

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
July 24, 2012

Committee Members Present: Larry Richardson, Nadia Rajs, Harold Roeder, Jr., George Fluhr,
Debra Conway, Fred Peckham
Committee Members Absent: None
NPS Partner: Sean McGuinness
Staff: Dave Soete, Laurie Ramie, Cindy Odell
Guests: Chuck Barscz, David Peters, Anne Willard, Cheryl Korotky

The UDC's Project Review Committee held its monthly meeting on Tuesday, July 24, 2012 at the Council office in Narrowsburg, NY. Chairperson Larry Richardson called the meeting to order at 8:06 p.m. A motion by Rajs seconded by Conway to approve the June 26 meeting minutes was carried. There was no public comment on the agenda.

Richardson referenced page viii of the River Management Plan and read from the "Management Actions in Non-Participating Towns" section. He then referenced page 54 and read section A under "Use of Acquisition Authority"; and continued with the "Project Review and Determination of Substantial Conformance" section under "Management Responsibilities of the Upper Delaware Council" on page 26. He remarked it is a pretty serious thing for a town to either not be a member of the Council or to be found not in substantial conformance. Therefore, he said, he was kind of shocked when he read the minutes of the action that was taken at the last Upper Delaware Council meeting. He feels it was irresponsible of the person who made the motion and those who voted for it. There are provisions in place for towns that may have an issue with a town being in substantial conformance. The procedure is to bring it to the Project Review Committee and the committee has the steps in place to review those issues. He does not think that a town of the Council, on a whim, should make a motion that any member town is out of substantial conformance; it should work its way through the process. Rajs said that after the last Council meeting, she and the Town of Lumberland felt insulted by the motion that was put forth. She took it upon herself, as the Supervisor of the Town of Lumberland, to call the Supervisor of the Town of Delaware. Her question to the Supervisor was simply "Was this brought forth to the Council from a personal view or was it from the Town of Delaware?" Supervisor Sykes replied it was not the Town of Delaware's position, it must have been a personal position. Rajs continued by saying that we, as members of the Council, don't bring personal positions to the Council, unless it is prefaced by "in my opinion", which that was not. She, therefore, was looking for an apology and that is what she said to Supervisor Sykes. She said she actually took it a step further and said she wanted either an apology or the removal of the representative. He did not answer her, she said, but that was and still is her position. No member of this Council should be embarrassed or insulted, either personally or the township, and be accused of not being in conformance. She said a day or two after the motion, the member who made it stated that what he did was an experiment. She again noted that she is personally insulted by the action that was taken at the last Council meeting. Richardson said he would like to move on. He hopes that we learn something and he feels the bottom line is we all still have the best interest of the corridor in mind and we need to move forward to work toward fulfilling the goals.

Discussion Items Report: Soete reviewed his written discussion items report that contained information on project review/substantial conformance developments. Highlights were as follows:

Pond Eddy Bridge update: Soete noted there was a meeting organized by NYS Senator Bonacic held on June 27. He said New York State is going to try and work out a compromise with Pennsylvania. There will be another meeting in six months to get an update.

Town of Highland: Soete reported that on July 10th, the Town unanimously adopted Local Law No. 3 of 2012. He noted that Ramie attended a final July 9 public hearing. Conway said it was a two-year process. She added that now the Town of Highland is also suspect of being out of compliance. She takes solace in the River Management Plan (RMP) at the very end of the land use descriptions, it says that any town or

township can adopt stricter ordinances or land use regulations as they see fit to protect the health, safety, and welfare of their residents. To her, that means that Highland, Tusten, and Lumberland are in compliance with the RMP. Rajsz added that the zoning was reviewed by UDC, by the state, the county, and no one flagged it. Roeder said that is one of the reasons that he brought up the whole issue. He said we don't look at the whole RMP. He said the UDC should be in a position where we are just as steadfast and determined to protect people's property rights as we are about protecting this river and the corridor. That is the purpose of this whole thing, he added. He said the UDC is aligned with a whole bunch of environmental groups, and he is not against that. There are all kinds of landowner groups in here and we don't even talk to them, he noted. He would like to see the UDC move to address both.

Johnston & Rhodes Bluestone Company (Manchester Township): Soete said we did receive a copy of a letter from NPS Superintendent Sean McGuinness to Robert Muller of the Wayne Conservation District recognizing that the Conservation District has assumed jurisdiction over the new road. The letter outlines the River Management Plan (RMP) and requests a meeting to discuss the NPS concerns. McGuinness said there has been no response to the letter. He added he regrets the Park Service did not get out to look at this project sooner. He said they would have reacted immediately with Wayne Conservation and PA DEP. He noted the slope and size of the road are in violation of the RMP. He said it is an example of a town with no zoning. McGuinness reported that the Park Service is now working very closely with the Wayne Conservation District and the key is how can we prevent this from ever happening again, particularly in Buckingham and Manchester townships as they are not members of the Council. A meeting has been requested with Wayne Conservation to find out what is the next step, how are they going to prevent erosion and sediment run-off from the road, and how can we prevent this from happening ever again. He would like to continue to work towards getting Buckingham and Manchester townships to understand that becoming a member of the Council is not something that takes away any rights, but actually adds to their rights. Discussion about the possibility of willing seller-willing buyer purchases of land in Manchester Township to protect the river corridor took place. McGuinness said that the Pennsylvania agencies need also to understand that they fall under the umbrella of Pennsylvania which signed on to follow the RMP. McGuinness said that taking no action concerning this issue is not an option. We need to protect the river corridor as that is the law. He is trying to follow the RMP by the letter and it states that if there is a threat, land can be purchased and there is potentially a threat up there. Another incident like this in Manchester can not be tolerated. That road is so much of an impact on the corridor and the people that live around there. Their experience of what they had, has been diminished, he added. Fluhr suggested using caution dealing with this. He said there seems to be a lot of unhappy people right now in the river valley because of controversy between conservationists and businesses. The recession finds a lot of people out of work. McGuinness said he understands this. Peckham feels it is an issue between being either conservationist or preservationist. He said he personally would rather be a conservationist where you have economic growth and new opportunities for economic growth and you can't shut those out, whereas he says a preservationist approach says you can't do anything, not even cut a tree down. He feels the approach needs to be one of conservation, not preservation. Richardson said he too understands that, but the fact is that the road, which is an eye sore, is here now and no one is going to take it back. He added that at some point the Park Service can no longer "pussy foot" around with these towns. Either they adhere to the RMP or the Park Service has to do its job. If they want to talk about alternative methods, then join the Council and we'll talk about what other ways we can mitigate such issues. If they choose not to, then they have to deal with the Park Service and the Park Service has to enforce the Plan. McGuinness said the first thing he would do is come to the Council for support on any actions he may take and move forward from there. McGuinness reiterated that any purchases of land would be done to prevent any threats to the river. He added that zoning is the key and that's the thing with private property rights. To protect private property rights, zoning needs to be in place. It's the towns and the townships that are making the decision. If towns are going to re-zone, they need to be sure that it takes care of the river corridor. If it is taking care of the corridor as far as the Land and Water Use Guidelines, then you are protecting private property rights. He said we need to get back to the towns and townships understanding they need to zone to protect the river and the corridor and that automatically protects private property rights.

Eagle Creek Hydro Power LLC: Soete noted this is the minimum flow unit at Rio Dam which has been discussed in the past. He said the project is now at the Federal Energy Regulatory Commission (FERC) level. A notice for the project and the FERC license amendment appeared in the 7/20/12 *Federal Register*.

There is another opportunity for comments should anyone want to pursue that. The licensee also proposes to construct a new access road, transmission line, and parking area associated with the new powerhouse. The deadline for filing motions to intervene, protest, and comment is 30 days from the issuance date of this notice. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission. Soete said he feels he addressed the Council's concerns when he commented at the public hearing. McGuinness said this project is a good example of how following the steps in the Project Review Handbook could help in determinations and documentation. He is looking forward to in the future having a procedure in place to look at Class I and Class II projects. He would like to make a decision based on a process and document it and move on. Fluhr asked Rajsz if the Town of Lumberland has a position on the project. Rajsz said she was at the public hearing and there were no adverse comments. Soete noted that Phil Chase was always an advocate for the Mongaup and it does flow into the Delaware River.

Holbert Bros. Bluestone (Lackawaxen Township): Soete said that at the last Project Review meeting it was noted that some state permits were being advertised for Holbert Bros. and McGuinness said he would check into it. Soete said that McGuinness did call Mr. Menghini from the PA DEP and found out that the permits are related to the new mining permit application. McGuinness said he recently received a phone call from Wayne Holbert and shared the details of that conversation. Discussion about Pennsylvania mining permit application process took place. The issue is currently in the hands of the PA DEP and McGuinness feels the next step will be a meeting with them and the Park Service and the UDC. Ramie noted that the UDC's position throughout this case is that we wanted to be heard. It was our position at the township level and with the state. We have written our concerns and comments to the Pennsylvania DEP and McGuinness has had ongoing communications with them to make sure that all of our concerns were addressed in the ultimate permit. Roeder commented that this is an example of good communication. McGuinness said at this point it is a wait for DEP to come to us as they are still finishing the permit. Even without us, they would still be going through this process.

Upper DeLAWARE River Roundtable update: Soete reported the next meeting is Thursday, August 2nd from 1 pm to 4:30 pm at the Tusten Town Hall in Narrowsburg and that Carla Hahn will be giving a presentation about the Upper Delaware Scenic and Recreational River. He added that is the group that has our five-year plan for review. Ramie said she has been asked to discuss that as well in conjunction with the River Management Plan and how the Upper Delaware Council operates. McGuinness noted that is part of the education that we have agreed to do. Ramie added that Hahn has a PowerPoint and this will be the model that is used when we go on the road to the municipalities.

Natural Gas Leasing/Drilling in the Region update: Soete said he saw an article in the July 6 *Scranton Times-Tribune* that stated, "Carol R. Collier, the executive director of the Delaware River Basin Commission, said Thursday that she 'would be surprised' if a vote on the regulations happens before November, a message she shared with leaders of a Wayne County landowners group during a private, informal meeting early last week." Peckham offered his theory that they are waiting for New York. He said they do not want to duplicate land use issues.

NPS Outstandingly Remarkable Values (ORVs): Soete said that on 7/18, Carla Hahn asked him if he could draft some language for a possible addition to the report that would mention the UDC's Toxics Inventory Study that was done years ago. McGuinness said that he has had conversation with Chuck Barscz from the NPS Northeast Regional Office and Hahn and they are not sure if that subject has value for the ORV report. He said it is good information, but not the type of information that is going to go in the report. Ramie said that she did submit comments on the report by the July 11th deadline on the Upper Delaware sections. Barscz said he would like to thank the UDC for participating in this. One of the goals that he has had within the region is to begin to have much more communication. The explosion over gas drilling really showed a weakness in the Park Service's approach to the entire Delaware. There are four units designated within the upper freshwater section of the river. Barscz noted there is a national steering committee for the National Park Service as they are managing 58 Wild and Scenic Rivers across the country. That group is charged with trying to make sure that we're all understanding the law and interpreting it correctly. One of their missions has been the ORV statements. Barscz feels the mission has been successful and that there was a good turnout at the workshop. They are working through the comments and are on schedule with that

and will be releasing a final report. This is the first time in the country that they were taking four designated units which are normally looked at as separate, but in this case are really not, to look at. The Denver Service Center acted as facilitator and is producing the report. Barscz commended those who participated in the workshop and who are sticking with the process, noting it was a tough task. ORVs are the foundation of building a management plan. It's why the river was designated. We know a lot more 30 and 40 years later and have gained a lot more experience. Barscz said a much stronger communications network is being established among the various components. He said it is critical that we all communicate amongst each other what is going on. Ramie commented it is taking a whole watershed approach. Barscz agreed with that statement.

Millennium Pipeline Company, LLC – Hancock Compressor Project update: Soete reported there was a notice in the 7/16 *Federal Register* stating that staff of the Federal Energy Regulatory Commission (FERC) will prepare an Environmental Assessment that will discuss the environmental impacts of the Hancock Compressor Project involving construction and operation of facilities by Millennium Pipeline Company, LLC in Delaware County, New York. There is a public meeting scheduled for August 2nd at 7:00 p.m. in Hancock at the Hancock Middle/High School. He noted it is another opportunity for people to comment. McGuinness said the Park Service plans to review the Environmental Assessment once that comes out and respond to it and address any possible effects to the river and the corridor and remind them of the values of the river. McGuinness feels it is best to wait to discuss this once we have the facts which we will be spelled out in the Environmental Assessment.

Tennessee Gas Pipeline TGP 300 Line Expansion Project: Soete noted that an article in the 7/12 *Philadelphia Inquirer* stated that the DRBC on 7/11 approved water withdrawals totaling nearly six million gallons for this major interstate pipeline project that would involve tunneling under the Delaware River. It also approved the discharge of water used to pressure-test the pipeline.

Shohola Township Proposed Zoning Ordinance Rewrite update: Soete said he did attend the first meeting for the rewrite on June 21st. He said that he and Peter Wulforth, chair of the Shohola Township Planning Commission, have been in communication. Soete said he has expressed our concerns that we would like them to continue to be in substantial conformance with the Land and Water Use Guidelines. He added the township should consider the definitions of terms in the Land and Water Use Guidelines as the basis for its revised Zoning Ordinance. Changing just one word from our standpoint could make a big difference. Soete said he told Wulforth that we have our next round of Technical Assistance Grants coming up. Their zoning rewrite is being done in-house, but they do have an attorney at their planning commission meetings. He believes they will be meeting on this issue until December so he said we will continue to keep an eye on this.

Peckham mentioned that Hancock also passed a resolution supporting natural gas drilling as did Fremont and Deposit. Ramie noted we have been collecting copies of those resolutions so that we have the exact language. We have Hancock's and Delaware's and are waiting for Fremont's, and then will hand them out at the UDC meeting.

Simon Arscott variance request – Town of Lumberland: Soete reported that on July 19th, the UDC received an application/information from the Town of Lumberland Zoning Board of Appeals regarding two area variance requests for the Simon Arscott property located along Tow Path Road (Town Highway 55) and the Delaware River. Soete shared the map that was sent along with the paperwork and went over it in detail with members. The applicant is requesting area variances for: 1) A front line setback reduction for the house that will be built on the existing foundation, the proposed house enlargement, proposed deck, proposed pool, and 2) A river setback line reduction for the proposed wooden deck. Soete reviewed some of his concerns. Discussion about building in floodplains and floodways took place. The town would like our comments by August 21st. McGuinness suggested looking at it in the respect of what the Land and Water Use Guidelines say. Barscz commented that in order for the town to participate in the insurance rate program, they have to meet certain requirements. Some of the requirements were discussed. McGuinness suggested going through the Land and Water Use Guidelines and drafting a letter. Soete said he would do one to send out for review before the next UDC meeting.

McGuinness said the Park Service had received a phone call from the U.S. Army Corps of Engineers about a potential wetlands disturbance in the Town of Lumberland. Rajsz said it was initially thought that the Lumberland Highway Dept. maybe was disturbing the area as they were working repairing Shortell Road, which is a town road. It was determined that the town highway department was not to blame, that it was in fact the current owner of the property. The issue is now currently being handled between the U.S. Army Corps of Engineers and the property owner. Rajsz wanted to make people aware that she did follow up on this issue with Stephan Ryba from the NY District of the U.S. Army Corps of Engineers. McGuinness questioned if this was a project that should have been brought to the Council for review. Rajsz said the owners took it upon themselves to do this work without knowing what the correct process was. She said they will now learn what the correct process should be.

Rajsz said that she spoke to the NYS DEC about a landfill in their town that is being monitored and during her discussion she asked about the Barnes Landfill. She learned that the New York State Attorney General's office still continues to pursue identifying responsible parties and that currently, there are no issues with the landfill that they know of.

Old Business

Use of the 1988 Project Review Workbook: After a brief discussion, it was determined where we left off the last time the workbook was reviewed. Richardson suggested to start reading the Foreword which is labeled as page i. The Table of Contents was skipped and Richardson continued reading "How to Use This Workbook" found on page ii. Ramie noted that our P.O. Box and the area code have changed since this book was published originally. Rajsz asked McGuinness who put this book together. McGuinness told her it was prepared for the Upper Delaware Council by the Conference of Upper Delaware Townships with the consultants Hoffman, Williams, Lafen & Fletcher of Arlington, Virginia in January of 1988. It was a contract that the Park Service paid for. Rajsz commented that every time there is a project in the river corridor, planning boards should really be using this checklist. McGuinness agreed. It is Richardson's opinion that every project should come to the Council and the Council determine if it significant or not and requires any further review. Richardson noted the planning boards have changed over the years and have lost sight; that is why it is so important for the local towns and townships to be educated as to what their responsibilities are. McGuinness said the plan is to educate the boards of the local municipalities jointly with the Upper Delaware Council. Rajsz spoke about a zoning board educational session to take place in October and suggested that might be a good venue for McGuinness to speak to the river towns and introduce the guidelines in the Project Review Handbook. McGuinness said it is a work in progress. Richardson feels if we can get the local boards to understand how important it is to send projects in the river corridor to the UDC, he does not think it will be a problem. Ramie noted that because of turnovers in these positions over the years, this concept has been forgotten. McGuinness said the important thing is to move all people together so they are acting in a way where they agree that we all want to protect the river and the corridor, according to the law, but mostly because we want to maintain this character that we have that is so special to all of us. We need to get more people to understand that it is not a "gotcha" and that we are working together here. Soete agrees we need education and communication. Peters said that at the last meeting he was at the river corridor boundary was being discussed and asked if that issue had been resolved. McGuinness told him that in the River Management Plan there are maps and they are the official maps that were sent to Congress. There is no question that there are no marks on the ground, but the intent of the corridor is ridge to ridge. Richardson said we did not get very far with the Workbook review tonight, but we will continue to work on it.

New Business

Action on FY 2012 TAG Applications due by July 24, 2012: Soete referenced the handout in members' packets that shows the FY 2012 Technical Assistance Grants. He reported we have heard from all the TAG holders. He reviewed projects on the list with members. He noted that the amount listed under the Amount Expended column is what the UDC will be paying out. The closeout date for the projects is July 24 and the checks will be cut at the August 28th Operations Committee meeting. Soete noted the Town of Highland did not submit either of their projects so that money will have to be de-obligated. A motion to approve the completed TAGs was made by Roeder, seconded by Peckham and carried. Rajsz asked if the de-obligated money will go back into the general fund or into this year's TAG money. Ramie noted that she is

disappointed with Highland because these are competitive funds and when a town goes for two grants and doesn't complete either project, that means we unnecessarily decreased the awards for the other applicants. We did not receive any notification from them at the mid-term. Had we known, we could have possibly allocated the funds to others. Richardson suggested establishing a policy for circumstances like this. Fluhr wondered if the de-obligated funds could be split among the remaining towns. Richardson said it is very important to get these mid-term reports in because once the projects are done we can't just give out the extra money. Ramie noted these are signed contracts between the municipality and the UDC and we agree to pay a certain amount and they agree in good faith to do the project. Discussion about the unobligated funds took place. McGuinness said he would look into it and added we need to refine TAGs. He feels there is a way to allow more than 10 months' time to complete them. Richardson said that would be a big plus, because it is very difficult to work within such a short time period.

FY 2013 TAG Applications due August 31st: Soete noted that the FY 2013 TAG applications are due by August 31st. He said that an inquiry was received from the Town of Delaware asking if buying video-tape equipment would be an acceptable item for a TAG request. After a brief discussion, it was determined that it was not acceptable as a stand-alone equipment purchase.

Public Comment: None

Adjournment: A motion by Fluhr seconded by Roeder to adjourn the meeting at 9:47 p.m. was carried unanimously.

Minutes prepared by Cindy Odell, 7/31/12