

Upper Delaware Council  
PROJECT REVIEW COMMITTEE MEETING MINUTES  
December 20, 2011

Committee Members Present: Fred Peckham, Nadia Rajs, Harold Roeder, Jr., Debra Conway,  
George Fluhr  
Committee Members Absent: Larry Richardson  
NPS Partner: Don Hamilton  
Staff: Dave Soete, Laurie Ramie, Cindy Odell, Bill Douglass  
Guests: Andy Boyar, John McKay, Ginny Dudko, Tony Ritter, David Dean,  
Susan Sullivan (8:30 p.m. – 9:15 p.m.), Anne Willard

The UDC's Project Review Committee held its monthly meeting on Tuesday, December 20, 2011 at the Council office in Narrowsburg, NY. Chairperson Fred Peckham called the meeting to order at 7:35 p.m. A motion by Rajs seconded by Roeder to approve the November 22 meeting minutes was carried. There was no public comment on the agenda.

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

**Hancock:** Soete reported that the Town of Hancock is reviewing their "Site Plan Review Law". He said it was started back in 2008 with a Technical Assistance Grant awarded by the UDC. The plan was never adopted. Peckham thought they had adopted part of the plan. Soete said the public hearing on the plan will be held on January 3<sup>rd</sup>, 2012 at 5:00 p.m. at the Hancock Town Hall.

**Pond Eddy Bridge update:** At the December 1<sup>st</sup> UDC meeting, the board appointed Ramie as the representative and Soete as the alternate for the UDC on the Pond Eddy Bridge Design Advisory Committee (DAC). Ramie attended the December 7<sup>th</sup> DAC meeting in Shohola. Soete noted it is good to see progress happening on the bridge project.

**Natural Gas Leasing/Drilling in the Region update:** The DRBC on November 18<sup>th</sup> announced that the special meeting scheduled for November 21<sup>st</sup> to consider draft natural gas development regulations has been postponed to allow additional time for review by the five commission members. No new meeting has been scheduled. Soete reported that the NYS DEC has extended the comment period for the draft SGEIS to January 11, 2012. He said that the 2<sup>nd</sup> draft from the UDC to the NYS DEC regarding the draft SGEIS was not approved at the December 1<sup>st</sup> UDC meeting and has been referred back to the Project Review Committee.

**Proposed major PJM mid-Atlantic power lines (several lines in various states) update:** In reference to the Susquehanna-Roseland power line, the NPS at the Delaware Water Gap National Recreation Area website states that an open house will be held on January 24, 2012 at the Fernwood Hotel and Resort in Bushkill, PA from 2:30 p.m. to 4:30 p.m. and from 6 p.m. to 9 p.m. Open houses will also be held in Stroudsburg, PA and Lafayette, NJ at the same times on January 25<sup>th</sup> and January 26<sup>th</sup> respectively.

**Holbert Bros. Bluestone (Lackawaxen Township) Update:** Soete said that on December 9<sup>th</sup>, 2012 the Pike County Court of Common Pleas hearing was held in Milford, PA to discuss various motions. No orders were issued. The attorneys have two weeks from the date of the hearing to submit briefings on the UDC standing issue and another week to respond to each other. No other hearings had been scheduled at this point.

**Town of Lumberland Zoning Law:** Soete said he attended the public hearing on December 12<sup>th</sup> and that it was standing-room only. He submitted comments to the Town of Lumberland by the December 14<sup>th</sup> deadline. He noted that he worked with the National Park Service on this issue and that they had submitted a letter also.

**Town of Tusten Zoning Law:** Soete reported that the Tusten Town Board approved the amended Zoning Law on November 28<sup>th</sup>, 2011.

**Johnston & Rhodes Bluestone Company/Hazel Peterson New Quarry Road (Manchester Township) update:** On December 2<sup>nd</sup> the UDC received a copy of a letter, dated November 25, 2011, from Robert A. Mead to Sean McGuinness of the NPS regarding the construction of a new commercial/mining road by Johnston & Rhodes Bluestone Company. Mead contends that the road is a clear violation of the Wild and Scenic Rivers Act, the National Park System Act, and the Clean Water Act. Mead wants the letter considered as notice of a significant violation of the above captioned federal laws. Mead wants a lead agency appointed, the road permanently closed, and restored to its original condition. Peckham questioned if the Park Service is going to respond to this. Hamilton said they are taking a look at it. They have been in touch with the Wayne Conservation District. Hamilton noted that the Mining Office in Pennsylvania has jurisdiction over the road in question, the Park Service has been in contact with them, and that a stop work order has been put on the road. Hamilton said he is not sure what the current status is.

**Eagle Creek Hydro Power LLC – Minimum Flow Unit at Rio Dam Rio Hydroelectric Project (FERC No. 9690):** Soete stated the proposal is to place a hydroelectric turbine at Rio Dam to harness the energy from the existing 100 cfs release. He said that he and Hamilton attended the public hearing at the Lumberland Town Hall on November 4<sup>th</sup>. He feels there are unanswered questions about power lines and the bald eagles. The Project Review (or WU/RM) Committee may want to consider submitting a comment letter to Eagle Creek Hydro Power. Agencies and stakeholders will have 60 days from the date of the meetings to comment on the IDC and request any additional studies. The comment deadline would be January 3, 2012. During a brief discussion about whether a letter should be sent, Boyar questioned if the host Town of Lumberland has any concerns. Rajsz answered no. Peckham suggested foregoing a letter as it would not be able to go before the full council before the deadline. Roeder said there may be other opportunities to comment at a later date if necessary.

**Pennsylvania Senate Bill 1100 and House Bill 1950 regarding impact fees for natural gas drilling update:** On November 21<sup>st</sup>, the Damascus Township Board of Supervisors sent a letter to State Representative Sandra Major expressing serious concerns about the proposed bills as they further limit local control over natural gas drilling activities. As noted in their letter, Section 3272 of HB 1950 seems to remove the remaining avenues which a Township has for local review of gas well pad construction, site selections, and roadway agreements. On November 22<sup>nd</sup>, the Shohola Township Board of Supervisors sent a letter to State Senator Lisa Baker expressing their opposition to the proposed bills. Peckham suggested commenting to support the positions of Shohola and Damascus Townships as opposed to sending a letter specifically analyzing the bills. Fluhr suggested sending the letter to the Governor and copying it to Representative Major and Senator Baker. Fluhr commented that the bills do take away a lot of township powers. Ramie noted that this topic is under new business on the agenda if the committee wanted to address it there.

### New Business

**3<sup>rd</sup> Draft letter: NYS DEC on draft SGEIS regulations:** Peckham said the letter is included in the packet and Ramie noted that it was also e-mailed out in advance for review to Council members. Ramie said Soete had received an e-mail from Richardson, who was absent from the meeting, commenting on the letter. Peckham asked how the committee wanted to approach the letter. It was decided to start at the beginning and go through it to the end. The main body (first two paragraphs) was addressed first. Fluhr said he felt the main body is a reminder to us (the committee) of what we are obligated to do under the River Management Plan and the contract that brought us into existence. It reminds the other parties also of what they are supposed to do. Fluhr said the big value of the letter is that, although it is really not saying anything new, it says things that a lot of people have forgotten. Peckham agreed and added that the first couple of paragraphs tells the state that they signed on to the RMP so they need to abide by those aspects of the plan. It was decided the first two paragraphs were acceptable as written.

Concerning point #1 under “The UDC comments are as follows:”, Peckham felt the wording needed to be more specific. After much discussion, it was decided that paragraph one under #1 would read: “We request that no permits for natural gas well pads, or ancillary facilities, be approved within the

Congressionally-designated Upper Delaware Scenic and Recreational River corridor. If an operator is able to demonstrate that no alternative practical means of mineral extraction exists, then any such proposals should be subject to site-specific State Environmental Quality Review Act (SEQRA) determination at a bare minimum". In reference to paragraph two under #1, initially it was suggested to omit the paragraph completely. Hamilton questioned if the second sentence of said paragraph should be left in there. After some discussion it was decided that the second sentence, after amendment, would remain. It is to read: "Note that according to the National Park Service, the 55,575 acres of private land area in the Upper Delaware River corridor, half of which is in New York, represents only a very small portion (about ¼ of 1 percent) of New York State that is underlain by the Marcellus shale." Committee members determined the remaining paragraphs under #1 were acceptable as written.

Boyar had one question concerning point #2. It was the use of the phrase "centralized impoundments" as opposed to "no open impoundments". Soete told him that centralized is the language that the DEC uses. He noted the DEC does not allow open pits for individual wells, but if there are multiple wells and if the waste is going to be recycled, they provide for centralized impoundments or as Peckham referred to them as "super pits". The committee then decided that point #2 was acceptable as written.

Fluhr questioned what compulsory integration referred to in point #3 was. It was explained to him that in New York State, gas sections are set up in units. If in a unit, 60% of the land owners agree to sign a lease, the remaining 40% are forced into it. After discussion about compulsory integration already being a law in NYS, it was decided to delete the first sentence of point #3 and amend the second sentence to read: "We are opposed to any state regulations that diminish towns' existing home rule authorities or jeopardize private property rights."

After a short discussion on point #4, it was decided that the only change be to the last sentence of the paragraph so that it reads: "We agree that local officials be notified of any permits applied for within their towns."

Boyar suggested enclosing a copy of the River Management Plan along with the letter to NYS DEC so that the plan is on record as part of this proceeding and to distinguish our corridor from the rest of the state. Fluhr recommended that after reference to "the 1986 River Management Plan" in the first sentence of the second paragraph of the letter to NYS DEC, to put in parenthesis, "copy attached". It was decided to supply a hard copy of the plan and to make reference to its availability on-line by providing the link.

A motion to accept the letter as amended was made by Fluhr, seconded by Roeder, and carried unanimously. Ramie said that a copy of the next draft would be made available to the Council in advance of the January 5<sup>th</sup> meeting for review.

**Draft letter: PA DEP requesting hearing:** Peckham questioned what this letter is addressing. Soete said that Holbert Bros. Bluestone has applied to the Pennsylvania DEP for a 40-acre mining permit. Peckham wondered if the UDC is asking to be part of the hearing. Ramie advised him that anyone is entitled to request a hearing on the permit application and that the Park Service has done so. She noted that the deadline to make the request is January 9<sup>th</sup>, 2012. Ramie referenced the Park Service letter provided in members' packets. Peckham questioned if Holbert Bros. intends to open the whole 40 acres at once or are they restricted. Soete told him that is what we are trying to determine. Soete reminded members that the RMP allows for four-acre minor mining operations. He added that the four acres could be reclaimed and the parties could move on. Dean asked for clarification of a minor mining operation. He was told that it is four acres or less.

Fluhr suggested that the letter be tabled until the next meeting. He noted there had been an executive session related to the subject and he feels there may be some township supervisors that would like to review the letter before any decisions are made. Peckham questioned Fluhr if he felt it was prudent not to do anything at this point because we are in litigation. Fluhr made a motion to table the letter and it was seconded by Dean. Ramie noted that we only have until January 9<sup>th</sup> to request a hearing. Fluhr asked if the UDC's attorneys have asked us to send this letter. Soete said they support it and that the Park Service has sent a letter. Ramie said our attorneys have noted that if we are fighting it at the township level, they don't know why we wouldn't fight it at the state level. Soete said the letter had been sent to the attorneys for their review and they okayed it. Peckham said it was his understanding that the attorneys had been retained to appeal the township case to allow for us to have our voices heard and nothing else. Soete said the UDC needs to show the state that we have an interest in the river corridor. Ramie said that if the township matter wasn't happening and the state had notified us that they had an application for a 40-acre

permit, the UDC would comment on it under every circumstance because it is in the river corridor. She noted the attorneys are not representing us at the state level. Dean questioned who would represent the UDC at a state hearing. Soete said that staff would. Conway questioned what the harm is in sending a letter to the DEP. Fluhr commented that the UDC has always been very supportive of the townships and he would like to give Lackawaxen Township the chance to review the letter. Peckham said that because we are in litigation with the township, he does not feel that is a good idea.

Peckham asked those on the committee to vote. The motion to table the letter was carried by a vote of 3 ayes (Roeder, Fluhr, Peckham) to 2 nays (Conway, Rajsz).

**PA Legislation on Natural Gas Drilling:** Ramie referenced copies of letters from both Damascus and Shohola Townships concerning Pennsylvania House Bill #1950 and Senate Bill #1100. She questioned if the Council wants to support their position on the legislation. Peckham suggested writing a simple letter of support. Ramie thought having a letter ready for the January 5<sup>th</sup> meeting would still have an impact. Peckham wondered if the letter should be addressed to the Governor and copied to the respective leaders of the House and Senate. Boyar suggested using the language of the 3<sup>rd</sup> paragraph in the Damascus letter and of the 2<sup>nd</sup> paragraph from the end of the Shohola letter and adding our support to that. Ritter quoted the third paragraph of the Damascus letter which reads “The total sweeping away of the Township’s control is unprecedented and is a very dangerous precedent that will have serious repercussions for years to come in many areas of local governance” and noted that this is exactly what the gas industry wants. Fluhr said that Pennsylvania is a Commonwealth in which power exists at the local level. Over the past thirty years or more, the counties and state have been taking more and more power away. He added that there are some people who feel that small units, like the townships, should be abolished and the county should take over everything. Fluhr feels the gradual take-over is a very bad process, but there are a lot of people who support it. He said it is often done theoretically to save money, but often ends up costing more. A motion to prepare a letter of support for Shohola and Damascus townships in their position on SB 1100 and HB 1950 was made by Conway, seconded by Fluhr and carried unanimously.

**Other:** None

### **Old Business**

**Use of 1988 Project Review Workbook:** Had been deferred on the agenda until the January 2012 meeting.

**Public Comment:** Anne Willard of *The River Reporter* wanted to comment on the importance of putting things on the record. She commended Andy Boyar for wanting to put the River Management Plan on the record as having things on the record has legal consequences, that is why it is important to do. It means that in any proceeding by an agency, if later on the agency makes a rule or does something in enforcing that rule, you can only challenge it on the basis of the information if they have it on the record. She added that is why it is so important for the UDC to get a letter to the Pennsylvania DEP because right now the UDC is not on record anywhere regarding the Holbert Quarry. This is the one way the UDC is sure to be on record and you don’t need to pay attorneys for it, is to have a hearing and go say what needs to be said by the employees who are on the payroll to get on the record about the Holbert Quarry. It is the one way the UDC can be sure to do it. The attorneys are doing their thing separately and said that we may be damaging the case in court by demonstrating the indifference and unwillingness to act.

**Adjournment:** A motion by Roeder seconded by Rajsz to adjourn the meeting at 9:40 p.m. was carried unanimously.