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	:SUPERIOR COURT OF NEW JERSEY
	:APPELLATE DIVISION
	:
In re The Pinelands Commission's	:Docket No. A-005025-14
Consistency Determination	:
Approving Tuckahoe Turf Farm Inc.'s:	
Application No. 1984-0389.009.	:On Appeal
	:from Final Agency Decision
	:of The Pinelands Commission
	:
_____	X

**CERTIFICATION OF CARLETON MONTGOMERY**

I, CARLETON MONTGOMERY, of full age, hereby certify as follows:

1. I am the Executive Director of the Pinelands Preservation Alliance ("PPA"), an environmental non-profit organization whose mission is to preserve and protect the natural and cultural resources of the New Jersey Pinelands. I make this certification in support of Appellants' position that the Pineland Commission's May 26, 2015 Consistency Determination Letter (also known as a "No-Call-Up Letter") is the appealable final agency decision in this case. I have personal knowledge of all the facts set forth in this certification.

2. In February of this year, I sent a letter to the Pinelands Commission asking the agency to clarify the status of

its private discussions with Tuckahoe Turf Farm, Inc.

("TTF") regarding soccer tournaments being held unlawfully at the site of this preserved farm. I had learned that the Commission staff was discussing a possible agreement to permit the activities to continue in conflict with the Commission's prior determination that these activities violate the Pinelands Comprehensive Management Plan ("CMP"). I therefore specifically asked that the Commission identify the legal authority it has "to make an ad hoc agreement with a landowner to permit violations of the [Comprehensive Management Plan]" and what processes the Commission intended to follow. My letter also asked to be notified of any future actions taken by the Commission with respect to TTF's development application in a timely manner that would enable PPA to comment before the Commission makes any final decisions. See Letter from Carleton Montgomery to Nancy Wittenberg, dated February 18, 2015, a true and accurate copy of which is attached hereto as Ex. A.

3. In a letter dated March 6, 2015, the Commission's Executive Director responded to my letter. The response did not address the questions I posed, but stated 1) that public input "in this case" would only be permitted "before the Hammonton Planning Board" and 2) that "[n]o formal agreement with the property owner has been drafted, signed or provided to the Commission for its consideration." See Letter from Nancy

Wittenberg to Carleton Montgomery, dated March 6, 2015, a true and accurate copy of which is attached hereto as Ex. B.

4. On March 27, 2015, The Pinelands Commission issued what is commonly referred to as a "Call-Up Letter," announcing its determination that the TTF activities at issue in this matter raise substantial issues of conformance with the CMP and stating that the agency would schedule a public hearing at which time the Commission would review whether the establishment of a commercial soccer use on TTF's property is permitted under the CMP and the applicable conservation deed restriction. See Letter from Charles Horner to Tuckahoe Turf farm, Inc., dated March 27, 2015, a true and accurate copy of which is attached hereto as Exhibit C.

5. On April 1, 2015, Fran Brooks, a resident of Tabernacle Township and member of PPA filed an Open Public Record Act ("OPRA") request with the Commission seeking all communications, correspondence and other documents relating to TTF for the period January 2014 through March 31, 2015.

6. On April 10, 2015, the Pinelands Commission held its regular monthly meeting. See Minutes of the April 10<sup>th</sup> meeting attached as C to TTF's Letter Brief dated September 10, 2015. PPA staff and members of PPA attended the meeting, including Fran Brooks. As recorded in the minutes, the Pinelands Commission went into a closed session, requiring all members of

the public to leave the meeting room. Upon emerging from the closed session, the Commission voted on and passed an oral resolution authorizing its "Executive Director to continue to negotiate and settle the Tuckahoe Turf Farm matter consistent with the terms discussed in closed session." Ex. C at PC2-31. The Commission did not reveal the terms discussed in the closed session and did not have before it any written resolution stating the grounds for or the terms of the resolution.

7. On April 24, 2015, The Pinelands Commission issued to TTF an "Amended Inconsistent Certificate of Filing" stating that its proposed commercial soccer activities are inconsistent with the CMP and the relevant deed restrictions. A true and accurate copy of that Certificate of Filing is attached hereto as Exhibit D.

8. During The Pinelands Commission's May meeting, staff member Chuck Horner reported, as recorded in the Commission's meeting minutes, that the "Staff recently issued an amended inconsistent certificate of filing for the soccer activities at Tuckahoe Turf to include both Winslow and Waterford Townships [as well as Hammonton Township]." See Minutes of May 8, 2015 meeting at PC2-37, a true and correct copy of which is attached hereto as Exhibit E.

9. It now appears that unbeknownst to me, my staff or, so far as we know, any member of the public, the Commission's



Executive Director signed a Stipulation of Settlement Agreement with TTF on May 11, 2015. See Exhibit A to TTF's Letter Brief dated September 10, 2015. The first time I or any member of my staff learned of the existence of this document was upon our receipt of TTF's Letter Brief dated September 10, 2015. Neither the Stipulation of Settlement nor a Resolution by the Pinelands Commission accepting or approving that settlement agreement was, to my knowledge, posted on the Commission's web site. It was not identified in any Commission meeting or meeting minutes. It was not provided to PPA or, to the best of my knowledge, to any member of the public at or around the time it was executed. Indeed, it was not even mentioned or noted in the Case Information Sheet filed by TTF in this matter. See TTF's CIS, dated July 27, 2015, attached hereto as Exhibit F.

10. On May 22, 2015, the Pinelands Commission responded to Ms. Brook's OPRA request. I assisted Ms. Brook's in reviewing the documents produced. Although approximately 355 pages of documents were produced, the package did not include the Settlement Agreement or any draft of the agreement. While the documents were produced in response to a request for documents through March, 2015, the response did include documents dated as late as April 24, 2015.

11. In a letter dated May 26, 2015, the Pinelands Commission issued to TTF a "No-Call-Up Letter", which declared

that the local agency approval of the TTF activities at issue here are consistent with the CMP, thus reversing the Commission's prior finding without explanation. A true and correct copy of this letter is attached hereto as Exhibit G.

12. It is my understanding that pursuant to N.J.S.A. 13:18A-5.h., the minutes of a Commission meeting must be prepared and delivered to the Governor, and that "[n]o action taken at such meeting by the commission shall have force or effect until 10 days, exclusive of Saturdays, Sundays and public holidays, after such copy of the minutes shall have been so delivered." Accordingly, if the Pinelands Commission had approved the Settlement Agreement at a Commission meeting on May 11, 2015, and had prepared the minutes of that meeting and delivered them to the Governor on that same day, May 26, 2015 would be the earliest date on which the Settlement Agreement could go into effect. However, the Commission did not meet on May 11<sup>th</sup> and there is no indication that the Pinelands Commission has ever formally approved this Settlement Agreement, or even reviewed and discussed it, either in closed session or at an open Commission meeting.

13. On June 12, 2015, PPA staff attended the June Commission meeting. As reflected in the official meeting minutes, the Commission did not reference or discuss the TTF issue. No resolution was adopted and neither the Settlement

Agreement nor the No-Call-Up Letter was mentioned. See Minutes of June 12, 2015 Commission meeting, a true and correct copy of which is attached as Exhibit H.

13. On June 16, 2015, Fran Brooks filed another OPRA request with the Pinelands Commission asking for correspondence, communications and other documents relating to TFF from April 1, 2015 to date.

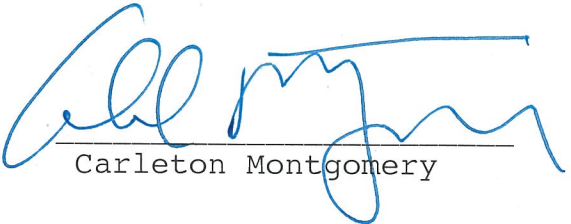
14. On July 6, 2015, PPA filed its Notice of Appeal, within 45 days from May 26, 2015. At the time, Ms. Brooks had yet to receive a response to her OPRA request.

15. Interestingly, one day after PPA's counsel received TTF's Letter Brief taking the position that the May 11, 2015 Stipulation of Settlement is the final agency decision in this matter, the Pinelands Commission e-mailed Fran Brooks its response to her June 16, 2015 OPRA request. In this response, the Commission included a partially-executed copy of the Stipulation of Settlement as an attachment to one of the responsive communications.

17. To my knowledge, prior to the September 11<sup>th</sup> OPRA response, the Pinelands Commission has never revealed the existence of the Settlement Agreement in any public forum or communication; nor has it ever provided me or PPA with the Settlement Agreement.

18. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: September 17, 2015



Carleton Montgomery