

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
September 22, 2020

Committee Members Present: David Dean, Larry Richardson, Jim Greier, Fred Peckham (via phone), Al Henry, Aaron Robinson, Jeff Dexter, Susan Sullivan.
Committee Members Absent: None.
Staff : Laurie Ramie, Shannon Cilento, Ashley Hall-Bagdonas
NPS Partner: None.
Guests: Roger Saumure- Shohola Township Alternate, Tom Dent- Town of Highland Representative (6:55 p.m.).

The UDC's Project Review Committee held its monthly meeting on Tuesday, September 22, 2020. Chairperson Dean authorized Richardson to lead the meeting. Richardson called the meeting to order at 6:30 p.m. There was no public comment on the agenda.

Approval of August 25 Meeting Minutes and September 8, 2020 Special Meeting Minutes: A motion by Henry seconded by Robinson to approve the August 25th Meeting Minutes and September 8th Special Meeting Minutes carried. There was no public comment on the agenda.

Resources and Land Use Specialist Update:

New York State Town Projects

Town of Highland: Cilento informed the Committee that a legal notice was published in the *Sullivan County Democrat* that a public hearing of the ZBA was to be held on 8/20 to address an appeal of a violation. The violation was issued to the owners of the Stickett Inn at 3380 NYS Route 97 in Barryville by Town Code Enforcement Officer Dave Preston; it stated the eating and drinking establishment/hotel had been operating without site plan approval or a special use permit. The property is in the Hamlet-Commercial Zoning District. As of 9/18, according to the property co-owner Johnny Pizzolato, the Town decided to drop the violations and allow the Stickett Inn to continue its operation. Despite several emails to the Town from Cilento, they have yet to respond or provide more information.

Town of Lumberland: On 8/12 the *River Reporter* reported on the Town Board meeting. The article read, "The second [item] was a resolution to set a public hearing for Wednesday, September 9 at 7:05 p.m. with respect to a proposed local law which would establish a six-month moratorium on the processing of applications for, and the issuance of any approvals or permits for, solar farms and solar power plants in the town. Supervisor Jenny Mellan said that although there hasn't been a big push to develop solar projects, they want the code to address the issue because the potential is there." Following the 9/9 hearing, the Town submitted a Notice of Intent to Serve as Lead Agency to the UDC for the proposed Local Law No. 2 of 2020, entitled Solar Law. Cilento will send the requested SEQR Lead Agency letter (included in the meeting packet under New Business) to the Town and request project updates from the Town.

Project Review Workbook Rollout: Since the Project Review Workbook 2.0 has been completed and posted on the UDC website, Cilento has begun attending Town meetings to announce its release and implementation. Cilento filmed a segment with *Quiet Light Films* for the Project Review Workbook video on 8/26. As boards begin to resume in person, she will attend meetings in various Town/ships to share. As of 9/22 she has attended: Town of Tusten Planning Board via Zoom, 8/17; delivered copies of book to Town Hall 8/18; Town of Delaware Town Board, 9/9; delivered copies of guide at outdoor meeting; and Damascus Township Board of Supervisors, 9/21; and delivered copies of guide. Due to our budget surplus we were able to order 100 more copies of the Workbook to distribute. Cilento said that's great because Town/ships are preferring hard copies and are excited about this version as it is a lot easier to understand than the previous version.

Substantial Conformance Review Database: Cilento updated the master spreadsheet to reflect input from August PR meeting, and renamed Project IDs to read UDC20-01 instead of TUS20-01 to avoid confusion.

TAG Master Database: Cilento added 2021 applications to the database and will update once final awards are made on 10/1.

Broadband Expansion: In both the 2012 UDC Strategic Planning Workshop report and the 2015-2020 UDC 5-Year Operating Program, expanding broadband and internet access throughout the river corridor was recognized as a priority. “There is a need to improve communications along the river corridor for EMS, as well as cellular service...and internet broadband capacity for business use for a local economic boost” (UDC Strategic Planning Workshop Report, 2012). At their 8/20 meeting, the Sullivan County Legislature authorized the creation of a Broadband Local Development Corporation to lead the expansion of broadband throughout the County, with a pilot project being initiated in Monticello (*River Reporter* article included in meeting packet). Additionally, the Wayne County Commissioners have initiated a broadband expansion project of their own with CARES funding to study access expansion in the County (*River Reporter* article included in meeting packet). Cilento will follow LDC meetings/projects as it pertains to development for western Sullivan County as well as developments in Wayne County as it pertains to eastern Wayne.

FY 2020 Technical Assistance Grants: Cilento said for Technical Assistance Grants Town of Delaware (2020-02 Guide to Permits Brochure \$1,127); Town of Hancock (2020-02: Recreational Access Study \$5,000); and Town of Tusten (2020-03: Comprehensive Plan Update \$10,000) are closed out. Under New Business the Committee will discuss Town of Tusten (2020-04: Zoning Ordinance Update \$906.50 out of \$7,250 award).

FY 2021 Technical Assistance Grants: This topic will be discussed Under New Business. A summary was provided in the Discussion Items Report.

Ramie said with regards to Broadband Expansion, UDC had been following Sullivan County’s attempts to address the shortages and deadzones in this vicinity of the river valley. UDC wrote letters to our Federal and State legislators asking for more information about rural broadband. Ramie said last Thursday she received an email that read: “Dear Ms. Ramie: “Thank you for contacting me regarding your support for increased access to broadband. Broadband access is especially important for our rural communities. Throughout my career, I have advocated for making sure that underserved rural areas have access to high-speed, broadband internet. In August of 2019, I secured over \$16.1 million in federal funding to expand rural broadband in Upstate New York. In 2017, I also called on the FCC to approve a waiver submitted by New York State to use funding provided through the Connect America Fund (CAF) in an effort to make high-speed internet service available to all New Yorkers. I will continue to make sure that all of communities are being served. Again, thank you for contacting me. Please keep in touch with your thoughts and opinions. Sincerely, Charles E. Schumer United States Senator.” Ramie said UDC sent Senator Schumer a letter on broadband back on 9/3/2019. That was after UDC observed a study that said there was \$39.2 million in Federal Funding to expand broadband internet access and help close the digital gap. Ramie said we found that the majority of the sites in Sullivan County were private homes in Lew Beach and outside the river corridor. The 9/3/2019 letter to Senator Schumer stated that the river corridor counts as well.

Old Business

Updated Draft UDC Land Use Complaint Policy and Log Form: Cilento said this was discussed at the last meeting and everyone has had time to ruminate with the information. She did receive advance feedback from Sullivan, Richardson and substantial comments from Jennifer Claster, former NPS Land Planner. Acting Superintendent Boch forwarded the information to Claster to review. Boch wrote that he concurred with Claster’s comments, most notably that the Policy is meant to be more concise in determining if there is a violation. Claster changed the language in the beginning which Cilento agrees to. Some of Claster’s more substantial comments are clarifying UDC’s role and she included information from the River Management Plan (RMP). Claster commented to add “member communities” rather than just communities or river communities so that Buckingham and Manchester would not be included. Under Special Circumstances for Municipal Noncompliance, Claster commented that UDC would use determining factors if it’s a clear and direct threat as defined in the RMP.

Saumure said something that he thinks that would be helpful as the policy develops is essentially a process checklist so that we have a set of steps that we go through. If we have a defined set of steps, that would be more efficient, he suggested. The group discussed a process map or flow chart. Saumure said if we have a defined procedure, it's documented, and there are not questions about what our next steps are. Richardson agreed that would be beneficial. Cilento said it would be a one-page more succinct version of the procedure section with notification, documentation, Town/ship contact, Project Review, etc. She said she would take that information and format it into something between a process map and defined steps. Saumure said he would forward her a flow chart for a resource.

Henry said when it first came in it was about him unfortunately because when a project was going on in Barryville he received a couple of complaints for large livery owners because they were concerned about making a big deal and concerned about retribution. Henry said he made some phone calls and tried to talk with former NPS Superintendent Kris Heister and NPS resource staff. He said he felt Heister's biggest concern was to hell him he was in error to try to call anybody other than Carla Hahn at NPS as that issue was assigned to her. Henry said he wasn't going to do that. He said when he was working at NPS he would receive tons of phone calls and he would never say "you have to go through this particular process or you have to call UDC, etc." He said the simpler you make the document the easier it will be. He said he is a little bit concerned because this is another way that the NPS is trying to control UDC and we have to be really cautious about that. Cilento said she likes the idea of keeping the document simple and from her Planner brain it a good way to track what is going on if we do get complaints. Her vision is to have this document be more internal and be a guiding process. She said also when we're doing the Annual Code Enforcement Review, she thinks it'll be helpful to have everything laid out and overtime we might be able to see patterns. Richardson said the next step is for Cilento to incorporate some of these ideas into this draft. Greier noted page 3 under Special Circumstances #2: Immediate and Time-Sensitive Threats "Because NPS jurisdiction extends to the ordinary high-water mark (OHWM) of the river, *NPS rangers can respond to construction activity on private land that extends below the ordinary high-water mark of the Delaware River, or that affects such land or the waters of the Delaware River.*" He asked when did that change? Cilento said that is from Claster's edits so that might not necessarily be something that goes into the final product. The comments in red are what NPS are proposing and we don't necessarily have to add it, said Ramie. Greier said it started out that they only had jurisdiction on the river. Then we increased it to the high watermark, now they want carte blanche and he's against it. Cilento said she understands where he's coming from but in this circumstance it's for a very clear threat of an example like sewage from private property pouring into the river.

Peckham said from what he's read in the Federal Register and federal laws with regard to navigable waterways by law etc. you can use the high watermark to navigate if there is an obstruction in the river but you can only go to the high watermark. You can't go over the high watermark; that would be considered trespassing and you can only do it for wading in and out. Peckham said you can't have a picnic on what's considered the strand, you would have to keep moving. Henry said those are two separate issues. He said earlier they were talking about NPS jurisdiction. Henry brought up 1996 36 CFR; the Code of Federal Regulations was modified under scope and application or applicability. Henry said NPS has jurisdiction to the ordinary high watermark on this river. Henry said the question was about construction and someone building a house there. What are they going to do? When 36 CFR was modified, there was a list of certain things that NPS wouldn't really enforce and construction activity would not have been one of them. Henry said as Cilento had said, if you came here and somebody was pouring tires into the river or direct discharge of some kind of a pollutant, then you can take action to ordinary high watermark. He said the other concern is, and we mentioned this before that no one knows exactly where the high watermark is. You can go to a lot of training, you can look at pictures, etc. Henry said they were always cautious as to what they were doing from an enforcement standpoint but legally the NPS has jurisdiction and authority to the ordinary high watermark. Greier said he's asked for a copy of 36 CFR but never received one. Saumure read from his phone: "Water subject to the jurisdiction of the United States located within the boundaries and that NPS including navigable waters and areas within their ordinary reach up to the mean high watermark line places subject together and flow of the tide and up to the ordinary high watermark in other places." Henry said that case came out of Glacier Bay, Alaska because tides there are huge. You can go miles when they're high and you're landlocked when they're low and that was referring to the ebb and flow. Rangers were going in and doing stuff when the high tide was there and then they would come back when the tide was low. They might have arrested people doing various things. It was contentious and it was challenged to ask where their jurisdiction was. Henry said we don't have ebb and flow here but on the Delaware River it's to the ordinary high watermark. In all units of the National Park System it

applies. Henry said he told the UDC that NPS should have told us about it in 1996; it's on the list of many things they didn't do or didn't tell UDC. Discussion continued.

Cilento said she thinks the most productive way forward for the policy's sake is to update it with Richardson's comment and some comments at the beginning that are benign. She will send out the updated version for review via email. She will have a phone call with Henry to discuss some of the language to move the issue forward and be productive. Cilento said this is up to our discretion; if someone calls us and tells us someone is building a house on a property, they can do that. We're protecting private property rights. She said this is purely for major negligence of zoning or planning that pertains to the safety of the river. Henry referenced the Barryville incident and said that Claster said Law Enforcement Rangers can't trespass to investigate a crime. He said there are restrictions under the Fourth Amendment as to what they can do. He said if someone calls up and says, "Someone is beating someone next to the river" you're going to go. If someone calls and says "There's a bulldozer in the river (which was this case) you would go. He said the worst that could happen is you would have to turn it over to the DEC, etc. In this case Heister kept telling him to call Hahn and he felt like that was a waste of time because nothing would get done. He went to the Chief Ranger and the Resource Chief Don Hamilton for a follow-up and Heister got upset and this is what promulgated a lot of this. Henry said no one should ever be reprimanded for calling the NPS for any type of a potential complaint. Cilento said the way she's set up the procedure is to focus on UDC's communication with the town/ship, with the UDC representative, with the Project Review Committee and not necessarily NPS, unless it is something that's a huge threat. She will be cognizant of that when updating this.

Ramie said it might be easier if we develop language for the yellow shaded part regarding municipal non-compliance, and then committee members can react to it. We will need to answer how to proceed if a member municipality is uncooperative or refuses to provide information. Ramie said it hasn't really been tested other than our experiences with the Town of Highland recently. Cilento thanked everyone for their input.

Project Review Workbook Version 2.0 and Virtual Presentation Update: Ramie said we want to keep this on the agenda until we have the final product, which is our 45 to 60-minute video that we're working on. Currently it's in the hands of Quiet Light Films. Videographer Jordan Lewis called today to say that they're in the editing stage. He would like to get some fall foliage shots to take advantage of this time of the year and the leaves changing. Lewis said the interviews look great from his perspective. Lewis told Ramie by the end of this week he would likely post a couple segments on the Vimeo channel that we can access to get an idea of how it's going. She did not want to pin him down on a date to have it done because she doesn't want to force the creative process. The payment is coming up for the second half of the contract at Operations Committee but she said she's comfortable that it will be finished on or around the end of this fiscal year.

Proposed Minor Amendment to Add Utility-Scale Solar Guidance: Ramie said she's received two additional comments from our member Towns; One was a Resolution from the Town of Tusten and the other is a Motion that occurred at the August meeting for the Town of Lumberland. They, along with Town of Cochecon and Town of Delaware, agree with the approach of the minor amendment to incorporate the Solar conclusions into Land and Water Use Guidelines. We have heard from four that disagree: the Town of Fremont, the Town of Hancock, Shohola Township, and Damascus Township. That leaves us with seven that did not respond. Ramie said we are truly at an impasse with this and what to do next with our Solar Energy Position Paper. Richardson said we're not going to settle this tonight. He said we know the position that NPS has taken on this. Ramie said the previous Superintendent stated that they could take action, obviously we don't know what will happen in the future with the change in leadership, but they do have the authority to proceed without us basically. Richardson asked that this issue be carried to next month's agenda. Sullivan suggested informing the new Superintendent of this issue and getting them up to speed on the issue. Henry said this is where we really need to get the Supplemental going. If we pursue that and put the definition changes regardless of what NPS says at least we are taking some action. He said if we submit the list he made of all the things NPS had done or changed to the RMP since the Errata Sheet and the 36 CFR he believes we will have a good case. Other examples are taking away law enforcement coverage money, trash removal money, and they said there was going to be a Visitor's Center at Mongaup and didn't do that. These are things that are in the RMP; things that have been changed without going through the due process and there are specific places in the plan that say for them to do that they have to follow the minor amendment procedures. Henry

said it includes land transfers to a plethora of things. His recommendation would be to put it into a supplement and at least UDC has taken some action. He said the people that developed the RMP understand this process; it took three years to get the Land and Water Use Guidelines together. Henry said when Tom Shepstone was here, he said don't reopen the RMP; use a supplement. Here is someone that worked on the RMP; that is recognized and appreciated in the corridor as a planner and a consultant telling UDC how to proceed. Ramie asked what the voting standard would be for a supplement since minor amendments require a unanimous vote? Henry said you can put the definition in the supplement. The group discussed if there was unanimous consent on the position paper. Henry said we need to go back to some issues like fracking and drilling and say what our feelings are. Paparella said looking back at previous emails, he confirmed the Unitality-Scale Solar Position Paper passed unanimously.

Dexter said there's precedent for doing this because that's how NPS asked us to do the Position Paper on Geothermal and Wind Energy. It was just to pass it through a Letter of Interpretation. Ramie said it was allowed for those cases because they said we had definitions that were similar in the Guidelines whereas they felt that Solar was a whole new definition. Dexter said it's an alternative energy, it's the same thing. You're not adding paragraphs you're just making a simple statement. Dexter said there are already four Town/ships that said "no" to a minor amendment. The other technique was a Letter of Interpretation. Ramie said NPS already said that wouldn't accept that. Robinson said the conundrum is that the Town/ships that voted "no" support the principles of this Position Paper. He said if that's the case for UDC to proceed with a Supplement that's a logical alternative because it shows that as a, as a council, we are in unison on that position. The argument of opening up the RMP is a whole different issue. Let that get discussed down the road. At least we did what we could do as a council, to frame our position, and that would get passed on to the membership and it would serve our purpose. Robinson said he would support preparing a Supplement.

Greier said from his knowledge the RMP has never been opened up for a minor or major change since its existence. The only way the NPS could change those regulations in the RMP was through a supplemental procedure. He said we each have a responsibility to the land owners and the property owners in our respective towns and we need to get this done. Richardson said he thinks it's important to remember that the procedure for using a minor amendment is a way of getting around opening up the RMP. Using a minor amendment procedure does not require opening the RMP. He said that was the discussion they had in Cochection and probably other Town/ships. He said nobody wants to open up the RMP. Discussion continued. A Motion by Greier seconded by Henry to have Ramie draft a Utility Scale Solar Supplement passed. Henry said he would like a Motion to have UDC staff make a list of all the things NPS has done from the Errata Sheet, to 36 CFR, to the most recent issues and put it in the form of a resolution. Richardson said that should be a goal but he doesn't want that tied in with what the committee is doing with the Supplement. Robinson said he agrees with Richardson. Richardson said that would be a project to work with Cilento on to come up with a list. Henry said it's plainly obvious what the NPS has been up to: "Do what we say; not what we do" from the very first day of the Errata Sheet. Richardson said that Errata Sheet was in the RMP when it was presented in 1988. He said he doesn't know what you're going to gain from attacking a plan not knowing if it went through any proclamation. Henry said it did. Ramie said it's dated 1987. Richardson said he has no problem compiling the list of NPS changes. Henry said it may help us going forward. He said we all sat here in horror when the Regional Director said to Heister that the UDC hasn't been doing anything. He said he worked at NPS and has some allegiance to that organization but it stinks when you think of what they've done, surreptitiously going in and changing things. NPS budget has grown as opposed to UDC's which has been flat. Ramie asked if the latest incident he's referring to is the Ten Mile River Access use change? Henry said yes. He said hopefully with new administration things will be different.

9/2 NPS Concurrence re: Town of Tusten: Narrowsburg Motors and Tess Retail: Ramie said Boch mentioned these letters when full Council met on 9/3. The packet includes the actual letters showing that NPS agreed with the recommendation of Substantial Conformance.

Other: Cilento said she heard there is a hearing set in October for Shohola's Zoning updates and that substantial conformance review will be coming up on the next agenda. Robinson said no changes have been made. Henry asked Cilento to check with Damascus Representatives to see the status of the Damascus Hotel going in across the bridge. Dexter said there's a lot of empty boxes there. He said they had problems and were delayed because they couldn't

find an engineer. Cilento said Foster Supply's other hotel has opened in Kenoza Lake, NY and that's been their main focus. They stayed open during COVID and it seems to be really successful. Ramie said they just bought a historic building in Newburgh as well and are expanding into the Hudson valley. Cilento said she knows they have been really successful with the Kenoza Hall so she's assuming the other one will be as well. Richardson said everything they do is beautiful.

New Business

Town of Tusten Technical Assistance Grant 2020-04 Project Completion Approval: Richardson said this is the Technical Assistance Grant that came in way under the granted amount. Cilento provided a cover sheet summary in the meeting packets that outlines the project completion. They ended up having \$906.50 in expenditures. Their grant award was \$7,250. As far as fulfilling the requirements of the grant contract they did; it just scaled back from the original intent and expended far less than originally was awarded. They did use Peter Manning as their consultant to draft a couple laws which they provided Cilento with (mass gatherings, noise ordinance, and zoning and subdivisions). Unfortunately, this was not communicated to us earlier, but they decided that they were going to wait until their Comprehensive Plan was adopted to address these zoning changes and to continue with the ordinance update. That's why it was stopped at that point and did not continue. They have not adopted them yet, but they do have the draft laws and ordinances. A Motion by Sullivan seconded by Robinson to approve completion for Town of Tusten Technical Assistance Grant 2020-04 carried.

Revised FY 2021 Technical Assistance Grant Applications: Towns of Delaware (\$6,000); Tusten (\$9,000); and Hancock (\$10,000): Richardson said for anybody who was not at the Special Meeting earlier in the month, we reviewed the TAG applications that came in way over what UDC had budgeted. Some of the projects as they were proposed would not move forward if they couldn't get the funding requested from UDC. Richardson said the committee decided, we'd go back to the Town/ships to suggest they look at the projects and revise them. If it's doable to do a stepped project, it could fall within UDC budgeted amount. He said this is the first time the committee has done this. He said you will see tonight they did an excellent job of revising the amounts and the total comes to \$25,000. Richardson said we had \$20,000 budgeted and would have to change the budget line in Operations Committee. Ramie noted that Fremont is not included in Delaware's revised TAG but that doesn't mean the project can't pick up later. Robinson said it's important to note that we communicated with these Town/ships that each of these funding requests represents a completed section of a larger project. A Motion by Sullivan seconded by Dexter to recommend approval of the revised applications carried unanimously. Ramie said there will be a Resolution at the 10/1 UDC meeting so there will be another chance to discuss this committee's recommendation to full Council.

UDC Letter re: Town of Lumberland Lead Agency Request: As Cilento mentioned in her report, UDC received a Notice of Intent to Serve as Lead Agency from the Town of Lumberland. They wish to serve as Lead Agency for their proposed Solar law. Ramie had referred Cilento to a letter that had been written to the Town of Cochecton last year where there was a similar Solar law for which the Project Review Committee prepared comments. She said since this is just for SEQR Lead Agency, the committee doesn't have anything to review yet. Cilento used the language that was in the former letter about the Outstandingly Remarkable Values (ORVs) and referencing the Position Paper on Solar Energy Systems. Ramie said this is the approach we have to take if a Solar Energy proposal comes before us because unless we judge it on the strength of the Position Paper, we don't have anything in the guidelines we can reference if we're going through a Substantial Conformance review for it. That's what we determined previously, that we are not in a position to render a recommendation on conformance of any solar laws currently. Cilento said in summary, she thanked them for referring it to us and UDC is including the Position Paper on Large Scale Solar Energy Systems that we've adopted. In the interim, UDC reminds its members to keep in mind that Town/ships have pledged to protect the ORVs.

Henry said in paragraph two of the draft letter it says, "The 1986 Final River Management Plan does not directly address alternative or renewable energies." He said he guesses that's true, but Wind and Geothermal were not directly listed. They used the inference and used Letters of Interpretation to say that they could be included without having to go through a Minor Amendment. The one exception was Utility Scale Solar, and they should all be lumped in Alternative or Renewable Energies as Dexter said previously. Ramie said maybe we should be more specific there, as Henry suggests, and say it doesn't directly cite Utility Scale Solar, because as he said, there are

references in there to other types of energies. A Motion by Henry seconded by Robinson to approve the amended draft letter to the Town of Lumberland regarding SEQR Lead Agency carried unanimously. Cilento said she will amend the letter and have it ready for Dean to sign.

Other: Henry suggested reading the 1996 version of 36 CFR 1.2. Robinson requested it be sent to Cilento so she could distribute it to committee members.

Public Comment: None.

Adjournment: A motion by Robinson, seconded by Paparella, to adjourn the meeting at 7:45 p.m. was carried.

Minutes prepared by Ashley Hall-Bagdonas, 10/1/2020