

UPPER DELAWARE COUNCIL MEETING MINUTES

July 7, 2011

The Upper Delaware Council held its monthly meeting on Thursday, July 7, 2011 at the Council office in Narrowsburg, NY. Chairperson Larry H. Richardson called the meeting to order at 7:33 p.m. The Pledge of Allegiance and roll call followed.

In attendance: Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Town of Delaware-Harold Roeder, Jr., Town of Cocheton-Larry Richardson, Town of Tusten-Tony Ritter and Susan Sullivan, Town of Highland-Debra Conway, Town of Lumberland-Nadia Rajs, Town of Deerpark-Phil Chase, Damascus Township-Jeff Dexter, Berlin Township-Lillian Russell, Lackawaxen Township-John McKay, Shohola Township-Scott Rando, Commonwealth of Pennsylvania-Dennis DeMara, National Park Service-Sean McGuinness. Absent: Westfall Township, State of New York, Delaware River Basin Commission.

Approval of June 2 Meeting Minutes: Ramie provided a correction to the public hearing date for the Town of Cocheton's Zoning Law, Subdivision Law and Comprehensive Plan Amendment as mentioned on Page 5 under Public Comment. It was listed as June 8 and should have been June 16. A motion by Rajs seconded by Rando to approve the June 2 meeting minutes as amended was carried unanimously.

Public Comment on the Agenda: None

Committee Reports: Committee reports were provided based on the meeting minutes. They were: June 21 Water Use/Resource Management by Chase; June 28 Operations by Richardson; and June 28 Project Review by Peckham. Referencing Chase's report, Rajs noted that the Lackawaxen Township Board of Supervisors had denied standing to the UDC and National Park Service to offer testimony at the June 8 public hearing on the Holbert Brothers Bluestone Conditional Use Permit Application. She asked whether a reason was given for the denial. Douglass replied no, it was just stated that we couldn't speak. McGuinness said that Don Hamilton represented NPS at the hearing. McKay clarified that the public could speak but they weren't recognized as parties to the proceeding. It's the board's discretionary judgment. That decision could be appealed before the Court of Common Pleas in Pike County. McGuinness said that NPS intends to request a postponement of Lackawaxen's next public hearing on July 20. They have been approached by property owners who oppose the project. It's clear in the township's own zoning ordinance and the River Management Plan that this use isn't allowed. Richardson said that if an appeal is possible, the UDC should make one. Since the Council was ultimately recognized as an Interested Party when this same application was made in 2008, how did we lose that stature? A motion by Rajs seconded by Conway to have staff investigate the procedure for filing an appeal of the Lackawaxen Township Supervisors' decision to deny standing to the Upper Delaware Council in the Holbert Brothers Bluestone Conditional Use Permit Application case was carried, with two abstentions from McKay and Peckham.

Status Reports

Delaware River Basin Commission: Hydrological reports including a New York City Delaware River Basin Storage chart showing 264.922 billion gallons as of July 1; the Delaware River Master summary data report for June 27-July 3; and Delaware River Flow and Storage Data June 2011 Summary and report as of

July 1 were handed out for informational purposes. Peckham asked how much is being released from the Cannonsville Reservoir. Chase replied 500 cfs. Richardson commented that the river is very high and dirty right now following all of the rain.

NYS Dept. of Environmental Conservation: Bill Rudge had provided three handouts in his absence: 1) July 1 news release, "DEC Commissioner Appoints Members to Hydraulic Fracturing Advisory Panel"; 2) June 30 news release, "New Recommendations Issued in Hydraulic Fracturing Review"; and 3) June 29 news release, "DEC Announces Revised Baitfish Regulations". Senior Resource Specialist Dave Soete reported that Rudge took the initiative after reading the June 28 Project Review Committee minutes to order an inspection of the Little Joseph Realty sand and gravel pit located on NYS Route 97 in the Town of Cohecton. Russell inquired about whether the Emerald Ash Borer purple trap boxes suddenly seen everywhere are available to private property owners.

PA Dept. of Conservation & Natural Resources: DeMara reported that Pennsylvania's 117 state parks are all open and in full swing. The Commonwealth's budget has been approved. Funding for the Department of Conservation and Natural Resources remained about even, despite a four percent overall reduction, as a result of revenue collected through the Oil & Gas program. DeMara offered highlights of a five-year report from the Pike County Scenic Rural Character Preservation Program. Since voters approved the \$10 million bond in 2006: over 2,700 acres of Pike County have been protected for open space, recreation, and natural resource conservation; over \$350,000 has been awarded to provide funding for 16 planning projects involving nine Pike County municipalities; and over \$3.8 million has been awarded to help communities acquire conservation easements for parks and scenic landscapes. DeMara remarked that those accomplishments are quite extraordinary over a five-year period. Lastly, his agency helped fund a new booklet titled "Pike Outdoors" that is directed at sportsmen and is available through Pike County's website. Richardson said it's nice that Pennsylvania recognizes the importance of what DCNR does and continues to fund the agency, unlike in some other states where they are shutting down parks.

National Park Service-Upper Delaware: McGuinness reported that the Fourth of July weekend was very busy on the river, with 10 or 11 rescues. On July 4th, NPS required everyone to wear life jackets, triggered by when the Callicoon river level gage reaches six feet or above. There are still enforcement issues related to that rule.

McGuinness met recently with Dick Martinkovic, commissioner of the Sullivan County Emergency Management and Homeland Security Division. Martinkovic wanted to discuss how his agency can work with the NPS rangers to improve communications for river rescues. Additional topics were how to prevent false alarms and providing information on the status of Sullivan County's 911 system upgrade plan. Rajsz agreed that the false alarms for river rescues have been a big problem for volunteer departments in the Town of Lumberland who were already wiped out from responding to weather-related emergencies.

The U.S. Department of the Interior sent a letter to PennDOT last week advising that the plan to replace the Pond Eddy Bridge at an upstream location from the existing structure could create an adverse effect on the Delaware River. They would prefer to see the bridge replaced in the exact same location to avoid new disturbances to the river banks and any issues related to the placement of the piers. McGuinness emphasized that they continue to support the bridge replacement but would like more thought put into the options. They would also like to raise the bar on the aesthetics for the new bridge in keeping with the Upper Delaware's cultural and scenic values. Peckham warned that this action may delay the project. McGuinness acknowledged that the letter "threw them a curveball" but said that everything is still on schedule, including the plan to establish a local Design Advisory Committee to assist PennDOT with the look of the new bridge. Roeder said that it will be difficult to engineer replacing the bridge on the same spot since residents of the Pennsylvania side of the bridge are essentially landlocked. McGuinness said that a revised Memorandum of Agreement for the Pond Eddy Bridge Project has just come out for a 15-day review period. Signatories include the Advisory Council on Historic Preservation, Federal Highway Administration, Pennsylvania State Historic Preservation Officer, and New York State Historic Preservation Officer. Invited signatories are the PA and NY Departments of Transportation. Concurring

parties are the National Park Service Upper Delaware Scenic and Recreational River, Preservation Pennsylvania, Delaware Nation of Oklahoma, Delaware Tribe of Oklahoma, Shohola Township, and Town of Lumberland. Comments on the MOA are due back by July 21.

McGuinness noted that he has followed up on his promise to provide copies of the "Project Review Workbook" that was prepared for the Upper Delaware Council by the Conference of Upper Delaware Townships in 1988. Its stated purpose is "to ascertain that major development projects requiring review by the Upper Delaware Council meet the intent of the River Management Plan for the Upper Delaware Scenic and Recreational River and the National Wild and Scenic Rivers Act... This review does not constitute any additional burden on the Council or on the project being reviewed. It simply codifies a procedure for examining major projects in a way that identifies significant impacts and allows the Council to consider their consistency with the River Management Plan." McGuinness said he would like to see the Project Review Committee begin using this workbook as a guideline for all of the projects that come before the UDC.

On June 23, the Sullivan County Planning Division sponsored a luncheon in Narrowsburg with tourism expert Dr. Peter Tarlow in conjunction with the Local Waterfront Revitalization Program project. McGuinness said that there was great input from the town supervisors, NPS and UDC representatives who attended on increasing the economic vitality of the river communities. One idea put forth by Highland Supervisor Andy Boyar was the development of a rail-trail for biking. The group intends to follow up on that with the railroad. Peckham expressed concern about the possible infringement on adjacent private property owners.

The Upper Delaware Scenic and Recreational River's annual Zane Grey Festival will take place on July 16 from 11 a.m. to 4 p.m. at the museum grounds in Lackawaxen, PA. This family event features crafts, booths, and demonstrations.

Under questions, Richardson asked whether local fire departments could check with NPS to verify whether river rescue calls are real or false alarms before they respond. McGuinness agreed that could be done. NPS needs to do some education about its 24-hour dispatch system. They would also like to see electronic communications improved. An opportunity for emergency responders to co-locate on an individual cell tower and use the same frequencies would be welcome. Peckham said maybe that's a project that the UDC could take on, trying to secure funding to get one communication system that will work for the whole river valley. Rando said that many Upper Delaware visitors aren't able to describe where they are when they need assistance. They can't identify which bridge they're near, for example. He's not sure what can be done about that. Richardson agreed that is a challenge. Without wanting to contribute to any signage clutter, perhaps there could be post markers placed along the river. We have to think about this from a newcomer's perspective.

UDC Executive Director's Report: Bill Douglass reported that the FY 2012 draft budget is ready to be finalized this evening. He will follow up with McGuinness on the issue of the Holbert public hearing before the next Lackawaxen Township meeting on July 20.

Old Business: None

New Business

UDC Resolution 2011-05 Approving Fiscal Year 2012 UDC Budget: A motion by Rando seconded by Rajsz to approve Resolution 2011-05 was carried unanimously.

UDC Resolution 2011-06 Approving FY 2012 Work Plan for the Water Use/Resource Management Committee: Richardson noted that the three committee work plans had been sent out for advance review and were recommended for adoption by their respective committees. A motion by McKay seconded by Rajsz to approve Resolution 2011-06 was carried unanimously.

UDC Resolution 2011-07 Approving FY 2012 Work Plan for the Operations Committee: A motion by Rajsz seconded by Rando to approve Resolution 2011-07 was carried unanimously.

UDC Resolution 2011-08 Approving FY 2012 Work Plan for the Project Review Committee: A motion by Rajsz seconded by Russell to approve Resolution 2011-08 was carried unanimously.

2nd Draft Comment Letter to PA Fish and Boat Commission, Proposed Rulemaking for Personal Flotation Devices, Nov. 1-Apr. 30: Richardson noted that the two draft letters on the agenda were also circulated for advance review. Rajsz commented that this is a good letter. This initiative that the UDC is supporting could lessen the amount of deaths on the river. A motion by Rajsz seconded by Rando to approve sending the letter to the Pennsylvania Fish and Boat Commission was carried unanimously. Russell asked whether this proposed rulemaking that would require people to wear Coast Guard-approved personal flotation devices “while underway or at anchor on boats less than 16 feet in length or any canoe or kayak” between November 1 and April 30 pertains to tubes as well. While McGuinness said he believes it would, Peckham added that it would be unlikely to have much tubing activity during these cold weather months. New York State has an almost identical regulation pertaining to life jacket use for this time period. The approved letter states, in part, “According to the National Park Service, since 1980, when Upper Delaware Scenic and Recreational River began river operations, 60 drownings have been recorded on the Upper Delaware River. Fifty-seven of the victims were not wearing life jackets; the other three were not wearing their life jackets properly and they came off. It is obvious that wearing life jackets saves lives, particularly during cold conditions... For the nationally-designated Upper Delaware Scenic and Recreational River, we trust that the Commission will continue to work with the New York State Department of Environmental Conservation and National Park Service to ensure that all regulations are consistent between both states, and that they are enforceable.”

Draft Comment Letter to Lackawaxen Township Supervisors, Holbert Brothers Bluestone Conditional Use Permit Application: Richardson commented that this draft letter is basically the same correspondence that the UDC submitted to Lackawaxen Township in 2008 when this applicant had previously requested a permit for a 40-acre quarry expansion before withdrawing the proposal. A motion by Peckham seconded by Rajsz to approve the letter was carried unanimously. It states, in part, “We strongly request that the Lackawaxen Township Supervisors deny the application because it would constitute a clear violation of the Lackawaxen Township Zoning Ordinance, and it is not in substantial conformance with the Land and Water Use Guidelines in the River Management Plan...” It offers eight comments pertaining to: 1) the location of the 268.77-acre property within the Upper Delaware Scenic and Recreational River corridor boundaries and the township’s Delaware River Corridor (DRC) overlay district; 2) the River Management Plan’s provisions for minor surface mining operations and prohibition on major surface mining operations anywhere in the river corridor; 3) Lackawaxen Township Zoning Ordinance’s prohibition on major natural resource uses in the Delaware River Corridor overlay district; 4) the River Management Plan’s prohibition on heavy industrial uses anywhere in the river corridor and Lackawaxen Township’s prohibition on natural resources processing in the DRC district; 5) a request for a traffic study based on PennDOT’s approval for a Low Volume Highway Occupancy Permit that would allow 375 trucks to enter and exit the site daily; 6) clarification on whether the Lackawaxen Township Planning Board actually recommended the proposal to the Lackawaxen Township Supervisors for approval and whether this proposal has been reviewed by county and state authorities; 7) a reminder that the Commonwealth of Pennsylvania has Executive Order No. 1989-2 in effect which specifies that state agencies shall act consistently with the goals, policies, and objectives of the Upper Delaware River Management Plan; and 8) a final appeal that “based on the fact that the Lackawaxen Township Zoning Ordinance specifically prohibits ‘Major natural resource uses as regulated by Section 506 of this Ordinance’ and ‘Natural resources processing’ in the DRC district, we urge denial of the application.”

New York State Preliminary Revised Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program: The 26-page executive summary from this document issued on July 1, 2011 was handed out for informational purposes.

Other: Richardson reported that, just before this meeting, the UDC received correspondence from Jane Prettyman that she has asked to circulate to board members. She has started a petition to ban “frack” trucks from the Upper Delaware Scenic Byway. The link to the website, which also contains a video, is: <http://www.petitionbuzz.com/petitions/helpsavebyway>. Secondly, a news release titled, “Battle of Minisink Commemorated in Ceremonies on July 22 and 23” was included in the meeting packets about the observances that will take place on July 22 at 1:30 p.m. at The Grave of the Unknown Soldier on River Road in Lackawaxen, PA and on July 23 at 4 p.m. at Sullivan County’s Minisink Battleground Park in Minisink Ford, NY. The complete news release is posted at www.upperdelawarecouncil.org.

Public Comment

- Helga Sachno introduced herself as a property owner located below the Holbert Quarry in Lackawaxen. She noted that some of her neighbors are here also and some are not. She was recognized as an Interested Party at the June 8 township hearing after she fought for that status. Her property is 1,312 feet from the quarry. Holbert claims the quarry can’t be seen but it’s affecting her quality of life through noise, truck traffic, and new runoff that is headed toward the Lackawaxen River and eventually the Delaware. She is here to oppose this project. Sachno quoted from the UDC’s June 28 Project Review Committee minutes, which stated under Holbert Bros. Bluestone Update in the Discussion Items Report, “There are several problematic issues stemming from the hearing. The first is that Supervisors’ Chairman Brian Stuart apparently won’t be allowed to vote because he was absent from the June 8 hearing. The second is that the attorney for the township and its planning board represents Holbert as well. The third is that one of the supervisors is believed to be a Holbert company employee.” Sachno said that if those allegations are true, this news blows her mind. She said the whole project should be scrapped. It’s not fair to them as taxpayers.
- Bill McLaughlin of Lackawaxen said he is disturbed by PennDOT’s characterization of 375 truck trips per day as “low volume” in their highway permit required for the Holbert expansion project.
- Patricia Keel of Lackawaxen said that she was also recognized as an Interested Party at the Holbert hearing and wishes to simply advise the UDC that she is opposed to this project.
- Anne Willard of *The River Reporter* said that a lot of member municipalities are struggling with zoning issues relative to gas drilling. The feeling is that New York State isn’t really doing its job. She asked McGuinness whether the Department of the Interior could sue New York State based on its enforcement of the Wild and Scenic Rivers Act. McGuinness replied probably not because the Wild and Scenic Rivers Act pertains to “bed and banks” of the river. Local zoning established the boundaries for the 55,575 acres in the river corridor. The River Management Plan covers that land. Activity on private property is a tough question. He doesn’t believe that’s been tested in this river valley before. The Plan says that the two states, towns, and counties will cooperate, but what if it doesn’t happen that way? The locals really have the authority. Willard offered her opinion that New York State is not allowing the municipalities to enforce their zoning. The federal government agreed not to regulate this area and to instead allow home rule. The problem is, there are no sanctions available against the state. McGuinness said he could remind the state of its authority and how the River Management Plan works. Richardson said he doesn’t see a lot of difference between the National Park Service objecting to the Holbert quarry or gas drilling. McGuinness replied that NPS just wants the intent of the Plan to be followed. The locals still make the decisions. Private property rights will always remain important. This is an opportunity to do the substantial conformance review together. Roeder said that the reason the Holbert proposal is against the River Management Plan is that the Plan calls for minor surface mining operations that do not exceed two acres of active face at one time plus an area equal in size to the active face necessary for accessory use. Sullivan said that this is just as much a violation of Lackawaxen’s own zoning. There is a local law in place, which makes this a no-brainer.

Adjournment: A motion by Roeder seconded by Rajsz to adjourn the meeting at 8:59 p.m. was carried.