

Disclaimer

These minutes reflect the actions taken by the Commission during its April 7, 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 April 21, 2017.

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

MINUTES

**April 7, 2017**

Commissioners Present

Candace Ashmun, Alan W. Avery Jr., Bob Barr, Giuseppe Chila, Paul E. Galletta, Jane Jannarone, Mark Lohbauer, Ed McGlinchey, Richard Prickett, 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

Bill Brown, Ed Lloyd and D'Arcy Rohan Green.

Commissioners Absent

Gary Quinn

Chairman Earlen called the meeting to order at 9:34 a.m.

DAG Moriarty read the Open Public Meetings Act Statement.

Executive Director Nancy Wittenberg called the roll and announced the presence of a quorum. (There were 13 Commissioners who participated in the meeting.)

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

Chairman Earlen said that the Commission's federal appointee Commissioner Frank Hays passed away on March 3, 2017. He asked Commissioners, staff and the public to join him in a moment of silence.

#### Minutes

Chairman Earlen presented the minutes from the February 24, 2017 Commission Meeting. Commissioner Lohbauer moved the adoption of the minutes. Commissioner Prickett seconded the motion.

The minutes of the February 24, 2017 Commission Meeting were adopted by a vote of 13 to 0.

#### Committee Chairs' Reports

Commissioner Avery said the March 28, 2017 Personnel and Budget Committee was canceled. He said the Audit Committee held a brief telephone conference to discuss the purchase of new accounting software.

Commissioner McGlinchey said the Agriculture Committee meeting was canceled due to the ongoing litigation with the Pinelands Preservation Alliance regarding Tuckahoe Turf farms. The Agriculture Committee was planning to discuss possible rules regarding field sports in the Agricultural Production Area, and the Committee was advised to hold off until the litigation is resolved.

Chairman Earlen provided an update on the March 24, 2017 Policy and Implementation Committee Meeting:

The Committee adopted the minutes of the October 25, 2016 meeting.

The Committee recommended the certification of ordinances from two municipalities:

Egg Harbor City - Ordinance 2-2017 (digital signs)

Waterford Township - 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7. These ordinances adopt a revised redevelopment plan for the Haines Boulevard Redevelopment Area and amend zoning boundaries and PDC requirements in the Regional Growth Area.

The Committee received a presentation from NJDEP regarding the construction of barriers to protect vernal ponds at Wharton State Forest from vehicular destruction. The Committee discussed forming a subcommittee to determine what protective measures can

be taken by the Commission, including use of a map to designate areas in Wharton that are inappropriate for motor vehicle use.

Chairman Lohbauer expressed an interest in serving on the subcommittee.

The Committee authorized \$500,000 for a new round of land acquisition through the Pinelands Conservation Fund.

The Committee had a brief discussion about funding sources to buy Pinelands Development Credits.

#### Executive Director's Reports

ED Wittenberg updated the Commission on the following:

- The National Park Service has named Bob Krunemaker as the temporary replacement to fill Commissioner Hays' seat on the Commission. A call has been set up for next week to provide Mr. Krunemaker with an overview of the Commission.

Director Larry Liggett provided information on two items that will be discussed at upcoming Policy and Implementation (P&I) Committee meetings:

- Wireless providers are interested in installing small network nodes or "microcells" onto telephone poles to provide sufficient coverage for data usage to stream movies and other content. Staff met with Verizon, and it looks like a plan amendment will not be necessary as they will not be using poles above a height of 35 feet. Staff also met with Mobilitie, who is representing Sprint. Mobilitie has a different approach and, although most of the towers they are proposing are outside of the Pinelands, the plan will need to be amended to incorporate the towers in the Pinelands Area because they exceed 35 feet in height. Ocean County is having difficulty citing a tower, which will require the New Jersey State Office of Information Technology's (OIT) Comprehensive Public Safety Tower Plan to be amended.
- Winslow Township has requested that the Commission take into account the Township's water conservation efforts in its interpretation of the existing Memorandum of Understanding between the Commission, Winslow Township and the Camden County Municipal Utilities Authority.

Commissioner Ashmun suggested reviewing the current cell tower plan standards at an upcoming P&I meeting.

Director Chuck Horner updated the Commission on the following:

- Staff met with Monroe Township officials to discuss a development application involving parcels that were rezoned after a municipal approval was granted.
- Ocean County has filed an application with the Commission for a park-and-ride facility at Route 539 and the Garden State Parkway in Little Egg Harbor Township. The application will go before the Commission in the coming months.
- Staff is working on two different applications that involve development associated with active agriculture operations.

Paul Leakan said the Commission held its 28<sup>th</sup> Annual Pinelands Short Course at Stockton University. There were 574 attendees, which is 138 more than last year. The Commission is currently planning a Summer Pinelands Short Course at Kramer Hall in Hammonton on July 27, 2017.

Chairman Earlen asked about the status of the interpretive center.

Mr. Leakan said the Commission had to hire an architect as part of the state permitting process. Once the permit application is submitted to the state, a 21-day review period begins. Split Rock has completed 75% of the AutoCAD drawings, which will be used to generate the construction of the exhibit. Staff is working to acquire artifacts for the exhibits and recently met with the Joint Base to discuss borrowing specific items, including a bog iron cannon ball.

Stacey Roth reminded Commissioners that Financial Disclosure Statements must be filed by May 15<sup>th</sup>.

Commissioner Avery asked if there was a different review process or standards for private towers and public service towers.

Director Liggett said the only difference between the two is the siting process for emergency service towers. He said the siting measures will be discussed as part of the plan amendment for the OIT plan. The CMP standards are the same for all types of towers.

Commissioner Chila said Gloucester County recently upgraded its public safety communications system to a 700MHz band. He suggested looking at different approaches to public safety telecommunications.

#### Resolution to Retire into Closed Session

DAG Moriarty read a resolution to enter into closed session to discuss the Pinelands Preservation Alliance (PPA) request for a Stay on Resolution PC4-17-03 related to the South Jersey Gas matter. Commissioner Lohbauer made a motion to enter into closed session. Commissioner McGlinchey seconded the motion. The Commission agreed to retire into closed session by a vote of 13 to 0, beginning at 10:15 a.m.

#### Return to Open Session

The Commission entered back into open session at 10:36 a.m.

Chairman Earlen presented resolution regarding the Stay Motion.

Commissioner Barr moved the adoption of a resolution Issuing a Final Decision Denying the Motion to Stay Pinelands Resolution No. PC4-17-03 Filed with the Pinelands

Commission on Behalf of the Pinelands Preservation Alliance (See Resolution # PC4-17-04). Commissioner Galletta seconded the motion.

DAG Malone said the resolution before the Commission is to deny PPA's stay motion based on reasons in the attached Order. He said a yes vote would be in favor of denying the stay motion.

Commissioner Lohbauer said he plans to vote no on this resolution because he feels the pipeline will cause irreparable harm to the aquifer, the process did not allow the public adequate time to comment and the project does not serve only the needs of the Pinelands because it does not serve a business in the Pinelands.

Commissioner Avery said nine members of this Commission voted in favor of the South Jersey Gas pipeline application during the February 24, 2017 Commission meeting. He said he believes that was the right decision and especially now after the PJM made a determination requesting the BL England plant to remain open to meet the needs of the grid. He said the public has had ample time to voice their opinions over a number of years and specifically on the application that was remanded back to the Commission. He said many of the comments were outside the scope of the CMP. He said he supports the resolution to deny the stay motion.

Commissioner Ashmun said she will be voting no on the resolution. She said none of the documents she has read have described the impact the construction of the pipeline will cause.

Commissioner Galletta said he agrees with Commissioner Avery. He commended the Attorney General's office for its work on the Order. He said nothing has changed since the vote in February; therefore he supports the resolution denying the Stay.

Commissioner Jannarone said she also agrees with Commissioner Avery. She said the public has had plenty of opportunities to comment on this application.

Commissioner Chila thanked the Attorney General's office for defending the claim that his membership in the International Brotherhood Electrical Workers (IBEW) union created a conflict of interest. (It was determined that Commissioner Chila does not have a conflict of interest in the matter.)

Commissioner Lloyd and Commissioner Rohan Green both stated they intend to vote no.

ED Wittenberg called the vote.

The Commission adopted the resolution by a vote of 8 to 5.

#### Public Development Projects and Other Permit Matters

Chairman Earlen presented a resolution recommending the approval of a public development application for the development of a 190 foot high communications facility.

Commissioner Avery moved the adoption of a resolution Approving With Conditions an Application for Public Development (Application Number 2003-0319.003) See Resolution # PC4-17-05). Commissioner Galletta seconded the motion.

Commissioner Prickett asked if this was the same parcel on which the Commission recently approved a municipal parking lot.

Mr. Horner said yes.

Commissioner Lohbauer said staff did a good job addressing the public comment for this application.

The Commission adopted the resolution by a vote of 13 to 0.

#### Municipal Master Plan and Ordinances

Chairman Earlen presented a resolution recommending the certification of Egg Harbor City Ordinance 2-2017.

Commissioner Prickett moved the adoption of a resolution Issuing an Order to Certify Ordinance 2-2017, Amending Chapter 170 (Land Use and Development) of the Code of Egg Harbor City (See Resolution # PC4-17-06). Commissioner Avery seconded the motion.

The Commission adopted the resolution by a vote of 13 to 0.

Chairman Earlen presented a resolution recommending the approval of Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7.

Commissioner Galletta moved the adoption of a resolution Issuing an Order to Certify Waterford Township's 2015 Housing Element and Fair Share Plan and Ordinances 2015-17, 2016-25, 2017-6 and 2017-7, Adopting a Redevelopment Plan for the Haines Boulevard Redevelopment Area and Amending Chapter 176 (Land Use, Development and Zoning) of the Township's Code (See Resolution # PC4-17-07). Commissioner Barr seconded the motion.

The Commission adopted the resolution by a vote of 13 to 0.

Commissioner Brown said he had to leave and ended the call.

#### Public Comment on Agenda Items and Pending Public Development Applications

Georgina Shanley of Ocean City, NJ, said the public was shut out of the January Commission meeting and had no opportunity to comment on the South Jersey Gas pipeline matter. She plans to take action to stop the construction of the pipeline.

Bill Wolfe of Bordentown, NJ, said he raised concerns about staffing levels at the last Personnel and Budget Committee. He also questioned the amount of money the Commission could recoup from the applicant when so much staff time and resources are spent on an application. He said the CMP requires that the natural resources of the Pinelands be protected, which means the effects of climate change need to be evaluated.

Commissioner Jannarone asked why some members of the public were unable to get into the January meeting.

Ms. Wittenberg said that the state fire marshal was responsible for the room capacity and he said the room was full.

Jeff Tittel of New Jersey Sierra Club expressed his dissatisfaction with the South Jersey Gas pipeline application process.

William Richardson, Mayor of Waterford Township, commended Commission staff for the professionalism displayed during the application process for the town's two applications. He thanked the Commissioners for voting in favor of Waterford's cell tower application and redevelopment plan.

Bob Filipczak of Linwood, NJ said that changing the BL England plant from coal to natural gas will not improve air quality.

Arnold Fishman of Medford Lakes, NJ, said that during the January Commission meeting, he noted to the Chairman that there were available seats.

Katie Smith of the Pinelands Preservation Alliance said she recently reviewed the Taunton Lakes road widening application. She commended staff for a thorough review of the stormwater management facilities. She said the South Jersey Gas pipeline application followed a flawed process and the decision was wrong.

Emile DeVito, New Jersey Conservation Foundation, said he supports a map at Wharton depicting roads where vehicles would be permitted. He said wetlands and ponds continue to be destroyed and the Commission should not wait for pond surveys to be completed before adopting a map. He said climate change is causing snakes to come out of their dens earlier. He said Enduro events need to be held earlier and scaled back so snakes do not get injured.

Greg Langan said he was a past Chief Ranger at Wharton State Forest and would like to help with a road closure map.

Commissioner Prickett said the map is not a road closure map it is a road access map.

Marianna Samaro of Shamong, NJ, raised concerns about the impacts the construction of the pipeline will have. She asked if any research has been done on the harmful effects of cell towers, specifically radiation.

Ordinances Not Requiring Commission Action

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

- Bass River Township Ordinance 2017-02
- Buena Vista Township Ordinance 40-2017
- Hamilton Township Ordinance 1842-2017
- Jackson Township Ordinances 3-17 and 4-17
- Manchester Township Ordinance 17-002
- Monroe Township Ordinance O:08-2017
- Plumsted Township Planning Board Resolution 2016-09
- Waterford Township Ordinance 2017-2

Commissioner Avery asked if Jackson Township was a certified Pinelands municipality.

Ms. Susan R. Grogan said Jackson is certified, noting that all Pinelands municipalities are certified.

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

Debbie Ewan of Waterford Township, NJ spoke about her application to convert an existing structure on her property into a single family dwelling. See handout.

Mr. Horner said this is an ongoing violation of the Township's land use ordinance and he did not want to get into the particulars of the application because the application may come before the Commission.

Georgina Shanley of Ocean City, NJ spoke about the reasons given by several Commissioners for voting for or against the pipeline application.

Bill Wolfe spoke about the importance of the Pinelands Act. Mr. Wolfe began to discuss the lawsuit filed by Commissioner Jannarone, referring to it as a "SLAPP" suit intended to intimidate the public. Chairman Earlen asked Mr. Wolfe to refrain from speaking about pending litigation.

Temma Fishman of Medford Lakes, NJ, said burning fossil fuels drives climate change. She read a statement into the record about her dismay over the South Jersey Gas pipeline decision.

Arnold Fishman said the Commission and public lost \$8 million of protection when the Memorandum of Agreement was not approved.

Chairman Earlen said he had to leave the meeting. Before he left he apologized to Commissioner Jannarone, Commissioner Barr and Nancy Wittenberg for the threats and harassment that they were subjected to during the South Jersey Gas application review process.

Chairman Earlen and Commissioner Jannarone left the meeting at around 11:45.

Connie Higgins of Long Beach Island, NJ, asked the Commissioners who voted in favor of the pipeline to provide the rationale for their vote.

Bob Filipczak of Linwood, NJ, spoke about various projects including Exit 44 on the Garden State Parkway that required stormwater management facilities. He expressed his dissatisfaction with the NJDEP stormwater rules. (Handout attached)

Jeff Tittel of the New Jersey Sierra Club read something from his cell phone about the needs of the grid, PJM and the BL England plant. He referred to a letter from the PJM, which he offered to provide to the Commission. He said BL England has not applied to the Basic Generation Service (BGS) auction.

Emile DeVito of the New Jersey Conservation Foundation, said he recently conducted a prescribed burn at the Franklin Parker Preserve. He commended the New Jersey Forest Fire crew. He said all appropriate permits were obtained and he looks forward to the positive results the prescribed burn will have on threatened and endangered species.

Jason Howell of the Pinelands Preservation Alliance said the map initiative at Wharton will improve public access to the Pine Barrens. He suggested that the Commissioners should be taken on regular field visits in the Pinelands. He read 7:50-6.143(2) from the CMP.

Bill Wolfe of Bordentown, NJ, said the basis for Commissioner Lloyd's recusal on the MOA for the pipeline was based on appearance. He said two members of the Commission who voted in favor of the pipeline had relationships with organizations that would benefit from the construction of the pipeline. He said he disagrees with NJDEP's air quality analysis for the BL England plant.

ED Wittenberg advised the Commission that the CMP allows for the creation of escrow accounts to be established when an application requires considerable staff review time. She said an escrow has been created for the South Jersey Gas application and \$25,000 was submitted to the Commission.

Commissioner Avery clarified his earlier statement about what the Commission can and cannot consider in making a decision. He said when he makes a decision, it's based on the adopted standards of the CMP, rules that have gone through a public process. He said the CMP does not speak to fracking, climate change, global warming or disfavored uses. He said based on the record for the South Jersey Gas application, the application was consistent with the adopted standards contained in the CMP.

He added that the CMP specifically states that the Commission defer to the NJDEP for air quality review.

Commissioner Chila said in response to a public commenter, he will see no economic benefit from the construction of the pipeline to serve BL England. He said he does not work for the IBEW, they represent him. He works for an electrical contractor and the BL England plant is not in his local union's territory.

In response to Mr. Fishman's comment about the \$8 million associated with the MOA process, Commissioner Lohbauer said you cannot put a price on the Pinelands.

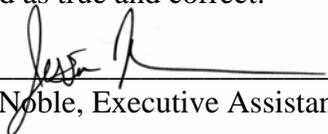
In response to Mr. Filipczak's comments about detention basins associated with Exit 44 on the Garden State Parkway, Commissioner Lohbauer said he regrets deferring to the NJDEP about stormwater management regulations.

Commissioner Galletta responded to Ms. Higgins' question about the rationale for Commissioners who voted in favor of the pipeline. He said he chose not to speak in favor of the application as the crowd would have prevented him from being heard. He said it was nearly impossible to hear because of the noise of the crowd.

#### Adjournment

Commissioner Lohbauer moved to adjourn the meeting. Commissioner McGlinchey seconded the motion. The Commission agreed to adjourn at 12:15 p.m.

Certified as true and correct:

  
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Jessica Noble, Executive Assistant

Date: April 18, 2017