

MOA POLICY ADVISORY COMMITTEE MEETING

Richard J. Sullivan Center
Terrence D. Moore Room
15 C Springfield Road
New Lisbon, New Jersey

April 24, 2015- 11:50 A.M.

MINUTES

MEMBERS IN ATTENDANCE: Chairperson Candace Ashmun, Paul E. Galletta, Edward Lloyd, Ed McGlinchey, Ernest Kuhlwein, Jr., Tiffany CuvIELLO (on behalf of Chuck Chiarello for the Pinelands Municipal Council), Fred Akers, Alan Avery (Commission Member Alternate) and Arnold N. Fishman, Esq. (Public Member Alternate)

OTHER COMMISSIONER PRESENT: Richard Prickett

STAFF PRESENT: Nancy Wittenberg, Larry Liggett, Susan R. Grogan, Chuck Horner, Paul Leakan, and Betsy Piner. Also present were Deputies Attorney General Kristen Heinzerling and Sean Moriarty and Amy Herbold with the Governor's Authorities Unit.

Chairperson Ashmun called the meeting to order at 11:55 a.m. She stated that this Committee would be examining the process for Memoranda of Agreement (MOA) but would not be discussing any specific MOAs. She said that an MOA is the mechanism by which a public agency can meet the needs of the public when they cannot be met in any other way consistent with the Comprehensive Management Plan (CMP). She noted that there are many kinds of agreements but these discussions will focus on the deviation agreements through which government agencies propose to meet a public need while providing an equal level of protection to the Pinelands in some other manner.

She said public comment would be welcome but she was limiting commenters to 3 minutes each and written comments were encouraged.

All present introduced themselves.

Ms. Wittenberg said that the meeting packet had contained an extensive January 16, 2007 memo written by former Executive Director John C. Stokes. The memo outlined the history of the MOA rules and provided a good starter for the discussions by this Committee.

Ms. Grogan said those efforts had grown out of the MOA with Stafford Township and Ocean County to authorize the closure of the Township landfill and the redevelopment of a business park. That MOA had raised many of the same issues that the Commission is dealing with today. She said Mr. Stokes' memo provided lists of active and proposed MOAs, the types of public and private partnerships with which the Commission had entered into MOAs and some potential changes to the MOA regulations. Ms. Grogan said the Policy and Implementation (P&I) Committee discussed the issues and, at the end, concluded not to make any changes to the MOA provisions of the CMP. She noted that not all the steps of the process are in the CMP other than the provisions related to a public hearing.

In response to a question from Mr. Akers that the deviation MOAs were not part of the original CMP, Ms. Grogan said the CMP was amended in 1994 as part of the second Plan Review to allow the deviation MOAs. She said prior to that amendment, a Waiver of Strict Compliance based on compelling public need was the route used by public agencies to advance their projects.

Commissioner Ashmun said proving compelling public need was difficult and sometimes not practical.

In response to Mr. Fishman, who referenced some minutes included in the meeting packet, Commissioner Ashmun said yes, the responsibilities previously held by the Public and Governmental Programs Committee has since been transferred to the P&I Committee.

Commissioner Ashmun referenced the packet item entitled *The Process for Considering an Intergovernmental Agreement, June 23, 2008* and said the Commission had never adopted the process although it is the one in current use.

In response to Commission Avery's question regarding the MOA provisions, Ms. Grogan said they were part of an extensive list of CMP amendments resulting from the 2nd Plan Review.

Commissioner Ashmun said she wanted the Commission to have an adopted procedure that involved the Commission early in the process. Furthermore, the 10 day notice of a public hearing was too short and should be revised. Lastly, there are no standards for what affords equal protection to Pinelands resources.

Commissioner Ashmun asked the Committee members for their concerns.

Commissioner Galletta said he wanted to clarify who is a suitable applicant.

Commissioner Avery said he echoed Commissioner Galletta's concerns. It is important that it be clear as to who is eligible to apply and that public entities with regulatory authorities remain eligible. He said they needed to answer what is a regulated public utility vs. what is a private entity. He said since there is difficulty in meeting a standard for compelling public need, those standards should be examined.

Commissioner McGlinchey said he shared the same concerns and wanted to know who should qualify to enter into an MOA and who provides the basic needs of the communities.

Commissioner Ashmun said most of what she is hearing is a need for clarification.

Mr. Fred Akers referenced the discussion of public purpose and said there needed to be a framework that clarified the limits of that public purpose, e.g., "in the Pinelands."

Commissioner Lloyd said he shared those comments but wanted a standard for equivalent level of protection. He cautioned that arbitrary action could expose the Commission to challenges and noted that former Commission Chairman, Jerrold Jacobs, himself a former utility executive, had said one of the greatest challenges to the protection of the Pinelands is its use as a corridor for public development. He added that he too felt the 10 day notice is inadequate and the Commission members needed to be involved early in the process.

Commissioner Ashmun said she had questions about alternative solutions to a problem. What about costs? Should the Commission be concerned with how expensive an alternative might be? How does the Commission determine what is a compelling public need? She said this undertaking will not be easy.

Commissioner Ashmun said that with the issue of impairment, maybe there are things other than wetlands that are impaired. As for linear development, the Pinelands Federal Act was written to avoid linear development across the Pinelands because it would be a cheap way to transport oil from offshore drilling to the refineries on the Delaware River. She said the goals of the Pinelands Protection Act will make some issues very clear. She said she saw this as a Committee that would meet a few times and work on the issues. For now, she suggested that the Committee first develop a process and, if a rule change becomes necessary, that could occur later, noting that rulemaking can take a year to complete.

Commissioner Galletta asked if Mr. Liggett could develop three models demonstrating examples of equivalent levels of protection.

Mr. Liggett said he had created five models. In many cases, one cannot apply an old model to a new situation.

Commissioner Ashmun asked that the next meeting be conducted without the public present and suggested that it follow the May 29, 2015 Policy and Implementation Committee meeting.

Mr. Fishman reminded those present that the term is “equivalent” protection, not equal protection; as an attorney, he had a different slant on those terms.

Mr. Akers said he supported not changing the CMP. Also, he said he found it compelling that, even with Mr. Stokes’ persuasive personality, his 2007 memo failed to lead to a change at that time.

Both Mr. Kuhlwein and Commissioner Lloyd said they had conflicts on May 29 and would be unable to attend the meeting.

Commissioner Avery said he understood the desire to have all these issues defined but he reminded everyone that deviation MOAs are, by definition, created under different circumstances, and any MOA is fact –based. One cannot define every issue that might come before the Commission.

PUBLIC COMMENT

Mr. Bill Wolfe said that MOAs should be the exception, not the rule. He said he did not think the Committee could legally proceed with changes to the MOA process without rules. He said he supported the concerns already expressed. He said, in fairness to the public, the Commission should put a moratorium on MOAs until the process is completed.

Ms. Marianne Clemente asked if Commissioner Prickett was a member of this Committee.

Commissioner Ashmun said he was here today as an observer.

Mr. Leakan posted the Committee membership on the Smart board.

Mr. Lee Rosenson said that part of the reason for the MOA process is the belief that the Waiver of Strict Compliance (WOSC) is too difficult. However, applicants avoid the WOSC process and use the MOA to get their projects through while trying to use terms like “urgent” and “extremely urgent” but not the word, “compelling.” He said the situation is a theater of the absurd to avoid the use of the term “compelling.” He said the Commission was dealing with a sham situation.

Ms. Fran Brooks, a Tabernacle Township resident, asked that the Committee provide an outline of all the key issues it will be addressing as that would be helpful.

Chairman Ashmun responded that such an outline will be drafted after the Committee's meeting with staff.

Ms. Clemente said the meeting needed to be more structured and asked about the status of the Committee alternates.

Chairman Ashmun stated that if a vote is taken, the count will be taken appropriately.

Commissioner Lloyd said Mr. Rosenson's comments were very astute. Historically, the MOA process has been discretionary on the part of the Commission.

Mr. Fishman asked if it would make sense to ask the public to submit questions for the Committee to consider.

Chairman Ashmun said she believed she had done so when she asked that comments be submitted in writing.

Mr. Leakan posted the appropriate contact email address on the Smart board: info@njpines.state.nj.us to which comments or questions may be sent to the Committee.

Ms. Wittenberg encouraged everyone to read Mr. Stokes' memo. She said some projects seem to be for the public good.

Chairwoman Ashmun asked the Committee to read the CMP provisions related to waivers and MOAs, noting there are two very different approaches.

The meeting adjourned at 12:50 p.m. (Moved by Commissioner Galletta and seconded by Commissioner McGlinchey.

Certified as true and correct:



Betsy Piner,
Principal Planning Assistant

Date: May 5, 2015