

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
May 26, 2020

Committee Members Present: David Dean, Larry Richardson, Harold Roeder, Jr., Jim Greier, Fred Peckham, Al Henry, Aaron Robinson, Jeff Dexter, Dan Paparella

Committee Members Absent: Susan Sullivan- Town of Tusten

Staff : Laurie Ramie, Ashley Hall-Bagdonas

NPS Partner: Acting Superintendent Jessica Weinman, Jennifer Cluster

Guests: Roger Saumure- Shohola Township alternate

The UDC's Project Review Committee held its monthly meeting on Tuesday, May 26, 2020 via tele-conference. Chairperson Dean called the meeting to order at 6:33 p.m. There was no public comment on the agenda.

Approval of April 28, 2020 Meeting Minutes: A motion by Greier seconded by Robinson to approve the April 28, 2020 Meeting Minutes was carried. There was no public comment on the agenda.

Resource Specialist's Update: Ramie provided a report due to the vacancy of the Resource Specialist position since January 2020.

New York State Town Projects

Town of Tusten: Included in the meeting packet is the UDC's 5/14 letter to the Town of Tusten responding to a Notice of Lead Agency Establishment under the State Environmental Quality Review Act re: Anaerobic Digester, H.O.R.S.E. AD2d – Community Supported Biocycling, as authorized at the 4/28 committee meeting. The Town Board is holding a special meeting on 5/26 at 6:30 p.m. by Zoom conference to conduct the public SEQR review with participation from a representative of Impact Bioenergy, from whom the DEC grant-funded unit is being purchased.

Town of Highland: Ramie sent a message to Town of Highland Code Enforcement Officer Dave Preston on 5/18 thanking him for forwarding the inquiry from the York Lake Estates Homeowners' Association about widening the entry and adding stone to the driveway for their NYS Route 97 (SBL 24-1-3.53) to access the river. It included the excerpt from the 4/28 committee meeting minutes discussing this, with the conclusion that this improvement to a pre-existing driveway is not reviewable by the UDC. Permits will be required from NYS Department of Transportation for its right-of-way and potentially from the NYS Department of Environmental Conservation.

Pennsylvania Township Projects

Damascus Township: Code Enforcement Officer Ed Lagarenne provided notice to the UDC on 5/19 for construction of a shed by property owner Louis Cannizzaro, stating, "This is for info only that we issued a permit. It is a 192 square foot shed, nowhere near the river, and not in a flood zone at 2017 River Road." He provided a copy of the site plan for the shed (attached).

2020 Technical Assistance Grants: A UDC Memorandum was issued 5/14 to reinforce the 8/28 completion deadline by which date project sponsors must submit supporting documentation and seek the determination of substantial conformance (where necessary) in order to request reimbursement payment. If this presents an unavoidable hardship, the Towns have until 7/24 to seek relief through an extension request.

Annual Code Enforcement Program Report: On 1/3 Resource Specialist Pete Golod submitted letters to all 13 UDC municipal members' Code Enforcement Officers and Planning Board/Commission Chairs requesting that they provide all building permits, special/conditional use permits, and variances issued within the designated river corridor from January 1 to December 31, 2019, as well as any modifications made to their laws, plans, ordinances, and zoning map changes. The materials were requested by 3/2. As of 5/26, a third request following the most recent

reminder on 4/15 was sent to Lackawaxen Township on 5/12 seeking this information, noting that all other municipalities have responded. Ramie noted, "While we understand that these are challenging times for local governments due to COVID-19 impacts, we are still obliged to file that annual report which is now overdue. Your cooperation would be appreciated." Claster asked when was the last time a report was provided to UDC by Lackawaxen? Ramie said she presumes last year and would check Golod's Code Enforcement Report.

Report of Correspondence Received: Nonna Hall, owner of Nonneta and Friends Creative (ceramic art studio) on Old Brook Road in Barryville, sent an email on 5/14 to the UDC and Upper Delaware Scenic Byway, stating in part, "It just blows my mind that the New York Department of Environmental Conservation issued a permit to allow the discharge of 17,000 gallons of treated wastewater per day into a tributary of the Delaware River. Everything will travel down this little beautiful brook [Halfway Brook], through the towns of Eldred and Barryville, and end up in the river... If the owners of Eldred Preserve really care about the area and the environment, they wouldn't even think that this kind of decision is remotely appropriate. My hope is that they have simply never heard the opinions of the local population, people who live in the area full-time and really care about the nature that they are surrounded by, the kind of nature we left the city for... Please consider the opinion of local people who live here, who own businesses here, and who raise their children here... I really hope that this letter will get your attention and will inspire you to approach the owner of Eldred Preserve and ask them to reconsider their system of dealing with their wastewater." Ramie responded on 5/15, "We at the Upper Delaware Council appreciate hearing your comments and have monitored the permitting of Eldred Preserve's proposed wastewater treatment operations by the NYS DEC and Delaware River Basin Commission. Just to be clear, the UDC has no regulatory authority and its advisory comments are generally limited to the jurisdiction of the federally-designated Upper Delaware Scenic and Recreational River corridor boundaries." (Ramie added that she would forward the message sent to laurie@upperdelawarecouncil.org to the chairperson of the Upper Delaware Scenic Byway, Inc., which is a separate 501(c)3 organization.) Nonna Hall replied on 5/18, "I can see how it might look like that property is far from the river, but we can't look at the problem as a separate situation. This is a part of the river. One of Delaware big brooks which delivers its water to Delaware River, and now it'll be delivering not only water or help some fish to commute there, but it'll transfer some human waste now as well. Which is horrible."

Robinson said unless they redesigned the sewer treatment system in the Eldred Central School, he thinks that also discharges into Halfway Brook. He said it did when he was on the school board 20 years ago. Robinson said the Eldred Preserve proposal isn't unique to discharging into the Halfway Brook. Claster said NPS looked at this project when it was being reviewed. There is a provision of the Wild and Scenic Rivers Act that allows them to take a look at projects on tributaries if they might invade or diminish the values for which the river was designated. Don Hamilton calculated and determined the dilution of the waste going into the Brook would be such that by the time it got to the Delaware it really wouldn't be something that would affect water quality.

Claster had offered to look at the Town of Tusten's zoning T.A.G. before they were finalized. Her understanding is they are not working on anything during this shutdown and asked Ramie to please reiterate that offer to the Town. Ramie said we can certainly reach out to them and see what stage they are at.

Old Business:

Project Review Workbook Version 2.0 and Virtual Presentation Update: Ramie said we have made a huge amount of progress. She had mentioned that Dorene Warner from W Design is working on the graphic design phase and came out with the first draft back on 4/21. Claster and Ramie provided edits to that and Warner turned around a second draft on 5/19. Today, Ramie received the third revision. Warner secured printing specifications from Spring Hill Laser Printing Services in Lake Ariel and they are now waiting on the final page count. A meeting is scheduled for 5/28 to go over the final edits. The National Parks Conservation Association (NPCA) graciously offered to assist us in paying for the design and production services. They would ideally like us to be done at the end of this week because of the way that their fiscal year is structured. We will be submitting the W Design invoice directly to NPCA to pay on our behalf, which we appreciate.

The second portion of this project is the virtual presentation. Ramie said UDC decided to pivot from a series of in-person workshops to do one web-based internet online presentation that we will record. It will be a training session that can be used forever at any given time and by any person to watch at their leisure. To do this, we're talking about

engaging some professional videographers to film different segments of it. We're thinking that this will be approximately a one-hour video, essentially, in which we have different segments. One would be an introduction that Richardson, as chairperson of the UDC could provide about what is this document. Tom Shepstone, our Planning Consultant has expressed enthusiasm about providing a historic overview. What are the Land and Water Use Guidelines? How did they come about? What is the purpose of this workbook? Cluster will then offer the primary portion of the training, which is to go through how to use workbook, potentially by Powerpoint and to take everybody through an exercise of substantial conformance or significant project review so that they can see it's not intimidating. It will demonstrate how you make use of the different forms and the sections, and which parts pertain to the type of project. Ramie reached out to three videographers that she's aware of their work from past projects and two of the three were both available and very interested in helping us with this. What we're asking them to do is to film those two or three segments mentioned, also get some nice footage of the river, or some still shots, so that it's engaging and dynamic for the people that are viewing it and something that we'll be proud of. Also, we are asking for them to provide us with some technical guidance on what type of platform we can post this ultimate product. For example, we had talked initially about housing it on the UDC website so that people could just go there, click on it, watch the program and learn from it whenever they're ready to but one of the videographers said that would probably crash our website instantly. There are different platforms like Vimeo or YouTube. If we had it out there on a channel like that, then we provide a link to it. We are discussing a WebEx style meeting. This rollout phase is another aspect that NPCA has offered to assist us with financially. However, when we get into Operations and Ramie talks about our finances, she did say the UDC can afford it at this point with all the money we haven't been spending lately. She said we'll see where we are when we get to that stage.

UDC Memo to Town/ships re: Minor Amendment to Land and Water Use Guidelines: Ramie said she ran out of time in the preparation for this meeting and the next one to get to this issue and had hoped to have a draft put together. She wanted to clarify what the memo would say Town/ships. She knew it had to do with the fact that we have conceptual approval on our Position Paper for Utility Scale Solar. The question to the Town/ships she believes was along the lines of will your Town/ship need to hold a public hearing in order to consider a minor amendment to the guidelines. Richardson said that was the gist of what it was. There was a discussion about whether the Town would have to hold a public hearing to do that, and in the process are there any objections from the Town to moving forward with that process? Ramie said she will try to get the memo together for the 6/4 UDC meeting so members can review it and make sure that it does represent what they had in mind before sending out.

Other: None.

New Business:

Cochecton, NY-Damascus, PA Bridge 2021 Rehabilitation – Comments Due by June 5: On Friday, we received communication from the NYS DOT. This is a follow-up to the 3/4 meeting that we had attended about the major rehabilitation of bridge. A copy was provided in the meeting packet. They are basically outlining how this process would go and asking for any comments on it by 6/5 to the project manager, Mr. Kim Nichols. They say that the objective of the rehabilitation is to raise the bridge condition and sufficiency rating to current department standards. In order to do that, they're going to be repairing the bridge deck, railing and sidewalk, as well as the pedestrian fence. They did listen to the feedback from the March meeting, which was universal to do the staged construction. They'll repair half of the bridge and maintain vehicular and pedestrian traffic on the other half with a temporary traffic signal for one-way traffic. They have gotten rid of the offsite detour, which was going to be 22 miles around and particularly was not favored by emergency response officials. Another provision that they are planning is that there is a height limit on this bridge and commercial vehicles or oversized length would not be allowed on the bridge during this time. They provide the specifications for height and weight in this case, and the criteria to require a hauling permit. This is taking place over two construction seasons, starting in the spring of 2021. They would work on a weekends and nights if they need to expedite it. It is also mentioned that they will be closing the parking area at the Cochecton DEC fishing access site, but the Damascus side will remain open. The project's estimated cost is \$4.5 million. They also included a major list of who has received this notice. Ramie said her question to the committee is whether anything raises any concern, or do we have any positive comments to offer? She said keep in mind that tomorrow morning is the annual meeting of the New York-Pennsylvania Joint Interstate Bridge Commission, which is being conducted by WebEx at 10:00 AM. This project among the nine other upper Delaware bridges will come up for discussion there with the inspection report, maintenance plans, capital costs, etc. Ramie plans to make a public comment during that meeting that UDC appreciates that they did listen to the local input and decided to go with the

stage construction.

Richardson said he would just point out that in the letter there's a paragraph referring to the Cochection fishing access. He said it actually says they're proposing to close the existing parking area on the Cochection fishing access, but that a temporary access will be provided to maintain fishing and recreational use from the NY side so they're addressing that issue. Ramie said she assumes there'll be a path down to the river or something to that effect, but that they'll probably need the parking area to stage their equipment.

Henry said he would just ask NYS why they need to close the parking lot if they are thinking of leaving walking access on the New York side? If they're using it to stage their equipment, see if there was another spot available so that people that want to use that access could park there.

Claster said she could speak to that, saying they did consult with NPS when they were contemplating closing the access. If they close both lanes on the bridge, then they could stage on the roadway going up to the bridge. By having one lane open to traffic it required that they find another staging area and that is how they ended up selecting the fishing access parking lot. Henry said he wonders if they're going to block the parking lot and if it's going to be a safety concern for the public. Claster said the walking route is going to be on a property that DOT owns that's next to the access. People will not have to walk through the staging area to get to the river. The area under the bridge won't be available; there's going to be an alternate path that's just up river on DOT land that's adjacent to the staging in the parking area. Dexter said he believes they said they were going to tear the deck off so parking wouldn't be allowed underneath the bridge. Ramie said she would seek additional information at the Bridge Commission meeting.

Letters to PA DEP & Lackawaxen Township: Holbert Bros. Bluestone Quarry Permits: On 5/1, we received a Freedom of Information Law request from Dr. Kishor Rao, who lives in Lackawaxen. It was an extremely broad request for ALL records from 2011 onward and continuing under the Pennsylvania Right to Know Law concerning anything to do with the Holbert Quarry, under various names, and of the individuals and companies. It also cited the Pennsylvania Right to Know Law and said that we had five business days to respond. Dr. Rao identified himself as a member of "Save Lackawaxen". This request came through by email on that Friday, by the time Ramie saw it, it was Monday.

Ramie said she did call and speak to Dr. Rao. She noted that the UDC was involved in a land use appeal through civil court in the Pike County Court of Common Pleas in 2011-12. She refers to this as a dark chapter of the UDC's history. It was a very costly and prolonged legal dispute in which the UDC was taking Lackawaxen Township to court for not enforcing its own zoning by allowing the Holbert Quarry to expand beyond its original scope to a 40 acre operation instead of two, five acre operations, and it exceeded the footprint that is allowable in both their zoning, as well as the Land and Water Use Guidelines. Ramie said it ended up being dismissed ultimately, and instead the parties worked out a stipulation with NPS Superintendent Sean McGuinness acting as spokesperson. UDC hired counsel who had expertise in land use matters. A group of homeowners had concerns about the impacts of the Holbert Quarry on their quality of life. Ramie said that wasn't our mission or objective; it was enforcement of the plan. They had their own concerns that they were raising and even after our case was dismissed, they continued on to appeal the court finding. Ramie said she doesn't believe that ended up successfully for them. She said we came up with a compromise and through the conditions that the Pennsylvania Department of Environmental Protection would enforce for the operation. It did restrict it to certain active mining and then accessory use and reclaiming these acres before the next plot could be moved on. Ramie said, this Freedom of Information Request came out of the blue because she has no information about anything going on at the Holbert Quarry. After the initial request she did call Dr. Rao and had a conversation with him. He said that he's permanently disabled in part of his filing and was asking for all records we had to be submitted by email exclusively. It also requested a lot of information UDC doesn't have such as the issuance of permits for traffic, etc. Ramie said she did not feel that the Freedom of Information would apply to the UDC, because we're not a government, public agency or a regulatory authority. We opted to check with our attorney Jeffrey Clemente who works in both NY and PA. Dr. Rao subsequently sent a package of additional information, which outlined his complaints. He did state that he intends to bring suit against the company for various violations and that he's looking for information to supplement his claim that way. Ramie spoke with Attorney Clemente and he shared the opinion that this is not applicable to the UDC. He advised Ramie to write a letter denying the claim, explaining that the five-day rule does not apply during a pandemic when courts are closed and government agencies are not held to the same standards. That time pressure would not be brought to bear

against us. UDC did act within that time period out of courtesy. UDC received a second Freedom of Information Request; this time under the New York State statute. Ramie said Rao promised to flood us with hundreds of statutes if we did not comply. He was very aggressive in his approach and dismissive of contacting Lackawaxen Township with his issues.

Dr. Rao said that the amount of traffic has increased significantly by his observation, and he's under the impression that they have now subleased the company to another entity, which was not allowed in the original stipulation. She said the court actions UDC were involved with are matters of public records through the court system.

Ramie told Dr. Rao if something new is happening, that's a legitimate question to bring up to both the Township and the Pennsylvania DEP. Ramie provided in the meeting packets letters to Lackawaxen Township and PA DEP, requesting any updates since 2011, as UDC has not been made aware of anything. Ramie was also contacted by the Delaware Riverkeeper Network. They also heard from another Holbert Quarry neighbor. Delaware Riverkeeper Network has asked us to keep them informed of anything that we find out as well. Ramie requested Clemente to write a response to the second FIOL request since Dr. Rao didn't accept hers. Clemente sent a letter on 5/12 there has been no response. Dr. Rao's request said if it was denied he would like to know what method of redress there was. Clemente did say that he has the right to file an Article 78 proceeding if he wishes to take it further with UDC.

Ramie heard back immediately from both the Township and the DEP. Mike Mancino, chair of the Township Board of Supervisors says that he believes a more recent amended conditional use has been approved for Holbert Quarry than the 2011 version that we had and will be providing an updated copy. Ramie also got a call from the District Mining Manager for Pennsylvania DEP who acknowledged that they too had received this Freedom of Information Law Request, which they are obliged to respond to and are doing so. He said he is more than happy to share the information that we requested in our letter. He asked if he could have until the end of this week, because they have limited staffing and are working remotely, and there was the Memorial Day holiday. Peckham asked what is Dr. Rao's issue with Holbert Quarry? Ramie a lot of his complaint was regarding his health and issues with his house like the foundation of his log cabin. He's worried about environmental damage. Peckham said one summer he had dynamite going off twice a day, six days a week and that's just part of the deal; everyone that's around bluestone hears explosives. Henry suggests waiting to hear back from PA DEP and Lackawaxen Township. Roeder said for those members who weren't here back in 2011, one of the points to know is that the expansion of the quarry was in a westerly direction moving outside the corridor. He said it was a debacle and he would advise UDC to stay away from this issue. Claster said if there was an agreement that was reached in 2011 between all the parties and if the permits have been altered since then in a way that does not honor the terms of that agreement, that would be something worth looking into. Robinson noted that the Township is aware of it as they approved the modifications. Discussion continued. Claster said she had been reading through some of the documents Ramie provided and it seems like the use didn't necessarily substantially conform, but that the agreement was a compromise position. If changes are being made that make it substantially conform even less, then it does seem like UDC's issue. Ramie said that's why we are doing our due diligence to look into it. Claster said the recourse that UDC does have is that it could withdraw the substantial conformance status from the Township. Roeder said we don't want to go through that mess. It was all controlled by the PA authority that controls these mines and it was not interfering with the corridor. It was the NPS superintendent that did a good job at realizing in court, what are we doing with this? He sat down with the parties and they came to a compromise. Richardson agrees that we've taken the proper approach. When comments come back from the proper agencies, we will have this discussion again.

Other: None.

Public Comment: Saumure said if the zoning is in compliance and the project is not, he doesn't think that we really can withdraw the substantial conformance. There has been a determination that the project or the quarry was out of conformance and there was a settlement on that. If the conditions have changed, the UDC is not in a position to say these new conditions are out of conformance because the old conditions were out of conformance according to the UDC. All we know is that something has changed and we need to refer that to the NPS.

Adjournment: A motion by Henry, seconded by Peckham, to adjourn the meeting at 7:32 p.m. was carried.