

Upper Delaware Council  
PROJECT REVIEW COMMITTEE MEETING MINUTES  
August 23, 2016

Committee Members Present: Larry Richardson, David Dean, Fred Peckham, Harold Roeder, Jr., ,  
Aaron Robinson, Susan Sullivan  
Committee Members Absent: Alan Henry, Jeff Dexter, Debra Conway  
NPS Partner: Kris Heister, Carla Hahn  
Staff: Laurie Ramie, Cindy Odell, Pete Golod  
Guests: Tess McBeath

The UDC's Project Review Committee held its monthly meeting on Tuesday, August 23, 2016 at the Council office in Narrowsburg, NY. Chairperson Richardson called the meeting to order at 6:30 p.m.

A motion to approve the July 26 meeting minutes was made by Roeder, seconded by Sullivan and carried. Tess McBeath, Town of Delaware Town Clerk, showed a copy of her newly printed Code Book and thanked the Council very much for the two grants in two years to make the project a reality. She said it is a big professional accomplishment and would not have been possible without the UDC Technical Assistance Grant funding. McBeath said that the Town Board will be adopting the Code on September 14<sup>th</sup> and it will be available on-line after that. She added this will be a useful tool not only for the Town, but for the public as well.

**Draft Position Paper on Large-Scale Energy Systems:** Golod noted that in the four months he has worked for the Upper Delaware Council, the words "solar energy" have been discussed extensively. He said that many towns have begun addressing solar energy. He feels it behooves the UDC to have a clear understanding and definition on what is large-scale solar energy systems vs small-scale energy systems so that through the implementation of the River Management Plan (RMP) he can assist towns and townships in regards to solar energy. He referred to the draft position paper provided in members' packets and distributed in advance to committee members. He said the paper was prepared by a subcommittee consisting of Chairperson Richardson, Executive Director Ramie, NPS Superintendent Heister and himself to facilitate the discussion about the compatibility of large-scale solar energy systems with the RMP and the Land and Water Use Guidelines (LWUG). Golod provided a summary of the draft paper, which follows in its entirety:

**I. Do the UDC and National Park Service (NPS) support the use of solar energy?**

Yes. Both the UDC and NPS recognize and support solar energy as part of an all-of-the-above approach to developing our nation's energy resources and support the development of renewable energy sources to reduce our dependence on fossil fuels. At the same time, we are committed to conserving and enhancing the unique scenic, cultural, and natural characteristics of the Upper Delaware River Valley and encouraging the continuation of existing traditional land and water uses. Therefore, we support energy development in an environmentally responsible manner that serves the public interests, protects scenic, cultural and natural resources, and safeguards our treasured landscapes. We are also committed to ensuring maximum flexibility for local governments and residents in shaping the identity, continuing history, and destiny of the Upper Delaware River Valley.

**II. Why do large-scale solar energy systems require a determination on whether they are an appropriate land use by the UDC?**

It is the responsibility of the UDC to determine those land and water uses which are clearly appropriate in the Upper Delaware River Valley; those uses which might, with conditions, be deemed appropriate; and those which may pose a threat to the resources of the valley and, hence, are inappropriate.

The development of solar energy facilities within the designated Upper Delaware corridor is a new land use that was not envisioned at the time that the Upper Delaware River Management Plan (RMP) and the Land and Water Use Guidelines (LWUG) were developed. Recognizing that new land uses would emerge over time, the LWUG state that "There may a number of unforeseen future uses that cannot be specifically provided for in the schedule. When those situations arise, the affected town, the Council and the National Park Service will compare those uses to similar uses that are defined in the Guidelines and make their judgments accordingly."

**III. How will this information be used by the UDC and others?**

Several towns/townships within the corridor have already passed or are developing zoning related to large-scale solar energy. For member towns/townships, it is the responsibility of the UDC to review relevant local plans, laws and ordinances to determine whether they “substantially conform” to the River Management Plan and the LWUG and to provide this recommendation to the National Park Service for final determination. The information presented here is essential for this determination. It is also hoped that a determination on the appropriateness of large-scale solar energy within the corridor will inform the development of zoning to address this land use by local governments.

#### **IV. Solar Energy Definitions**

**SOLAR ENERGY SYSTEM:** An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment. Solar energy equipment includes electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy. (NYSEG Model Law)

**LARGE-SCALE SOLAR ENERGY SYSTEM:** A Solar Energy System that is ground-mounted and produces energy primarily for the purpose of offsite sale or consumption, regardless of energy capacity. (NYSEG Model Law)

**SMALL-SCALE SOLAR ENERGY SYSTEM:** A Solar Energy System that is ground or roof-mounted or building integrated and produces energy primarily for the purpose of onsite consumption. A small-scale solar energy generating system shall provide electricity and/or thermal energy for the principal use and/or accessory use of a lot of record on which the solar energy system is located. However, this provision shall not be interpreted to prohibit net metering.

This type of small-scale solar energy system would be considered a compatible use or appropriate special/conditional use for residential, agricultural, and minor commercial development as described in the Schedule of Compatible, Conditional, and Incompatible Land Uses provided on page 134 of the RMP/LWUG.

#### **V. Does Large-Scale Solar Energy Have the Potential to Pose a Clear and Direct Threat?**

A clear and direct threat is defined as an instance where a new land use is proposed which is either: (1) identified on the list of new land uses which are incompatible within the Upper Delaware river corridor; or (2) identified as a land use which would, if developed in such a way, be counter to one or more of the principles and objectives set out in the River Management Plan and the Land and Water Use Guidelines. (RMP 1986)

A: Yes. Key in this definition is “if developed in such a way”. Failure to consider factors such as thresholds for size, total lot coverage, height, siting, site maintenance, decommissioning and site restoration, etc. could result in a clear and direct threat and lead to land use impacts such as increasing impervious coverage, habitat and farmland loss, and aesthetic impacts. (NY-SUN Solar Resource Guide)

#### **VI. Where Does Large-Scale Solar Energy Fit with Existing Land Use Definitions in the RMP/LWUG?**

##### **A. Industrial Use**

##### **1. Is large-scale solar energy considered an industrial use?**

Industrial Use - An establishment, other than a home occupation, used for the assembly, manufacturing, or processing of goods, not including farming. (RMP 1986)

A. No. In the Uniform Commercial Code, a “good” is defined as “all things . . . which are movable at the time of identification to the contract for sale . . .” UCC § 2-105. Whether electricity is a “good” has been litigated in numerous courts. In 1992, the Appellate Division of the Supreme Court of the State of New York determined that electricity is NOT a “good” – it is a service (Bowen v. Niagara Mohawk Power Corp., 183 A.D.2d 293 N.Y. App. Div. 1992). Since electricity is not considered a good, large-scale solar energy is not an industrial use based on the definition in the LWUG.

##### **B. Commercial Development**

##### **1. Is large-scale solar energy considered commercial development?**

Commercial development is defined as “any use, except home occupations, involving the offer for sale, rental, or distribution of goods, services or commodities or the provision of recreational facilities or activities for a fee, but not including the manufacture of goods or commodities.” (RMP 1986)

A. Yes. Large scale solar energy systems are considered commercial development because (1) they are not home occupations, (2) exist for the primary purpose of selling electricity, and (3) electricity is considered a service and commodity. Solar energy systems are not considered manufacturing which is generally involves the conversion of raw materials by hand or machinery. The Ohio Supreme Court concluded in 1988 that electricity is the flow of electrically charged particles along a conductor. A utility does not

‘manufacture’ electrically charged particles, but rather, sets in motion the necessary elements that allow the flow of electricity (Otte v. Dayton Power & Light Co., 37 Ohio St. 3d 33, Supreme Court of Ohio 1988).

**2. Is large-scale solar energy considered a commercial facility?**

A. Yes. A commercial facility is defined as place of retail or wholesale trade or the location from which services are provided that are privately operated for pecuniary gain. (RMP 1986)

**3. Is large-scale solar energy considered a major commercial use?**

The definitions of minor and major commercial development are as follows:

Minor Commercial Development - In recreational areas, commercial uses limited to professional offices associated with residences, small neighborhood retail convenience stores, farm stands or similar retail facilities with less than 2,000 square feet of floor space, or less than five people, and compatible with the natural and scenic qualities of a designated recreational river. (RMP 1986)

Major Commercial Development - Commercial uses with 2,000 square feet or more of floor space, or five or more employees, not including Minor Commercial Development. (RMP 1986)

A: Yes. Large-scale solar energy systems do not fit the definition of minor commercial development provided in the LWUG. Based on the criteria of 2,000 square feet (0.0495 acres) or more of “floor space”, interpreted as impervious surface area for the purpose of characterizing solar, it does fit the definition of major commercial development. In June 2013, the National Renewable Energy Laboratory released a report that quantified how much room solar power requires based on an assessment of 72% of all large solar plants installed in the United States. The report concluded that the total area requirement for a photovoltaic (PV) plant between 1 and 20 megawatt capacity is 8.3 acres per MW (NREL 2013). Therefore, the

estimated range of the amount of land required for large-scale solar energy systems is 5,423 to 723,096 square feet based on the Town of Fremont limit of 15kilowatts and the maximum of 2MW that can connect to the grid in New York.

**Calculation:**

- $15\text{kW} = 0.015\text{MW} @ 8.3 \text{ acres/MW} = 0.1245 \text{ acres OR } 5,423 \text{ ft}^2$
- $2\text{MW} @ 8.3 \text{ acres/MW} = 16.6 \text{ acres} = 723,096 \text{ ft}^2$

**4. Is major commercial development a compatible use within the Corridor?**

A: No. Major commercial development is considered an incompatible land use in both recreational and scenic sections of the river corridor.

**C. Power Plant**

**1. Is large-scale solar energy considered a power plant?**

Power Generating Stations - Any new commercial or public electric generating facility (for base load, cycling or peaking purposes) powered by coal, oil or natural gas, nuclear power and hydropower. (RMP 1986)

A. Yes.

**2. Are power plants a compatible use within the Corridor?**

A: No. Power generating stations are considered an incompatible land use in both recreational and scenic sections of the river corridor.

**VII. Are Large-Scale Solar Energy Systems A Compatible Land Use Within the Corridor?**

A: No.

In discussion, Robinson said this is a well-done analysis and he compliments the sub-committee on it. He added that he can’t wrap his head around the ultimate objective. He understands that based on the River Management Plan, aesthetics has a lot to do with it. He shared his concern about limiting solar development due to the test of aesthetics when there are developable areas in the corridor that can’t be seen from the river. Richardson said the committee did not look at this position from aesthetics; they looked at it from what they could draw out of existing documentation and how it could be related to the criteria of what is compatible and incompatible. Robinson said if someone could demonstrate a project that has no impact, then we are precluding something that doesn’t have to be. Peckham shared his thoughts regarding the negative impacts of large solar farms. Sullivan feels that it is more advantageous to her Town to have this type of development controlled in the corridor than it would be to allow it as there is the rest of the town to entertain projects such as commercial solar. She added that the terms of the River Management Plan are what the towns agreed to and she feels the concept of the Plan is “small scale” and that is defined in the Plan. She feels the values of the corridor bring development that is good to her town. Robinson said restrictions in the corridor could be imposed at the town level. Dean commented that technology and

science continue to move forward. He shared his concern for eliminating the potential for development based on technology that is changing. Heister said the position paper does not contain restrictions based on capacity for that reason. Golod read from the River Management Plan the definition of Major Electric Lines. He noted that those lines are incompatible uses in hamlet, recreational, and scenic segments. Heister said the sub-committee was very careful not to make judgments based on impacts. She said there is process laid out in the RMP that is very objective, based on definitions. She feels that major commercial development and power plants as defined in the RMP are the clearest similar use to solar panels. Richardson stated that the committee can't speculate as to what technology will be in the future. Dean feels there should be a provision made that as technology changes, there has to be a way to revisit these issues. Richardson said the sub-committee looked at this position without tying it to the amount of power generated. It was looked at based on the physical size and in that sense can be revisited. What would be considered large-scale solar energy development today could very well be developed in such a way that it would be considered small-scale solar energy development in the future as technology evolves. Heister said it can be recognized that this is an evolving technology as so many of these renewable energy sources are and can be revisited at any time in the future. Robinson stated that procedurally, his Board of Supervisors would have to agree to the proposed position. He stated that the Council can't overlook private property rights. Richardson pointed out that zoning, in a sense, is a taking of rights and it never pleases everyone. He spoke of the importance of towns and townships putting zoning in place that protects them in the event that these large development companies go defunct. A brief discussion about bonds took place. Sullivan spoke of the importance of the towns and townships remembering their obligations as members of the Council to treat the corridor differently in their zoning. Dean reiterated that private property rights and home rule cannot be overlooked. Richardson noted that the sub-committee was careful to draft a position that is defensible in regards to the LWUG and RMP. Sullivan thanked the committee for their efforts. Richardson said that the object of this exercise was to have the Council take a position. Peckham said it is his opinion that the paper should have been "stronger". Richardson noted that towns are going to be moving on the zoning of this issue and the Council should be able to communicate its position. Golod said that he is being asked about the Council's position when he attends the meetings and workshops that are being held regarding the solar issue. Roeder said he would like more time to process the paper and present it to his town. Heister suggested moving the paper to the full Council so that everyone is bringing it back to their respective towns and townships at the same time. A motion to move the draft position paper to the full Council for review and consultation with local governments was made by Robinson, seconded by Sullivan and carried with Peckham abstaining.

### **Discussion Items Report**

#### **Project Review Update**

##### **New York**

**Town of Hancock:** Golod noted that Town Code Enforcement Officer Thomas Zampolin recently informed the Town Board that by October 3 New York State codes are being eradicated and the state will be required to adhere to the International Code Council (ICC) codes. The town Board will hold a public hearing on September 6<sup>th</sup> regarding the upcoming changes.

**Town of Delaware:** Golod said he attended the second Special Meeting solar workshop held by the Town Board in light of the recent permit application by Delaware River Solar. A revised proposed amendment to the Town of Delaware Zoning Law was provided along with the Baer Rd. Neighbors Proposed Law Zoning Amendment Offering. A spreadsheet contained subject items and how they applied to the NYS Zoning Resource Guide, the Baer Rd. Neighbors suggested language, and the Town of Delaware's Proposed Law and where it is to be addressed in the proposed zoning amendment.

**TAG Program:** Golod said that on August 19<sup>th</sup> he received Delaware's TAG project completion form, three copies of the completed work, and all the supporting documentation. He recommends the committee vote to approve the project.

**Town of Cochection:** Golod reported that on August 10<sup>th</sup> the Town Board voted unanimously to schedule a public hearing to discuss the adoption of a six-month moratorium on commercial solar farms. The public hearing will be held on September 14<sup>th</sup> at 7 p.m. in the Cochection Town Hall.

**Town of Tusten:** Golod stated that Tusten Town Board member and chair of the energy committee, Brandi Merolla, recently announced at the town board in Narrowsburg that the solar panels that will power the town's electricity, with the exception of street lights, have been installed. The wiring is to be installed later in the week followed by a NYSEG inspection. Merolla hopes the 109-kilowatt array will be operational in September.

**TAG Program:** Golod reported that on August 18<sup>th</sup> he received Tusten's TAG project completion form, three copies of the completed work and all the supporting documentation. He recommends that the committee vote to approve the project.

**Town of Highland:** Golod noted that on July 12<sup>th</sup> at its regular Town Board meeting, Supervisor Jeff Haas addressed the Town's zoning and the need for a comprehensive update. Haas said the town required a certified individual to get the ordinance up to 2016 standards, and would cost approximately \$50,000 which he plans to obtain through grants.

Golod stated that several months ago Millennium Pipeline Company agreed to pay for a comprehensive health impact assessment to be performed on the health impacts of the proposed 22,400 hp compressor station in Eldred. Sullivan County asked consultants interested in submitting proposals to do so by August 19<sup>th</sup>, and asked FERC to take the results of the study into consideration before granting Millennium any approvals. Data to be collected will include baseline health statistics and existing diseases among area residents, and a baseline air and water measurements of pollutants of concern.

**TAG Program:** Golod reported that on August 22<sup>nd</sup> he received Highland's TAG project completion forms for their two projects, three copies of each of the completed work and all the supporting documentation. He recommends that the committee vote to approve the projects. Golod noted that one of their projects was to develop the "Revitalizing the Monarch Butterfly" brochure which was included in each member's packet and the other project was to develop a "Guide to Permits" brochure. He passed around one of those brochures for members to look at.

**Town of Lumberland:** Golod said he attended the August 10<sup>th</sup> public hearing regarding the proposed Comprehensive Plan Update. Resolution #116, Lumberland Comprehensive Plan Update, was opened up for public comment. He noted that many of the comments were negative towards the Plan due to the lack of addressing the "economic crisis" the Town is facing. Once public comment was closed, a long form Environmental Assessment Form was completed. A motion was then made and seconded to approve the Comprehensive Plan.

**TAG Program:** Golod reported that on August 12<sup>th</sup> he received Lumberland's TAG project completion form, three copies of the completed work and all the supporting documentation. He recommends that the committee vote to approve the project.

Regarding Camp Simcha, which is located in the Town and in close proximity to the river corridor and waters which drain into the Delaware River, Golod said that on August 2<sup>nd</sup> Solitude Lake Management (working for Camp Simcha), dumped Sonar SRP, a poisonous systemic aquatic herbicide, into Lake Diana which is approximately 75 feet from a local resident's water wells. The NYS DEC was contacted and responded by stating there is no requirement that residents be informed of the application of herbicides. Previous herbicides used by Camp Simcha required restrictions on swimming, fishing, and irrigation.

In September 2015, a permit was issued for a commercial sewage upgrade to Camp Simcha's 17,500 gallons per day discharge to 45,000 gallons per day into an unnamed tributary of the Delaware River. The commercial upgrade had also been approved by NYSDEC and the DRBC. As of August 11 it was reported in *The River Reporter* that residents have been complaining about continued smells of sewage and constant noise coming from the new facility.

Pennsylvania

## Wayne County

Golod reported that recently results of the 2014 *Baseline Assessment of Groundwater Quality in Wayne County* were discussed by the Wayne County Commissioners. Wayne Conservation District Watershed Specialist Jamie Knecht partnered with the USGS collecting 89 samples from private landowners water wells within the county during the summer of 2014. The wells ranged in depth from 85 feet to 1,300 feet. Results of the 2014 ground water quality met most drinking standards set by the EPA for drinking water quality, but some had constituents or properties that include arsenic, iron, pH, bacteria, and radon-22. Golod's written report contained some of the results.

**Buckingham Township:** The law firm of Doug Clark is working on Linden Energy Service's (LES) agreement to perform survey and title work on the Township owned property that would allow the company to construct a natural gas gathering line pipeline along the former O&W railroad bed. Buckingham and Manchester Townships are splitting the legal costs since both boards are required to sign the agreement with LES. Peckham stated that there is no agreement to build a pipeline at this time.

**Damascus Township:** Golod reported that repair work began on August 1<sup>st</sup> on the Skinners Falls Bridge. In an email dated August 17<sup>th</sup> from Project Manager Carla Medura, it was stated that work is to be completed September 7<sup>th</sup>. Hahn noted that the date in the contract for work to be completed is 9/7, not that they will necessarily finish then.

**TAG Program:** Golod reported that on August 16<sup>th</sup> he received Damascus's TAG project completion form, three copies of the completed work and all the supporting documentation. The project was to Compile, Generate, and Distribute Emergency Action Educational Material within the Township. He recommends that the committee vote to approve the project.

A brief discussion about Camp Simcha's commercial sewage upgrade took place. Robinson stated that in New York State it is a requirement for a certified operator to visit the site seven days a week to check the water quality and inspect the system functionality.

**Berlin Township:** Golod said that on July 19<sup>th</sup> the Township Board of Supervisors met and summarized a four-year illegal dumpsite program. Five Wayne County sites were cleaned in 2015 and six thus far in 2016. The 2016 effort has collected five tons of trash, 1.8 tons of scrap metal and 147 tires. All program costs are covered by Pennsylvania Environmental Council grant funding with no cost to the participating municipalities.

### TAG Program

Golod reported that on July 22<sup>nd</sup>, he received Berlin Township's completed TAG project and required documentation. Their project was to Purchase Tax Maps, Develop a Town Website, and Create a "Base Map" of the Township. He recommends the committee vote to approve the project.

### Training and Other for Resource Specialist Pete Golod:

8/15: Golod coordinated with Shohola Township UDC Representative Robinson to locate and "flag" six areas suitable for some form of Emergency Response Wi-Fi "hot spots" or a call box. A copy of a Google map showing these spots was included in members' packets.

8/8: Golod met with Chairman Richardson, Executive Director Ramie, and NPS Superintendent Heister to discuss solar energy and how best to define the use of solar energy within the Upper Delaware River corridor.

8/26: Golod and Executive Director Ramie are to meet with NPS Management Assistant Carla Hahn and Biologist Jamie Myers to discuss the proposed updated Project Review Workbook, and the need for a PDF map for that book.

Currently: Golod said he is executing a full review of all TAG grants, monies that were awarded, and monies spent from 2016 back to the first year TAG grants were issued in 1998. All information is being collected, cross referenced and updated in an ongoing spreadsheet. Ramie said this is being done as a discrepancy was found in our directory posted on the website.

**New Business**

**Approval of Town of Tusten TAG 2016-01: Develop New Town Website:** A motion to approve TAG 2016-01 was made by Peckham, seconded by Robinson and carried.

**Approval of Town of Delaware TAG 2016-02: Complete Codification Process:** A motion to approve TAG 2016-02 was made by Peckham, seconded by Robinson and carried.

**Approval of Town of Lumberland TAG 2016-04: Review & Update Comprehensive Plan:** A motion to approve TAG 2016-04 was made by Peckham, seconded by Robinson and carried.

**Approval of Town of Highland TAG 2016-06: Develop “Revitalizing the Monarch Butterfly” Brochure:** A motion to approve TAG 2016-06 was made by Peckham, seconded by Robinson and carried.

**Approval of Town of Highland TAG 2016-07: Develop “Guide to Permits” Brochure:** A motion to approve TAG 2016-07 was made by Peckham, seconded by Robinson and carried.

**Approval of Berlin Township TAG 2016-09: Purchase Tax Maps, Develop Town Website, Create “Base Map” of Township:** A motion to approve TAG 2016-09 and de-obligate \$40 of unspent funding was made by Peckham, seconded by Robinson and carried.

**Approval of Damascus Township TAG 2016-10: Compile, Generate, and Distribute Emergency Action Educational Material:** A motion to approve TAG 2016-10 was made by Peckham, seconded by Robinson and carried.

**Other:** None

**Old Business**

**Planning for Utility-Scale Solar Projects – 8/3 Meeting Notes:** Ramie referred to her written report in members’ packets. She said this forum was sponsored by Sullivan County Division of Planning and Environmental Management. The report is a synopsis of the meeting. Ramie and Hahn shared some details of the meeting.

**Follow-up on Telecommunication Services in the River Valley:** Robinson said that Keith Haviland, Major Account Executive for Frontier Communications will present at the September 1 full Council meeting. He asked members to send any questions they may have to Ramie to forward to Haviland in advance of his presentation if they involve advance research.

**Project Review Workbook Update:** Ramie said Environmental Planning and Design is working to incorporate the approved recommendations from the March 2016 report and to complete the conversion of the 1988 Project Review Workbook into Word files. That is expected to be done by the end of the month in order for the graphic designer to be able to start her portion of the project. Ramie said this project is on track.

**Other:** Roeder said he had not heard about New York State codes being eradicated and the state being required to adhere to the International Code Council (ICC) codes. Richardson said they have thrown out the old code in order to come up with a brand new code. Golod believes the changes will be minimal. Richardson said that his Town’s Building Code Enforcement Officer said to the contrary that there were going to be big changes.

**Public Comment:** None

**Adjournment:** A motion by Roeder, seconded by Sullivan to adjourn the meeting at 7:55 p.m. was carried unanimously.

*Minutes prepared by Cindy Odell, 8/31/16*