

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
March 28, 2017

Committee Members Present: Larry Richardson, Harold Roeder, Jr., Fred Peckham, Jeff Dexter, Alan Henry, David Dean, Aaron Robinson, Susan Sullivan, Jim Greier, Debra Conway

Committee Members Absent: None

NPS Partner: Kris Heister (6:54 p.m.), Carla Hahn

Staff: Laurie Ramie, Cindy Odell, Pete Golod

Guests: None

The UDC's Project Review Committee held its monthly meeting on Tuesday, March 28, 2017 at the Council office in Narrowsburg, NY. Chairperson Richardson called the meeting to order at 6:31 p.m.

A motion to approve the February 28 meeting minutes was made by Robinson, seconded by Peckham and carried with Richardson abstaining. There was no public comment on the agenda.

Discussion Items Report:

Project Review Update

New York

Town of Cochection: Golod reported that on March 9th he received a draft Zoning Ordinance Amendment for Renewable Energy Systems from the Town. He reviewed the amendment and on March 23rd met with the NPS to share his notes and comments. A copy of the draft Substantial Conformance checklist along with a draft letter to the Town Supervisor is provided in members' packets and will be reviewed under New Business.

Town of Tusten: Golod noted that last month he reported that "on February 14 he attended the Town's Planning Board meeting. The meeting was to amend Section 11.6.2 of the Town's Zoning Law, which allows the Zoning Board the right to override any decisions made by the Town Board and Planning Board." It was, in fact, a Town Board meeting and not the Planning Board. The amendment to Section 11.6.2 was to **correct** a previous error that had allowed the Zoning Board of Appeals (ZBA) to override Planning and Town Board decisions. Per NYS Town law, the ZBA only has the authority to listen to appeals generating from the Code Enforcement Officer's decisions or determinations. A brief discussion about the responsibilities and authority of Zoning Boards of Appeals took place.

Pennsylvania

Wayne Land and Mineral Group vs. DRBC: Golod stated that his report contains background information on the challenge of the long standing drilling moratorium imposed by the Delaware River Basin Commission. He reported that on March 23rd, a Federal District Court threw out the lawsuit by Wayne Land Mineral Group who alleged that the DRBC lacks the authority to review and approve natural gas facilities on land owned by the group.

Damascus Township: Golod said that on March 17th he finished reviewing a draft Zoning Ordinance Amendment for Alternative Energy Systems he had received on December 7th from the Township Code Enforcement Officer (CEO). On March 17th he reviewed this amendment with the NPS and made notes and comments. On March 20th, Golod sent a letter with comments to Damascus Zoning Officer Ed Lagarenne and he attended the Public Hearing and Town Board meeting that evening where he read the letter aloud to the Supervisors. A motion was made and approved to table voting on the amendment until the final draft is printed and available next month, Golod noted.

Also in Damascus, Golod reported that he received and reviewed a variance for an at-grade flagstone picnic patio in a flood plain. Per the CEO no building permits were issued and the proposed patio conforms with the Township's zoning. If authorized, the proposed patio is not to alter the essential character of the neighborhood or district in which the property is located, nor impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Therefore, it was determined that the project does not meet the threshold of a Class II project, and does not require a review by the UDC. Golod said he issued a letter to the Township stating the findings.

Golod said he also received a zoning permit to replace a pre-existing mobile home with a recreational cabin located in the river district. Because the applicant is seeking to replace the mobile home with a recreational cabin, a building permit and inspections under the Pennsylvania Uniform Construction Code (UCC) which conforms with legislation for the Pennsylvania Building Code are not required, and the structure is exempt from the requirements of the UCC. Furthermore, no building plans were issued, the proposed cabin is to be built on approximately 2-3% slope, all setbacks conform with the Township's zoning, and Hunting/Fishing Cabins and Seasonal Residences are listed as a Compatible Use in a Recreational Segment per the Schedule of Compatible, Conditional, and Incompatible Land Uses in the Land and Water Use Guidelines. Therefore, Golod said he determined that the project does not meet the threshold of a Class II significant project and does not require a review by the UDC. A letter was issued to the Township stating the findings. Golod added he learned that there is a pre-existing well and septic system and they will re-connecting. A brief discussion about hunting/fishing cabins, seasonal residences, septic systems, and electrical inspections took place.

Resource Specialist's Report:

- Golod said he attended the PA Watershed Connections Conference in State College, PA on March 5th and 6th. He will be providing a report to the WU/RM Committee at the April meeting.
- Golod reported that on March 15th he completed Geology 482: Nature of Geographic Information of the Penn State GIS Certification course earning the grade of an A and two credits towards the course certification completion. He noted that the next course, GEOG 483: Problem Solving with GIS, is scheduled to begin August 6th and he will be seeking approval from the Operations Committee to continue with the course once he obtains more tuition information.
- Golod said he met with NPS Superintendent Heister on March 16th who advised him that she is satisfied to let the 2016 Enforcement Report mirror what was done last year by compiling all the data from the towns and townships. He added that they do plan to collaborate and consider changes to the report to reflect a pattern of actual land use changes per the River Management Plan for next year. Golod reported that the Towns of Hancock, Delaware, Tusten, Lumberland, and Deerpark, and Damascus and Lackawaxen Townships, have submitted all pertinent information for the compiling of the annual Enforcement Program Report to date.
- Golod reported that mobilization is scheduled for May 9th for the Narrowsburg Bridge rehabilitation with a project completion date of September 26, 2018. The proposed work consists of replacing the steel grid deck, span two stringers, sidewalks, bridge railings, guiderail, bridge approach chipseal paving, milling and overlay, drainage improvements, pavement markings, and reinstallation of the traffic beacon.

Richardson suggested regarding the Enforcement Program that a reminder be issued to the six towns and townships that have not yet submitted their 2016 information. He suggested sending them to the Code Enforcement Officers and copy it to the Supervisors.

Ramie questioned if the 2017 Technical Assistance Grant Mid-Term Progress Report which was due by February 28 has been received from the Town of Hancock. Golod said he did not receive that. Peckham was asked to follow up on this.

Old Business

Red Alert Emergency Phones Follow-up: Ramie said UDC sent its request for an engineering study to Frontier Communications in September at their suggestion. She said she contacted Keith Haviland of Frontier via email again today to see if there has been any progress. Haviland said he was surprised that we

had not heard from their engineering department and said he would check into it. Sullivan shared her personal frustration with corporate Frontier regarding her home internet issues.

Project Review Guides Update: Ramie referred to a handout containing responses from three of the five County Planning Offices to the UDC's request for information on their project review procedures to inform our process for updating the Project Review Guides. Ramie said work on updating the guides will continue in April.

Other: None

New Business

Damascus Township Zoning Ordinance Amendment – Alternative Energy Systems: Golod said he received the draft zoning amendment for review in December and was given a deadline of March 17th to provide comment to the Township. Golod said he had been reviewing this amendment with NPS staff when schedules allowed. A copy of the letter by Golod regarding the amendment which he to read at the Township's March 20th public hearing was provided in members' packets. Golod said he has been advised that there were some deficiencies with his letter and looked to Heister for comment. Heister referred to the review as a "team effort" between the Park Service and the UDC. She said a meeting regarding the review was held on March 27th between herself, Golod, Hahn and Ramie. Heister referred to a copy of a March 27th letter she had addressed to Project Review Committee Chair Richardson because she felt there were some issues that shouldn't have been addressed without the assistance of the Project Review Committee. She doesn't feel it is fair to put the review team in the position of trying to make decisions on their own regarding certain issues. Heister does not feel they have the tools they need right now to do the kind of reviews that they are being asked to do because of the fact that the RMP and the Land and Water Use Guidelines do not directly address the new land uses being reviewed. Heister spoke of the outcomes of the UDC-NPS March 27th meeting regarding the letter sent to Damascus Township. Discussion took place about revising the language regarding a final conclusion of whether a zoning amendment conforms to the LWUG to reflect that it is an initial determination recommended to the NPS. They agreed to follow up and refresh their memories of process. Heister said there was talk about revising the review team process to more clearly define it to include: at the conclusion of a project review meeting, go back and articulate the main points of any letter – determine if they are "letter worthy"; assign tasks for further investigation if necessary (Heister spoke about kilovolt and kilowatt conversions); identify points of agreement and disagreement; identify their respective conclusions on whether the project substantially conforms to the Land and Water Use Guidelines; and resolve that prior to being sent to a town or township, a letter should be fully reviewed by the UDC Project Review Committee so that the Committee can assist with the identification of key guidance for inclusion in the letter, resolve any disagreement in interpretation, and concur or not with the conclusion related to substantial conformance. She suggested that if the review timeline is short, a letter could be provided to the committee via e-mail as is commonly done for other time sensitive issues. The issue of choosing language carefully was also discussed at this meeting, Heister noted.

Heister suggested that the committee needs to talk about how they would like the review team to address the issues of solar, wind energy, geothermal, and other new land uses that have not been determined by the Committee to be compatible, incompatible, or conditional. She noted that these issues of alternative energy are being presented by municipalities. She asked if the review team should make statements based on the Draft Solar Position Paper; do you want them to explain our process, where we are in the process and state that as a result we can't make a determination of whether this zoning substantially conforms? She stated the review team needs this direction in order to proceed. Peckham suggested advising the municipalities that we are in the process of determining a position and are awaiting feedback from our participating towns and townships. He questioned what would happen to those towns that have already acted should the UDC come up with a differing position. Greier said that some towns have already adopted zoning relating to solar energy. Richardson stated that Cocheton is getting ready to pass their zoning, but does not have any projects proposed like some of the other towns. Richardson feels the Committee should wait until the Solar Position Subcommittee meets before we act. Heister said the UDC has 45 days to review zoning according to their process. She said if the window of review is missed, she does not see how you can make a town or township go back and change their zoning. Robinson thinks the committee should work on identifying exactly what these alternative energy projects have that are objectionable to the River

Management Plan. Definitions don't necessarily identify what is objectionable, he added. He feels that each alternative energy system should be tested with some kind of measurement of impacts such as visual and water and break them down. Hahn noted that the Outstandingly Remarkable Values for which Congress designated the Upper Delaware, are quantifiable. Robinson said the committee should get a copy of that for comparing. Heister hopes that the subcommittee talks about what process they are going to use to come to a conclusion. The process in the RMP is straight forward in that you consider a use and see if it fits under an existing definition. She said it would be rational to talk about a measurement of impacts.

Sullivan questioned what is involved to add a definition to the River Management Plan. Heister said that would constitute a minor change. Sullivan stated that the RMP has definitions for power plants, but does not address "alternative energy sources." Heister said that is a minor amendment that could be accomplished by resolution through the committee. She said she will discuss with the Solar Subcommittee at its April 6th meeting the fact that the Draft Solar Position statement goes through all eight steps of a minor amendment with the exception of putting it out for public review.

Richardson noted that the Council is not currently in a position to make any determination, but suggested the Council could respond to the towns stating that the topic is under review, and we would like to bring to your attention the issues that we would be looking at for projects in the river corridor. Sullivan thinks communication would be a good idea and concisely remind them of the Outstandingly Remarkable Values. A brief discussion about moratoriums took place. A motion to prepare a general letter for all UDC towns and townships providing an update on the status of the UDC's review of the Draft Position Paper on Large-Scale Solar Energy Systems was made by Richardson and seconded by Henry. Members took the time to collectively review the draft letter to Town of Cochection Supervisor Gary Maas regarding the Town of Cochection Zoning Ordinance Amendment – Renewable Energy Systems. Golod explained the reasoning behind his comments. He noted that he included the statement, "It is also important to note that **Power Generating Stations** are considered an Incompatible Use in the Recreational Segments per the Schedule of Compatible, Conditional, and Incompatible Land Uses in the Land and Water Use Guidelines of the River Management Plan" for informational purposes only. Heister suggested the last paragraph which states, "Based on this review, the UDC will recommend to the National Park Service (NPS) that this zoning ordinance amendment substantially conforms to the Land and Water Use Guidelines. Furthermore, please note that only this amendment has been reviewed and the NPS makes the final determination on substantial conformance" should more clearly state that the Council is unable to make a determination of substantial conformance. She suggested including additional information for the Town to consider and would include the list of Outstandingly Remarkable Values. Heister stated that these would be recommendations. After more discussion a motion was amended to revise the letter to the Town of Cochection as discussed and to prepare a general letter for all UDC towns and townships providing an update and reminding them to always consider the Outstandingly Remarkable Values of the Upper Delaware Scenic and Recreational River in their local zoning development and decisions. Heister said it is important to include in the letters the inability to make a determination on substantial conformance at this time. Hahn suggested that communications of this caliber be sent out over the signature of the Project Review Chairman or the UDC Chairman. Robinson feels the review process is a futile effort as no determination is being made. Ramie stated that the letter does offer specific comments based on this preliminary review that could be helpful while the town is still in its draft zoning stage. We want to encourage our municipalities to submit their draft ordinances for review. Richardson said we have reviewed the zoning amendment to the extent possible. Heister said the committee is "giving up the role they are supposed to be playing in implementation of the River Management Plan" because a decision has not been made. Robinson said he is not sure we should be sending a letter that makes no determination. Richardson said the letter will raise the awareness of the concerns that we will have as we go forward. Sullivan feels that if a town looks for our input, we owe them some response. Robinson questioned how the Park Service is going to look at the amendment. Heister said she prefers for the UDC to come up with some interim solution that we can all live with. She added that she would recommend, "going out onto the limb, to say that to be safe that we recommend that these uses not be considered as anything other than conditional uses." Richardson does not know of a New York town where it wouldn't be considered a special use. A vote was taken and the motion on the two letters passed unanimously.

Town of Cochection Zoning Ordinance Amendment – Alternative Energy Systems: Addressed along with Damascus amendment.

Upper Delaware Council Solar Position Subcommittee April 6 Meeting Draft Agenda: Henry said the agenda was included in members' packets for informational purposes. He said the draft agenda is a starting point and welcomed any suggestions to add to or change it in any way. A brief discussion about the subcommittee membership and additional meeting times took place. Richardson asked that whatever the subcommittee discusses be shared with the whole Council. Sullivan suggested that the agenda be sent out to all members in advance of the April 6 meeting.

Other: Greier asked members if they read the March 20th response from NYC DEP Deputy Commissioner Paul Rush in response to the UDC's March 2nd letter re: Improvements to Public Emergency Notification System. Greier was not happy with the response, especially Rush's statement, "We expect to have recommendations from SEI sometime in the next 12-18 months." He said the letter also speaks about the rigorous inspections of the dams that are conducted almost daily. Greier said he would like another letter drafted for action at the April 6 meeting stating his dissatisfaction with the timetable and to request a copy of the results of the latest dam inspection. Greier spoke of the information he found on-line about an Integrated Public Alert and Warning System (IPAWS). Richardson said the Council has talked about getting warnings out to people who may be on the river. A motion to draft a letter for action at the April 6 full Council meeting regarding the timeline for action and to request a copy of the latest dam inspection was made by Greier, seconded by Peckham and carried. Hahn asked if the local emergency management coordinators are supportive of the UDC's request. Ramie said we have received feedback from all of them. Henry asked for that letter in advance.

Henry reported that the Pennsylvania Game Commission made a last-minute change and decided not to legalize semi-automatic rifles for hunting big game like deer, black bear, elk, and turkey.

Public Comment: None

Adjournment: A motion by Peckham, seconded by Conway to adjourn the meeting at 7:53 p.m. was carried unanimously.

Minutes prepared by Cindy Odell, 4/6/17