

Upper Delaware Council
PROJECT REVIEW COMMITTEE SPECIAL MEETING MINUTES
October 3, 2019

Committee Members Present: Larry Richardson, Harold Roeder, Jr., Fred Peckham, Jim Greier,
Al Henry, Jeff Dexter, Aaron Robinson, David Dean
Committee Members Absent: Debra Conway, Sue Sullivan
Staff : Laurie Ramie, Pete Golod, Ashley Hall-Bagdonas
NPS Partner: Jennifer Claster
Guests: Ginny Dudko – Town of Deepark alternate.

The UDC's Project Review Committee held a special meeting on Thursday, October 3, 2019 at the Council office in Narrowsburg, NY to review "The Upper Delaware Scenic and Recreational River Guide to Substantial Conformance and Project Review". Chairperson Richardson called the meeting to order at 6:00 p.m. and the Pledge of Allegiance followed. There was no public comment on the agenda.

Review of the "Upper Delaware Scenic and Recreational River Guide to Substantial Conformance and Project Review": Richardson said everyone received a hardcopy and electronically a copy of the draft "Upper Delaware Scenic and Recreational River Guide to Substantial Conformance and Project Review". Golod said he and Claster are looking for any suggestions, comments, edits, and questions, positive or negative. Golod asked the committee: "What were your thoughts when you read through it?" Dexter said he thought this version was going to make it easier for the Towns and Townships. He felt the information was scattered throughout the manual. He said in order to find the checklist or worklist you have to find that project in the manual. It may be better to just put the sections that pertain to the Town or Township up front and put everything else in the back as an appendix. Dexter spoke with the Zoning Code Officer in his township and he found the detail to be interesting; he's glad he has access to it but in order to get the forms needed you have to "hunt and peck" through the guide. Claster said they did split the forms into their own section. In the Table of Contents there is a Section Part 2 with all of the forms. It is split into the Local Laws, Plans, Ordinances, Zoning Review Maps and Amendments, Forms, Challenges and Variances Forms, and Significant Projects Forms. She said if you had a significant project, for example, you could just go to page 2-31 and the checklists start right there. Claster said they added information that would essentially help the Towns and Townships answer questions like: does the specific project need to be reviewed at all? Is it a Class I or Class II project? Claster said she noticed they are not spelled out in the Table of Contents and perhaps under Section III: Forms for Reviewing Significant Projects they should add Class I and Class II Projects. Dexter said that might help. Golod said the framework for the Guide is still the same subject matter. They just tried to make it a little easier to read. Dexter said you have the Project Review Principles several times in the Guide and that adds bulk to it. He said it should be set more in the true Appendix, possibly, rather than be repeated. Claster said that's true, but if you know what you're looking for, the checklist is all there. You don't have to look at an Appendix for the Principles and Objectives. However, reading it as a whole document may seem repetitious. Claster said they also discussed having forms available online as PDFs. If you have a specific project, you don't have to look through the entire Guide. You can refer to the forms online. Golod asked if the issue was confusing with the Table of Contents or just overall confusing? Dexter said working from the beginning of the Guide through Substantial Conformance, that's what scares off people initially. Golod said "Substantial Conformance" the blanket term for all of the reviews. Richardson said that's where the training is really going to come in to familiarize everyone with this document. Dexter referenced Part 2-15; Review of Significant Projects – UDC. Dexter said it shows a maximum for time allowed of 90 days. However, the Pennsylvania Municipal Planning Code does not allow for that length of time. He said any project submitted is in as few as 30 days is considered passed if it goes beyond that. Golod said if you look at the chart it is actually the UDC that has 45 days and that is pulled from the River Management Plan (RMP). The NPS then has 45 days for a final determination. Dexter said regarding Challenges and Variances, in Pennsylvania, appeals go to Zoning Hearing Board. He said in the Guide there is a reference to "Negotiate a resolution". Dexter said you do not negotiate a Resolution with the Zoning Hearing Board. Their decision when rendered is final unless it is appealed directly to the Commonwealth Court. Claster said the opportunity to make the UDC's case about a Challenge or Variance would be at the Hearing. Robinson said on page 45 of the RMP it does pick up the distinction of Zoning Board of Appeals and Zoning Hearing Boards. It recognizes the timing and the type of negotiation. The UDC would have to go in as a friend of the Court.

Henry said it's kind of hard to maneuver through the Guide. It would help if there are page numbers that refer back to those in the Table of Contents. Henry suggested having chronological numbers. Richardson said he's seen documents with a two-numbering system on the bottom of the page. Claster said they are hoping when this goes to the graphic designer, she can do the pagination for the graphics as well. Golod said a lot of the feedback received on the 1988 Guide was that it was cumbersome, confusing and overwhelming. He said they really tried to make this user-friendly to the part-time volunteer. Henry asked about defining "Substantial Conformance" and "mean high-water mark". He said NPS uses ordinary high-water mark in 36 CFR and he believes it will confuse people. He also asked where is the mean high-water mark? Claster said the ordinary high-water mark is a NPS term and something the Army Corps uses and defines NPS's area of jurisdiction, but it didn't make its way into this Guide. Claster said it did make its way into the Land and Water Use Guidelines. They are using the Principles and Objectives as they are written in the Guidelines, without changing them. Claster said if we used ordinary high-water mark, that's not what it said in the Guidelines. It said the setbacks are consistent with the States. Claster called New York and Pennsylvania and got the setbacks that each state use. New York uses the mean high-water mark, not ordinary high-water mark. Pennsylvania is at the top of the riverbank. Golod said they are trying to be consistent with what's in the original adopted guidelines. Henry said he's talked to many solicitors over the years because jurisdiction was brought to the ordinary high-water mark. Claster said this is not defining NPS's jurisdiction, this is a set of guidelines that was developed by a group of citizens and people from the area 30 years ago. She said they are trying to be true to that. Claster said if she was addressing this she would be specific for what State was being discussed. Henry said the Guide needs to tone down "the power of the use of eminent domain". He noticed that at the bottom of the charts on the first page it reads "If the municipality does not substantially conform, and it becomes necessary to protect the river corridor from a clear and direct threat, NPS may institute the procedures for the use of the power of eminent domain described on pages 55-57 of the RMP." Henry thinks it could simply say: "NPS may institute the procedure for eminent domain." He referenced Part 1 – 9 in the guide. Henry also saw that it mentions the "Powers and the Authority of the Secretary. . ." Henry said he believes Eminent Domain starts at a department level vs bureau level. He believes the Secretary of Interior or the Department of Interior starts Eminent Domain as opposed to the NPS. Henry said thanks to Claster and Golod for all of the hard work, it looks good.

Robinson said generally, he found it useable. He thinks the graphics will help a lot because reading it with just text confused him. He said he could have used it if he had to go over a project. Robinson said the only thing he'd like to see is a more quantitative definition of Substantial Conformance. He said it's really a subjective definition and it could lead to headaches and problems. This could be a good opportunity to quantify it. Then a Town and Township would have a benchmark. Claster said she thinks the use of the word "substantial" is really unfortunate; she wishes it would have just been "conformance". If it would have just been conformance looking at the definitions it says it has to conform with the Schedule of Uses and Principles and Objectives and it is very cut and dry. Because it's called Substantial Conformance, it sounds like it doesn't mean 100% conformance. Richardson agreed and said that was a factor in getting the Towns and Townships to come onboard.

Peckham mentioned the term Strand and that it may be useful to be added into the Guide. Peckham was also reviewing the Schedule of Uses Supplement: Recreational Segments; Appendix A-5 it lists Subsurface Mining Operations as Incompatible Uses. Peckham said that would include gas, oil, water, coal and anything else you would put a hole in the ground for. He said with no definition for Subsurface Mining it could mean anything anyone wants. Golod said in Hamlets the third Incompatible Use is Subsurface Mining Operations; however, there is no definition for Subsurface Mining Operations in the Land and Water Use Guidelines. Golod said Peckham brought up a good point that there is a term on the Schedule but it is not defined in the Guidelines. Golod said again, how do we approach that? Claster said it's not the only one. Greier thinks there should be a definition of navigable water. He said a DEC representative had told him previously if he can float a toothpick it's a navigable waterway. Claster said the Project Review process doesn't really get into that but that would be a good topic to flag for later.

Ramie said the issue of defining Substantial Conformance sounds like a big topic. She said it could hold the Guide up for three more years. She agrees it would be wonderful for everyone to have a more specific definition of what Substantial means. She sees it as such a universal issue that everyone will need to weigh in on it. Claster said if you look at the definition that is in there it doesn't give any indication if it is 100% or 50% conformance and that's why it's sort of challenging. Golod said this is something that Claster and Carla Hauser-Hahn, when she was with the NPS, had discussed with Ramie and Superintendent Heister to get guidance on either Substantial or Total Conformance. Robinson said the whole point of the document is to assist Towns and Townships in meeting Substantial Conformance. If you don't know what that means quantitatively, where do you go? Robinson said how

do you weigh it? Does an aesthetic issue and aesthetic objective have less weight than an environmental impact issue? Richardson said in New York, when you go for a variance it is much easier to get an area variance than a use variance.

Golod asked the committee how would they like him and Claster to move forward? Should it be brought to the next Project Review meeting or should there be a meeting with Golod, Claster, Ramie and Superintendent Heister? Richardson said there have been some really good suggestions. He asked Golod and Claster to incorporate those notes and share with the committee. He doesn't want to get further hung up on defining Substantial Conformance. He's open to leaving it for some interpretation for the UDC to deal with projects a little differently than if you have to meet all ten objectives, etc. Henry said if you look at page 2-16 How to Review Local Laws, Plans, Ordinances, Zoning Maps and Amendments it says a Municipality is declared to be in "substantial conformance" when its relevant laws, plans and ordinances are in conformance with respect to the Schedule of Compatible, Conditional, and Incompatible Land Uses, the substance of the Final RMP, and the substance of each of the principles and objectives set out in the Guidelines and the Plan. Henry emphasized "in conformance" and said you can see how it can be confusing. Golod said that is the definition out of the Guidelines. Henry noted on Part 2-16 the second paragraph towards the bottom may give a little wiggle room: "However, if the town or township can show that it meets the objective in a different way than by the listed management techniques, it may also be deemed to meet the objective. If it has met an objective in another way than by the listed management techniques, the reviewer must state how the law, plan or ordinance meets the objective under Other- explain". Richardson said he thinks you have to meet the Principles and Objectives, that's not questionable. The question becomes, you may be able to do it in another way than the listed ways and that is where substantial comes into play. Henry said that section might need to be heightened. Richardson said when we meet on this topic again we really want to move forward. Claster asked do you see them making the revisions and meeting again or making the revisions and circulating the Guide? Richardson said we should meet again to act on it. Ramie asked if it would be possible to have it ready by the 11/7 UDC meeting? Claster said yes, she thinks the changes will be easy to make.

Other: None.

Adjournment: A motion by Robinson, seconded by Roeder, to adjourn the Special meeting at 6:45 p.m. was carried.

Minutes prepared by Ashley Hall-Bagdonas, 10/10/19