diagonally from the municipal building; and
- Egg Harbor Township is proposing the installation of sanitary sewer main.

All were in favor. The Commission adopted the resolution by a vote of 15 to 0.

Chairman Earlen presented a resolution recommending the approval for the development of a natural gas pipeline.

Commissioner McGlinchey moved the adoption of a resolution Approving With Conditions Pinelands Development Application Number 2012-0056.001 (See Resolution # PC4-17-03). Commissioner Galletta seconded the motion.

Commissioner Lohbauer made a motion to table action on the resolution *Approving With Conditions Pinelands Development Application Number 2012-0056.001*. He explained his rationale for tabling the resolution. He said first the public was not afforded an adequate amount of time to provide public comment. He said significant facts regarding the project remain in dispute and, for this reason, he suggested a fact-finding hearing before the Office of Administrative Law. He said Commissioners need more time to review the information associated with the proposed pipeline application. Commissioner Ashmun seconded the motion.

Commissioner Rohan Green said she agreed with tabling the motion. She said there has not been enough time for Commissioners to perform due diligence on the application.

Commissioner Prickett asked Ms. Nancy Wittenberg if all members of the Commission had received a copy of the public comment compact disc (CD).

Ms. Wittenberg said the CD containing public comment received for the South Jersey Gas application was express mailed on February 13, 2017. She said staff was notified on February 22, 2017 that one Commissioner had not received the package. Staff contacted the

United States Parcel Service and did confirm that the package was delivered February 15, 2017. Staff hand delivered a second copy of the CD to that Commissioner on February 22, 2017.

Commissioner Prickett said he supports the motion to table the application.

Commissioner Hays said he also supports tabling the motion. He said he has questions for the applicant.

Commissioner Prickett asked Ms. Wittenberg if the new Commissioners had been briefed on the history of the South Jersey Gas application.

Ms. Wittenberg said that she provided background information, including the prior Executive Director's report on the Memorandum of Agreement and the Memorandum of Agreement to the new Commissioners. She said she met with Commissioner Chila to review the application, spoke with Commissioners Jannarone and Barr, and answered questions submitted by Commissioner Hays.

Commissioner Lloyd said because of the conflicting facts regarding this application, he supports the motion to table the discussion and have an administrative hearing.

Commissioner Avery said he rejoined the Commission in December of 2013 and since that time the South Jersey Gas application has been the dominant topic. He said it's time for the Commission to focus on other work. He said some of the information is beyond the scope of what the Court remanded back to the Commission. He said he does not support the tabling.

Commissioner Galletta thanked staff for organizing the public comment. He said he appreciated hearing from both sides on the matter, but he agrees with Commissioner Avery. He said he has enough information to make his decision.

Commissioner Ashmun said with a precedent setting decision such as this, the Commission should not rush.

Commissioner Lohbauer explained his motion to table the resolution and specified that the resolution could be voted on after an OAL hearing and once the Commission provides the opportunity to comment on the SJG application to any individuals who chose to leave the January 24, 2017 Commission meeting..

DAG Moriarty offered clarification on how to proceed with the tabling motion. He said first the Commission has to pass the motion to table the resolution, after that happens, then another motion must be made setting the parameters of the tabled issue.

Ms. Wittenberg called the roll to table the resolution *Approving With Conditions Pinelands Development Application Number 2012-0056.001*.

Ashmun- yes

Avery-no
Barr-no
Brown-no
Chila-no
Hays-yes
Galletta-no
Jannarone-no
Lloyd-yes
Lohbauer-yes
McGlinchey-no
Prickett-yes
Quinn-no
Rohan Green-yes
Earlen-no

The Motion to table the resolution did not pass.

The Commission received a number of letters raising concerns regarding potential conflicts of interest. Commission staff forwarded all such correspondence to the State Ethics Commission and the Attorney General's office. With regard to this matter Ms. Wittenberg read the following statement into the record:

Over the past several weeks, Commission staff has received information from members of the public alleging that certain Commissioners may have conflicts of interest requiring recusal from the vote on the South Jersey Gas application. After review of the information provided and consultation with the State Ethics Commission and the Attorney General's office, it has been determined that none of the Commissioners in question have a conflict of interest requiring recusal in this matter.

Commissioner Lohbauer read a statement prepared by Commissioner Ashmun. (See attached statement.)

Commissioner Lohbauer read his statement into the record. (See attached statement.)

Commissioner Prickett said that he does not agree with the finding in the Executive Director's Recommendation Report that the pipeline will serve only the needs of the Pinelands. He said that he does not agree with the comparison in the report that BL England is like the New Lisbon Developmental Center in that the pipeline will serve only one end-user. He said in his opinion he does not believe that the pipeline primarily serves only the needs of the Pinelands.

Commissioner Earlen asked Ms. Wittenberg if there were similar applications to the South Jersey Gas application that the Commission had approved in the past and if so could some details be provided.

Ms. Wittenberg said through the years, dating back to the 1980's, the Commission has issued Certificate of Filings (CF) for a number of natural gas infrastructure projects, many

of which have been developed in the Forest Area. She then provided examples stating the year the application was approved, the size of the pipe, length of the route and the Commission's rationale for consistency with the CMP.

Commissioner Earlen asked about an application Ms. Wittenberg mentioned that had been approved in 1990 that traversed through the Forest Area for an electric generating station outside of the Pinelands. He asked if the CF noted if the electric would primarily only serve the needs of the Pinelands.

Ms. Wittenberg said the CF made the assumption that the electric would primarily serve the needs of the Pinelands.

Commissioner Rohan Green asked for the public to respect and listen to all sides. She said she concurs with Commissioner Prickett and Lohbauer.

Commissioner Lloyd said the evidence in the record does not show that the pipeline will primarily serve only the needs of the Pinelands.

Commissioner Hays asked if there was any case law regarding the definition of "public service infrastructure" and "primarily serve the needs of the Pinelands" as defined in the CMP.

Ms. Stacey Roth said the only case law that discusses public service infrastructure is the Buena Regional School District v. Pinelands Commission, however the case does not discuss the definition of public service infrastructure. The New Jersey courts have never interpreted or ruled on "primarily serves only the needs of the Pinelands". However it was mentioned in the November 7, 2016 Appellate Division decisions on the South Jersey Gas Company's application.

Commissioner Hays raised questions regarding the basis for including communication cables in the CMP.

Mr. Horner explained why the CMP was amended to include fiber optic cable.

Ms. Wittenberg called the vote on the resolution *Approving With Conditions Pinelands Development Application Number 2012-0056.001*.

Ashmun-no

Avery-yes

Barr-yes

Brown-yes

Chila-yes

Hays-abstain

Galletta-yes

Jannarone-yes

Lloyd-no

Lohbauer-no

McGlinchey-yes
Prickett-no
Quinn-yes
Rohan Green-no
Earlen-yes

The Commission adopted the resolution by a vote of 9 to 5, with Commissioner Hays abstaining from the vote.

Public Comment on Agenda Items and Pending Public Development Applications

55 members of the public spoke in opposition of the gas pipeline and expressed their displeasure about the vote in favor of Resolution #PC4-17-03 (South Jersey Gas Natural Gas Pipeline Application). A transcript of the meeting can be obtained by contacting the Commission.

Ordinances Not Requiring Commission Action

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

- Galloway Township Ordinance 1952-2016
- Winslow Township's Housing Element and Fair Share Plan & Ordinance O-2016-027

No members of the Commission had questions.

Public Comment on Any Matter Relevant to the Commission's Statutory Responsibilities

Five members of the public spoke in opposition of the gas pipeline and expressed their displeasure about the vote in favor of Resolution #PC4-17-03 (South Jersey Gas Natural Gas Pipeline Application). A transcript of the meeting can be obtained by contacting the Commission.

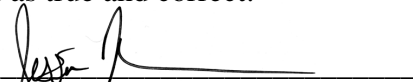
Adjournment

Commissioner McGlinchey asked about the status of the Fair Share Housing numbers.

Ms. Susan Grogan said she has not heard about numbers but the Commission has received a number of municipal settlement agreements negotiated with the Fair Share Housing Center.

Commissioner Lohbauer moved to adjourn the meeting. Commissioner Galletta seconded the motion. The Commission agreed to adjourn at 2:23 p.m.

Certified as true and correct:



Jessica Noble, Executive Assistant

Date: March 2, 2017

Commissioner Ashmun's statement read by Commissioner Lohbauer at the February 24, 2017 Pinelands Commission Meeting

This decision whether to ignore our own Plan for the protection of the Pinelands National Reserve, or stick to our sworn oath to protect this world valued biosphere reserve is an opportunity to once again show the state, country and the world that we are up to the task.

The development of the Comprehensive Master Plan thirty years ago, was a monumental task and was based on years of documented research all of which you will find described in Volume 1. If you haven't read Volume 1 you haven't read the plan. The regulatory scheme represented by the CMP is designed to respond to the need to manage growth in a manner that works for future residents and for protection of critical resources.

In responding to the Federal Act (Section 502 of the National Parks and Recreation Act of 1978.) the New Jersey legislature delineated a Pinelands Protection area and internally a preservation area, all within the larger National Pinelands Reserve. Under these laws the Commission was created to plan and regulate development in the state delineated Pinelands Protection Area and to plan and comment in the larger National Reserve.

The preservation area is a highly sensitive area at the heart of the Pinelands protection area designed to virtually preclude future development including pipeline corridors. The dilemma faced by the Commission in developing a Plan (the CMP) for development and growth was that there were vast areas just as sensitive to human activity as the preservation area that needed to be given similar protection. As areas for various levels of management were designated these areas became the highly protected Forest Areas.

This application for a pipeline across a Forest Area of the Pinelands protection area is a way to get Pennsylvania natural gas to the coast. It is deemed necessary to convert a part time "peaking" power plant from coal and oil to a full time natural gas plant. It has been claimed that such a change in fuel will reduce the plants impact on climate change but that seems doubtful considering the full time use being described. This combined with the fact that the applicant plans to move far more gas than required for the repowering of the BLE plant and redundancy for the other customers has been arranged in the contract, raises many questions.

It has been claimed that this pipeline will have no impact on the pinelands ecology and/or the aquifer because it is in a ROW or under the road itself. Pipeline construction at this scale is a major development. It is not a question of making a neat little slit and dumping in a 24in. pipe and sealing it all up. It is major construction involving outside contractors, huge machines, extensive right-of way disturbance, storage areas and roadways. All the on-site independent observers cannot change what it takes to build this line across some of the most sensitive land in the Pinelands. Once started there will be no turning back.

The applicant and our Executive Director refer to the 1400 miles of SJG pipelines in the Pinelands area. They are serving the Pines and residents of south jersey they are generally smaller distribution systems and generally serving the needs of pinelands residents and business'.

One of the reasons the Federal and State Pinelands protection Acts were put in place was the fear that this less populated area of New Jersey would be the thruway for oil pipelines from offshore drilling anticipated at the time. Instead we have eager natural gas mongers trying to get to the coast for whatever purpose. Setting a precedent by allowing this line to cross the forest area with little or no advantage to Pinelands residents will forever haunt future commissioners. The interpretation of Volume 1 and the CMP will never be the same.

I join the four governors most responsible for the implementation of the federal and state Pinelands legislation as well as our former executive directors in urging you to stop this unlawful interpretation of the CMP.

This is a private project attempting to use an older peaking power plant as an excuse to use the Pinelands as an inexpensive corridor to move gas derived in another state to market. I see no long or short term public good coming from this project and therefore I vote no on this resolution.

Commissioner Mark Lohbauer's statement read at the February 24, 2017 Pinelands Commission Meeting

I'd like to thank the public for participating, and commenting. I'd like to thank Director Nancy Wittenberg and the staff for the hard work they have done to present this application to us, and respond to our questions. And I'd like to thank my fellow Commissioners for their patience to date in considering this subject. I ask for a few more minutes of your time, now.

Former Commissioner Witt submitted a comment that tried to address this divide. He was right when he said that the CMP is not anti-development. The CMP exists not to block all development, but rather to make sure that development happens where it should happen, and not occur where it should not. While I disagree with Commissioner Witt's statement that the framers of CMP intended gas pipelines to receive special consideration—that is not evident in the CMP document—it is true that the CMP does not prohibit pipelines, or other utility infrastructure. The Pinelands Commission has permitted them—this record shows that the Commission has allowed 6 prior pipeline developments to this applicant.

So, why the lengthy discussion about this application?

It's because the CMP does not allow development everywhere. It particularly restricts development in the protected Forest Area, and this application proposes to bury 10 miles of this pipeline in Forest Area.

Some argue that it's not true Forest Area; it's a roadbed. That's a meaningless distinction, and we should not be distracted by it. It's laudable that the applicant seeks to minimize disturbance to the trees of the forest by planning to build under pre-existing roadbed, but the forest is not just trees. The Forest Area is a conglomeration of trees, soils, streams, plants, animals, and habitat that together form the great natural filtration system that cleans and preserves our groundwater, beneath the trees... beneath the roadbed. It's all precious, and it's all protected.

The CMP does not prohibit us from authorizing development of utility infrastructure in the Forest Area; however, it frowns on that development, and sets a very high bar for us to follow when we consider such development: it tells us that the development must "primarily serve only the needs of the Pinelands."

The clash of the words "primarily" and "only" in that phrase are jarring. We're told that it was a mistake, that the original phrase "serve only" was intended to be modified to "primarily serve," and in the haste to modify, a mistake was made by leaving both words in place. However, in the now 30+ years of the CMP, no Pinelands Commission—not even us—have seen fit to change that phrase. I'm not so sure that we can simply dismiss a word that has always been in place in the CMP. So which standard should we apply? "Only," meaning exclusively, or "primarily," meaning "mainly". No NJ court has ever defined that standard. I believe that if an applicant can meet the less-restrictive standard of "primarily," then we are obligated to grant that application—however, that the applicant must pass a high bar in order to prove that the project "primarily" serves the needs of the Pinelands.

Why was the standard set so high? Because the initial reason for the passage of the Pinelands Act was not just a recognition of the unique nature of this forest, but of the reality that outside forces were interested in creating lateral development projects through it. If the Act had not been passed

when it had, projects might have occurred that would have used the Pinelands as a pathway to connect the Jersey coast with Philadelphia, and in the process, denigrated the forest. Commissioner Ashmun reminds us that there was interest in the 1970's to build an above-ground petroleum pipeline from the coast to the refineries of Philadelphia, and the Act prevented that.

Clearly, in passing the Act and formulating the CMP, it was recognized that while some development would be necessary, that when it came to the Forest Area, development should be the exception, and only happen when it was clear that the development was necessary to serve the needs of the Pinelands.

So, the Superior Court has sent this application back to us to answer just that question: Does this application “primarily serve only the needs of the Pinelands”?

I have considered the question from a variety of perspectives:

- Demand for electricity
- Reliable access to natural gas
- Protection from airborne emissions
- Bearing the cost of the pipeline
- Volume of gas
- Jobs and commerce
- Assuming the risks of harm from pipeline installation and operation

For each of these, I find that the facts show that this pipeline does not *primarily serve* the needs of the Pinelands:

The electricity goes to the users in the PJM grid, spread across 14 states

The gas reliability affects 142,000 customers of SJG, of which only 20,000 are in the Pinelands

The airborne emissions can be considered in several ways: the applicant likes to compare the emissions of the gas-fired plant with the current coal-fired plant; however, we all know that an Administrative Consent Order says that the operator of BLE has 3 choices to correct its bad emissions:

1. Add pollution controls to capture the emissions from coal-burning; (no pipeline required)
2. Switch to burning natural gas; or
3. Shut the plant down (No emissions; no pipeline required).

All three of those scenarios yield lower emissions than the current operation, so if that is a need of the Pinelands, a pipeline through our Forest Area is not the only way to achieve them. (By the way, the record tells us that the PJM grid does not anticipate or need the power generation of the BLE facility, and that since this application was filed, 3 other NJ power plants have opened created 2,000 Mega Watts of generation capacity in our State—4.5 times more than BLE would do.)

Another way to consider emissions would be to acknowledge that while a gas-fired BLE would greatly reduce the emissions of NO_x and SO_x as opposed to the coal-fired plant, it will emit far more volatile organic compounds and fine particulate. The record includes the statements of a professor from Rowan University who came here several times to warn us that the dangers of greenhouse gas emissions from a gas-fired plant were far greater to us, and equally if not more damaging to the Pinelands. (As you saw, I asked the

DEP about the effects of global warming on the Pinelands, and their response last evening was “*DEP is only aware of general peer-reviewed research that does not provide specific evidence of a detrimental impacts to the Pinelands region.*”

I looked to see who is paying for the pipeline, thinking that if the Pinelands derives the primary benefit, then Pinelands customers would pay for it. That is not the case. BLE will pay for only 40% of the cost of the pipeline, which I presume will be passed on to its customers—the vast majority of whom do not reside or have businesses in the Pinelands. The rest of the cost—60%-- will be paid by the people who buy gas from South Jersey Gas—these are the 142,000 customers in Cape May and Atlantic Counties, of which only about 20,000 are in the Pinelands.

The volume of gas might tell us who is benefitting from the pipeline. We are told in the Executive Director’s report that 125,000 Million Cubic Feet/day is what is needed to fuel the BLE plant. However, the record tells us, in the Standard Gas Service Agreement that the applicant has with the operator of BLE, that the amount needed for plant operations is 67,225 MCF/day—little more than half of 125,000 MCF. Also, the record tells us that the pipe is designed to handle 308,000 MCF/day, and with some modifications by SJG of other systems, it could handle 380,000 MCF/day—more than 5 times what BLE needs. NJ BPU has given SJG a permit to this pipeline to handle 380,000 MCF per day. So—whether it’s 2 times more or 5 times more gas than is needed by BLE, will that additional gas primarily serve the needs of the Pinelands? There is no evidence that it will.

As to jobs, I asked the applicant whether they can find 3 firms that do Horizontal Drilling in the Pinelands... or whether they can buy pipe for this project from a supplier in the Pinelands... or whether they will hire workers for this project from the Pinelands... and their answer is “No, they are not required to do this.” So the Pinelands will not be primarily served with jobs.

So, who bears the risk of harm from:

1. installation disturbances,
2. spills of bentonite slurry from the Horizontal drilling process;
3. spills of contaminated test-water from the 2.5 million gallons of water that will be used to pressure-test the completed sections of pipeline;
4. removal of a 10-mile swath of Forest Area soil that will be displaced by the pipeline;
5. possible puncturing of clay layers that could drain wetland habitat;
6. de-watering of groundwater from trench sites where pipe must be laid, not installed by HDD;
7. leaks of methane gas from a pipeline that will be immersed in the aquifer—and which, by the way, hydrologists have told us on the record will dissolve and interact with groundwater, contrary to the representations of the applicant and the DEP...

The answer to that one is, exclusively the Pinelands; primarily the Forest Area.

I find no evidence that this pipeline primarily serves the needs of the Pinelands.

Finally, one other point: this pipeline begins at a point outside of the western boundary of the Pinelands, traverses eastward through the Forest Area of the Pinelands, and passes outside of the eastern boundary of the Pinelands into the Pinelands Reserve. While inside the Pinelands, it makes no connection to users there. This, to me, is the definition of lateral development that the

Pinelands Act sought to prevent. This does not benefit the Pinelands; it uses the Forest Area to move product from one side of the Pinelands to the other.

If we decide to approve this application today, it will set a precedent for what is meant by “primarily serve only the needs of the Pinelands.” We will be lowering that high standard to a very low bar, that any utility will be able to point to and rely upon to get approval for their development laterally through the Pinelands. That would be catastrophic, and completely against the intent of the people who gave us the Pinelands Protection Act and the CMP.

I urge my colleagues to follow the advice of:

- The three Executive Directors: Terrence Moore, John Stokes, and the January 2014 Report on this application by our Director Nancy Wittenberg, all of which found this application to be contrary to the intent of the CMP;
- Four prior Governors, all of whom find this application contrary to the intent of the CMP; and
- The advice of experts who have spoken and written to us about the potential detriment to the Pinelands of this project.

I vote “No” on this application.