

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
August 27th, 2019

Committee Members Present: Larry Richardson, Harold Roeder, Jr., Fred Peckham, Jim Greier, Ginny Dudko, Al Henry, Jeff Dexter, Aaron Robinson, Susan Sullivan

Committee Members Absent: Debra Conway

Staff : Laurie Ramie, Pete Golod, Ashley Hall-Bagdonas

NPS Partner: Kris Heister

Guests: Roger Saumure – Shohola alternate, Cheryl Korotky, Bill Dudko

The UDC's Project Review Committee held its monthly meeting on Tuesday, August 27, 2019 at the Council office in Narrowsburg, NY. Chairperson Richardson called the meeting to order at 6:34 p.m. There was no public comment on the agenda.

Approval of July 23rd Meeting Minutes: A motion by Greier seconded Sullivan to approve the July 23rd meeting minutes was carried. There was no public comment on the agenda.

Resource Specialist's Update:

New York

Town of Highland: Golod referred all to the meeting packet document called "Highland Zoning Law Substantial Conformance Review Summary with Suggestions for Improvement". Full Council requested that Golod and National Park Service Land Use Planner Jennifer Claster compile this report for the Town of Highland. Golod explained that Andy Boyar, the Town of Highland Alternate, had relayed that the Town had felt its current zoning was stronger than it was in 1990 when the initial Substantial Conformance Review had been performed. Under Initial Substantial Conformance Review & Subsequent Amendments on the handout the Amendments listed have not been reviewed by the UDC nor received by the NPS. Golod explained in the initial 1990 review 29 separate uses were evaluated as compared with 61 uses that were evaluated in the 2019 review. Golod attached Appendix One for detailed recommendations regarding conformance with the Land and Water Use Guidelines' Principles and Objectives. Appendix Two details recommendations regarding conformance with the Land and Water Use Guidelines' Schedule of Uses. Golod said he would like to give a lot of credit to Claster. She was able to take Golod's Substantial Conformance Report and put it into the Summary format. Golod said he was hoping that Boyar would be here to hear this update. He asked the Committee if they would like him to forward this to the Town. Discussion ensued. Sullivan said the column that says "How to Bring this Use into Conformance" is very helpful because sometimes what you're looking at is a question of definitions or wording. Saumure said it's a very hand-holding document that shows the Town how they could make improvements. Greier said his Town shares the same Town Attorney as the Town of Highland and he doesn't want to see this turn into a domino effect. He would like to try to see this issue settled. Golod told Greier the Highland Zoning Law Substantial Conformance Review Summary with Suggestions for Improvement is helping the Town get into conformance because right now they are out of conformance. Ramie said they may reject it entirely; we have heard from Boyar that they are fairly exhausted with this Zoning Code and not eager to open it up again. Ramie said UDC has done our part once we provide this information. Heister said the Town has not been declared formally out of conformance and we are still in the negotiation phase. Richardson said UDC is doing everything we can to help them along. The Summary Golod provided does the work for them. He said somebody just has to have the political will to take the Summary and do something with it. Richardson said he would like to review it. His opinion was to share it with Boyar and the topic will be brought up at the 9/5 full Council meeting. Robinson said what are the consequences of a member Town not abiding by the principles of the membership? Richardson said they can continue to participate. UDC becomes responsible for reviewing Class I and Class II Projects. Heister said it's the responsibility of the NPS to prevent Incompatible Land Uses. The Town has to be declared out of conformance before that could be triggered and it has to be an incompatible land use. Incompatible uses by definition are a clear and direct threat. Henry said after this is reviewed and approved by the Council to be sent to the Town of Highland, he recommends adding a letter advising them they are not in Substantial Conformance and need to submit Class I and Class II Projects. Discussion ensued. Richardson said just because a project comes before the Town of Highland there are still questions of: 1. Is it in the

corridor? 2. Is it a project that is a threat? Maybe it's a simple project that's not a threat to anything. Richardson said he guesses he's waiting for the Town of Highland to respond to one of the UDC letters and say something like "We're satisfied; we're not doing a thing." Then UDC can take the next step of sending a recommendation to the NPS.

Rt. 97 Project Update: Last month Golod was asked to follow-up on three Actions on this project. The first was to file a Freedom of Information Law (FOIL) request. On 8/20 the UDC received the Town's response letter which is included in the meeting packet. The package that Boyar delivered from the Town's files included the same incomplete application forms and permits from May 2018 which are a Building Repair Permit and a Demolition Permit that the UDC received in June 2018. The packet also included the Town Code Enforcement Officer's inspections of footings and backfill. Also included was email correspondence between the Town and the NYS Department of Transportation for its survey of property boundary encroachment from this project. A letter to the Town Supervisor and to the Town Board from the Highland Citizens for Equitable Zoning Enforcement regarding the Rt. 97 Project was submitted in August 2018 to the Town. Additional new information included a building permit for septic repair issued 2/4/19, and inspected on 8/19, the day UDC received the FOIL package.

Per the NPS, Julius Robinson, owner of parcel #27.9-1, is co-owner of Silver Canoes which uses the old Wild and Scenic River location at 3512 Rt. 97 Barryville, NY. Silver Canoes has been using this location for three years and has a current Commercial Use Authorization (CUA) with the NPS. Prior to Silver Canoes, Julius Robinson had a CUA from the NPS from the same location. The permit still specifies the site is for launching and landing.

Regarding an update from the NYS Department of Transportation on encroachment, the DOT reported that its immediate concerns have been resolved and a Stop Work Order has been lifted. The determination was reached that the rebuilding of the structure did encroach on the State right-of-way but they will allow the structure to remain. The Region 9 Office of Right-Of-Way worked with Julius Robinson and was able to place a portion of the Right-Of-Way under a Use and Occupancy Permit, allowing the structure to remain and for the work to continue. Julius Robinson has made a formal request to purchase the Right-Of-Way (ROW) along his frontage that includes the area currently occupied by his building. There has been no further update from that point.

Golod was asked to investigate methods to file a complaint against the Town for alleged non-enforcement of its Zoning provisions. Golod went to USA.gov, which was the only source he was able to locate that tells you how to file a Complaint against a State government or a local municipality. Golod said in order to file a complaint against a State Government, UDC would have to contact the NYS Investigator General or contact our Senator or Representative for the State of New York in order to file the complaint. Golod said it appears that this method of filing a complaint would be ineffective. The reason for that is the Town has voiced that they do not have any required site plans for this project. The DOT offered their response regarding encroachment and we heard response from the NPS last month. Based on the information included in the FOIL packet Golod does not find that this project rises to the level Class II reviewable project. Heister said she thinks the issue is with the Town; they didn't require a site plan. Robinson said that's true, in the big picture, UDC has no authority to demand anything and the reward for an applicant to defy zoning is to be able to achieve their end goal. He said UDC has wasted hours and days of volunteer time which he resents. Robinson said if a member of this organization is not willing to adhere to make it efficient for the volunteers to function there is no point in them being a member. Sullivan said if there is no sewage going into the river let's drop it. Robinson said we don't know that because there's no plan for that septic system. Sullivan said there's been an inspection for it apparently. Robinson said he's lived there, he knows that septic system, it was a metal tank. He said that septic system should be engineered because there's a stone wall that separates a leach field from the river. Golod said a year ago the Code Enforcement Officer (CEO) could have gone to the applicant and demanded a site plan. The CEO wouldn't communicate with Golod or the UDC. Golod said he was told by several people that there was septic work being done while the CEO and Town Representative Kaitlin Haas told everyone there is no septic work. Yet, February 2019, a permit is issued and just a week ago they finally inspected it. It wasn't a replacement of a 250-gallon septic barrel that was there. It was increased to over 1,000 gallons with no septic plan, just a permit. Golod said this seems to raise even more questions but again, it doesn't rise to a Level II reviewable project so he washes his hands of it. Henry said he still thinks there's place for review. NYS has DEC. He's sure that they would want to know that there was a septic system put in illegally. Even though the Town inspected it, they never did the site plan or engineered and all of that stuff is illegal. Henry said he hopes the record reflects that this is no way to do business. UDC should hold our heads in shame. Discussion ensued.

Town of Lumberland: On 8/6 the UDC submitted a Substantial Conformance review packet, including the Council's recommendation for approved Substantial Conformance, to the NPS for Town of Lumberland's adopted Local Law #1, changing the zoning designation of two parcels, SBL 28.-1-28 and SBL 28.-1-30. On 8/15 the UDC received a letter from the NPS Regional Director stating that the NPS concurs with the UDC's recommendation of Substantial Conformance for Lumberland Local Law No. 1. A copy of the letters was included in the meeting packet.

Project Review Guide Workshop: Golod and Claster submitted a final DRAFT version of the Guide to Executive Director Ramie and NPS Superintendent(s) Ehrler and Heister. Comments and edits were requested by 8/6. Ramie asked about the possibility of turning the Guide over to the committee for its review at the 9/10 special TAG meeting. Golod said he would check with Claster for her availability.

FY2019 TAG Update: FY 2019 TAG's are ending this Friday at 4:30 p.m. Currently, we have completion forms from the Town of Lumberland and the Town of Tusten. UDC is still waiting for Shohola Township and Berlin Township to submit their completion forms for payment.

FY2020 TAG Update: These applications are also due on Friday at 4:30 p.m. FY2020 Applications we have received thus far: Town of Tusten 2020-01: Phase I Comprehensive Plan Update -- \$10,000. Town of Tusten 2020-02: Town Zoning Update Project -- \$7,250. Town of Delaware 2020-03: Guide to Permits brochure -- \$1,127. The Special Project Review meeting will be held on 9/10 at the UDC office at 6:30pm. Golod spoke with the Town of Lumberland grant writer today and he is working on completing his grant so he can overnight mail it to the UDC. Henry asked what the total was for TAG was. Ramie said it wasn't set because UDC didn't do the 2020 budget yet. That way we will be able to put an exact number in like we did this fiscal year.

Henry asked Golod if UDC modified the verbiage to make sure that TAG projects involving zoning are in compliance. Golod said yes, a Substantial Conformance Review must be completed prior to their receiving the final payment. Ramie said we brought those changes of the grant criteria to the committee and it was approved. Golod said it's on the memo he sent out as well as on the UDC website.

Resource Specialist's Update: On 7/25, 8/15, 8/22 Golod met with Claster to continue work on project review issues. On 8/21 Golod conducted a site inspection of a business sign. On 9/11 Golod will offer a presentation on the RMP/LWUG for the NPS's Wild & Scenic Rivers Council Steering Committee. On 9/18 Golod and Claster will conduct a UDC/NPS River Management Plan/Land and Water Use Guidelines training session with Wayne County Planning.

Old Business:

Outline: Changes to Bring Town of Highland Zoning Law into Substantial Conformance: Covered under Resource Specialist's Update.

NYS Rt. 97 Parcel 27.-9-1 Update: Covered under Resource Specialist's Update.

Other: None.

New Business:

Approval of Fiscal Year 2019 Technical Assistance Grants Completed Projects by 8/30: Ramie said last month UDC approved Town of Lumberland's TAG. UDC has just received the Town of Tusten's approved project. Golod said this is for BoardDocs Municipal Organizer/Planner Software, TAG 2019-03. The Town of Tusten has already been using it and it's been working really well. UDC has received all invoices and proper documentation. A Motion by Roeder seconded by Henry to approve the successful completion of Town of Tusten TAG 2019-03 BoardDocs Municipal Organizer/Planner Software carried unanimously.

Peckham said the Town of Hancock is going to submit an application by Friday for FY2020.

Proposal: Utility-Scale Renewable Energy Recommendations and Process: Ramie said this proposal in the packets is a follow-up from Project Review and full Council. We were asked to reach out to Tom Shepstone to elaborate on doing a Supplement to the River Management Plan (RMP) and the Land and Water Use Guidelines as mentioned in his 5/2 presentation at the UDC. Ramie said the proposal Shepstone submitted is not exactly what she asked for. Ramie asked Shepstone to flesh out what it meant to do this Supplement. In the course of reviewing UDC's documents, the relevant excerpt from the minutes, and putting this in the context of the Renewable Energies Position Paper in particular, Shepstone's twist on it was to say we wouldn't need to open up the plan to consider any major or minor amendments or Letter of Interpretation. Shepstone's idea was approach it through Recommendations. He's proposing to finish the Renewable Energies Position Paper that UDC started and oversee the public input process to introduce it, in consultation with the NPS. He would also look into new land uses since the documents' adoptions and formulate these set of recommendations for \$10,000. Ramie said she's not recommending this proposal at that cost. Ramie said ironically to change the process for minor amendments it would take a unanimous vote to change the unanimous vote standards. Ramie said UDC has been struggling with this and she knows we want to get it done. Ramie said Heister made a good point to her. How can you make any changes that would be enforceable according to those documents unless you go in and change them? To incorporate the inclusions of the position paper by recommendation wouldn't have any authority behind it basically for UDC to review projects of that sort. Henry said this is way too much and perhaps we can ask Shepstone to come up with a supplement, not recommendations, and refocus his attention on something that's a lot smaller scale. Henry suggested making it a 90% vote for amendments. UDC is in charge of the RMP. He just can't see spending \$10,000 to do it. Richardson said he has an issue with a Recommendation. To him an Amendment to it or a Letter of Interpretation seem more official.

Greier said UDC is never going to agree on this because every Town and Township has their own Solar Zoning. The only thing that UDC can do is to gather everyone's information. Ramie said that's the Position Paper essentially. Discussion followed. Richardson said we may not be able to agree 100% on a specific minor amendment; could we agree 100% to change the requirement from 100%? Henry made a recommendation through the process of Supplement, Addendum or Errata to include the language of Utility Scale Solar. Henry said the RMP has been modified more than anyone would realize and never once was it done in the appropriate way from the beginning. Heister said she was talking to Ramie about the Shepstone proposal and what Heister was struggling with after reading all of the minutes was that she thought the issue was the 100% unanimous vote and then she received Shepstone's letter and sitting through this meeting she said it still seems like the unanimous vote is the issue. She said it's based on people not wanting to do anything or the misinformation that you would have to open the whole plan up, which you wouldn't, or the unanimous vote. Heister said you can't do anything about the attitude of not wanting to amend the RMP ever. The unanimous vote seems like something that can be addressed. Heister doesn't find the argument the changes have been made not using the proper process all that compelling because there is a proper process. The minor amendment process can be gone through very quickly to make a decision to change the requirement from a unanimous vote to whatever, 90% or majority. Henry said you can poll all the participating Towns and Townships, New York, Pennsylvania, DRBC, NPS and CAC based on the Errata sheet no longer have votes. Heister said she believes the NPS Solicitor's Office changed the NPS status. She said it's a conflict of interest for the NPS to be able to vote on how Federal money is spent. Henry asked if she had documentation on that. Heister said she might and said she does have documentation that the DRBC did not want to be a voting member. Greier asked why is UDC even addressing the Renewable Energy Paper? He said we're spending hours on it and we're never going to agree. It's the Towns and Townships' business and they have to enforce their own Zoning laws. UDC can't enforce them for them. Ramie said Golod came up with the language to add definitions into the Land and Water Use Guidelines and to put it in the proper places in the Schedule of Uses for Conditional and Special Uses. It was not concluded how to incorporate it. Ramie said we were at the point of the Draft position paper where there are two draft alternatives and everyone got sick of it, that's why we haven't finished it. Richardson said when UDC started that Position Paper Towns and Townships weren't doing Solar yet. It was talked about. Richardson saw that as a template for a Town to do Solar. He said the truck passed us by. Now many have good Solar ordinances in place. Richardson said you can almost take a lot of that work we did and cut it down. Roeder said he thinks UDC should get back to the very basics of why we're here. If it's not in the viewshed, scenic or recreational how could UDC go against it? The goal isn't how we do it; the goal is does it protect the river? Does it serve the corridor? Does it protect private property rights? Ramie said some of it is that this position paper has become associated with reopening the RMP. She's not sure how it got elevated to that level. Ramie said Peckham has said many times that the reason it was put in there for a unanimous vote is it's not supposed to be easy to change

the RMP. Ramie said she and Heister have talked about who would be willing to give up their vote to say you can pass it by majority. She said there's justification why it is the way it is. Henry said he recommends going through the plan revision to get down to a vote that says majority but that includes having public hearings. Robinson said he doesn't think we should overlook one element of unanimous approval. That is some of the members are choosing to not vote for anything and it's a matter of principle. Perhaps the term "distrust" plays into it because they've seen this plan more from 30 years ago to today and the terms which the Towns agreed to are far different than what the operative elements of the plan are today. The Supervisors don't trust that more will be done. Robinson said as far as Solar, Shohola Township has no trouble with that. They have looked at that. It's the concept of opening it up easily. Shohola Supervisors feel the deal changed from the starting point until now. Peckham proposed a non-binding vote and when someone votes no they can explain why their Town or Township doesn't want to vote that way. Ramie said an earlier version of the position paper was sent out to every Town and Township for their feedback and they did respond. Richardson said he would like to entertain a discussion about changing from unanimous vote like any organization. Richardson said you name him any organization that requires a unanimous vote of anything. Also, it's an amendment; it's not changing the root of the plan. Henry said another option is to follow the minor amendment and unanimous consent and require an addendum for definitions. Henry said you can then request everyone to vote for Utility Scale to put that definition in. If everyone votes for that, without opening up the RMP we can at least accomplish something with a supplement. You will have given everyone unanimous consent. Henry said the NPS should work with us hand-in-hand. As Roeder said, what harm is it going to do to put a definition in there? It will give guidance to Towns and Townships that don't have Solar. Ramie said it wouldn't be officially in there. She said a Supplement is doing the same thing an errata sheet does. Sullivan said she thinks if there was a non-binding vote on the position paper you would get unanimous approval but if it's about changing the process she would like to know how all the Towns and Townships feel about that too. She said you should make room to hear the objections. Peckham said he wants to make sure that nothing happens to the river that will hurt him financially. Saumure said if you wanted to get a unanimous vote he thinks it would have to be tied to something of significant value to Towns and Townships. Heister said what she is hearing is that there is probably not support for an alternate process to have it be something other than unanimous vote. Heister asked how many are going to vote to give up your vote? Richardson asked, is there support to look at changing the requirement of a unanimous decision on a minor amendment? Greier said no. He said a lot of times when he makes decisions he's reflecting the decisions of his Town Board and his people. He said they wouldn't agree to change the RMP. Richardson said it's not opening up the RMP. It's a minor amendment; we are adding something to the RMP that was not addressed. Richardson said the Towns and Townships have empowered UDC representatives to do the right thing in representing them and he doesn't know how anyone could object to the Solar Position Paper. How can UDC put it in a more formal format? Richardson said this appears to be a dead issue and we are moving on. Dudko said have we become so afraid to do anything that we are going to do nothing? Somehow, we need to move forward on this. Henry recommended for this topic to be carried forward to next month.

Fiscal Year 2020 TAG Applications due by 8/30; Special Project Review Meeting on 9/10: Ramie said this is a reminder of the Special TAG meeting date on 9/10 at 6:30.

Other: Peckham said a 10-year old fell off of Jensen's Ledges on Saturday.

Public Comment: None

Adjournment: A motion by Henry, seconded by Roeder, to adjourn the meeting at 8:16 p.m. was carried.

Minutes prepared by Ashley Hall-Bagdonas, 9/4/19