

Adopted May 25, 2012

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

Richard J. Sullivan Center / Terrence D. Moore Lecture Hall

15C Springfield Road

New Lisbon, New Jersey

April 27, 2012 – 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Mark Lohbauer, Leslie Ficcaglia, Paul E. Galletta (by telephone), Robert Jackson, Richard Prickett, Candace Ashmun (1st Alternate), D'Arcy Rohan Green (2nd Alternate)

OTHER COMMISSIONER PRESENT: Ed Lloyd (in audience)

STAFF PRESENT: Executive Director Nancy Wittenberg, Stacey Roth, Larry Liggett, Susan Grogan, Paul Tyshchenko, Ed Wengrowski, Nick Procopio, Paul Leakan, and Betsy Piner

Chairman Lohbauer called the meeting to order at 9:35 a.m. and noted that this was the first meeting of the CMP P&I Committee since he had designated new Committee assignments at the April 13, 2012 Commission meeting.

1. Adoption of minutes from the March 30, 2012 CMP Policy and Implementation Committee meeting

Commissioner Ficcaglia moved the adoption of the minutes of the March 30, 2012 CMP Policy and Implementation Committee meeting. Commissioner Jackson seconded the motion and all voted in favor.

2. Executive Director's Reports

Egg Harbor City Ordinance 5-2012, Amending Chapter 170 (Land Use and Development) of the City's Code in response to amendments to the Pinelands CMP related to forestry, wetlands management, and residential cluster development in the Pinelands Forest Area

Ms. Grogan said that Egg Harbor City Ordinance 5-2012 is the City's response to the recent CMP amendments related to forestry, wetlands management, and residential cluster development in the Pinelands Forest Area. She said that in most cases the municipalities have adopted the model implementing ordinances provided by the Commission. Those can be approved administratively by staff as they are exactly as written in the rules. However, Egg Harbor City has made a small, more restrictive change to the forestry standards so staff feels it appropriate to conduct a full formal review.

Ms. Grogan said that the City has aesthetic concerns with clearcutting activities and felt that the CMP standards related to buffers to clearcut areas were inadequate. Ordinance 5-2012 increases the buffer from the clearcut area to a road from 50' to 100' and for an internal property line to a neighboring property, to 200'. Ms. Grogan said that the 50' buffer was not ecologically based so the City's concerns were the same as that of the Commission, to protect the view.

She said that the report summarizes comment received from the Pinelands Preservation Alliance (PPA) regarding residential cluster development provisions in the Forest Area. Egg Harbor City's wetlands are severely constrained and PPA has indicated that there should be limited bonus clustering opportunities. Egg Harbor City did not have that concern and made no changes to the provision so staff is comfortable recommending this ordinance for approval.

Commissioner Ficcaglia said that it would be hard for the Commission to restrict the municipality if they are abiding by the CMP and that she did like the extension of the buffer.

Ms. Grogan said that in her many meetings with various municipalities, she has found that they are all interested in what others are doing. When she shares the various modifications such as Buena Vista's concern with limiting bonus densities (*Buena Vista Township Ordinance 14-2011*), the towns respond from a variety of perspectives and goals. Egg Harbor City was not concerned with the bonus units.

Commissioner Jackson moved the recommendation that the Commission approve Egg Harbor City Ordinance 5-2012. Commissioner Ficcaglia seconded the motion and all voted in favor.

**Town of Hammonton 2011 Master Plan Reexamination Report,
Amendments to the Land Use Element of the Town's Master Plan and
Ordinance 023-2011, Amending Chapter 175 (Land Use and Development) of
the Town's Code for purposes of adopting a Downtown Code and revised
Zoning Map**

Ms. Grogan directed the Committee to a large zoning map of the Town of Hammonton, specifically the downtown area along Route 54 and south of the White Horse Pike. It is for this area that, consistent with its Master Plan Reexamination Report, Hammonton has adopted Ordinance 023-2011 to recognize 7 different specific zones with different characteristics. She said that rather than relying on traditional zones with a listing of specific uses, Hammonton has adopted a form-based code. It provides standards for building design, including the type of building permitted in each of these districts, number of floors, setbacks, rooflines, etc. Within these districts, the use is not the focus, but the form. This is an attempt to maintain a vibrant downtown area and it is an interesting approach, also taken by Pemberton Township for the Browns Mills area. She said that it works well in existing downtowns. She said that all the changes are within the Pinelands Town management area of Hammonton and are permitted and appropriate.

She said that when the map was provided to staff, it became apparent that there were some very minor corrections made to Pinelands Management Area designations for a number of split lots between Pinelands Town (PT) and Agricultural Production (APA) management areas. Hammonton has proposed changing the management area boundaries to follow the lot lines with a net increase of roughly 0.5 acres to the PT. Staff does not see an issue but felt it appropriate for the Commission to be aware of these changes.

Chairman Lohbauer said that he works with form-based code in his business and he commended Hammonton for having taken this step. He said that a community is at a disadvantage when it has to compete with malls. Hammonton deserves recognition for taking this step to stimulate mixed use development in this portion of the Town.

Commissioner Ashmun moved the recommendation that the Commission approve Town of Hammonton's 2011 Master Plan Reexamination Report, Amendments to the Land Use Element of the Town's Master Plan and Ordinance 023-2011. Commissioner Jackson seconded the motion and all voted in favor.

New Jersey State Office of Information Technology's Comprehensive Public Safety Tower Plan for Pinelands

Mr. Liggett said that the siting of cell towers is a two-step process. Step 1 is the approval of a Plan that will allow an increase in tower height from 35' to 200' in certain height-restricted areas. These Plans are not site plans, rather they are plans with which the Commission agrees that the provider has demonstrated that there is a gap in coverage in an area. It is at step 2, the application process, when the Commission determines if the tower can actually be sited at a particular location. The providers are asked to provide in their Plans, applicable search areas (e.g., in this case they said a 1-mile radius) where they can demonstrate the need for a tower in order to provide adequate service. Following the approval of a Plan, the provider can seek a site within those search areas and then submit an application. Mr. Liggett said that it was difficult to determine where the technology will go in the future. In the early days, it was only coverage for phone calls that was needed; now it has become a capacity issue to deal with the increased types of data transmissions.

In response to Commissioner Ashmun's question if there were no expiration of these approved Plans, Mr. Liggett said that there is not. The only issue would be in the case of the abandonment of a tower which is no longer needed. In such a case, the rules obligate the provider to remove it.

Additional questions from the Committee related to the ultimate height of the towers. Mr. Liggett explained that the height of a tower will be determined at the time the site is selected and most are less than 200'. The Commission chose to limit the height of towers to 200' as, beyond that, Federal Aviation Administration rules require appropriate lighting and perhaps certain paint colors to protect aviation.

In response to Commissioner Jackson's concern that the Commission should know the specific site before approving a Plan, Mr. Liggett said that the provider is required to demonstrate that there is a legitimate need for an additional tower in order to deliver service. The provider will need to secure a site and that might be very difficult as there are multiple provider partners and not only must a site be suitable for all, but it must be available. He said that staff tries to offer caution in advance of areas to be avoided, e.g., the Forked River Mountains.

Mr. Tyshchenko made a PowerPoint Presentation (*Attachment A*) on the Office of Information Technology's Public Safety Tower Plan for Pinelands (OIT Plan). He reviewed the history, the review process and the number and proposed search area locations of towers within the OIT Plan. He said that of particular concern to the Commission are Site Numbers #19 (proposed to be sited in the PAD of Washington Township within the Wharton State Forest [preserved lands; does not meet siting and visual criteria]) and #21 (exceeds the 200' height restriction). In addition, public comment raised issues with tower #41 (within the Forked River Mountains 5-mile buffer zone). However, there is a nearby mine and a tower currently in the Forked River Mountains zone that could be used or could be removed and a replacement tower built at this mine location.

Commissioner Ashmun expressed concern that the Commission was sending a mixed message by approving a Plan and then denying these two towers.

Mr. Tyshchenko said that if there are sites that are not consistent with the CMP specific siting requirements, their applications will undergo an "alternatives" analysis to make them so.

In response to a comment from Chairman Lohbauer that, if it appeared impossible to site tower #19, why should the Commission approve such a Plan, Mr. Tyshchenko said that the P&I Committee could recommend a conditional approval of the Plan including the exclusion of tower #19. However, DEP has been a Plan participant from the beginning and has, at least implicitly, agreed to consider the release of the deed restriction and granting a diversion from the Green Acres Program when the specific site is identified for tower #19.

Ms. Roth stated that the purpose of the Plan is to demonstrate a need for towers. This will allow the provider to submit an application for a tower. One doesn't know how technology will change and how it will look in ten years. But, if a tower is not included on a Plan, an application cannot be submitted. By approving a Plan, the Commission is saying that it agrees that there is a need.

In response to Commissioner Ashmun's statement that she saw nothing in the Executive Director's (ED) Report indicating a need, Mr. Tyshchenko said that the signal propagation maps which are in the OIT Plan, not the ED Report, demonstrate areas that lack available service and identify the sites where towers will cure that situation.

Commissioner Jackson said that he saw no evidence that DEP had looked at fire towers for siting. Furthermore, coverage for every emergency was not needed.

Mr. Tyshchenko said that the CMP requires, and OIT and V-Comm (OIT's radiofrequency consultant) had confirmed the necessity of all sites and would consider existing structures.

Ms. Grogan added that if the fire towers are in the right locations, OIT will need to use them.

Mr. Tyshchenko said that the Commission had a GIS layer with fire towers but it was unlikely that there was a suitable fire tower within the search area for proposed tower #19.

Commissioner Rohan Green said that she felt that this was a need issue and not within the Commission's purview to judge. She commended PPA for recognizing the inappropriate siting of an additional tower #41.

Mr. Tyshchenko said that the Commission did not have the technological expertise to second guess the demonstrated need. He added that staff shared PPA's concern and that the CMP would not permit another new tower within the Forked River Mountains buffer area.

In response to Commissioner Prickett's question if there were a possibility of replacing a single tower at site #19 with two shorter towers, Mr. Tyshchenko said that ultimately, locating that tower will depend upon the DEP release and diversion. Two shorter towers may impact less on the viewshed and may blend in better with the horizon. Typically this can be demonstrated through computer simulation or a balloon test.

Commissioner Prickett then asked if using two shorter towers instead of one would allow one such tower to be located outside the Preservation Area. Ms. Grogan responded that it likely would not, as the management area boundary is some distance away.

Commissioner Jackson moved the recommendation that the Commission approve the New Jersey State Office of Information Technology's Comprehensive Public Safety Tower Plan for Pinelands. Commissioner Rohan Green seconded the motion and all voted in favor with the exception of Commissioner Ashmun who voted against it.

3. Discussion of a proposed agreement with USGS to complete a Rapid Assessment of Uncapped Landfills within the Pinelands Area

Mr. Wengrowski introduced Mr. Tim Reilly, a USGS Research Hydrologist, who is available today for questions. Mr. Wengrowski said that Mr. Reilly had been most helpful in reviewing the Hammonton and Buena Borough (wastewater) land application sites and had provided assistance far beyond that requested.

Mr. Wengrowski made a PowerPoint Presentation (*Attachment B*) on the proposed agreement with USGS to complete a rapid assessment of uncapped landfills within the Pinelands Area. He discussed the history, CMP capping requirements and status of Pinelands landfills, noting the presence of some 60 legacy landfills, those that lack the engineering controls typical of modern landfill design. He noted five landfills that have received impermeable caps to date and Winslow Landfill is in the final design stage for the installation of an impermeable cap.

Mr. Wengrowski said that in the summer of 2010, he and an intern performed a pilot demonstration project in which they accessed NJDEP file documents to compile data on six select Pinelands landfills. They compiled data on monitoring wells, compared the monitoring results to water quality standards, and performed GIS analysis of onsite and adjacent landscape to identify potential leachate receptors.

The proposal before the Committee today is a joint funding agreement between USGS and the Pinelands Commission to expand upon that project and determine the status of the uncapped landfills. The project anticipates three categories of these landfills: 1. environmentally benign for which long term ground water monitoring (but no extensive engineering controls) are required; 2. insufficient data to determine need for remedial action, thus additional data are required; and, 3. a demonstrated risk to public health/environmental receptors requiring need for extensive engineering controls. Mr. Wengrowski said that, if authorized, this study will exclude landfills already under evaluation by another entity, e.g., DEP or EPA.

Mr. Wengrowski noted the value of capped and redeveloped landfills in terms of protecting the environment and public health but also as an asset for development potential in appropriate management areas.

Chairman Lohbauer said that he thought that DEP had been monitoring landfills all along.

Mr. Wengrowski responded that DEP has extensive files and at one time had a team of geologists. Due to staff reductions, they no longer have the resources for such monitoring. The \$180,000 funding for the project will come from unexpended USGA funds from the Buena Borough MUA wastewater infiltration site project, unexpended Commission funds from the same project and from a fund contribution from Stafford Township related to the landfill solar facilities project.

Ms. Wittenberg said that she would be meeting with DEP on the project next week to access the files.

Mr. Liggett said that there are hundreds of sites State-wide that could be monitored and DEP is focusing on sites worse off than these landfills. He noted that Trevan Houser, who is working on the Estell Manor Landfill, was in the audience today.

Commissioner Rohan Green noted that there has been no compensation from the responsible industry for the capping, if required..

Ms. Wittenberg said that since 1980, landfills have been required to have funding for proper closing.

Chairman Lohbauer said that the staff had done sound work and found a funding source.

In response to questions from Commissioner Prickett, Mr. Wengrowski said that none of these are Superfund sites.

Commissioner Ficcaglia moved the Committee's recommendation that the Commission authorize the Executive Director to enter into an agreement with the USGS to include matching funds from the USGS to assist the Commission in performing a rapid assessment of uncapped landfills within the Pinelands Area. Commissioner Rohan Green seconded the motion and all voted in favor.

4. Update on Kirkwood/Cohansey Water Supply Planning/Policies

- **Commission staff update**

Dr. Procopio presented an update (*Attachment C*) regarding the process of revising current Commission policies dealing with groundwater withdrawals from the Kirkwood-Cohansey aquifer. Recommendations will be based on results of the Kirkwood-Cohansey research studies and will focus on setting impact thresholds at the local scale in order to minimize impacts in wetlands and at the watershed level in order to minimize the impacts to streamflow.

- **Presentation by the Pinelands Preservation Alliance on the result of its forum on Kirkwood-Cohansey water supply planning**

Mr. Carleton Montgomery, PPA Executive Director, distributed materials (*Attachments D-1, D-2 & D-3 to File Copy Only*) from PPA's 2-day forum (March 13, 2012 & March 20, 2012) on Kirkwood-Cohansey (K-C) Water Supply Planning. He said that the forum was motivated by the special nature of the K-C aquifer and the need to protect Pinelands resources. He stated that although it is illegal to send water to Pennsylvania, each day much water from the K-C aquifer is sent to the Atlantic Ocean. He said that there are nearly 3,000 monitored wells (public supply, agricultural or otherwise monitored) utilizing the K-C aquifer and many more private household wells, with additional wells being added continually. As most water uses are consumptive/depletive, it is time for a regional and science-based discussion of how the Pinelands Commission and DEP regulate water for the purpose of sustainability.

Mr. Montgomery said that there are other water resources and that there is a strong consensus that the K-C should be considered as the last option as a water source. He

said that there need to be feasible measurements that are sensitive to rivers and the ecology that they sustain. The DEP and the Commission need to do pro-active planning. He said that no one knows how much water has been lost already from the K-C or the trajectory of those losses. He said that the next step will be a report on the Forum, and an expansion of the discussion. He said that this is a complex issue and PPA hopes to develop a group that can determine how useful the results of the Commission's K-C study will be. He said that the Commission needs confidence that it can accommodate all growth in the Pinelands without impacting the K-C aquifer.

Commissioner Jackson said that the public needs to understand what is at risk.

Commissioner Prickett said that people do not think about the cost of water and don't realize that wetlands cleanse water. We need to secure clean water for future generations.

Commissioner Rohan Green said that the very existence of the Pinelands is based on the preservation of water.

5. Public Comment

Mr. Rich Bizub, with the PPA, said that the Water Supply Master Plan (the Plan) has always focused on water deficit, storage, transportation, etc. but has never had an ecological component. He said that although he was glad to hear that DEP is looking at the ecological component, the Plan has never had any "teeth". He said that when PPA has reviewed water allocation permits and commented that proposals were inconsistent with the Plan, the response was always that the Plan is a guidance document. He said that he didn't see that the current Plan was changing so, it will be up to the Pinelands Commission to protect Pinelands resources.

Mr. Bizub also referenced Mr. Wengrowski's presentation on landfills and asked if any of the five having impervious caps have demonstrated improved water quality. He said that several years ago he had looked at data on Evesham's capped landfill and saw no improvement.

Mr. Liggett responded that Ocean County has information that showed improved water quality.

Mr. Fred Akers, with the Great Egg Harbor Watershed Association, noted the dedication of the members of the P&I Committee who must review materials at the Committee level and then again at the Commission level. He said today's agenda was quite ambitious, that he always enjoyed the presentations, and that he particularly enjoyed Mr. Tyshchenko's presentation of the proposed cell tower Plan, noting that this is a complicated issue as technology is changing. He noted his disappointment that Commission members had been discouraged from attending the PPA Water Supply Forum. Finally, he stated that events such as the Atlantic County Utilities Authority Earth Day celebration were good opportunities to help members of the public understand water issues.

6. Other Items of Interest

Ms. Roth reminded the Commission members that the Financial Disclosure Statements are due on May 15, 2012 and there is a \$50/day penalty for failure to comply.

There being no other items of interest, the Committee adjourned at 12:30 p.m. (moved by Commissioner Jackson and seconded by Commissioner Ficaglia).

Certified as true and correct:

Betsy Piner, Principal Planning Assistant

Date: _____
May 9, 2012

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Richard J. Sullivan Center / Terrence D. Moore Lecture Hall
15C Springfield Road
New Lisbon, New Jersey
April 27, 2012 – 9:30 a.m.

SUMMARY

The Committee adopted the minutes of the March 30, 2012 meeting.

The Committee recommended that the Commission approve the following:

Egg Harbor City Ordinance 5-2012 – response to CMP amendments related to forestry, wetlands management and clustering

Town of Hammonton 2011 Master Plan Reexamination Report, Amendments to the Land Use Element of the Town’s Master Plan and Ordinance 023-2011 adopting a Downtown Code and Revised Zoning Map

and

New Jersey State Office of Information Technology’s Comprehensive Public Safety Tower Plan for Pinelands

The Committee recommended that the Commission authorize the Executive Director to enter into an agreement with the United States Geological Survey (USGS) to include matching funds from USGS to assist the Commission in performing a rapid assessment of uncapped landfills within the Pinelands Area.

The Committee received a presentation by staff and by the Pinelands Preservation Alliance on Kirkwood/Cohansey water supply policies.

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