

**Upper Delaware Council**  
**PROJECT REVIEW COMMITTEE MEETING MINUTES**  
**July 23<sup>rd</sup>, 2019**

Committee Members Present: Larry Richardson, Harold Roeder, Jr., Fred Peckham, David Dean,  
Al Henry, Jeff Dexter, Aaron Robinson, Susan Sullivan  
Committee Members Absent: Jim Greier, Debra Conway  
Staff: Laurie Ramie, Pete Golod, Ashley Hall-Bagdonas  
NPS Partner: Marilou Ehrler, Jennifer Claster  
Guests: Roger Saumure – Shohola alternate, Cheryl Korotky

The UDC's Project Review Committee held its monthly meeting on Tuesday, July 23, 2019 at the Council office in Narrowsburg, NY. Chairperson Richardson called the meeting to order at 6:33 p.m. There was no public comment on the agenda.

**Approval of June 25<sup>th</sup> Meeting Minutes:** A motion by Peckham seconded by Henry to approve the June 25<sup>th</sup> meeting minutes was carried. There was no public comment on the agenda.

**Resource Specialist's Update:**

New York

**Town of Highland:** Regarding the Town of Highland 2019 Zoning Update, on 7/11 the full Council requested an outline be prepared for the 7/23 Project Review Committee reflecting changes that would be recommended to bring the Town's Law into substantial conformance with the Land and Water Use Guidelines. Claster put together a comparison for the Town however, they are still fine tuning it and Claster put together a helpful guideline. Claster said it could use a few changes to make it a little more reader-friendly. They will have it for the committee next month. Richardson asked if it would be concise enough that the board may be able make changes with an amendment or will the zoning need to be opened up? Claster said it's really up to them. Golod said personally, he doesn't think an amendment would suffice because it covers different areas of the zoning. There are some objectives that could be massaged into meeting the objective and some that cannot. Claster said she could see if they added a section that just addressed the corridor they could put all the changes in there. That could be a smaller amendment that doesn't require changes to the whole document. They would still have to change their Schedule of Uses and some of their definitions, regardless. Golod said he believes that the eliminated 2017 Zoning removal of the Highland River Overlay District caused a lot of these issues to arise. Peckham asked why it was eliminated and Claster said we don't know. Golod said they didn't share that with us but the Zoning Rewrite Committee for 2017 that completed that Draft for which the UDC supplied a Substantial Conformance Review was disbanded by the Town Supervisor and a new Rewrite Committee was formed.

Regarding the Rt. 97 Project Update, in the meeting packets a draft letter was provided to the National Park Service indicating the UDC had insufficient documentation to conduct a substantial conformance review for the NYS Rt. 97 riverside construction project at Highland Parcel #27.-9-1. The last time we have heard from the Town was the fall 2018 when the subcommittee met with the Town. They said it had been turned over to the State and DOT was going to be surveying. The Town said we would receive some kind of feedback or report when they were done and UDC hasn't received anything. Henry said one of the things contemplated during meetings was filing a complaint for not producing the information. Ramie said if it doesn't exist, they can't send it. Golod said he doesn't know what information they can provide because they did say from the subcommittee meeting that there wasn't any information to be had. Henry said you can at least get that in writing. Ramie said she doesn't feel filing a complaint would be productive for our relationship with the Town. Henry said regardless of the relationship, when this was going on they were in substantial conformance and a participating Town. They kind of failed to participate other than Andy Boyar asking for a complete review which UDC furnished. If you want to let Towns that have zoning and ordinances go that route, Henry would just say beware. He hears people complain about the Town of Hancock and Berlin Township for not having zoning and ordinances. There's a protocol and complaint procedure. He feels there needs to be a negative consequence for negative behavior. Ramie said procedurally who do you file that complaint to? Henry said he's sure they have a page in their old zoning saying if you have any concerns with their zoning ordinances contact the Zoning Board of Appeals or the Zoning Code Enforcement Officer or higher up. Golod said

they've allowed the project to continue because he saw there is a deck now. He thinks for him to start writing letters to the OAG about this, who is he to tell them what to do, after the subcommittee went down to talk to them? Dean asked what is the opinion of NPS. Claster said we have been participating in conversations about this all along. Dean asked what UDC should do and does NPS have any teeth? Peckham said if you don't show teeth you might as well pack-up and go home. Richardson said he thinks we've gone above and beyond. This letter spells it out and we pass it along to NPS. Claster said the UDC furnishes an Enforcement Report every year to the NPS as part of the contract, is that right? Golod said the last he talked to Superintendent Kris Heister she didn't want the yearly reports; it could be 3 years or 5 years. There was no real time limit put on there. Claster said this seems like something that should go in that report as one piece of information on whether the Town is enforcing its own laws. Claster said it's hard to know what the landowner is doing without having that information provided. NPS doesn't have the ability to send someone onto his property and investigate, that's not what NPS does. Claster asked, "Is it a clear and direct threat?" We don't know. It depends on what the property owner is actually doing there other than hearsay but they have no official document that says they put in a septic system and it's *X* feet away from the top of the bank. Henry said NPS does have authority to trespass if there was a complaint. Claster said this is not a legal matter that would involve NPS. The Town is responsible for making sure that person is following the laws. Henry said NPS already went down there and took pictures. What prompted this initially was there was an investigation and report done about illegal dumping near the river. Henry said if it's river-related NPS has the authority to go onto property. Claster said she doesn't think NPS can. They can look from the river and road but she doesn't think they can trespass onto someone's property. Henry said he spent 32 years as a Federal Law Enforcement Officer and he's telling her NPS can trespass to investigate a complaint and a complaint came in. Claster said even if it's not criminal complaint? Henry said it could be an environmental complaint, criminal, etc. Henry said this is the laughing stock of the valley.

Sullivan said her picture of this property is this is only an issue because it's right on the river. From what she's hearing it's a private home and the Town failed to get any data. The only way she could see any threat to the river was if the septic system were to leak into the river. She said NYS law says if an individual disagrees with a determination of the Zoning Board they can file an Article 78 with New York Department of State. They will provide a legal analysis. The neighbor could say, "I can't find out what that septic system is next door to me, I'm not happy. I'm filing an Article 78 to the Town for their failure to investigate the septic system." Discussion continued. Ehrler said unfortunately this is a project that she's not that familiar with but she understands that Carla Hauser-Hahn and Superintendent Kris Heister have looked at it already. Claster has talked about what she thinks NPS can do. Ehrler does have some concerns about private property. NPS does have a review of meeting conformance with this zoning and theoretically, one would hope there's zoning in place that this septic meets the zoning for that Town, and if it doesn't, the reality is we need the documentation that says that it doesn't. Based on this conversation neither UDC or NPS have been given that information. The question is how does anyone get ahold of that documentation to find out if that septic system does in fact meet zoning? That has to be with the Town because they should have filed something in order to install their septic system. If they didn't, that's a really sad violation by the Town for not enforcing their own laws. There are certain things NPS can and cannot do and a lot of things no one wants NPS to do and NPS doesn't want to go there. Hauser-Hahn still works for NPS until 8/3; she's on vacation. Claster and Ehrler will reach out to her and get the history behind this and apologized for the slight disadvantage. Dean said don't apologize but there has to be follow through. Ehrler said we all know what the NPS follow-through can be and NPS is not about to do that and she doesn't believe anybody here wants NPS to do that.

Robinson has a few concerns; one being that it could possibly be contagious. If other Townships see that there's no consequences to enforcing their zoning, you may see sloppily enforced zoning. He said Shohola Township handles it by taking the applicant to court. It's a Town's responsibility. From a UDC standpoint we don't have any enforcement capacity. We are an evaluating and recommending agency. He feels the NPS should have some responsibility to get involved with the Township to get the information. If not, the whole structure of the UDC and NPS is a waste of time. What are we here for if it's not going to be followed up? He said the original threat always was if Towns and Townships don't behave the NPS will take action to the extent of confiscating property. Claster said the Town told UDC that if it filed a Freedom of Information Act (FOIA) Request UDC could get that information. For reasons she doesn't understand, that was not done. That was an option that was not pursued. The way that the River Management Plan (RMP) lays this out; if a Town has a history that is documented of non-enforcement of their zoning that can take them out of substantial conformance. That is where she was going when she mentioned the Enforcement Report. If there was a documented pattern of non-enforcement of its own zoning, how she imagines it playing out is UDC would provide an Enforcement Report to NPS at which point the discussion

of whether the Town should come out of substantial conformance. If the Town does come out of substantial conformance, only at that point is it possible to exercise eminent domain in a situation in which there is a clear and direct threat to the resource. Claster said what we're talking about on this property is two small sheds that were torn down, a new shed was built on the approximate footprint but not exact. Based on the documentation received there was nothing about a septic system. Claster asked the committee what is the clear and direct threat. It is an incompatible use on the Schedule of Uses. Claster does not see vacation cottages, Airbnb, a shed, a tiny house, none of those things are considered incompatible on the Schedule of Uses. The procedure is the Town has to come out of substantial conformance and then if a project is proposed on a property that presents a clear and direct threat, that's when eminent domain is discussed. Claster said we're not anywhere near that now. We may be getting there with the zoning and come out of substantial conformance soon but, so far, NPS doesn't have an enforcement document that documents a history of non-enforcement in the Town of Highland. This project happened while the Town was in substantial conformance. When reading the RMP, it is very clear there is no eminent domain exercise unless the Town is not in substantial conformance. Robinson said get a site plan. Richardson said they never had a site plan. Robinson said you can't even make a determination of a project without a site plan. Claster said if the applicant never provided a site plan to the Town there may not be one. Robinson said that negates the whole application as it says on the application you need one. Claster said you're right. Discussion continued. Henry made a motion to file a FOIA request on the missing information on the project including the site plan and sewer plan to the Town of Highland, write a letter of complaint to New York State Department of State relative to this project while copying the Town of Highland, and send a letter to NYS DOT asking for an update on the survey of this project. The motion was seconded by Saumure carried. Richardson said he doesn't think this is the way to do it. He said the likely response from the State government would be have you filed a FOIA Request? If the Town has documents you don't have access to, the way to get them is through a FOIA request. All they have to do is tell us it's not available or we're not going to comply. Sullivan said that request seems very legitimate. NPS could file a FOIA request. They are defenders of the river. It should say is there a site plan, is there a septic plan, has it been inspected and is it up to code? Discussion continued. Henry and Dean said NPS need to be partners, not silent partners. There needs to be participation. Richardson said UDC hasn't made a determination and put it on NPS's desk at this point. They have been working with UDC, trying to get this resolved ahead of time.

**Town of Lumberland:** On 4/15 the UDC received the Town of Lumberland's Proposed Local Law #1, "A Local Law Amending the Zoning Law of the Town of Lumberland, Sullivan County, New York". The proposed law changes the zoning designation of parcels, SBL 28.-1-28 and SBL 28.-1-30. A substantial conformance review will be conducted under New Business.

**Town of Deerpark:** A portion of the scenic overlook wall on Route 97 in the Hawk's Nest had been damaged. NYS DOT will repair the wall using native bluestone which has fallen from sections of the existing walls. Work is expected to take two weeks to complete and will begin once approval is granted by the NYS DEC. The area will be inaccessible during the repair process. A photo was passed around of the wall damage to the Hawk's Nest.

#### Pennsylvania

**Shohola Township:** Golod provided technical assistance by evaluating and prioritizing non-conforming items in the township's current zoning ordinance to assist the municipality with determining which specific areas should be modified during their revision process that is part of the FY 2019 TAG project.

**Project Review Guide Workshop:** On 7/9 Golod and Claster conducted a small workshop where the timeframe for substantial conformance reviews were discussed. It was agreed that the UDC will continue to provide municipalities with technical assistance while they work towards adoption of laws, plans, and ordinances. Additionally, within 45-days the UDC will supply the municipality with a draft substantial conformance report to further assist achieving conformance. Once the municipality has adopted, the UDC will have 45-days to perform a final substantial conformance review, and submit to the NPS for a final determination. Golod appreciated everyone's input that was involved. Roeder said one thing that stuck with him from that meeting was that whoever represents the Towns and Townships, our ears and eyes should be open whenever a new project is coming, a revision in zoning or ordinance, etc. and that should be brought forth to the UDC and there should be communication in the beginning. This could save them money because they may not have to make revisions.

**Project Review Guide Update:** On 7/22 Golod and Claster met and reviewed the amended draft Project Review Guide. It was agreed that the document is ready to be reviewed by the UDC Executive Director and the NPS

Superintendent(s). All comments and edits were requested by 8/6. Claster won't be here for the 8/27 Project Review meeting, therefore the date to show the committee is to be determined.

**FY2019 TAG Update:** Town of Lumberland completed TAG 2019-01; Building Dept. FAQ Brochure; **Request full payment \$787.** The deadline for municipalities (Berlin, Tusten and Shohola) to complete their FY2019 projects and submit their documentation for reimbursement is Friday, August 30, 2019. Ramie said 9/30 is the end of the Fiscal year. The municipalities are given 10 months to complete their project unless approval is requested and granted for an unavoidable extension.

**FY2020 TAG Update:** On 6/27 TAG packets (solicitation memo, application form, contract criteria, and standard contract rider) were distributed to UDC town/ships and the five counties. Applications must be submitted by 4:30 on Friday, August 30, 2019. No applications have been received as of yet.

#### **Resource Specialist's Update:**

On 6/27, 7/11, and 7/22 Golod met with NPS Land Use Planner Jennifer Claster to continue work on project review issues. On 7/2 Golod and Claster conducted a UDC/NPS River Management Plan/Land and Water Use Guidelines training session with Sullivan County Planning. This presentation will be the basis for the 8/1 UDC presentation. Golod and Claster learned about the GML 239 Exemption in which Sullivan County has entered into agreements with their towns to exempt minor actions for 239 review such as decks and pools. This exemption will allow Sullivan County to focus on larger scale project reviews. The trigger for a 239 review are projects within 500' of the state boundary, Rt.97, county roads, municipal boundaries, and agricultural districts. Golod provided the exemptions on his Discussion Items report. Claster said in Sullivan County the Town of Fremont and Town of Cochection have not asked for the exemption. The rest of the Resource Specialist Update is for personal review.

#### **Old Business:**

**Supplement to the 1986 River Management Plan and/or Land and Water Use Guidelines:** Ramie said the task from last month was to review the Supplement to the 1986 River Management Plan and/or Land and Water Use Guidelines outline. Henry moves we follow the outline for a Supplement in a draft form as it applies to the Renewable Energies Position Paper with 90% approval of the voting populous. Henry said it's pretty obvious that changes have been made to the RMP. Ramie has provided numerous examples and NPS has not followed the procedures of the RMP. Page 16 of the Foundation document, previous Superintendent Sean McGuinness recommended doing a River Management Plan Addendum. Henry said it appears people realize change is inevitable, no one wants to follow procedure of the RMP because it's never going to happen. Claster asked why that is? Henry said in this case he's talking about the Utility Scale and some Towns have said they don't want to pursue it. Dexter said they don't want to open up the RMP because it's not pleasant. Ehrler said what the committee is proposing is a supplement, which has not been outlined in the RMP, she understands that erratas have been used, some before the RMP was even signed. The RMP didn't exist, UDC didn't exist when some of the erratas were done. Claster said the RMP wasn't signed until October 1987, the errata was put in in September 1987. The errata was discussed by The Conference of Upper Delaware Townships (COUP) as early as January 1987. Henry asked for the documentation from Ehrler and Claster's research. Ehrler said just so she understands, Henry is proposing a supplement, which is not outlined in the RMP. In the terms of public feedback you will hold a public hearing? Wont that open up the same concerns about opening up the RMP? You then will put it to a vote and some people may not say yes. Ehrler asked aren't you doing the same thing but a different process and calling it a different name? Isn't it a very similar process you're proposing as an amendment? Henry said in his mind a supplement would be much easier and very similar to the supplement done for land changes. Discussion ensued. Ehrler said her final comment is you will do what you will do, but understand what NPS has said, that this is not outlined in the RMP as a path forward to change the RMP. It's clear in Ramie's documents. NPS has concerns. The method is spelled out in the RMP and a supplement is not one of them. Henry mentioned 36 CFR. Ehrler said that changes things across the Park Service. Discussion continued. Claster asked which Towns said they would vote no because they are opposed to any changes going through the amendment process? Robinson said Shohola Township for one. Henry said he's heard that it more than just one Town/Township. Richardson recommended to the Town of Cochection that we don't open the RMP up; find a way to add to it or amend it. Sullivan said many Towns have had the discussion on Solar, they are aware that this is a Land Use and made the decisions on what they want to do. In every instance it's fallen into a Special Use or Conditional Use. Claster asked why wouldn't the other Towns and Townships try to work with the others that don't want to go through the process to go through with it? Richardson said he doesn't know if you're going to find a

Town that's going to be proactive to open up the RMP. Claster said it's about one issue: Renewable Energy. It's not about opening the RMP up. It's about one change. Discussion continued. Ramie read from the Foundation Document about what prompts an addendum: "New management challenges that did not exist during the development of the original RMP for the Upper Delaware River necessitate an Amendment to the RMP through collaboration of local state and community partners. The RMP addendum would identify current issues, trends, threats and opportunities within the river corridor and identify specific recommendations for the protection of the Wild and Scenic Rivers Outstandingly Remarkable Values." Ramie said there it was called an addendum and this is an NPS document from 2014. Ramie said it's a circular question on whether the procedure comes first or the Position Paper. Richardson said he would like to put a procedure in place to make changes. Richardson asked Henry to work closely with staff to come up with a supplement to the 1986 River Management Plan and/or Land and Water Use Guidelines and have it by the next meeting. Claster wanted to remind the committee that this is not just UDC's document and this is not just UDC's process. She doesn't think you can unilaterally come up with a process and then change the way the RMP is modified on your own. Richardson told Claster if we don't find a way to go forward that has been talked about endlessly here, then it shouldn't be brought up again. These issues won't be addressed, or the next issues and the Towns and Townships will be on their own. Find a way to work with us.

**6/24 & 6/26 Pace University Local Land Use Law Training Report:** Golod's report was included in the meeting packet.

**Other:** None.

**New Business:**

**Project Completion for Town of Lumberland TAG 2019-01: Guide to Permits Brochure:** Motion by Peckham to approve the project completion for Town of Lumberland TAG 2019-01: Guide to Permits Brochure seconded by Henry carried unanimously.

**Draft Letter to National Park Service: UDC Review of Town of Highland Parcel #27.9-1:** Ramie said this is moot as a different tactic has been decided.

**Substantial Conformance Review for Town of Lumberland Local Law #1:** Golod provided a copy of the Substantial Conformance Review in the meeting packet. This issue was discussed last month. Golod said this is essentially a comment letter. Two parcels are located in the Black Forest District and the Hillside District. They have been joined to become part of the Town's River Hamlet District. The map Golod provided in the meeting packet states that. The parcel size is 15.64 acres for one parcel and 3.1 acres for the other. They are owned by Jerry's Canoes which owns the adjacent parcel to the west. Therefore, changing the zoning designation would constitute a logical infill area between the two preexisting River Hamlet District parcels. Golod found that the Town of Lumberland met the requirements for this zoning redistricting. Additionally, on 7/10 the Town held, voted and unanimously approved adoption of Local Law #1. Therefore, Golod recommends that the Project Review Committee approve to the full Council the recommendation to the NPS that the Town of Lumberland's Zoning Ordinance Amendment be found in substantial conformance. Claster asked if Golod ever heard back from the County regarding their review of this. Golod replied no. A motion by Roeder, seconded by Robinson to move the recommendation to full council carried.

**Skinnners Falls, NY-Millanville, PA Bridge: Repair Project Estimated Oct. 2019-April 2020:** Ramie said this had come up at the bridge commission meeting. They were due to have an onsite-meeting to look at structural issues with the 1901 bridge. Ramie provided the Engineer Report notes in the meeting packet. She pointed out on page 3, 6a, it says they have decided to divvy it into two different construction packages. They will prioritize the bigger issues first. For the first construction package, they intend to issue a notice to proceed to the contractor in October 2019. Construction would need to be completed by April 2020 so the bridge is open by the summer tourism season. No date is given for the second contract. Ramie speculates that bridge will be closed over the fall and winter into next spring. She did forward that question to PennDOT but has not received an answer.

**8/30 Deadline for Submission of FY 2020 Technical Assistance Grant Applications:** Ramie wanted to provide everyone with the outline and asked all to share with the Towns and Townships. It was sent out in the form of a press release as well as directly. Ramie knows of one Town that is working on a project.

**Other:** Henry said in the letters relative to the Town of Highland, Sullivan brought up a good point that there's inspection on every level of development. If that could be placed in the FOIA Request, we would like to see the schedule of completed inspections.

Claster said with regard to the Technical Assistance Grants and the memorandum that was sent to the Towns and Townships, it includes project types that NPS told UDC they did not want UDC to advertise and award with money that comes from NPS but you did it anyway. Ramie said we said it would be on a case-by-case basis. We would let them be creative and see if they can justify it through the RMP so UDC isn't eliminating projects before we even know what they might be. Claster said there are a lot of Federal, State and County grants available. NPS spent time since last meeting putting together a list of programs that our local municipalities in PA and NY can apply for, for various types of cultural and educational projects. There are a lot of other grants out there for those types of projects. Richardson said if NPS could provide a copy of that UDC could have copies to hand out at the Technical Assistance Grant presentations. If we have to turn someone away, they will have another source. Henry said the nice thing about Technical Assistance Grants is it's "free money" a lot of grants you have to put up matching funds. Sullivan added it does nothing for the Town or Townships relationship with NPS. She's not turning down free information, that's lovely. People that do grant writing for the Town of Tusten largely do it on a volunteer basis. Claster said at one time it was discussed asking Patrick Reidy to review the revised contract and rider. Claster asked Ramie if she still wanted that to happen and Ramie said no. Saumure asked what the agenda was and what is trying to be accomplished? Ehrler said this is the policy that has been put in place through reading the RMP. Superintendent Heister spelled it out in her response to the letter of the request and she quoted the RMP and what the grants could be used for. The agenda is to meet the requirements of the RMP. That is Ehrler's understanding of what they are trying to enforce. Saumure said being a little more transparent might be a way for UDC and NPS to meet their goals together. Without that it turns adversarial. Ehrler said she appreciates that and it's really unfortunate that this is where that is. She doesn't disagree. It should be worked on together. Ehrler said Superintendent Heister will return in three weeks and that can be discussed with her.

Roeder asked if River Road to Cochection is open and the group said no. Richardson said don't follow the detour sign; he made a huge circle.

Golod asked if anyone has any means of disposing CFL light bulbs, please email him.

**Public Comment:** None

**Adjournment:** A motion by Sullivan, seconded by Roeder, to adjourn the meeting at 8:35 p.m. was carried.

*Minutes prepared by Ashley Hall-Bagdonas, 8/1/19*