

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
March 26, 2019

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

Committee Members Absent: Debra Conway

Staff : Laurie Ramie, Pete Golod, Ashley Hall-Bagdonas

NPS Partner: Carla Hahn, Jennifer Claster

Guests: Roger Saumure (Shohola alternate)

The UDC's Project Review Committee held its monthly meeting on Tuesday, March 26, 2019 at the Council office in Narrowsburg, NY. Chairperson Richardson called the meeting to order at 6:31 p.m. There was no public comment on the agenda.

Approval of February 26th Meeting Minutes: A motion by Robinson seconded by Peckham to approve the February 26th meeting minutes was carried. There was no public comment on the agenda.

Discussion Items Report:

Town of Highland: Regarding the 2019 Draft Zoning Law Golod updated the committee that on 1/17 the UDC electronically received the Town's 2019 draft zoning law. On 2/12 the Town had scheduled a Public Hearing for the zoning law with plans to adopt. A preliminary review of the 2019 draft zoning law found more than half of the 22 objectives to be out of conformance with regard to the Land and Water Use Guidelines. On 2/7 the full Council was apprised of the status of the precursory review and the condensed timeframe from the Town's submittal to the public hearing. The full Council voted to submit a letter to the Town explaining the UDC's obligations regarding substantial conformance reviews and requesting postponement of adopting the current 2019 draft zoning law. Due to weather the Town's Public Hearing had been postponed to 2/25. In that time Golod performed an initial draft substantial conformance review of the Town's 2019 draft zoning law and shared it with the Planning Consultant, Laberge Group, as well as members of the Town Council. Golod explained that the initial draft substantial conformance review is to be used as a guidance document with the 'review' and 'recommendation' sections acting as comments or suggestions to help bring that specific Objective into conformance with respect to the Land and Water Use Guidelines. On 2/25 Golod attended the Town's Public Hearing which took comments from the public but did not adopt the draft zoning law. The public hearing was then recessed to 3/12 with plans to adopt. On 3/12 Golod attended the Town's Public Hearing and Town Board meeting regarding the 2019 draft zoning law. The Planning Board Chairman stated the Planning Board did not have the adequate opportunity to review the latest version of the draft law as the Town Board had made changes to the draft as late as Monday, March 11th after the Planning Board met on March 6th. The Planning Board Chair outlined over 10 pages of errors and deficiencies that he reported to discover. The Board went into executive session and upon their return recessed the public hearing and postponed adopting the current version of the 2019 draft zoning law until, tonight, March 26th. Supervisor Haas said he would postpone the vote only for two more weeks as the zoning law has to be finalized by the end of the month in order to receive Sullivan County's grant. He also impressed that the zoning law "is a work in progress". Golod spoke via email with Debra Conway tonight and she said they are most definitely going to be approving the 2019 draft zoning law tonight. He believes Conway is in attendance at the meeting. Neither Supervisor Haas or any of the Town Board member addressed the February UDC letter, the February Project Review Committee's letter, or the UDC's draft substantial conformance review of the (now older version) of the 2019 draft zoning law, nor did they direct any questions to Golod or the UDC. A copy of the final letter dated 3/1 to Supervisor Haas is in the meeting packet. Richardson requested a clarification, asking they reported over 10 pages of errors and deficiencies? Golod said Planning Board Chair Hafkin was not speaking for the Planning Board, he was speaking solely for himself, in standing before the Town Board. His review was not of the March 18th zoning law that they will likely be adopting tonight. Saumure asked if there was any substantial difference between March 11th and March 18th? Golod said he has not done the Substantial Conformance Review because he was waiting for the Town to adopt. In that seven-day period he sent an email to Hahn and Claster stating that with the exception of addressing a few of the concerns for the livery owners which would directly affect the sections on the campgrounds and liveryes, the rest has

not been addressed. Golod said when Chairperson Hafkin said he found 10 pages of errors, he wasn't referring to UDC Substantial Conformance Report or the documentation UDC provided. Saumure said they are jamming this through to get the Sullivan County Grant money then? Richardson said from the outside, that's what it appears to be. Golod said there was a Grant from Sullivan County issued to the Town to help them as UDC helped them with the 2017 draft of their zoning law. They have to adopt in order to get that grant money and Golod believes the deadline is at the end of this month. The Town asked for an extension as well. Peckham said if they adopt the zoning it will be out of conformance. Richardson said there is a strong possibility. Hahn said it appears from what Golod said there doesn't appear to be any substantive changes. Even addressing the livery issues, they will still be almost 50% out of conformance in regards to Land and Water Use Guidelines. Robinson reviewed correspondence between Laberge Group and UDC rebutting Golod's analysis. Robinson asked Golod's take on that and did any of the rebuttals have any merit? Ramie said that UDC received that document anonymously. It was not copied to the UDC. One point they offered was what they produced in this 2019 draft is better than what they have now, which Golod said he can't disagree with but is it better than the 2017 draft, absolutely not. Heather Jacksy, Senior Planner from Sullivan County Planning was also in attendance. However, Jacksy was at the Town Board meeting for Sullivan County business regarding the Highland River Access Grant. She had asked someone in her stead to read a letter that she and her husband had written to the Town Board. In the letter they asked, as Golod had, to please reinstate the Highland River Overlay District. Golod said it was good to see a Planner from Sullivan County Planning make that comment. Highland River Overlay District was the first thing Golod looked for and it is still not there. They did slightly tweak the Rural Floating Commercial District. To Golod it almost seems like they can enact this district wherever they want; if a use suits them, they can make it pass. Discussion ensued. Sullivan said the Narrowsburg Union, which was a school, couldn't obviously be moved and they wanted the broadest possible zoning uses for it so they could have anything in the building rather than have it be empty. The idea was floated to have a floating district and it was voted down. They decided to extend the downtown business district to include that block. Sullivan asked if the Laberge Group consultant said in correspondence there was a River District or was he referring to a Floating District? Golod said strictly right now there is the Hamlet Commercial, R1 Residential district, R2 Residential Agricultural district and the Washington Lake Resort District. They added the Rural Commercial Floating District. Unlike these other districts with a paragraph explanation, the Rural Commercial Floating District goes on for eight pages and Golod found it confusing. Robinson said there is an aspect of spot zoning because it seems like you could create an inadvertent spot zoning situation without calling it spot zoning. He doesn't believe that is permissible in New York. Claster said you can create a floating district; it was brought up at the Land Use Leadership Alliance (LULA) Training Program. She said it does seem somewhat akin to spot zoning. You need a certain minimum acreage, the developer proposes a site-specific plan and then the board has almost total discretion about the lot standards, area, setbacks, the uses that are put on the site. The only uses that are not allowed are a handful of residential uses. Essentially anything else that shows up under Schedule of Uses could potentially occur in one of these districts. So, there are things that would be considered incompatible in recreational and hamlet areas that a developer could propose in one of these districts and that would not go against their zoning law. Richardson said this is the first time he is really hearing about this but, it certainly seems that it could lend itself to abuse. Sullivan said the obvious problem is that it's not lined up to the suggestions in the Land and Water Use Guidelines. Most Towns have a River District, they pretty much take it out of the Land and Water Use Guidelines and apply it to their River District. She asked Dexter if that was correct for Damascus Township and he said there is a Special Zoning District just for the river. Sullivan said that's what Town of Tusten has also and that is not a floating district because it has very clear specification. Saumure said if anything, in the overlay that's the one area where you can't really have a floating district with arbitrary zoning because it is governed by the River Management Plan.

Golod said he mentioned to Ramie this afternoon and he believes he put it in an email to Claster and Hahn, that although they had modified the draft zoning law slightly, it was again regarding campgrounds and recreational uses, specifically geared towards liveries. The one thing that Golod did notice was that they didn't address any of the discrepancies in their Schedule of Use regulations. Aside from that being in the UDC's draft conformance review it was actually brought up at the 2/12 town board meeting. Someone else had brought up that it was conflicting information and as of 3/6 they still have not corrected it. They are going to have issues with their own zoning versus their own schedule. Additionally, per New York State Town Law §5261, zoning rights are granted to the Town "for the purposes of promoting the health, safety, morals or the general welfare of the community. The town board is hereby empowered by local law ordinance to regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location, use of buildings, structures and land for trade industry residents or other purposes." Richardson said he doesn't think we are questioning that; that is what zoning is. Dean said he

thinks the Town has autonomy. If they decide to go against the RMP, so be it. If you take this step you're on your own. Don't look for any kind of help or assistance from the UDC. Golod said he agrees with Dean, UDC is trying to empower municipalities to be more self-aware and give them autonomy but he felt these planning consultants are saying to the Town, "You don't really have to adhere to the Land and Water Use Guidelines because NYS law says xyz...". Golod said planning consultants should be conscientious saying "You do have this power through NYS law. However, you are a participating member municipality within the River Corridor and there are these Land and Water Use Guidelines for this federally recognized waterway." Richardson said this is a first where the consultants asked the Town "Is it your wish to be in substantial conformance and take benefits that go with it or choose not to be?" Robinson said the UDC's main function for a town is to support their zoning. Another problem Robinson sees is us wasting an inordinate amount of time reviewing their documents that are not in conformance. It's a burden on the organization. Richardson said UDC will have to do a review of whatever the final ordinance is because we've only looked at the draft and then we'll make a determination. Hahn said it also helps to remember that the consultant helped to write the 2017 draft, which was quite good. Then they were called to start over again. Golod said keep in mind there was an entirely different zoning rewrite committee. Supervisor Haas disbanded the entire committee, which included planning board members, which was the committee that drafted the 2017 version. That version was in conformance with the exception of four comments. The new rewrite committee is made up essentially of the town board members and this version is what they produced with Laberge. Greier asked if the Town communicated with Golod in anyway on why they are doing the rewrite? Golod said initially it was started in 2017, when UDC issued the Town of Highland a grant. They did a draft, Hahn and Golod reviewed it and presented it to the committee and it was found in Substantial Conformance. The public had several issues with a lot of the animal husbandry side of it as well as signage. Golod thinks it's because of the public outcry they may have scrapped the 2017 draft. This version now is a complete deviation from the 2017 draft. The Town board is not in communication with Golod. He has been in communication with the Planning board, the Planning Consultants and the Town Clerk. It seems like it all transpired from the Rt. 97 project that Golod has been in zero communication since May of last spring. Greier said maybe it's time to reestablish the avenue of communication. Hahn said there is a procedure that the Project Review Workbook established to work through reviews. That is: the staff works with the Township, if that's not resolvable, the Project Review committee members work with the Township, if that doesn't work the full council works with the Township. Hahn said it can't keep going back to Golod. She thinks the committee needs to work with the Township. Claster asked if Golod had seen a revised zoning map. Golod said he didn't even receive the revised bulk schedule/schedule of uses. He obtained them off the internet. Doreen Hanson, the Town Clerk has sent Golod the drafts as Laberge has produced them but there has been no dialogue with the town. Claster said she hasn't seen a revised zoning map either.

On 3/11 Representative Conway informed Golod of a Legal Notice for a hearing on a NYSDEC permit to discharge 17,000 gallons of wastewater per day from the Eldred Preserve into Halfway Brook which flows into the Delaware River. Golod did some research and discovered the NYSDEC does not list water withdrawal permits as the DRBC does. However, the location of the proposed WWTP is far outside the delineated river corridor. It does appear the WWTP would discharge into Halfway Brook. However, the brook then travels into a retention pond, then into Sidwell Lake, then into another retention pond, all the while it's traveling down into the river corridor, it splits off into six or seven tributaries prior to merging with Hickory Brook then enters the corridor which becomes Halfway Brook which then enters into the Delaware River. Golod's opinion as a former biologist is this treated wastewater would be diluted so many times over that it would most likely have zero to little impact even if it did flow into the river as untreated. Discussion ensued. The distance was thought to be 10-11 miles. Golod received a draft NYS DEC permit. Superintendent Heister also mentioned as a new Wastewater permit this would also require review and permitting by the DRBC. He looked at the updated Notice of Applications Received and the Eldred Water Treatment Plant is not listed there as of yet. Henry said he hopes UDC contacts the DRBC because with Berlin Township's Beach Lake Municipal Authority, their sewage treatment was just 14 miles from the confluence under a DRBC permit and they fined them \$16,000 in the past. If Eldred Preserve is discharging 17,000 gallons of wastewater per day Henry hopes that this committee contacts the DRBC for more information. Richardson asked if DRBC is the regulating agency for wastewater discharge in Pennsylvania? Henry said DEP is. Ramie said Golod did poll the committee to see if they wanted the UDC to be involved in making a comment. The majority felt that UDC should not because it is outside UDC's jurisdiction. However, in situations like this, UDC defers to a higher authority, the DEC or DRBC. We could give them a heads up this project is happening, and ask if they have the proper paperwork to put it on the docket. Henry said DRBC is a member of UDC so he can't see a reason why they can't be made aware of it. Ramie said with the Delaware Riverkeeper involved she believes they will be pushing for

every agency out there to take a hard look at this. There is also a petition drive going on against it, so it is out there in the news.

UDC 2019 TAG Update: All four municipalities (Berlin, Tusten, Shohola, and Lumberland) had submitted the FY 2019 Mid-Term Progress reports on or shortly after 3/1. The Town(s) of Lumberland and Tusten are finalizing their work and will be submitting Project Completion Forms shortly requesting reimbursement.

UDC/NPS Meetings in conjunction with Sullivan County Planning Department: Golod had been tasked with organizing a meeting to discuss county responsibilities outlined in the River Management Plan and provide/explain the Land and Water Use Guidelines pertaining to reviews of projects within the designated river corridor. Golod had tentatively arranged two dates with Sullivan County Planner Heather Jacksy; however, scheduling conflicts for March and April arose with the NPS. The next dates available for the NPS to attend these meetings are mid-May. Richardson commented he doesn't think that NPS has to be there. If it becomes too difficult to coordinate with them he recommends setting up a meeting with UDC and the county. Richardson said he would be willing to sit-in on that meeting. Ramie said this is a joint endeavor and Hahn is very much up to speed on the counties' responsibilities. Golod said he has no issue meeting with Jacksy and her staff but if Ramie, Hahn and Claster would like him to wait he could go either way. Richardson would like the meeting done by mid-May. Hahn said it was requested of her to instruct the county as a team on the Land and Water Use Guidelines and Substantial Project Review process. There are three people on their staff that now review projects for the river corridor. One has been on maternity leave. They requested when she is back to work that NPS give this instruction for all three people. Hahn is willing to go but she said Claster is the professional planner and thinks she should be there.

Resource Specialist's Update: On 2/28 Golod, Management Assistant Hahn, and Land Use Planner Claster met and worked on Project Review issues (Damascus Township Comp Plan Update, Damascus Township Floodplain Ordinance Amendment, Town of Highland 2019 draft Zoning Law), and continued working towards completion of the Project Review Guide. On 3/1 Superintendent Heister, Hahn, Claster, and Golod met with Damascus Township Supervisor Steve Adams, ZCEO Lagarenne, and Planning Consultant Carson Helfrich to discuss some issues regarding the East Central Wayne County Comprehensive Plan Update and the Township's Flood Plain Ordinance Amendment. On 3/12 Golod attended the Town of Highland Town Board meeting in regard to the adoption of the 2019 draft zoning law. On 3/25 Golod attended the 6th meeting of the DRBC's Subcommittee on Ecological Flow. Henry asked what the projected finalization date is for the Project Review Guide. Hahn said there were two work sessions that were cancelled. Claster and Hahn continued to work on it and she thinks they are ready to send the nearly final version to Golod to review.

Old Business:

Town of Highland 2019 Draft Zoning Code Status: Discussed above.

Renewable Energy Position Paper and Minor Amendment Steps: Golod said it is still in this committee's hands on how to approach the Renewable Energy Position Paper and Minor Amendment Steps. Several months ago along with the position paper Golod had sent rudimentary steps per the RMP on making a minor amendment to the plan. Golod, Ramie, Heister, Hahn and Claster still need to sit-down to discuss the position paper and the minor amendment process. Golod said what is involved is to add definitions at the end Land and Water Use Guidelines for large-scale utility solar, large-scale utility wind, geothermal and where they would be placed on the Schedule of Uses. Henry had asked Golod to approach two municipalities from Pennsylvania and two from New York and how they would approach a large scale developer for any renewable energy source that walked in their office and said "I would like a permit to build". They all said they would either be Special Use or Conditional. Claster said the last she saw about this was that the last version of the position paper was sent out to the committee members, with all the comments in one color and Golod was looking for feedback. Golod said the only feedback he had received was from Richardson. That's why it's still in the committee's hands. Peckham said if it is conditional use, what are the conditions? Golod said that would be interpreted by the towns. Discussion ensued. Peckham said his concern is for example on his property he could put 80 acres of solar panels and you would never see them from the river and they are affecting the ecology of the river. If you put something on the side hill, you don't want to do that, it's the viewshed. There are certain requirements in the RMP like electric and the voltage going out, pipeline size, it must be

within these guidelines. Peckham thinks the Solar paper misses that. Golod requested that Peckham put that down in a comment so it can be passed along to the rest of the committee and NPS. Greier said as soon as the committee initiates a plan everyone agrees on the whole concept will be obsolete. Claster said in the position paper that went out for review, there are two different ways of treating the use so a decision should be made about which one is preferred. It should be one or the other. Sullivan said she's read it and she's not going to read it again. This has been discussed numerous times and if we want more detail she thinks UDC should hire a consultant. Regarding the length, Golod said something that Superintendent Heister had said is that position papers are supposed to be as informative as possible. It contains all the information so there are no questions left unanswered. It's the resolution that is short and to the point. If it's not read there is no headway on a project that's been going on for three years. Golod said Heister, Claster and he have already provided their comments he was waiting for the committee's feedback. Golod said we have to preserve and conserve our River valley and if a developer wanted to put up a 20 megawatt array like they are doing for the "Villa Roma Project" we need to be conscientious because it is in the corridor and if we don't have any guidance for our municipalities to review these projects we look ineffective. Roeder said the Town of Delaware was concerned not that they're going to put on in the corridor but that it would be put in a place where you can't see it, out of view shed. Hahn said this is about energy as a whole and the committee needs to decide on where to go with it. She suggested doing a workshop. Richardson felt we had a pretty good position paper but we are trying to address any prospective problems ahead of time. Discussion ensued. Dean said you're dealing with a subject that is bound to change and become more efficient and it's going to happen quickly. A lot of these are located on former farms because you can't make any money farming anymore so they lease out land for these to be built. The Town of Deerpark is sensitive to this. There are two big projects going on and they are in the middle of nowhere. You can't see them unless you are in a plane. Robinson said in Pennsylvania it's not a threat because there is no subsidy. Hahn suggested doing a work session because we are looking for a yes or no answer to an either/or question. Greier said every Town looks at this differently and that's why we are not any further ahead. The main kicker in this project is the Minor Amendment where you must get a unanimous vote. Greier feels that won't happen. Golod said it's our directive to address new land uses that arise in the river corridor and to make those amendments to the guidelines. Richardson suggest at the next meeting committee members have their copy of the position paper and everyone will go through it. Please review it and be prepared to make comments. If comments can be provided ahead of time, that would be helpful.

Other: None.

New Business:

FY 2020 TAG Program Criteria Review: Richardson asked that we carry the FY 2020 TAG Program Criteria Review forward to the next meeting. Ramie said UDC starts soliciting for the FY 2020 Technical Assistance Grants in June or July and asked for everyone to please read the handout of comments by the NPS. Richardson said he thinks one big issue UDC will need to come to an agreement on is for the TAG grants with revised zoning or revised ordinances. Do we want to make it contingent upon being accepted and approved by a town or as it is now, it just has to be presented, they don't have to adopt it? Golod said Superintendent Heister provided comments regarding TAGs and Golod provided a copy of the UDC Technical Assistance Grant and Contract Criteria. He asked for all to pay specific attention to Qualifications and Restrictions as well as Purposes. Golod had previously mentioned possibly opening up outside of just dealing with land use planning, GIS planning, zoning law revisions, codification of laws, master plans, comp plans to include items such as cultural resource management, threatened endangered species management, fish & wildlife management, which are all parts of the RMP. The UDC Technical Assistance Grant and Contract Criteria, specifies that it has to relate to the RMP. Golod said when we had that issue with Northeast Region mandating that projects strictly had to stick to zoning and land use, this handout states there is more than just land use management and water use management. Golod said maybe that is a dialogue UDC can also open up. Other municipalities may be falling by the wayside because they want to approach a TAG application for a cultural project or there is something threatening in their municipality that they want to invest in. Hahn said the information that Heister sent out has more to do with accountability for the money being given to the town. Hahn said she went to Sullivan County and asked if they have specific requirements regarding their grants for an adoptable document and they do. Claster said if UDC wanted to revise the contract language that is used in the grant agreements or the rider that is attached so there is more accountability, the NPS Solicitor could review for to UDC. Sullivan County attaches a Scope of Services to their agreement that spells out what the responsibilities are for the grant recipient to get the money.

Other: None

Public Comment: None

Adjournment: A motion by Greier, seconded by Peckham, to adjourn the meeting at 8:02 p.m. was carried.

Minutes prepared by Ashley Hall-Bagdonas, 4/2/19