



State of New Jersey

THE PINELANDS COMMISSION  
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Executive Director

**REPORT ON MONROE TOWNSHIP'S FEBRUARY 2006 STORMWATER  
MANAGEMENT PLAN, APRIL 2007 MASTER PLAN REEXAMINATION REPORT,  
FEBRUARY 2008 MASTER PLAN REEXAMINATION REPORT AND ORDINANCES  
0:53-2006, 0:13-2007, 0:25-2007, 0:27-2007, 0:15-2008 AND 0:28-2008, AMENDING  
CHAPTER 175 (LAND MANAGEMENT) OF THE CODE OF MONROE TOWNSHIP**

September 29, 2008

Monroe Township  
125 Virginia Avenue  
Williamstown, NJ 08094

**FINDINGS OF FACT**

I. Background

The Township of Monroe is located in the western section of the Pinelands Area in Gloucester County. Pinelands municipalities that abut Monroe Township's Pinelands Area include Franklin Township in Gloucester County, Winslow Township in Camden County and the Borough of Folsom and the Township of Buena Vista in Atlantic County.

On September 3, 1983, the Pinelands Commission fully certified the Master Plan and Comprehensive Land Management Ordinance of Monroe Township, now codified as Chapter 175 (Land Management) of the Township's Code.

On February 10, 2006, the Pinelands Commission adopted a set of amendments to the Pinelands Comprehensive Management Plan (CMP) which require stormwater runoff to be managed in accordance with both New Jersey (NJ) Department of Environmental Protection stormwater regulations as provided in N.J.A.C. 7:8 and Pinelands Comprehensive Management Plan regulations N.J.A.C. 7:50-6.84. These amendments were adopted to address stormwater-related water quality, groundwater recharge and water quantity impacts of major developments, and to integrate the new NJ Department of Environmental Protection requirements and current stormwater engineering practice into the Pinelands Comprehensive Management Plan, including requirements for pre-treatment and recharge of stormwater from high-pollutant load areas, specific site assessment protocols for major development, low impact site design, standards for permanent stormwater facility



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maintenance and management of onsite soil resources, particularly in the post-construction period to test as-built field conditions against design assumptions. These Comprehensive Management Plan amendments became effective on May 1, 2006.

By law, municipalities located within the Pinelands Area are required to adopt ordinance amendments necessary for conformance with any Comprehensive Management Plan amendments within one year of the effective date of any such amendments.

On April 20, 2006, the Monroe Township Planning Board adopted Resolution PB-33-06, approving a Watershed Based Municipal Stormwater Management Plan for Monroe Township, dated February 2006, which contains all required elements as described in the stormwater management rules of N.J.A.C 7:8 et seq., including provisions addressing stormwater design and performance standards, build-out analysis and exemptions to design and performance standards through mitigation strategies. The Pinelands Commission received an adopted copy of the February 2006 Stormwater Plan, along with an adopted copy of Resolution PB-33-06, on September 4, 2007.

By letter dated August 15, 2006, Commission staff provided a revised model stormwater control ordinance to the Township and detailed the revisions which would be necessary to both a Stormwater Control Ordinance and the Municipal Stormwater Management Plan for purposes of consistency with the May 2006 CMP amendments.

On December 4, 2006, the Monroe Township Council adopted Ordinance 0:53-2006, amending Chapter 175 (Land Management) of the Township's Code by adopting revised stormwater management standards and application requirements which apply to development throughout the Township, including that portion in the Pinelands Area. The Pinelands Commission received a certified copy of Ordinance 0:53-2006 on December 13, 2006.

On April 5, 2007, the Monroe Township Planning Board approved Resolution PB-38-07, adopting an April 2007 Master Plan Reexamination Report for the Township. This Master Plan Reexamination Report recommends a series of land use changes, adopts a number of minor revisions to the Township's February 2006 Stormwater Management Plan for purposes of consistency with the May 2006 CMP amendments and recommends minor revisions to the Township's stormwater control ordinance. The Pinelands Commission received adopted copies of Resolution PB-38-07 and the April 2007 Master Plan Reexamination Report on May 8, 2007.

On April 24, 2007, the Monroe Township Council adopted a series of ordinances intended to implement the recommendations of the April 2007 Master Plan Reexamination Report. Specifically, Ordinance 0:13-2007 amends Chapter 175 (Land Management) of the Township's Code by revising recreation and open space requirements for certain residential developments, Ordinance 0:25-2007 amends Chapter 175 by clarifying various provisions of the stormwater control ordinance (0:53-2006) and Ordinance 0:27-2007 amends Chapter 175 by adopting a revised Zoning Map, dated May 2007, which reflects changes in Pinelands management area boundaries as recommended in the April 2007 Master Plan Reexamination Report.

The Pinelands Commission received certified copies of Ordinances 0:13-2007, 0:25-2007 and 0:27-2007 on May 9, 2007. A copy of the May 2007 Zoning Map adopted by Ordinance 0:27-2007 was subsequently received on May 22, 2007.

By letter dated June 14, 2007, the Executive Director notified the Township that Ordinance 0:13-2007 would require formal review and approval by the Pinelands Commission. The Executive Director further noted the need for the Township to prepare and submit an analysis justifying the increased in-lieu recreation fees adopted by Ordinance 0:13-2007.

By letter dated June 19, 2007, Monroe Township requested an extension of the Commission's review period for Ordinance 0:13-2007 so as to provide an opportunity for the municipality to prepare the necessary analysis. By letter dated June 22, 2007, the Executive Director notified the Township that an extension was granted until October 22, 2007.

By letter dated June 26, 2007, the Executive Director notified the Township that Resolution PB-38-07 and Ordinance 0:27-2007 would require formal review and approval by the Pinelands Commission.

By letter dated October 23, 2007, the Executive Director notified the Township that the February 2006 Stormwater Management Plan and Ordinances 0:53-2006 and 0:25-2007 would require formal review and approval by the Pinelands Commission.

On February 28, 2008, the Monroe Township Planning Board approved Planning Board Resolution PB-48-08, adopting a February 2008 Master Plan Reexamination Report for the Township. This Master Plan Reexamination Report recommends a series of land use changes, including rezoning a portion of Regional Growth Area to Rural Development; rezoning zoning districts within the Regional Growth Area; the amendment of several land use ordinances; and, the amendment of the Township's sewer service plan.

On May 18, 2008, the Monroe Township Council adopted Ordinance 0:15-2008, amending Chapter 175 of the Township's Code by adopting a revised Zoning Map, dated May 2008, to implement the recommendations of the 2008 Master Plan Reexamination Report. The Zoning Map adopted by Ordinance 0:15-2008 supersedes that previously adopted by Ordinance 0:27-2007. The Pinelands Commission received a certified copy of Ordinance 0:15-2008 on May 20, 2008.

By letter dated June 19, 2008, the Executive Director notified the Township that the 2008 Master Plan Reexamination Report and Ordinance 0:15-2008 would both require formal review and approval by the Pinelands Commission.

On August 26, 2008, the Monroe Township Council adopted Ordinance 0:28-2008, amending Chapter 175 by confining the applicability of the Township's open space regulations to areas within the Pinelands Area, increasing the amount of the contribution required in-lieu of constructing active and passive recreation facilities from \$3,500.00 to

\$5,900.00 per dwelling unit and/or lot and eliminating the exception from the in-lieu contribution requirements for age-restricted housing. The Pinelands Commission received a certified copy of Ordinance 0:28-2008 on August 29, 2008.

By letter dated September 5, 2008, the Executive Director notified the Township that Ordinance 0:28-2008 would require formal review and approval by the Pinelands Commission.

## II. Master Plans and Land Use Ordinances

The following documents have been submitted to the Pinelands Commission for certification:

- \* Resolution PB-33-06, approving the February 2006 Watershed Based Municipal Stormwater Management Plan of Monroe Township, adopted by the Planning Board on April 20, 2006;
- \* Ordinance 0:53-2006, amending Chapter 175 (Land Management) of the Code of Monroe Township, adopted by the Township Council on December 4, 2006;
- \* Resolution PB-38-07, approving the April 2007 Master Plan Reexamination Report of Monroe Township, adopted by the Planning Board on April 5, 2007;
- \* Ordinance 0:13-2007, amending Chapter 175 (Land Management) of the Code of Monroe Township, adopted by the Township Council on April 24, 2007;
- \* Ordinance 0:25-2007, amending Chapter 175 (Land Management) of the Code of Monroe Township, adopted by the Township Council on April 24, 2007;
- \* Ordinance 0:27-2007, amending Chapter 175 (Land Management) of the Code of Monroe Township, including a revised Zoning Map dated May 2007, adopted by the Township Council on April 24, 2007;
- \* Resolution PB-48-08, approving the February 2008 Master Plan Reexamination Report of Monroe Township, adopted by the Planning Board on February 28, 2008;
- \* Ordinance 0:15-2008, amending Chapter 175 (Land Management) of the Code of Monroe Township, including a revised Zoning Map dated May 2008, adopted by the Township Council on May 13, 2008; and
- \* Ordinance 0:28-2008, amending Chapter 175 (Land Management) of the Code of Monroe Township, adopted by the Township Council on August 26, 2008.

These documents have been reviewed to determine whether they conform to the standards for certification of municipal master plans and land use ordinances as set out in N.J.A.C. 7:50-3.39 of the Pinelands Comprehensive Management Plan. The findings from this review are presented below. The numbers used to designate the respective items correspond to the numbers used to identify the standards in N.J.A.C. 7:50-3.39.

**1. Natural Resource Inventory**

Not applicable.

**2. Required Provisions of Land Use Ordinances Relating to Development Standards**

*Stormwater Management*

As recommended in the February 2006 Stormwater Management Plan, amended in April of 2007, Ordinance 0:53-2006 amends Chapter 175 (Land Management) of the Code of Monroe Township in order to provide for stormwater control regulations and the incorporation of certain design and performance standards which apply to development throughout the Township, including that portion in the Pinelands Area. As a result, the Township outlines and adopts a strategy applicable to major development projects of one acre or greater in order to address stormwater related impacts, including those associated with groundwater recharge, stormwater quantity, and stormwater quality. Design and performance standards target operation and maintenance measures for existing and future stormwater facilities and encourage the use of low-impact development techniques. Such low impact measures include non-structural stormwater management measures and the application of best management practices, such as bioretention systems, constructed stormwater wetlands, infiltration basins, pervious paving systems, and vegetative filter strips.

Ordinance 0:53-2006 also provides the opportunity for off-site mitigation as an exception from strict compliance from the groundwater recharge, stormwater runoff quantity and stormwater runoff quality requirements. In order for mitigation to occur in the Pinelands Area, a mitigation project must be located within the Pinelands Area and within the same drainage area as the development site. Any such mitigation must occur in accordance with the mitigation measures outlined in the Township's February 2006 Stormwater Management Plan, as amended in April of 2007. However, in this amended Plan, the Township has elected to defer identification of any specific mitigation projects or areas. Instead, the Plan states that a list of specific

mitigation projects in the Pinelands shall be submitted to the Pinelands Commission in the future for certification as part of an amendment to the Stormwater Plan.

Under certain circumstances, the Township also allows a developer to provide funding to the municipality in lieu of completing a specific mitigation. This funding must be equivalent to the cost of implementing and maintaining the stormwater management measures for which an exception is being granted. The April 2007 amendments to the Township's Stormwater Plan require the Township to expend monies collected for mitigation projects in the Pinelands Area within five years of receipt.

Ordinance 0:53-2006 further specifies and requires a particular method of calculating stormwater runoff rate and volume, stormwater runoff quality, and groundwater recharge rates. Nonstructural stormwater management strategies are identified and as are prescriptions for stormwater runoff quantity and rate, groundwater recharge, erosion control, and runoff quality standards. Additional quality standards are applied to high pollutant loading areas.

Ordinance 0:53-2006 specifies the requirements for general inspection, maintenance and repair of stormwater management measures, including both structural and nonstructural measures, as incorporated into the design of a major development. Ordinance 0:53-2006 ensures an applicant identifies those persons responsible for maintenance and action in the event a project becomes a public health nuisance or danger to public safety or health. Additional requirements are outlined for the care of Best Management Practice measures, which rely on infiltration.

Through Ordinance 0:53-2006, Monroe Township also includes provisions requiring permanent financing of the inspection, maintenance and repair of stormwater measures. For those stormwater management measures that are to be inspected, repaired and maintained by a public agency, Ordinance 0:53-2006 requires the applicant to pay an up-front fee to the Township. This fee is to be placed into a cash management account and used by the municipality for the sole purpose of conducting inspection, maintenance and repair activities for the stormwater facilities required as part of the application in question. No such fee is required for stormwater management measures that are to be inspected, repaired and maintained by a homeowners association or other form of non-public ownership. In those cases, the ownership entity must establish and maintain a fund for the annual inspection, maintenance and repair program, as well as a contingency fund for long-term reconstruction. Ordinance 0:53-2006 specifies the method by which the required fees and funds are to be calculated.

Ordinance 0:25-2007 makes no substantive changes to the stormwater standards adopted by Ordinance 0:53-2006. Rather, Ordinance 0:25-2007 clarifies the applicability of various provisions contained in Ordinance 0:53-2006 to the Pinelands Area, the non-Pinelands Area or the entirety of the municipality.

Monroe Township's February 2006 Municipal Stormwater Management Plan, as amended April 2007, and Ordinances 0:53-2006 and 0:25-2007 sufficiently respond to the May 2006 Comprehensive Management Plan amendments relative to stormwater management.

#### *Pinelands Management Area changes*

As recommended in the April 2007 Master Plan Reexamination Report, amended by the February 2008 Master Plan Reexamination Report, Ordinance 0:15-2008 affects a number of zoning changes including the rezoning of a 38-acre portion of the Regional Growth Planned Residential District (RG-PR) to the Rural Development Agricultural District (RD-A) and a corresponding rezoning of a 44-acre portion of the RD-A District to the Regional Growth Moderate Residential District (RG-MR). The map attached as Exhibit #1 indicates the location of these changes in Pinelands management area designations.

The 38 acres rezoned from the Regional Growth Area to the Rural Development Area consist of two lots and paper streets, located south of the Black Horse Pike and east of Malaga Road (see attached map, Exhibit #2). One of the lots is a 20-acre public park and the other is an 18-acre landlocked, vacant property under private ownership. Rezoning both lots to Rural Development forms a more logical border between the RG-PR District and the RD-A District and provides a more suitable zoning for the two parcels based upon the underlying uses. Residential development is permitted in the RD-A District at a density of one unit per 8 acres while permitted density in the RG-PR District ranges from 1.25 units per acre for conventional residential development to 7.4 units per acre for planned residential development. Given that one parcel is a public park and the other is a landlocked property, the removal of approximately 38 acres from the Regional Growth Area will have little or no impact on Regional Growth Area residential zoning capacity. The February 2008 Master Plan Reexamination Report recommends that the 38 acres rezoned from Regional Growth Area to Rural Development Area be removed from the Township's Sewer Service Area.

The Township has also rezoned approximately 44 acres from the RD-A District to the RG-MR District. The area in question is located along Corkery Lane and Malaga Road and consists of all or portions of 20 lots, most of which are between one and three acres in size (see attached map, Exhibit #2). Of these lots, 10 are currently residentially developed and one contains a church. Rezoning the 44 acres eliminates splitting an existing lot between two management areas and brings all of the existing lots into conformity with the Township's minimum lot size requirements. Whereas an eight acre lot size is required in the RD-A District, a minimum lot area requirement of only one acre (utilizing septic systems) or 27,500 square feet (with public sewer) applies in the RG-MR District. Thus, the potential for a small number of new units (likely no more than 8-10) results from the zoning change. The February 2008 Master Plan Reexamination Report recommends that the 44 acres

rezoned from Rural Development Area to Regional Growth Area be included within the Township's Sewer Service Area.

The two management area changes implemented by Ordinance 0:15-2008 result in zoning district boundaries which better recognize the underlying land uses, have little or no impact on Regional Growth residential zoning capacity and are entirely consistent with the Comprehensive Management Plan.

Although not implemented by Ordinance 0:15-2008, the February 2008 Master Plan Reexamination Report also recommends rezoning 214 acres (consisting of 38 parcels) in the area bounded by Morgan Road, Orbanus Lane, Winslow Road and Morgan Road from the Regional Growth Moderate Residential District (RG-MR) to Rural Development Agricultural District (RD-A) in order to energize agricultural uses of land in this area and to further preserve the areas rural character. The February 2008 Master Plan Reexamination Report recommends that these 214 acres be removed from the Township's Sewer Service Area.

Also not implemented by Ordinance 0:15-2008 is the recommendation of the April 2007 Master Plan Reexamination Report to rezone 135 acres (consisting of eight lots) on the southern side of the Black Horse Pike along the border of the Regional Growth Commercial District (RG-C) and the Rural Development Commercial District (RD-C) in order to create the proposed Regional Growth Mixed-Use Senior Care District (RG-SC). The proposed RG-SC Zoning District is intended to address the needs of a growing senior population with a well-planned neighborhood. The February 2008 Master Plan Reexamination Report recommends that these 135 acres be included within the Township's Sewer Service Area.

The above-discussed Master Plan recommendations (the rezoning of 38 acres from RG-MR to RD-A and the creation of the RG-SC Zoning District) are not before the Commission for review and approval at this time. Upon their implementation by the Township Council through adoption of a revised Zoning Map, that review process will begin.

#### *Other Zoning Changes*

Ordinance 0:15-2008 also rezones 47 acres (consisting of 22 lots) from the Regional Growth Residential Age-Restricted (RG-RA) District to the Regional Growth Moderate Residential (RG-MR) District (see attached map, Exhibit #3). This zoning change occurs within the Regional Growth Area; no change in Pinelands management areas is involved. The 22 affected lots are located along the northern and western edges of a larger 110 acre property which the Township recently approved for age-restricted residential development (246 units on 110 acres). The 22 rezoned lots range in size from approximately one-half of an acre to six acres; only four are currently vacant. Although these lots were recently included in the RG-RA District by the Township, that zoning change appears to have been made in error

because permitted residential uses in the RG-RA District are limited to high density, age-restricted developments on larger, contiguous parcels. The smaller, individually owned lots rezoned by Ordinance 0:15-2008 had little potential to be developed under the RG-RA District standards. An RG-MR designation, with its 27,500 square foot lot size requirement, is more appropriate given the existing lot size and ownership pattern. Rezoning these 22 lots to the RG-MR District provides the opportunity for single family residential development consistent with the surrounding development pattern and is entirely consistent with the Comprehensive Management Plan.

The February 2008 Master Plan Reexamination Report also recommends that the “Diamond Lakes” area of the Township be included within the Township’s Sewer Service Area, in accordance with N.J.A.C. 7:50-6.84(a)(2), if a public health problem can be identified there. The “Diamond Lakes” area is a 45-acre residential community (consisting of 183 parcels) located near the intersection of the Black Horse Pike and the Old Black Horse Pike in a Pinelands Rural Development Area. The community is presently served by on-site septic systems. However, many of the homes which were once occupied only seasonally have been converted to year-round use. The Township has experienced the deleterious effects on water quality which such a conversion to year-round use can have in similar communities. Public sewer service would address such water quality issues. If a public health problem can be documented by the municipality, MUA, county or other party, sewer service could be provided to serve existing development in the area consistent with the CMP.

### *Recreation and Open Space*

Ordinance 0:13-2007, as amended by Ordinance 0:28-2008, provides that where the Planning Board or Zoning Board of Adjustment determines that good planning and use of resources on a community-wide basis requires that recreational improvements and open space that would otherwise be required within a major residential subdivision or development within the Pinelands Area of the Township be waived, an applicant shall be required to pay a fee to the Township in an amount equal to the value of the unconstructed recreational facilities and open space land. Ordinance 0:13-2007, as amended by Ordinance 0:28-2008, also increases the minimum contribution in-lieu of recreation facilities (applicable to all major residential subdivisions or developments except affordable housing projects) from \$2,000 per dwelling unit or lot to \$5,900 per dwelling unit or lot. Monroe Township’s Code permits an annual review of the Township’s costs in order to determine whether the minimum in-lieu contribution amount requires adjustment. An evaluation of the Township’s costs for providing recreational facilities is contained within the February 2008 Master Plan Reexamination Report and is attached hereto as Exhibit #4. The analysis demonstrates that the Township’s costs for providing recreational facilities varies from \$5,994.32 per dwelling unit or lot for developments of less than ten units to \$6,001.34 per dwelling unit or lot for developments of between 151 and 200 units. Therefore, the increased fees (\$5,900 per dwelling unit or lot) established

by Ordinance 0:13-2007, as amended by Ordinance 0:28-2008, seem reasonable and are not inconsistent with the recreation standards of the Comprehensive Management Plan.

Monroe Township's February 2006 Municipal Stormwater Management Plan, April 2007 Master Plan Reexamination Report, 2008 Master Plan Reexamination Report and Ordinances 0:53-2006, 0:13-2007, 0:25-2007, 0:15-2008 and 0:28-2008 are consistent with the land use and development standards of the Comprehensive Management Plan. This standard for certification is met.

**3. Requirement for Certificate of Filing and Content of Development Applications**

Ordinance 0:53-2006 specifies an applicant shall submit, in addition to information required under any provisions of the Township's land use ordinance or by the Pinelands Commission pursuant to N.J.A.C. 7:50-1.1, all required components of a 'Checklist for the Site Development Stormwater Plan', when applying for a subdivision or site plan approval. Any application for approval of a major development is further referred to the Township and Pinelands Commission for review, requiring submission of all engineering plans, topographic maps, site analysis, project description and site plan, land use planning and source control plan, stormwater management facilities map, and a calculations, inspection, maintenance and repair plan.

The application requirements adopted by Ordinance 0:53-2006 are consistent with those added to N.J.A.C. 7:50-4.2 by the May 2006 amendments to the Comprehensive Management Plan. Therefore, this standard for certification is met.

**4. Requirement for Municipal Review and Action on All Development**

Not applicable.

**5. Review and Action on Forestry Applications**

Not applicable.

**6. Review of Local Permits**

Not applicable.

**7. Requirement for Capital Improvement Program**

Not applicable.

**8. Accommodation of Pinelands Development Credits**

The management area and zoning changes implemented by Ordinance 0:15-2008 are expected to have little to no impact on the use of Pinelands Development Credits within Monroe Township's Regional Growth Area. This is the case because little in the way of vacant land with significant potential for residential development is affected by the zoning changes.

Likewise, the amendments adopted by Ordinances 0:13-2007 and 0:28-2008 relative to open space and recreation requirements are unlikely to directly affect opportunities for the use of Pinelands Development Credits. These ordinances provide developers in the Regional Growth Area with the ability to pay a \$5,900 per unit fee as an alternative to constructing any required recreational facilities or providing any necessary open space on-site. While the Township will have the responsibility of determining where such in-lieu contributions would be most appropriate, given the municipality's overall recreation and open space needs, Ordinances 0:13-2007 and 0:28-2008 do afford any developer a reasonable opportunity to achieve the maximum residential densities permitted in Chapter 175, including full use of Pinelands Development Credits, should he or she choose to do so.

This standard for certification is met.

**9. Referral of Development Applications to Environmental Commission**

Not applicable.

**10. General Conformance Requirements**

Monroe Township's February 2006 Municipal Stormwater Management Plan, April 2007 Master Plan Reexamination Report, 2008 Master Plan Reexamination Report and Ordinances 0:53-2006, 0:13-2007, 0:25-2007, 0:15-2008 and 0:28-2008, amending Chapter 175 (Land Management) of the Code of Monroe Township, comply with the standards and provisions of the Pinelands Comprehensive Management Plan. Therefore, this standard for certification is met.

**11. Conformance with Energy Conservation**

Not applicable.

**12. Conformance with the Federal Act**

Monroe Township's February 2006 Municipal Stormwater Management Plan, April 2007 Master Plan Reexamination Report, 2008 Master Plan Reexamination Report and Ordinances 0:53-2006, 0:13-2007, 0:25-2007, 0:15-2008 and 0:28-2008, amending Chapter 175 (Land Management) of the Code of Monroe Township, comply with the standards and provisions of the Pinelands Comprehensive Management Plan. No special issues exist relative to the Federal Act. This standard for certification is met.

**13. Procedure to Resolve Intermunicipal Conflicts**

Not applicable.

**PUBLIC HEARING**

A public hearing to receive testimony concerning Monroe Township's application for certification of its February 2006 Stormwater Management Plan, April 2007 Master Plan Reexamination Report and Ordinances 0:53-2006, 0:25-2007 and 0:27-2007 was duly advertised, noticed and held on November 14, 2007 at the Monroe Township Municipal Building, 125 Virginia Avenue, Williamstown, New Jersey, at 7:00 p.m. Ms. Grogan conducted the hearing, at which no testimony was received.

A public hearing to receive testimony on Monroe Township's application for certification of its 2008 Master Plan Reexamination Report and Ordinances 0:13-2007, 0:15-2008 and 0:28-2008 was duly advertised, noticed and held on September 24, 2008 at the Richard J. Sullivan Center, 15C Springfield Road, New Lisbon, New Jersey at 9:30 a.m. Ms. Grogan conducted the hearing at which the following testimony was received:

Attached hereto are the written comments submitted by Kim Balsamo, a resident of the Diamond Lakes area of Monroe Township (see attached testimony, Exhibit #5). Ms. Balsamo states in her written comments that on May 14, 2008 a meeting was held in Diamond Lakes which was attended by some 25 members of the community in addition to Councilman Frank Caligiuri and the Township Engineer. Ms. Balsamo notes that at the meeting no residents expressed any public health concerns related to failing septic systems within Diamond Lakes. A second meeting was held on May 22, 2008.

Approximately 15 residents of the Diamond Lakes area as well Councilman Frank Caligiuri and the Township Engineer were in attendance. Ms. Balsamo notes that once again no residents expressed any public health concerns related to failing septic systems. Ms. Balsamo notes that at the conclusion of the second meeting those in attendance were told that the Township would not pursue the issue of extending public sewer service to the Diamond Lakes area any further. Ms. Balsamo concludes her written comments by stating that she would like the Diamond Lakes area removed from the Sewer Service Area to prevent the Township from more easily extending public sewer service thereto at a later time.

Mr. David R. Oberlander of Flaster Greenberg appeared to speak on behalf of the Builders League of South Jersey (hereinafter, "the League"). Mr. Oberlander began his testimony by addressing a procedural matter. Mr. Oberlander renewed the League's concerns that they had not received proper notice of the hearing, referencing a letter previously sent to the Commission by Mr. Robert Washburn, Esq. on behalf of the League (see Exhibit #6). He stated that had the League received proper notice, they would have been able to arrange to have an expert present to rebut the Township's analysis submitted in support of its increased recreation and open space fees. However, given the lack of notice, they requested that the hearing be postponed or the public comment period be extended so that the League would have adequate time to submit such rebuttal testimony.

Mr. Oberlander then addressed his substantive objections concerning the Township's increased recreation and open space fees. He argued that, as decided by the Appellate Division's recent decision in the consolidated appeals of New Jersey Shore Builders Association v. Township of Jackson and Builders League of South Jersey v. Egg Harbor Township, the Township lacks authority under the Municipal Land Use Law to impose such fees. Mr. Oberlander further noted that although the Appellate Division stated in *dicta* that such fees may be permitted within the Pinelands Area as a result of the provisions of the Comprehensive Management Plan, the League's position is that the Comprehensive Management Plan does not, in fact, authorize such fees since it is silent on the issue. The CMP provides only on-site standards pertaining to open space and recreation facilities. It does not explicitly authorize the imposition of fees in lieu of open space or recreation facilities. Just as the Municipal Land Use Law's silence on the issue was interpreted by the Appellate Division as a lack of authority to impose such fees, Mr. Oberlander argued the CMP's silence on the issue should also be interpreted as a lack of authority to impose such fees. However, assuming *arguendo* that the CMP does authorize the Township to impose such fees, Mr. Oberlander argued that they are arbitrary, capricious because the fees imposed are excessive. The Township's analysis states that the cost of an acre of land within the Township is \$35,000. Given current market conditions that is excessive. Mr. Oberlander also argued that the fees imposed are arbitrary and capricious because the Township has increased its fees in order to recoup the fee revenues it lost as a result of its inability to impose such fees in the non-Pinelands Area of Township as a result of the Appellate Division's recent decision in the consolidated appeals of New Jersey Shore Builders Association v. Township of Jackson and Builders League of South Jersey v. Egg Harbor Township. Mr. Oberlander also

noted that the ordinance gives the authority to determine whether to accept a fee in lieu of open space and recreation facilities only to the Board hearing the matter. The developer can not choose whether to pay the fees or provide the open space and recreation facilities. Finally, Mr. Oberlander argued that it was arbitrary and capricious to remove the exemption from said fees for age-restricted developments. He argued that the residents of age-restricted communities do not require the same kinds of facilities nor do they require the same amounts as other communities.

Mr. J. Timothy Kernan of Kernan Consulting Engineers appeared to speak on behalf of Monroe Township. Mr. Kernan argued that it was his interpretation of the court's opinion in the consolidated appeals of New Jersey Shore Builders Association v. Township of Jackson and Builders League of South Jersey v. Egg Harbor Township that the Township was, in fact, authorized to impose such fees. Mr. Kernan responded to Mr. Oberlander's argument that the Township's fees were excessive. He noted that \$35,000 for an acre of land within Monroe Township was not excessive even given the current real estate market. Mr. Kernan also noted that that figure represented the cost of an acre of land within the Township over a period of time; not for a specific point in time. Mr. Kernan also responded to Mr. Oberlander's argument that the Township had increased its fees in response to the court's decision. Mr. Kernan noted that the February 2008 Master Plan Reexamination Report had been prepared well in advance of the court's decision. Mr. Kernan also noted that while it is true that the Township adopted the ordinance increasing the fees subsequent to the court's decision, the analysis supporting those increased fees had been prepared well in advance thereof as it was included within the February 2008 Master Plan Reexamination Report. Mr. Kernan also responded to Mr. Oberlander's contention that the residents of age-restricted housing do not require the same kinds of open space and recreation facilities, or the same amounts thereof, as residents of other communities do. He noted that many residents of age-restricted communities are active adults and while the types of recreation facilities these active adults require may differ, these active adults do still generate significant recreation and open space demands.

Ms. Theresa Lettman appeared to speak on behalf of the Pinelands Preservation Alliance. She began by responding to Mr. Oberlander's request to delay certification. Ms. Lettman argued that delaying certification would postpone the implementation of various stormwater control measures which will serve to protect water quality throughout the Pinelands Area of Monroe Township. She requested that the Pinelands Commission move forward with certification.

Ms. Lettman then stated that it would be confusing for the public if the Commission were to certify the portion of the Township's Master Plan Reexamination Report which includes the recommendation to extend public sewer service to the Diamond Lakes area of the Township since no such public health concern has been identified and the residents of the Diamond Lakes area do not share the Township's belief that one currently exists. Ms. Lettman argued that the fact that the area has already been included in the Gloucester County Utilities Authority's Sewer Service Area map adds to the public's confusion regarding the existence of a public health concern in the Diamond Lakes area. Attached

hereto are the written comments submitted on behalf of the Pinelands Preservation Alliance by Mr. Richard G. Bizub (see attached testimony, Exhibit #7). Mr. Bizub states that the recommendation to provide sewer service to the Diamond Lakes area, a portion of the Rural Development Area, is inconsistent with the CMP and should be removed.

Mr. Kernan responded to Ms. Lettman's arguments concerning extending public sewer service to the Diamond Lakes area by stating that the Township understands that much work would need to be done prior to providing sewer service to this area. The Township understands that a public health problem must first be documented. He stated that the Diamond Lakes area was included within the Township's Sewer Service Area in the Gloucester County Utilities Authority's Water Quality Management Plan because if it hadn't been included in this amendment, it would have had to wait another six years to amend said plan. He also noted that the area had been included only conditionally. The plan notes that public sewer service can only be extended thereto in accordance with the CMP.

There being no further testimony, the hearing was concluded at 10:05 a.m.

### **EXECUTIVE DIRECTOR'S RESPONSE**

Ms. Balsamo's written comments state that the residents of the Diamond Lakes area do not believe that a public health problem exists and that the area's septic systems are not failing. Ms. Balsamo therefore objects to the Diamond Lakes area being included within the Township's Sewer Service Area. Ms. Lettman's testimony and Mr. Bizub's comments echo the same sentiment. It should be noted that by certifying the February 2008 Master Plan Reexamination Report, the Pinelands Commission is not making a determination that a public health problem exists or that the septic systems in the area are failing. Nor does the Master Plan Reexamination Report state that that is the case. The Master Plan Reexamination Report merely recommends that the area be investigated in order to determine whether that is, in fact, the case. Ms. Balsamo and the residents may be correct in their belief that no public health problem exists and that the septic systems are not failing. On the other hand, the Township may be correct in its belief that one does exist. However, neither the residents' nor the Township's beliefs concerning the existence of a public health problem is adequate to justify extending sewer service to a Rural Development Area. That is precisely why the CMP requires that the public health problem be documented. If proper investigation can document such a public health problem, then and only then does the CMP provide that public sewer service may be extended to the area subject to certain restrictions. The recommendation within the report that the area be sewered if, and only if, a public health problem can be documented is entirely consistent with the CMP. Contrary to Mr. Bizub's comments, the Township is not requesting that the Diamond Lakes area be sewered. Rather, the Township is requesting to include the area within the Township's Sewer Service Area if a public health concern can be documented. Including an area within a Sewer Service Area is not the same as actually providing the area with sewer service. Many portions of existing Sewer Service Areas are not actually sewered. Including this area within the Township's Sewer

Service Area will not in any way diminish the Township's obligation to document a public health problem before the area can actually be approved for sewer service by the Commission.

With respect to Mr. Oberlander's contention that the League did not receive proper notice of the hearing, a copy of the Commission staff's response to Mr. Washburn is attached hereto as Exhibit #8. All public notice requirements were met and therefore the public hearing was held on September 24, 2008. Written comments on the 2008 Master Plan Reexamination Report and Ordinances 0:13-2007, 0:15-2008 and 0:28-2008 were also accepted through 5:00 p.m. on September 24, 2008. The record is now closed. The Commission's 120-day review period does not require the Commission to take action on the Township's submission at its October 10, 2008 meeting. However, the Executive Director would not recommend any delay in such action. The Township has adopted and submitted a number of master plan and ordinance amendments to the Commission for certification. Among these is the municipality's response to the May 2006 Comprehensive Management Plan amendments in the form of a Municipal Stormwater Management Plan, amendments to that Plan contained in the April 2007 Master Plan Reexamination Report and two stormwater control ordinances. Zoning and management area changes which the Township has been working to implement for some time are also included in the April 2007 Master Plan Report, as well as the 2008 Master Plan Reexamination Report and Ordinance 0:15-2008. The two ordinances dealing with recreation and open space, 0:13-2007 and 0:28-2008, are contained within or authorized by the April 2007 and 2008 Master Plan Reexamination Reports, respectively. Because all of the ordinances and master plan amendments are tied together, it is not possible for the Commission to proceed with approval of some but not all. The Township's submission must be reviewed and acted on by the Commission as a package. Given the importance of the Township's long-delayed stormwater amendments, and the consistency of all the ordinances and master plan amendments with the Comprehensive Management Plan, the Executive Director can only recommend that the Commission complete its review process as quickly as possible.

As to the substantive aspects of Mr. Oberlander's comments on Ordinance 0-28-2008, it is not within the Commission's purview to judge whether or not the recreation and open space standards adopted by Ordinances 0:13-2007 and 0:28-2008, including those which establish in lieu fees, are authorized by or otherwise consistent with the provisions of the Municipal Land Use Law (N.J.A.C. 40:55D-1 et seq.). The Commission must consider the ordinances adopted by the Township only in terms of their consistency with the standards of the Pinelands Comprehensive Management Plan. The Comprehensive Management Plan expressly authorizes Pinelands municipalities to adopt ordinances which provide for open space and recreational facilities in association with residential developments (N.J.A.C. 7:50-6.144(a)3) and sets forth a series of guidelines for the amount of land and type of facilities which should be provided, depending on the size of the development. The Comprehensive Management Plan also expressly states that Pinelands municipalities may adopt alternative and additional techniques for the protection and enhancement of recreational resources; municipalities need not adopt the precise recreation program set forth in the Comprehensive Management Plan (N.J.A.C. 7:50-6.142). Monroe Township has elected to provide for recreation and open space in association with residential development through a combination of on-site requirements and off-site provisions (in lieu fees which are paid to the municipality). These provisions are not inconsistent with those of the Comprehensive Management Plan. Furthermore, the Township has prepared and provided

an analysis which supports the amount of the in lieu fee specified in Ordinance 0:28-2008. The analysis prepared by Monroe Township is similar to the analyses prepared by other Pinelands municipalities in support of their own in lieu fees. These analyses have supported in lieu fees ranging from \$500 per dwelling unit or lot to \$5,750 per dwelling unit or lot depending upon the local costs to the municipalities for providing recreational facilities (see attached spreadsheet summarizing similar analyses, Exhibit #9). While Monroe's fees are the highest fees presented to the Commission for certification thus far, Monroe's in lieu fee ordinance is the only in lieu fee ordinance reviewed by the Commission this year. Other recent in lieu fee ordinances reviewed and approved by the Commission have imposed comparable fees (for example, Egg Harbor Township - \$5,750 per lot; Galloway Township - \$5,000 per lot; Hamilton - \$5,600 per lot for major subdivisions). Since virtually all ordinances providing for in lieu fees contain provisions requiring or permitting the periodic review of the adequacy of such fees, it is expected that other municipalities with such fee ordinances in place will increase their fees in order to keep pace with inflation and market conditions. While Mr. Oberlander is correct that Ordinances 0:13-2007 and 0:28-2008 leave the decision whether to require open space and recreational facilities on-site or to accept a fee in lieu thereof to the discretion of the Planning Board or Zoning Board of Adjustment, this is not a flaw. Ordinances 0:13-2008 and 0:28-2008 authorize the applicable board to accept a fee in lieu of providing open space or recreational facilities on-site where said board has determined that good planning and use of resources on a community-wide basis are better served by accepting a fee in lieu thereof. Possessing a detailed knowledge of the community which it serves, a local Planning Board or Zoning Board of Adjustment is uniquely qualified to determine which alternative will best suit local open space and recreational needs. Based on the foregoing, it does not appear that the \$5,900 per lot fee adopted by Ordinance 0:28-2008 is unreasonable.

### **CONCLUSION**

Based on the Findings of Fact cited above, the Executive Director has concluded that Monroe Township's February 2006 Stormwater Management Plan, as amended April 2007, and Ordinances 0:53-2006 and 0:25-2007 sufficiently implement the May 2006 amendments to the Pinelands Comprehensive Management Plan relative to stormwater management. The Executive Director has further concluded that the February 2006 Stormwater Management Plan, April 2007 Master Plan Reexamination Report, 2008 Master Plan Reexamination Report and Ordinances 0:53-2006, 0:13-2007, 0:25-2007, 0:15-2008 and 0:28-2008 are consistent with Comprehensive Management Plan standards for the certification of municipal master plans and land use ordinances. Accordingly, the Executive Director recommends that the Commission issue an order to certify the February 2006 Stormwater Management Plan, April 2007 Master Plan Reexamination Report, 2008 Master Plan Reexamination Report and Ordinances 0:53-2006, 0:13-2007, 0:25-2007, 0:15-2008 and 0:28-2008 of Monroe Township.

PWT/SRG/CMO  
Attachments