



State of New Jersey

THE PINELANDS COMMISSION

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CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

Nancy Wittenberg
Executive Director

**AMENDED REPORT ON AN APPLICATION FOR MAJOR
PUBLIC DEVELOPMENT**

July 25, 2011

Mayor Chuck Chiarello
Buena Vista Township
P.O. Box 605
Buena, NJ 08310

Please Always Refer To
This Application Number

Re: Application #: 2009-0180.001
Block 4529, Lot 4
Block 4530, Lot 1
Route 40, Fir Avenue &
Greenbriar Avenue
Buena Vista Township

Dear Mayor Chiarello:

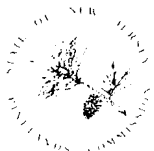
The Commission staff has completed its review of the above referenced application. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its August 12, 2011 meeting.

FINDINGS OF FACT

This application is for improvements to an existing municipal park located on the above referenced 1.71 acre lot in Buena Vista Township. The proposed improvements are the development of two stone parking areas, totaling 7,400 square feet, a 1,015 square foot gazebo, and 1,284 linear feet of sidewalk. The proposed development is located in the Pinelands Village of Richland.

All of the improvements subject of this application occurred prior to 2006 and prior to completing an application to the Commission. This development constitutes a violation of the application and approval requirements of the Pinelands Comprehensive Management Plan (CMP). This application is to resolve the violation. Hereinafter, the development referenced in this Report as proposed refers to development that has already occurred on the parcel.

The Commission staff issued a Report on an Application for Public Development on June 20, 2011 for the proposed development. On June 24, 2011, the Commission staff issued a corrected copy of the Report on an Application for Public Development which corrected the staff's response to a



www.nj.gov/pinelands

General Information: Info@njpines.state.nj.us

Application Specific Information: AppInfo@njpines.state.nj.us * 2 0 0 9 0 1 8 0 . 0 0 1 *

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public comment on page 2 of the Report regarding the need for a cultural resource survey for the project. Since issuance of the June 24, 2011 report, the Commission has received additional written comments from two individuals and verbal comments, provided at the Commission's July 8, 2011 meeting, from three individuals. This Report is being amended to include the summaries of public comment received orally and written between June 24, 2011 and July 8, 2011 and provides the staff response to those comments.

The proposed development will be located in an existing grassed area. The proposed soil disturbance appears to be limited to that which is necessary to accommodate the proposed development. The submitted plan does not propose seeding of disturbed areas. If seeding is necessary, the Landscaping and Revegetation guidelines of the CMP recommend the use of grasses that are tolerant of droughty, nutrient poor conditions.

There are no wetlands located within 300 feet of the proposed development.

The applicant has demonstrated that the proposed development is consistent with the stormwater regulations contained in the CMP. The applicant proposes to utilize an existing stormwater management basin that is located on Block 4529, Lot 4. The concerned stormwater management basin was developed as part of Application #2008-0068.001 for the reconstruction of the Richland Volunteer Firehouse.

Based upon the location of existing development, the proposed limits of disturbance and review of information available to the Commission staff, it was determined that a survey for the presence of threatened or endangered species of plants and wildlife was not required.

The applicant was not required to complete a cultural resource survey because information available to the Commission staff did not provide sufficient evidence of significant cultural resources to require such a survey.

PUBLIC COMMENT

The applicant has provided the requisite public notice. The application was posted on the Commission's website as received. Subsequently, the application was marked "substantially complete" on June 22, 2011. The Pinelands Commission has received written public comments from two individuals. In addition, at the July 8, 2011 Commission meeting, three individuals offered verbal public comment. Copies of the written public comments are attached.

Summary of Public Comment Offered Either in Writing or Verbally at a Commission Meeting:

Written and oral comments provided by Mark Demitroff:

1. The commentor believes that a cultural resource survey should have been performed. Staff Response: The Commission staff archaeologist previously reviewed the proposed development and determined that, for the reasons specified in the Commission staff's July 7, 2010 letter (attached) which references a May 27, 2010 letter (attached), a cultural resource survey was not required. The Commission staff's June 20, 2011 "Report On An Application For Public Development" incorrectly indicated that the proposed development was not located within the "historically sensitive area" of Richland Village, as delineated in the "Pinelands Villages and

Towns: Historic Area Delineations,” prepared by the Pinelands Commission and dated March, 1988. A corrected “Report on an Application For Public Development” was issued on June 24, 2011 to clarify that the front portion of the parcel, is, in fact, located in the “historically sensitive area.” However, whether the proposed development is, or is not located in the “historically sensitive area” of Richland Village, is not the determining factor regarding whether a cultural survey is required. It is but one factor that is considered in making this determination.

2. The commentor also does not believe that the applicant has met the CMP stormwater standards. Staff Response: This application proposes approximately 9,699 square feet of disturbance. Based upon the Commission’s regulations, no stormwater management would be required for development resulting in less than 5,000 square feet of clearing or disturbance. The application proposes a total increase in impervious surface, as defined by applicable regulations, of 6,838 square feet.

The stormwater management plan submitted for this application was prepared, signed and sealed by a New Jersey licensed professional engineer from the Township Engineer’s office. The engineer submitted information to demonstrate that the proposed development is consistent with the stormwater management standards of the Buena Vista Township land use ordinance and the CMP. Commission staff reviewed the proposed stormwater management plan and determined that the proposed plan meets the CMP stormwater standards. The Commission staff reviews the proposed stormwater management plan for conformance with the CMP standards. The staff also completed a “due diligence” review to ensure that there are no obvious issues with a proposed design that would call into question whether a proposed design will function or would impact adjacent lands.

3. The commentor is also concerned that the proposed development may result in degradation of the groundwater quality due to potential leaching of pollutants from railroad ties placed on the parcel and lead paint from a 300 square foot railroad caboose that was also placed on the lot. Staff Response: The Pinelands Commission does not regulate construction materials. However, in undertaking its “due diligence” review, prior to issuance of this Report, the staff contacted appropriate NJDEP programs and were advised by NJDEP that the two concerns being raised by the commentor did not appear to raise issues with applicable NJDEP regulations. However, by copy of this Report, we are alerting the New Jersey Department of Environmental Protection’s, Chief of Bureau of Landfill and Hazardous Waste Permitting, of this comment.
4. Additional comments regarding “redevelopment lands” and authority of the Township Engineer to proceed with developing Sawmill Park were offered by the commentor. Staff Response: These matters are not regulated by the Commission.

Written comments provided by Chris and Jaime Girodano:

5. The commentors indicated that their home is located adjacent to the park and their home and septic system has been negatively affected by the construction of the existing stormwater basin on adjacent Block 4529, Lot 4. They do not believe that the stormwater management system works and want the municipality to design one that

does work. Staff Response: The stormwater management plan submitted for this application was prepared, signed and sealed by a New Jersey licensed engineer from the Township Engineer's office. The engineer submitted information to demonstrate that the proposed development is consistent with the stormwater management standards of the Buena Vista Township land use ordinance and the CMP. Prior to issuance of this Report, the staff completed its "due diligence" review of the application by conducting a site visit and contacting the engineer regarding whether the existing stormwater basin was functioning consistent with its design and the CMP stormwater management standards. The engineer indicated that, although shortly after construction of the basin, the basin did fail, necessary steps were taken to fix the basin and the basin is now functioning as designed.

Oral comments provided by Theresa Lettman:

6. The commentator indicated that she did not understand how the proposed development met the stormwater management standards of the CMP regarding stormwater being retained and infiltrated onsite. Staff Response: The Commission staff reviewed the proposed stormwater management plan and determined that the proposed development meets this CMP stormwater standard. The CMP stormwater management standards require that stormwater be managed on a parcel. The CMP defines "parcel", in part as, "any quantity of land, consisting of one or more lots that is capable of being described with such definiteness that its location and boundaries may be established." Managing stormwater on an adjacent lot meets the definition of parcel.
7. The commentator also indicated that the CMP needs to be amended to permit opportunities for public comment as the public was not aware that the July 8, 2011 Commission meeting would be the last opportunity for the public to provide comments on the application to the Commission. Staff Response: The application was initiated on October 5, 2009 and the required newspaper public notice was published on March 9, 2011. The Commission is in the process of implementing new procedures to allow the public the opportunity to provide oral comment on public development applications. These new procedures serve to lengthen the duration of the comment period which is established by regulation to be 10 days. While the new procedures are being phased in, there is an acknowledged degree of uncertainty. However, proper legal notice was provided for the application as required by the CMP, and the Commission's website provided additional notice of the application.

Oral comments offered by Fred Akers:

8. The commentator indicated that there were ongoing stormwater problems in Richland Village and he is concerned that a new CMP rule allows municipalities to waive the rules. We believe the commentator was referring to the CMP amendment that provides that, if the stormwater management standards cannot be met on a parcel or can be more effectively achieved through alternate measures, an "exception" may be granted at the discretion of the Commission, provided any such measures occur within the Pinelands Area and within the same drainage area as the parcel proposed for development and are sufficient to offset the granting of the exception. For this application, the applicant did not propose an "exception" from the stormwater

management standards.

9. The commentor was also concerned about problems that arise from multiple property owners merging their stormwater management responsibilities, as proposed in this application, without responsibility to control it. Staff Response: The Commission staff reviewed the stormwater management plan for the proposed development. The concern expressed regarding merged stormwater responsibilities is valid. However, if a stormwater basin owner were to take an action that causes a violation of the stormwater management standards of the Township land use ordinance and the CMP, the Township and/or the Commission could take an appropriate action to resolve that violation.

CONCLUSION

The proposed improvements to an existing park are a permitted use in a Pinelands Village (N.J.A.C. 7:50-5.27(a)2). If the following conditions are imposed, the proposed development will be consistent with the management standards contained in Subchapters 5 and 6 of the CMP and Buena Vista Township's certified master plan and land use ordinance.

1. Except as modified by the below conditions, the proposed development shall adhere to the plan, consisting of three sheets and dated as follows:

Sheet 1 – dated April 22, 2005; revised May 6, 2011;
Sheet 2 – dated November 7, 2005; revised May 6, 2011; and
Sheet 3 – dated April 22, 2005; revised March 1, 2011.
2. Although it is recognized that the development has already occurred, the proposed development shall still adhere to the "Vegetation" standards of the CMP. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.
3. Although it is recognized that the development has already occurred, disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
4. Although it is recognized that the development has already occurred, prior to any development, the applicant shall obtain any other necessary permits and approvals.

As the proposed development conforms to the standards set forth in N.J.A.C. 7:50-4.57, it is recommended that the Pinelands Commission **APPROVE** the proposed development subject to the above conditions.

APPEAL

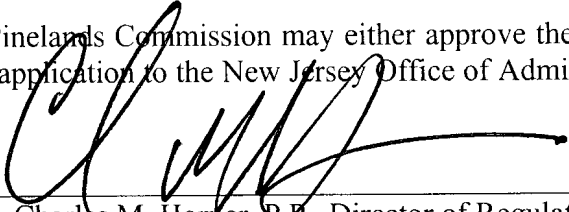
The CMP (N.J.A.C. 7:50-4.55) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be

made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

1. the name and address of the person requesting the appeal;
2. the application number;
3. a brief statement of the basis for the appeal; and
4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received, the Pinelands Commission may either approve the recommendation of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____


Charles M. Horner, P.P., Director of Regulatory Programs

RLW/ED/CH

c: Secretary, Buena Vista Township Planning Board
Buena Vista Township Environmental Commission
Atlantic County Department of Regional Planning and Development
SNS Consulting Engineers
Rhonda Ward
Robert Confer, Chief, NJDEP Bureau of Landfill & Hazardous Waste Permitting
Mark Demitroff
Theresa Lettman, PPA
Chris and Jaime Giordano
Fred Akers

Encls. (8)

Commentor April 28, 2011 letter
Commission July 7, 2010 letter
Commentor June 4, 2010 letter
Commission May 27, 2010 letter
Commission March 11, 2010 letter
Commentor Feb. 7, 2010 letter
Commentor June 28, 2011 letter
Commentor July 7 2011 letter