

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
 August 28, 2018

Committee Members Present:	Fred Peckham, Jim Greier, Harold Roeder, Jr., Al Henry, Jeff Dexter, Aaron Robinson, Virginia Dudko (Deerpark alternate)
Committee Members Absent:	Larry Richardson, David Dean, Susan Sullivan, Debra Conway
National Park Service Partner:	Jennifer Claster
Staff:	Laurie Ramie, Pete Golod
Guests:	Steve Adams

The UDC's Project Review Committee held its monthly meeting on Tuesday, August 28, 2018 at the Council office in Narrowsburg, NY. Peckham, who volunteered to temporarily chair the meeting in the absence of Committee Chair Richardson and Vice-Chair Dean, called the meeting to order at 6:33 p.m.

A motion by Henry, seconded by Greier, to approve the July 24 meeting minutes was carried, with Dudko abstaining.

There was no public comment on the agenda.

Discussion Items Report: Golod reviewed his written report, including as highlights:

Town of Tusten: A docket was issued by the Delaware River Basin Commission to the Narrowsburg Water District for an application to renew the approval of an existing groundwater withdrawal and allocation of 4.24 million gallons per month from existing wells in the town's public water system. There is no increase from the previously-approved allocation of 4.11 million gallons per month.

Town of Highland: Golod provided an update on the Barnes Landfill Project Status. The Water Use/Resource Management Committee had raised the issue of whether the landfill is a Superfund site. The answer is no; it is not listed on the U.S. Environmental Protection Agency's Superfund list. Adams asked, "Should it be?" Golod said the responsibility and procedures for nominating a site for a Superfund declaration would be good questions to pose to New York State DEC and UDC Representative Bill Rudge. He further updated that the National Park Service Resource Management Division submitted a letter to the NYS DEC on 7/25 with follow-up questions regarding the Barnes Landfill. A response is pending. The UDC issued letters on 8/21 to the NYS Office of the Attorney General and the Department of Health for more information related to the Barnes Landfill.

For a Route 97 project update, Golod referred members to an attachment to his report with excerpts from the 1988 Project Review Workbook's Procedures for Reviewing Significant Projects. Among the three types of projects that must be reviewed by the Council are projects requiring local permits. The Council would review only those permits that have a direct effect on the conservation and protection of land and water resources in the river corridor. Golod referenced Alternative A. Under this alternative, the application would be received by the Code Enforcement Officer or Planning Board/Commission. That office determines whether the action is one that appears on the list of Class II projects. If it is on the list, it checks off the matching action and sends the checklist and a copy of the application to the Council. If it is not on the list, no additional action need be taken. Step 1: The UDC is notified of the proposed action by the town/ship. Council staff will review the application and verify whether it is on the list of significant projects. If not, the application is recorded and reported to the Council. If it is on the list, the Council staff will contact the code enforcement officer or the planning board/commission to seek any additional available information about the application. Step 2: Council staff completes the appropriate review checklist. If the staff finds that the development does not meet the applicable criteria, it notifies the Project Review Committee and proceeds to the next step. Step 3: Council staff and Project Review Committee negotiate with the code enforcement officer or planning board/commission to resolve the differences. If no resolution is reached, the Project Review Committee notifies the Council that a potential clear and direct threat is proposed and proceeds to the next step. Step

4: The Council makes a final effort to resolve the conflict. Step 5. The Council makes its recommendation to the National Park Service that a clear and direct threat may be proposed.

Golod said that Town of Highland officials suggested that this project was a Class I and therefore didn't require review, but he said the UDC has been unable to determine that since it was not provided with a full application. This is in spite of repeated requests for additional information, both verbally and in writing. Included on the Class II Review checklist are projects which require a conditional/special use permit or site plan review, which, if approved, could take a town out of substantial conformance. Golod said no site plan has been provided in order to make that determination. On 8/3, Golod sent an invitation to Town of Highland Supervisor J. Haas, Code Enforcement Officer Preston, Planning Board Chairman Hafkin, and UDC Representative K. Haas which stated, "The Upper Delaware Council's role is that of an advocate for our members and to offer assistance in all facets of zoning and land use while acting as a liaison between the municipality and the National Park Service. In our Cooperative Agreement, the UDC is tasked to review land use projects that occur within the delineated river corridor for their substantial conformance with the River Management Plan and the Land and Water Use Guidelines. We have not been able to conduct this review for construction activity at Town of Highland SBL: 27.-9-1 due to a lack of required documentation. When there is an issue with a project, the 1988 Project Review Workbook that guides our procedures states, 'The staff and Project Review Committee will meet with the code enforcement officer or planning board/commission to resolve the problem.' Therefore, available UDC members of the Project Review Committee and I invite you to a meeting to discuss the referenced project and reach a resolution. We are willing to accommodate your preference to either meet at the UDC office in Narrowsburg or at the Highland Town Hall. Please advise of your most convenient scheduling for any weekday between now and the Aug. 28th date of our next Project Review Committee. Thank you." Golod reported that he has received no response or acknowledgement of this invitation from any of the recipients. Having attempted the negotiation referenced in Step 3 with no communication from the town in return, he therefore recommends proceeding to Step 4 by passing it on to the full Council.

Adams asked if the UDC had pursued the Right-to-Know route, which would give the entity five days to provide information upon request. Claster asked Golod if he had completed the project review checklist as per Step 2. Golod said the two permit copies and hand-drawn sketch provided to the UDC for a structure re-build and cottage demolition do not match the Town of Highland Building Department's own submission requirements for permit applications. He said the applicant submitted this as an accessory building but it exceeds the town's dimensions for that category. Robinson said there is a requirement for a licensed surveyor to provide a site plan when there is a substandard lot within a district. There are also different review standards if the use will be commercial or residential. Claster agreed that the submitted information doesn't match the requirements. She asked whether this project would require a Special Use Permit from the town as per the Class II Review checklist. Golod said these questions are rhetorical since the UDC doesn't have the documentation needed to make these determinations. He has been trying to gather this information since May and does not know how to proceed any further given the lack of response from the town. Claster said it appears that the new building is relatively within the footprint of the building that was demolished. She recommends trying to go through the checklist. Golod said he was advised that the footprint had grown by approximately 3 feet for the new foundation, accessory buildings had been combined into one structure, and the project has moved 18 inches closer to Route 97. Claster said that a "clear and direct threat" is the language used to describe when the project gets referred from the committee to the Council, then potentially to the NPS. She recited the definition from the Land and Water Use Guidelines: "Clear and Direct Threat – An instance where a new land use is proposed which is either (1) identified on the list of new land uses which are incompatible within the Upper Delaware river corridor; or (2) identified as a land use which would, if developed in such a way, be counter to one or more of the principles and objectives set out in the River Management Plan and the Land and Water Use Guidelines." Golod asked if the NPS representative is saying to let this go. Claster protested that she did not say that. She is reminding everyone to keep that "clear and direct threat" definition in mind. She is aware that there has been a communication breakdown with this project. Robinson pointed out that the UDC can't review an application that is deficient. It should be turned back as incomplete. The same standards should apply to all projects for the sake of fairness. Roeder said the value of zoning is diminished if the code isn't followed. Henry said he supports Golod's recommendation to move this on to the full Council and would make a motion to that effect. At the same time, he said the UDC as a corporation should also investigate the mechanism for filing a complaint against the town which the code enforcement officer would have to follow up on as to whether they are

violating their own zoning. The UDC has been charged by the NPS and Department of the Interior to administer this Plan. Whether it's a clear and direct threat or not, the town needs to do something. As a participating member of this Council, they should be cooperating. If the Town of Highland is no longer part of the Council, they would come under the direct oversight of the NPS. That is the "heavy hammer clause", he said. Henry reiterated his recommendation to step this up to the full Council and then look into filing a complaint, which the NPS can join if they would like. Claster suggested that the Council could examine the Special Provisions to find more "legal heft". She noted that towns and townships are legally responsible to uphold their zoning. Adams added that applicants as well are responsible for researching the submission requirements for their projects, stating that "ignorance is no excuse". Henry said the Plan calls for the NPS to provide legal assistance to the Council and this could be a great opportunity to offer counsel. Peckham cautioned against getting too threatening and suggested keeping the NPS out of it as long as possible. He said that most of the towns would rather deal with the UDC. Golod said he was trying to focus on the process. The NPS had advised following the Workbook procedures. Since the timing has elapsed on the committee's attempt to meet with the town to resolve differences, he believes we are at Step 4 of the project review process. Henry proposed drafting a letter to bring up at the full Council. Dexter seconded Henry's original motion for the Project Review Committee to refer this matter to the Upper Delaware Council, and asked whether the UDC has filed a Freedom of Information Law request to see what other documentation the town has on this project. Henry said the UDC had been advised that the town did not submit the project for Sullivan County review under General Municipal Law 239 either. A vote on the motion carried unanimously. Claster asked if the action included filing a formal complaint letter. Henry said this topic should be discussed at the full Council on 9/6. His recommendation was to check on the procedure for filing a complaint.

Pennsylvania: The Delaware River Basin Commission held a hearing on water withdrawal requests on 8/15 which will be acted on at the regular business meeting on 9/15. Golod said he will find out the applicable project(s) associated with this notice.

Golod reported that Pennsylvania is a national leader in unsustainable energy practices, currently the 6th largest producer of electricity and the 2nd largest producer of natural gas. Plans are to make PA 10% solar-powered by 2030. The 10% target aims significantly higher than the Commonwealth's current goal of 0.5% solar power by 2021.

Technical Assistance Grants: The Discussion Items Report included the status of 2018 TAGs and the call for 2019 TAG applications, which will both come up under New Business.

Resource Specialist's Update:

- On 7/26, 8/1, and 8/8, Golod met with NPS Management Assistant Carla Hahn and NPS Community and Land Use Planner Jennifer Claster to continue work and finalize a draft Project Review Guide.
- On 8/20, Golod, Ramie, Heister, Hahn, and Claster met to re-evaluate the "Position Paper on Select Utility-Scale Renewable Energy Systems: Solar, Wind, Geothermal and Hydropower".
- On 8/29, Golod will participate in the U.S. EPA's webinar, "Emerging Contaminants in Landfills and Groundwater".
- On 8/30, Golod will attend the Stream Maintenance & Flood Intervention Workshop sponsored by Wayne Conservation District in Honesdale, PA.
- On 9/25-9/26, Golod will attend the 6th Annual Delaware River Watershed Forum in Cape May, NJ, noting that he therefore will be absent for the next Project Review Committee meeting. Adams asked Golod to send him details about that conference.

New Business:

Damascus Township TAG 2018-02 Extension Request: Golod said that Damascus Township was not able to meet the 8/24 deadline for Fiscal Year 2018 Technical Assistance Grant project completions. He referenced a letter in the packets from Supervisor Steve Adams requesting an extension and offering reasons why the Joint Comprehensive Plan for Damascus, Manchester and Oregon Townships needed more time. A written draft is anticipated to be ready by 12/31/18. Ramie noted that National Park Service guidance received on 8/17 offers the option for the UDC to

obligate the funding in FY 2018 to spend after 9/30 without having to reallocate the \$5,583.33 to another project. Ramie said that the reallocation would leave a big hole in the UDC's budget as the end of the fiscal year approaches and would potentially divert this amount of funding available for the FY 2019 program since the township intends to re-apply in the next round otherwise if the extension was not granted; therefore, she recommends in favor of the extension. Adams explained the work remaining and the schedule. A motion by Roeder, seconded by Henry, to authorize the extension of Damascus Township Technical Assistance Grant 2018-02: Comprehensive Plan Update carried unanimously.

Approval for Town of Tusten TAG 2018-01 Project Completion: Golod reported that the Town of Tusten had submitted its documentation and payment request for \$6,000 for TAG 2018-01: Codify Local Laws and Ordinances (Phase II) on 8/23. The town spent a total of \$7,050 on the project. Tusten Town Supervisor Carol Wingert wrote in a cover letter, "The Town is appreciative of this and every grant we have received to help expedite our planning, zoning, and ease of access to our laws while bearing in mind the importance of the Upper Delaware and the River Management Plan." A motion by Roeder, seconded by Henry, to approve the successful completion of Town of Tusten TAG 2018-01: Codify Local Laws and Ordinances (Phase II) carried unanimously.

FY 2019 Technical Assistance Grant Applications Due by 8/31; 9/11 Meeting: Golod reported that two applications for the 2019 grants round have been received to date from the Town of Lumberland and the Town of Tusten. He described the proposals briefly and encouraged the representatives to remind their municipalities that applications must be submitted by 4:30 p.m. on Friday, 8/31. The special meeting of the Project Review Committee to review the TAG applications will take place on Tuesday, 9/11, at 6:30 p.m.

Other: None

Old Business:

Project Review Guide Update Status: With the subcommittee of Golod, Hahn, and Claster having released their final draft of the Project Review Guide, the document has now been turned over to NPS UPDE Superintendent Heister and UDC Executive Director Ramie for their review and comments.

Re-evaluation of Renewable Energy Systems Position Paper: Golod reiterated that UDC and NPS staff had met on 8/20 to discuss changes to the position paper. A revised draft will be presented.

River Management Plan Concerns – Damascus and Shohola: Ramie reminded all that the UDC had solicited feedback from the municipal membership about the effectiveness of the River Management Plan (RMP) and the Land and Water Use Guidelines. A memo was sent on 3/16 with responses requested by 4/27. Five replies were received, with two flagged for further investigation. In the interest of time, this item had been tabled on several agendas. The responses from Shohola Township, dated 5/7, and from Damascus Township, dated 4/18 and received on 5/8, address Minor Commercial Development (definition and criteria) and Major Commercial Development (as it relates to cell towers), respectively. Henry said that since any change to the RMP would entail pursuing either a minor/major amendment or Letter of Interpretation, he recommends putting these concerns on file unless the UDC is prepared to consider these avenues. He said the only changes that have occurred to the RMP since its 1986 adoption took the form of an Errata sheet dated 09/87, but he's not aware of where the authority came from for that addendum since it isn't documented. Claster said it seems very unlikely that the NPS would support changes through a Letter of Interpretation for Minor Commercial Development or cell towers. She noted that there had already been a compromise in the RMP which started as allowing no commercial development as of approximately 1985 to the 2,000 square feet that is currently cited. Adams said that Pennsylvania now considers cell towers to be a utility. He asked how that differs from an electric or telephone pole. Dexter said the lack of cell towers in the designated river corridor affects the health, safety, and welfare of residents and visitors. A lot of people can't communicate, even though the technology is available, because we don't have the infrastructure, which is probably at least 10 years behind. People need to make a living, this affects children's education, and it's a safety issue for emergencies, such as in the two major storms this year where people could not communicate. Something must be done. Dexter said the

only way to resolve might be to lock NPS, Verizon and AT&T in a room and not let them out until they reach an agreement on what will be allowable in the river corridor. Robinson said that is why he advocated for the UDC to commission a comprehensive study of cellular service gaps in the river valley that would yield recommendations but the NPS said no, claiming that project idea was beyond the UDC's purview. The flaw is in the inability of the average person to call out during emergencies. Peckham said the study's focus should be to explore how many cell towers would be needed to get the maximum coverage range in the river valley. Where would the ideal locations be and what size towers are needed? A problem is that these companies need subscribers. Dexter said the two cell towers in Damascus Township were kept behind the ridgeline but they are still visible.

Henry said that the UDC should discuss hiring a consultant for a cell service study with some of its surplus funds. Claster asked why he thought they would get a different answer when the NPS has already said that is not a federally-fundable project. Henry said that Heister had kicked this back to the towns and townships in saying they are responsible for the health, welfare and safety of their citizens; it's on their shoulders. Adams said that townships are required by law to provide fire and ambulance protection, not communications; but if nobody can dial for those services, how do they get help? Robinson said, if the UDC membership feels that emergency communications are a top priority, this should be pursued further with the NPS. There is a contradiction when the RMP assigns among federal management responsibilities: "Provide for the protection of the health, safety, and welfare of residents and visitors" (page 39); "Provide an emergency communication system and periodically evaluate the effectiveness of the system" (page 112); and "Provide better emergency communications and better river information" (page 99), and yet the NPS is interpreting that this is not their responsibility. Robinson said as an example that the Plan called for NPS to post emergency phone numbers on all public telephones in the river corridor as people's first point of contact. Since technology has obviously evolved beyond pay phones since 1986, the whole communications system should be reassessed. This could be a UDC recommendation to the NPS. Each time the UDC has raised the issue though, Heister has knocked it down. Dudko remarked that there have been a lot of deviations from past practices over the last few years as well as difficulties in securing the UDC's funding. She wondered if that is the result of changes in federal rules or coincides with the tenure of this particular superintendent. Dudko said she is starting to feel suspicious about motivations. She asked whether there is a movement afoot to essentially close down this river valley, citing the empty buildings one finds when taking a ride down Rt. 209 to the next federal unit on the river. Peckham said that people are still suspicious over the federal government, including Manchester and Buckingham Townships which have not joined the Council. Greier said that he has seen the UDC's problems in dealing with the NPS increase over the last 3-4 years. Peckham said that the NPS is being "cut and squeezed", facing tighter budgets than ever. He offered as a possible explanation that Heister believes the \$300,000 allocation is wasted on the UDC. "They see \$300,000 out there and wonder what are we doing with it? To her, they're wasting it on us. They could put that \$300,000 in their budget." Greier said that the Upper Delaware was created by an Act of Congress, with the federal government and both states signing on to it. They should move out if they don't want to honor the original intent of the River Management Plan. He then predicted, "If you want to have a civil war, it will happen, right in this river valley."

Returning to the issue of the RMP concerns by Damascus and Shohola, Henry suggested bringing it up to the full Council. He proposed creating a subcommittee to pursue these two suggestions for re-examination and any others if there is a will to make any amendments to the Plan. The towns and townships should know that we're listening and trying to do something. Claster said that the minor amendment process that is under development for the Renewable Energy position paper will provide an example for how to handle any similar changes, such as to address cell towers. Roeder said there were arguments 10 years ago about cell towers. At the time, they were looked at not so much for emergencies as for public conversations. He said it behooves us to follow through with this. There is new technology out there. The Park Service should be more of a partner in this situation and we should be working together more cooperatively. They should care about safety beyond what happens on the river. It would be poor public relations if they didn't. "Why should any one person have to lose their life in this river corridor because they couldn't call for help?" Roeder asked. This region relies on and loves our tourism industry. We must protect everyone. Claster said that she's hearing mentions that the NPS has said that there can't be cell towers in the corridor. She asked when that happened so she could research it further since it pre-dates her employment. Henry said that the policy was discussed during Superintendent Sean McGuinness's tenure. Peckham said that there are no specific references to cell towers in the RMP.

Other: None

Public Comment: None

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

Minutes prepared by Laurie Ramie, 8/30/18