

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
Feb. 23, 2011
(*Changed from Feb. 22*)

Committee Members Present: Peckham, Rajsz, Roeder, Keesler, Richardson, Rando, Conway
NPS Partner: McGuinness
Other Council Members: Ritter, Boyar, Niflot, Sullivan
Staff: Douglass, Soete, Coney, Ramie
Guests: Approximately 12

The UDC's Project Review Committee held its monthly meeting on Wednesday, Feb. 23, 2011 at the Council office. The meeting day was changed to allow UDC members to attend the DRBC public hearings on Feb. 22 in Honesdale and Liberty on the draft natural gas regulations. Committee chairperson Fred Peckham called the meeting to order at 7:23 p.m. Coney provided a correction to the Jan. 25 meeting minutes: the wastewater facilities discussion and Peckham's comment about facilities in Auburn and, it should read, Owego. A motion by Rando seconded by Rajsz to approve the minutes as amended was carried.

Public Comment on the Agenda

~ Tom Shepstone verbally provided, and handed out, comments regarding his perspective on the Land and Water Use Guidelines in the River Management Plan. Shepstone said he was involved with the Upper Delaware issues since 1973. He chaired three different committees that put extensive effort, over more than a decade, into developing what eventually became what are the current Land and Water Use Guidelines. They allow for natural gas development within the corridor and should not be otherwise interpreted. Moreover, natural gas development is the single best method of preserving the character of the region that the Guidelines seek to protect.

The Guidelines specifically provide for gas/oil fields and lines as Appropriate Special uses/conditional uses in all portions of the Upper Delaware River corridor, although major oil and gas transmission lines are identified as incompatible uses. The text of the Guidelines further provides for individual wells and lines constructed to provide services to or collect from individual customers or wells, as well the maintenance of existing facilities or the location of new lines within existing rights-of-way. While this language can be construed to prohibit new major oil and gas transmission lines outside of existing rights-of-way, it clearly accommodates both exploration and on-going drilling for natural gas in the Upper Delaware River corridor. It also permits collection of that gas. The guidelines anticipated the type of drilling common at that time, which was relatively small production units of 40 acres or less.

Today the situation is much different. Production units are now rapidly trending toward 1,280 acres or one well pad per two square miles. This means the relative amount of disturbance has been reduced. There is a lot of discussion to the effect gas drilling represents heavy industrialization, but these facts demonstrate exactly the opposite. These are not permanent disturbances. Pads get rapidly replanted after a short drilling period and all that is left are a few tanks and a standpipe. Speculative assertions of threats from horizontal drilling and hydraulic fracturing have no place in a serious discussion of what the Guidelines permit. These are matters controlled by the states and have to do, not with the establishment of drilling as use, but with its operation, a matter in which the UDC offers no expertise. It should not attempt to substitute its unfounded fears for the scientific judgment of regulators who have licensed and inspected literally tens of thousands of gas wells.

None of this is to suggest a given town cannot decide to exclude natural gas drilling from the river corridor if it wished to do so. Case law suggests it may well be able to do so. Practically speaking, there is unlikely to ever be any significant amount of drilling in the corridor anyway. The Guidelines require neither exclusion, nor inclusion – it's up to the individual towns.

The UDC must also consider the substantial open space benefits of natural gas development. A five-acre well pad serving a 1,280 acre production unit consumes only 0.4% and, even assuming another five acres or access road, the total coverage is less than 1% of the landscape. If farmers and other large landowners are to be able to pay the taxes on the land they own and maintain it in open space, there is nothing that even comes close to natural gas in its effectiveness toward that end.

Finally, I'd like to remind the UDC of the grand bargain the Upper Delaware River Management Plan represents. It was a bargain between economic development and environmental protection, a bargain among multiple levels of government, a bargain between residents and recreationists, and a bargain between upstate and downstate. Rewriting that contract cannot be accomplished by reinterpretation of the terms that were bought with years of work and compromise. Failure of UDC to recognize this essential fact will lead to a complete loss of faith in the organization and in the River Management Plan.

~ Jill Weiner, Catskill Citizens for Safe Energy, asked Shepstone what gas company he works for. She also asked the committee what their interest is in gas high impact development. Who has what interest in making money on gas? Peckham said he has no interest with a gas company. We represent the towns/townships. Conway noted the UDC Bylaws say no conflict of interest. Wiener said there should be transparency before the topic is discussed. Peckham said we'll take that under consideration.

~ Debbie Conway said the purposes and intention of the guidelines are listed but where does it say economic stimulus. Shepstone said you left a paragraph out where it says maintain and enhance economic development of the corridor. Everyone basically has an economic interest. I won't apologize for it. Conway said our letter says to conserve the resource. McGuinness noted it says protect, and protect traditional uses and that traditional uses should continue, but in 1980 there was small scale drilling, not the 7-acre industrial drilling on well pads. Rajsz remarked the process has changed.

~ Laurie McFadden said she didn't understand why there was no recognition of changed practices. The practice now is different than mentioned in the River Management Plan. It's not hysteria to ask about chemicals and to disclose your interest doesn't mean you cannot have that interest. Transparency is needed. We need to weigh everything carefully. Peckham showed the Plan and said this is what we follow. Conway mentioned there are different interpretations. Peckham said to read the process in the RMP to see how changes to it are done. Right now we need to address the comment letter.

~ Barbara Arrindell said Tom works for Marcellus Shale Coalition. Drilling in the RMP is a different process. There's no spacing regs for gas units in Pennsylvania. The DRBC draft gas regs supersede to the states with regards to units. There are chemicals in the fluid. Some have severe effects on people. PA DEP and NYS DEC are understaffed. DRBC is allowing states to do enforcement. The impact of gas has become a huge deal. Only one-fifth of the water comes back; four-fifths has to be trucked.

~ James Davies, Glen Spey, mentioned that Tom said subject to EPA regs, but Cheney did not have that. Tom corrected that he said DEP and DEC, not EPA. Shepstone continued that he was not employed by Marcellus Shale Coalition. It's a lie and keep it up and I'll sue. Peckham interjected this is a meeting for the Project Review Committee. Richardson said as to disclosure, I have not leased or intend to lease and have not made any money with this.

Discussion Items Report on Substantial Conformance/Project Review: Soete reviewed the discussion items report with the committee; some highlights follow.

Update Natural Gas Leasing/Drilling in the Region: The DRBC has announced the public hearing schedule to receive oral testimony on the proposed natural gas development rulemaking. The U.S. EPA submitted its draft study plan on hydraulic fracturing for review to the Agency's Science Advisory Board, a group of independent scientists. UDC staff prepared a draft comment letter to DRBC which was briefly discussed at the WU/RM committee meeting. Some revisions were made and a second draft letter was forwarded to the Project Review and WU/RM Committee members.

Town of Cochecton Zoning Law Amendments Update: Soete explained he received links for the proposed zoning law, subdivision law, and comp plan from the town's consultant, Tom Shepstone on Jan. 27. All references to natural gas have been removed from the zoning law. Soete is reviewing the documents and would get back to the town.

Damascus Township Proposed Zoning Ordinance Amendment: Soete reported he understood that Damascus Township plans to go back to its original conditional use concept and that surface drilling activities will not be allowed in the river zone.

Common Waters Foundation Grant Program: The PA *Environmental Digest* states a new million-dollar grant program for private landowners in the upper Delaware River Basin to implement watershed forestry practices was launched this week by the Common Waters Foundation. Forest owners in three

states will be eligible to receive financial assistance for implementing sustainable forest management projects on their property.

Berlin Township cell tower: Soete noted a proposed wireless telecommunications tower off Plank Road would be out of the River corridor.

Old Business None

New Business

TAG 2009-04 Town of Lumberland, zoning law re-write, request for extension: The committee reviewed a request from the Town of Lumberland to extend its TAG project for six-months. A motion by Richardson seconded by Rajsz approving the request was carried.

2nd Draft Comment Letter-DRBC Natural Gas Draft Regulations: The committee received via email a second draft comment letter to DRBC regarding the draft gas regs prior to the meeting. Richardson moved to send the letter to the full Council; there was no second. Boyar suggested that the committee divide the letter into sections and approve these sections in order to manage this issue fairly. The committee agreed.

Page 1: A motion by Conway seconded by Rajsz to approve page one; motion carried.

Page 2: A motion by Rando seconded by Rajsz to approve page 2 up to number 3 on page 3 was carried.

Page 3, #3, 1st graph: A motion by Conway seconded by Rajsz to approve #3, first graph as written was carried; 1 nay.

Page 3, #3, up to #4: A motion by Conway seconded by Rajsz to approve was carried; 2 nays. Page 3 & 4 further discussion; add RMP definitions under pages listed from 123 to 134. Motion by Richardson seconded by Rajsz and carried.

Page 4, #4: Motion by Richardson seconded by Conway to approve #4 as written. Discussion; approved first graph. #4 further discussion, motion by Peckham seconded by Rajsz make "it" horizontal drilling, not carried.

Page 4, #5: Discussion, changes made. A motion by Richardson, say potential cumulative impacts and independent peer review analysis, seconded by Rajsz and carried with changes; 2 nays.

Page 5, #6: Motion by Rajsz seconded by Keesler to approve was carried.

Page 5, #7: Motion by Richardson seconded by Rajsz to approve was carried; 1 nay.

Page 5, #8: Motion by Rajsz use first sentence only. No second. Motion by Rajsz seconded by Keesler amend first sentence and last sentence was carried.

Page 5, #9: Motion by Rajsz take out #9, seconded by Keesler and carried.

Page 5, #10: Motion by Rando seconded by Rajsz to approve. Discussion. Motion to amend motion to add deleterious products liquid or solid should not be stored in flood hazard area, seconded by Rajsz and carried; 1 nay.

Page 6, #11: Motion by Richardson seconded by Conway to approve as is carried; 1 nay.

Page 6, #12: Motion by Richardson seconded by Rajsz approve with Peckham's suggestion, delete all but first sentence, was carried.

Page 6, #13: Discussion to change some language. Motion by Richardson seconded by Rajsz to amend using Boyar's language was carried.

Page 6, #14: Discussion to change some language. Motion by Rajsz seconded by Rando to approve as amended was carried.

Page 6, #17: Motion by Rajsz seconded by Roeder to delete was carried.

Page 6, #18: Motion by Richardson seconded by Roeder to delete #18 was carried.

Page 6, #19: Amendment by Peckham. Motion by Rajsz seconded by Roeder to approve as amended was carried.

Page 6, #20: Motion by Richardson seconded by Roeder to delete was carried.

Page 6, #21: Discussion. Amendments made. Motion by Rajsz seconded by Rando to approve as amended was carried.

Page 7, #22: Motion by Richardson seconded by Rajsz to approve was carried.

Page 7, #23 and #24: Motion by Roeder seconded by Richardson to delete was carried.

A motion by Roeder seconded by Richardson to recommend the letter as amended to the full Council for action was carried; 1 nay.

Public Comment

~ Anne Willard asked if the Town of Cohecton would still be in substantial conformance with the River Management Plan if drilling doesn't have conditional use. McGuinness noted that the Plan indicates "substantially" in conformance. Richardson commented that the Town was found in substantial conformance when originally reviewed, and since the zoning law has not included anything on gas drilling, most likely it would remain in substantial conformance. The state has said no town can ban gas drilling.

~ Barbara Arrindell made comments about injection wells and that salts can include heavy metals. In 2005, the Energy Policy Act excluded use of diesel in that method. The exemption from the safe drinking water act says diesel not exempted.

~ Roy Tedoff Statement (read by Debra Conway) – "In 1986 a River Management Plan was hammered out by the NPS, New York and Pennsylvania, and the local communities and property owners around the upper Delaware. This RMP created the Upper Delaware Council which required it to administer its 'Land and Water Use Guidelines'. According to those guidelines, the first priority is protect the 'health, safety and welfare' of the corridor residents. The second is to 'protect, encourage and promote the continuation of existing traditional land and water uses'. And with seeming foresight, the RMP charges 'individual development projects which...could result in clear and direct threats on the river corridor will be reviewed by the UDC so that it may determine whether there are any significant threats'. A reference to gas wells in the RMP suggests that 'individual wells' could be permitted 'subject to conditional use review', but the type of wells that might have been considered in 1986 when the RMP was created bear little relation to High Volume Fracking. The UDC is bound by its charter to refrain from affirming recommendations regarding fracking unless it has ascertained 'whether there are any significant threats'. In other words the UDC cannot affirm DRBC regulations as the DRBC has admittedly not undertaken an environmental impact study."

Adjournment A motion by Roeder seconded by Rando to adjourn the meeting at 10:05 p.m. was carried.

Carol Coney, Office Manager