

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
May 28th, 2019

Committee Members Present: Larry Richardson, Jim Greier, Harold Roeder, Jr., David Dean, Al Henry, Jeff Dexter, Aaron Robinson, Fred Peckham, Susan Sullivan
Committee Members Absent: Fred Peckham, Debra Conway
Staff : Laurie Ramie, Ashley Hall-Bagdonas
NPS Partner: Marilou Ehrler, Carla Hauser-Hahn, Jennifer Claster
Guests:

The UDC's Project Review Committee held its monthly meeting on Tuesday, May 28th, 2019 at the Council office in Narrowsburg, NY. Chairperson Richardson called the meeting to order at 6:35 p.m. There was no public comment on the agenda.

Richardson welcomed Marilou Ehrler, NPS Acting Superintendent. Richardson asked Ehrler to share a bit about herself. Ehrler was detailed into this position while Kris Heister is away. Before coming to Upper Delaware NPS Ehrler was the head of Cultural Resources at Gateway National Recreation Area. That division reviews all the projects at Gateway in terms of their impact on the Cultural Resources in the Park. Ehrler is a licensed architect in the State of New Jersey and she has a Master's Degree in Historic Preservation. Ehrler is here for 12 weeks and this is her third week. She said she's here to help. Robinson said Ehrler's assignment is pretty timely because UDC is requesting that NPS reinstate our funding for cultural TAG Grants and Ehrler may have some valuable insights on preserving local history. Ehrler said preserving history is one of her specialties.

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

Resource Specialist's Update:

Town of Tusten: Ramie said in Golod's report he writes that we reviewed the Town's substantial conformance review of the draft zoning and subdivision law amendments. Since then Golod has gotten in touch with the Town and Planning Consultant, Peter Manning, to request a meeting to review some of the issues that the committee had found. That meeting has yet to happen.

Town of Highland: Will be discussed under New Business.

Town of Lumberland: They submitted Proposed Local Law #1, which amends their zoning law. It proposes to change the zoning designations of two particular parcels. Ramie noted that while the Discussion Items Report and says April 11, 2015 she assumes Golod meant April 11, 2019 that the lots have been zoned and designated River Hamlet District (RH).

FY 2020 TAG's: Will be discussed under Old Business.

Ramie said the remainder of the Discussion Items Report could be read at one's own leisure.

Old Business:

FY 2020 Technical Assistance Grants Contract Updates: Ramie said Kris Heister made some suggestions which the committee and full Council supported to give clarification and strength to UDC's contract for Technical Assistance Grants. Ramie provided a copy with track-changes noted. To summarize the changes to the contract criteria, the first item was to acknowledge that the source of the funding is Federally provided through NPS. Anything that is underlined is proposed to be added and anything that is crossed out is to delete. On the bottom of page one it was repetitious to what it said right above. On page two they are changing dates that will pertain to the 2020 round. On page three Ramie added a note regarding the qualifications for grantees to emphasize that payments

are made on a reimbursement basis. Each Town or Township or county has to submit their documentation and show the project is complete in order for UDC to take action. On page four UDC is asking as part of the application procedure to provide a project title and also states UDC requires applicants come to a review meeting. On page five there is an addition saying that UDC's attorney may need to review contracts as well as NPS's Contracting Officer. Ramie said as you know, last year UDC had quite the snafu about not hearing back until February about cancelling out Berlin Township's application after NPS rejected it. Ramie said that was awkward because it cut into the time that the applicants had to complete their work. Ramie feels it's best that at the same time UDC is reviewing applications NPS does same to judge the appropriateness of Federal Funds for what has been proposed. NPS sits at the table while UDC does the reviews but the contracting officer is the person that actually approves disbursing that funding. In terms of contract supervision, UDC has always had a Midterm Progress Report that is required but also listed our Project Completion Form so everyone has the same documentation to file. Ramie has also listed what deliverables UDC expects to get: a copy of whatever they have produced; UDC attribution; and documentation of the applicant's completed implementation and actions, such as hearing notices, motions, resolutions, enacting laws, plans or amendments if that is applicable to the project. Ramie has put in there at Heister's suggestion that UDC will perform Substantial Conformance Reviews if it is applicable to the project. Ramie has added the statement, "Final payment will not be authorized until final product is received, successfully reviewed and found to be in substantial conformance (if applicable). Grantees that adopt local laws contrary to achieving substantial conformance with the Land and Water Use Guidelines for the Upper Delaware Scenic and Recreational River shall be considered ineligible for future technical assistance grants under conditions to be determined by the UDC." Ramie said that's a change in philosophy here, and asked the committee to think that through. Ramie tried to provide some wiggle room by saying they are not automatically disqualified from ever receiving a TAG again if that happens but UDC would make that determination. Lastly, that the Project Review Committee traditionally accepts the completed project before it goes to Operations Committee for payment.

Discussion ensued. Richardson said his concern is the timeliness on their end. If it gets hung up somewhere "up the ladder" how long does UDC wait for NPS to say yes or no? Dean said this is another hurdle. Sullivan said historically it's been a UDC function to review the requests and to give the Towns and Townships the guidelines to review the requests. Richardson said he's been with the UDC since 1989 and it was always up to the UDC to make that determination. It wasn't until last year NPS came down pretty heavy on UDC. Henry said there needs to be ample time for NPS to review TAGs way before UDC decides whether or not we will accept a project. Ramie said UDC approved its Resolution the first Thursday in October and didn't get the decision from NPS until February. That was problematic last year. The contracts had to be suspended; UDC didn't issue any until we heard back from NPS. Henry said someone at NPS needs to be able to make this decision a lot more rapidly than four months. Cluster said she wasn't here for that but she would think with that experience it would be more efficient this time. Now NPS knows what to expect from the Regional Office with regards to these TAG grants. There are criteria that are laid out in the River Management Plan (RMP) that apply to funding for these types of projects and she feels if everyone reviews them and is familiar with them that would help speed things up. Henry said Contracting Officer Patrick Reidy in his correspondence with Ramie said we don't have to do this in the fiscal year but UDC made a determination that it would make more sense to do it within the fiscal year for administrative efficiency. Dexter said he agrees with the above comments; he feels uncomfortable sending it downriver because it takes forever to get back to UDC. Dexter said UDC is abdicating our responsibility. Sullivan said she doesn't know why this additional oversight is needed. The other side is UDC working with Towns and Townships who are making an application based on a schedule or timeline which they are told will be honored and they will get an answer in a timely fashion. They in turn do budgets and are counting their money just like everyone else. To hang that process up on a \$5,000+ grant that has to be reviewed by the Department of the Interior before they can trust they are going to get their funds makes no sense. Robinson's concern is in a difference of opinion with UDC and NPS with the validity of who defers to who? Is UDC subordinate to NPS? Ramie said she would say yes since it is Federal funds. Hauser-Hahn said with regard to the TAG program she had mentioned previously the Red Book Report, a heavy duty report done by the Solicitor's Office about NPS contracting. The audit concluded NPS was not overseeing a lot of contracting responsibilities to the level they should. The result is a lot of this "bean counting" as Henry calls it. They really want to make sure that NPS is holding up their end of contract and responsibilities under the law. Hauser-Hahn said one of the things NPS needs to figure out is how they respond to the changes. Ehrler said this is across the board and not something that UDC was singled out for. It is a requirement for NPS that they need to answer to. Like the river, it flows downhill most time and that's unfortunate. Roeder said in the last two years UDC has experienced rather erratic funding. It has basically failed higher up. UDC wants to conserve the river and corridor and protect private property rights. Sullivan said how many other organizations such as the UDC have it taken to the level of the

Department of Interior? UDC has a hard time functioning with the level of oversight that is being applied to it and Sullivan is asking in the U.S. what have other groups like UDC done to cope with this? Ehrler said she knows all the agreements have gone through an additional level of scrutiny. NPS agreements with universities have been scrutinized more than ever before. It's a question that can be put to the Regional Office because they oversee the larger part of that. Discussion ensued. Greier said this RMP was set up to keep what's happening right now from happening. He would ask NPS to review the RMP, especially the paragraph on jurisdiction, before more regulations are imposed on UDC. Sullivan said for 30 years there has been a very delicate balance between 15 Towns and Townships, private property owners, and NPS, and the UDC is the intermediary that has kept that balance. A large part of it has been the \$30,000 grant program which is now a \$15,000 grant program. NPS is destroying one of the threads that ties that all together. The RMP has worked and prevented large-scale development.

Hauser-Hahn asked if NPS reviewing the document was added to the contract criteria under Heister or Patrick Reidy's direction? Ramie said to her it's a proactive way of not getting UDC in the situation of approving something and then finding out the rug got pulled out and it is not approved. Hauser-Hahn asked if they are going to be sent directly to the Contracting Officer or Upper Delaware NPS? Ramie said the past two years, NPS as the local unit took care of bumping it upstairs. Ramie said it doesn't matter what method is used. Hauser-Hahn said NPS has an Agreements Technical Representatives on staff who is supposed to assist with some of that. Hauser-Hahn said Heister is also the Project Manager of this project so it's kind of like going around the Project Manager. Richardson said he thinks the intent is to send it to Upper Delaware NPS for a yes or no. UDC's assumption is NPS will have to send it up further. Hauser-Hahn said so everyone understands it was in response to the issue of giving the Town of Highland \$10,000 to do their Zoning Ordinance and the Town bagged that. Their product did not substantially conform to the guidelines. That is what started to raise these questions. Ramie said yes but it was also the issue that UDC had approved one particular contract and NPS disallowed it four months later. Discussion ensued. Claster had some comments she hopes are constructive. Regarding adoption, she didn't see anything in there if an ordinance or law is funded by this grant it has to be adopted. She sees a lot of language about Substantial Conformance. Regarding the contract rider, the timeframe to complete the project is pretty short (10 weeks) for a project like a zoning ordinance or something that must be adopted. Claster said it wasn't clear to her looking at the rider that is actually a requirement. If it was deliberate that's fine because it doesn't have to be adopted. Ramie said it has always been UDC's procedure we didn't require adoption because sometimes things go awry in the middle of the process and UDC can't control that any more than the Town or Township can. Claster said there is also some discussion in Heister's email about going to a reimbursement system. Ramie said UDC doesn't give the money up front; that was a misunderstanding by NPS. Claster said what she got out of the revision is the project has to be documented as complete and they will get all the money as a lump at the end. Ramie said that's always been the situation and is not a change. Claster said there is nothing wrong with that, she just wanted to raise reading through it there were a few places where there was a mention of reimbursement by provided deadlines. It sounded like there was some kind of installment. You may want to look at where that's mentioned to see if you find any of that. One of the things that concerns Robinson in the process of adoption is that it could be something totally extraneous to the River Corridor in an ordinance revision or new ordinance and that becomes the hangman of its failure. UDC would suffer the consequence of a non-passage of a turned down ordinance where the issues as it related to the RMP were met. Adoption may not be the best approach because the bulk of the land mass it outside the River Corridor. You could have something related to a stable on ten acres where people ground swell and say "We don't want this ordinance". Yet in the development of the ordinance satisfied UDC's guidelines. Ramie said it was deliberate that she did not put adoption is required in there. Richardson thinks the approach would be the applicant presents their program to UDC with the intent and if the intent is to change their zoning, to strengthen it or make sure they are in conformance, then they are on the right track. If it's turned down at the last minute because the Town says no Richardson is not sure they should be penalized. Hauser-Hahn said Sullivan County has a program where they provide money for zoning work as well and they require it be passed. She asked how do you see it being fiscally responsible to pay for something you're not getting? Ramie said there is a scope of work they describe and if they meet that at the end then mission accomplished. That scope doesn't have to involve adopting the final product. Henry said he sees that as a negative behavior and thinks somewhere in the revision if it's allowed to be repeated there should be some kind of sanction. If a Town doesn't adopt it and UDC gives them \$10,000 similar to Town of Highland, it's still \$10,000 of tax money that could have maybe gone to some other Town and gotten a product that was usable. Richardson said no board is going to guarantee passage of this. The intent is to do the project for positive reasons and UDC accepts that. Discussion continued. Claster referred to the email and said UDC has our opinion on adoption. Making adoption required for the Town to get their final payment is fine with NPS. It could take a while if it's controversial. UDC is made up of member Towns and if UDC found that's feasible then that's ok.

Looking at the Town of Highland, it does seem like the fact that they got a grant from Sullivan County for their latest rewrite of their zoning that did have adoption tied to it really incentivized them to get it adopted. They had a deadline and extended it slightly but they were trying to meet their deadline.

Ramie said looking at page five of the contract, she could change the language that says present it to NPS Contracting Officer specifically and just make that NPS in general. Ramie said she thinks of the NPS Superintendent here as UDC's ambassador essentially to present our issues because that individual was part of those discussions. Hauser-Hahn said Heister is the Project Manager and she is the one communications should go to. Sullivan said she would vote to remain exactly as UDC had it and she doesn't care about penalizing the Town of Highland. It's not workable to make some kind of requirement for a Town to require passing an ordinance. Richardson said historically the Superintendent or representative of NPS has sat in every TAG grant special meeting so there was never an issue in the past. Hauser-Hahn reiterated that the rules have changed. Robinson said they should escrow the money immediately. Once NPS approves a proposal those monies should be escrowed so when a product is complete that money can migrate into UDC distribution. Ramie said UDC normally solicits applications by mid-June. She referred to a draft application form in the packets. It is sent out mid-June so Towns and Townships have time to think about their project ideas. Application deadline is 8/28. Ramie said there are intersecting deadlines of completing the FY19 deadlines by 8/30 while simultaneously taking in applications for the next round.

Ramie also included in the meeting packets a letter she wrote asking NPS to expand the scope of the projects to include cultural projects. Richardson's thought on this is if NPS has narrowed the parameters of the TAGs perhaps UDC needs to create a different grant program that isn't called Technical Assistance. You read all through the RMP and it mentions encouraging historical projects as well as others. UDC can't do it under the restrictive parameters of this program. Ramie said it's still Federal Funding though. Richardson said we're not talking about Technical Assistance when we're talking about inventorying barns or cemeteries. Roeder said there has been a lack of any consideration by NPS for UDC for cultural projects in this community. If NPS doesn't want UDC to do cultural projects why did they put money into the Roebling Bridge? NPS is a signatory to the RMP, they helped develop the plan. Hauser-Hahn asked that the letter be addressed to the Superintendent. Robinson said he would like to add a line that NPS has invested millions not only in Roebling Bridge but also putting \$840,000+ into the Zane Grey museum as well. There is a NPS impetus to highlight these cultural and historical assets in the corridor. Henry said RMP refers to Outstandingly Remarkable Values (ORVs) but NPS has hung their hat on the Wild and Scenic Rivers Act. There is one that specifically mentions cultural. This was one of the ORVs when it was reviewed in 1968 and incorporated in 1978. That may have more weight than the RMP. Claster said she doesn't think there's any question that the Park values cultural resources. To her it seems like it's a matter of what the RMP specifically says NPS can fund. There are numerous references in the RMP to providing financial assistance, providing funding or technical assistance that uses all these different phrases for preparation of relevant laws, plans and ordinances. There's one reference to funding through planning contracts with local governments for the identification, evaluation of historic building, sites, structures, districts and objects. This is a really technical task that would require a certain amount of expertise and she's not sure it would be the appropriate vehicle for a Technical Assistant Grant. Henry said if ORVs are mentioned in the RMP then you can connect it to the Wild and Scenic Rivers Act. Ehrler said many zoning ordinances also include a component of a preservation ordinance that is part of the zoning. In many towns throughout the country that is inherent as part of the zoning. If you find a clear preservation ordinance which would identify those items, you would also write in the protection in how they are reviewed then as part of the zoning. That may be a way to deal with it through UDC's funding. Claster said a local ordinance provides stronger protection for your local cultural assets than being listed on the National Register. Ehrler agreed that a local ordinance provides that extra level of review that UDC is looking to have for cultural resources. Discussion ensued. Claster said perhaps you could use TAG funding for that purpose. NYS has Preservation Historical Grants that is just a matter of application. In terms of Pennsylvania, Ehrler can check to see if they have any. It would be through the Historic Museum Commission. They do offer grants to help pay for professional services for someone to sit on your Historic Review Board. Hauser-Hahn said what if a Town or Township or UDC funded doing a draft model ordinance? She is reminded of years ago when the Town of Delaware was leading some of the ordinance writing when UDC first started out. Henry asked NPS to email UDC the information they have on Outstandingly Remarkable Values. A motion by Robinson, seconded by Henry to revise the draft letter concerning Technical Assistance Grants Program with suggested changes was carried.

Renewable Energy Position Paper and Minor Amendment Steps: Ramie said the way we left this topic last meeting was we were deferring this discussion of Renewable Energy Position Paper to this meeting and to focus on

the either/or alternatives that were offered in the latest draft to develop some specific recommendations. Henry said even though it might extend this topic, in light of what Tom Shepstone recommended relative to the Guidelines and minor and major amendments he thinks UDC should look into doing some kind of supplement or letter of interpretation, as opposed to trying to do any kind of change to the plan. It appears that the Utility Scale Solar is the biggest concern. Claster said what Shepstone presented at the UDC meeting was his opinion only. It was not something that NPS would support. That's been gone over before in this committee. A letter of interpretation or supplement is not going to be acceptable to NPS. That is the word from the Solicitor on this matter. Ramie asked how would you know because there has never been a supplement. It hasn't been proposed yet. A supplement is a brand new concept. A supplement is something different from a letter of interpretation. Dexter said we have an opinion from someone who was there and went through all the work. He knows other people who worked on the plan who he can reach out to as well. Richardson asked staff to investigate further how a supplement might work, what it is and what that supplement might include. Henry said NPS has already put the supplement in; it's called the Errata Sheet. The Plan says NPS and DRBC are supposed to be voting members. Someone took the plan and said we don't want to be a voting member; we will add an Errata Sheet. They did the same thing with a Resolution relative to the extension of 36CFR, the ordinary high water mark. Henry signed it as Chairperson much to his chagrin. They enacted that through the Superintendent's compendium. Henry said there are some things that stretched the plan. Hauser-Hahn said Bill Douglass put together the Errata Sheet to the RMP but she can't produce the cover memo because he presented it to the UDC. It may be in old minutes.

Other: None.

New Business:

Town of Highland 2019 Zoning Law Final Substantial Conformance Recommendation to UDC: Ramie said what is provided in the meeting packets is Golod's final take on the adopted version of this. Golod sent it out in advance. If you flip through it, you will find that he highlighted in yellow the aspects that were found not in substantial conformance or for which there were issues. When you get to page 22 he offers a timeline of all the actions that have taken place including dates with UDC's communications on this subject and what responses have come back. The most recent action was on 5/15 the planning consultant Laberge Group submitted a certified letter back to UDC in acknowledgement of UDC's letter sent on 5/3. Laberge Group maintains that the Town of Highland's adopted zoning law is in greater conformance with Land and Water Use objectives than the Town's prior law that was in effect. They also say in many cases the regulations were strengthened to be more restrictive than the guidelines. The full text of that letter has been provided in the meeting packet. In addition, Golod provided a comparison of the Town's Districts Schedule of Uses regulations performed against the Land and Water Use Guidelines Schedule and he has highlighted that areas that conflict. Those include the sections on dwellings, mixed commercial residential, clearcutting, communication towers, farm stands, public utility structures and facilities, business and professional offices, drinking establishments, farm brewery, hotel/motel, etc. The summary on page 26 states that out of the 22 objectives in the Land and Water Use Guidelines Golod determined that 12 do not substantially conform. Golod's suggestion is provided in the meeting packet which lays out the steps provided in the Project Review Workbook. His estimation is UDC is up to step six: the Project Review Committee making a recommendation to the full Council that UDC has made attempts to negotiate and resolve differences. Ramie said it seems we've come as far as we can on that so this is your prerogative as a committee. Richardson said Golod shared Laberge Group's responses and they responded point by point. The issue they kept repeating was: it maintains the current levels of conformance and beyond. Richardson said typically when they do zoning in New York they make a statement up front that it replaces previous zoning. Richardson asked does that statement exist in the Town of Highland? If that's so maybe UDC doesn't have all these problems we found with them. Claster said from her perspective the zoning is the zoning. Town of Highland adopted this zoning in which 12 out of 22 objectives do not pass the review. Regardless of what the previous zoning did or didn't do this zoning that is under review now doesn't meet it. Claster said the last review they have on file for Highland Zoning is the original 1990 Substantial Conformance Review. Since then it has been revised and amended multiple times. Claster doesn't know on what basis they are even making that statement that this is more in conformance than the previous zoning because to her knowledge no one has reviewed their zoning since 1990. Ramie displayed a copy of the new Town of Highland Zoning Law and Richardson asked if there is a reference to replacing all prior? It wasn't found. Henry asked Claster if she had ever seen this in her prior experiences with her practice a total rewrite of the zoning not in substantial conformance? Claster said this is the only place in the world that she knows of that has substantial conformance. Henry asked Richardson what's going to happen. Is this going to be a legal issue because Golod and Claster think

the Town of Highland are out of Substantial Conformance and the Town does not? Is the Town going to want to bow out of UDC? Richardson said they could legally challenge UDC's ruling. Claster said she went through Laberge Group's letter point by point and she thinks a clear response could be made to every one of their points. Greier said Town of Fremont adopted five-acre zoning policy. He said now they are finding out it's too strict; people don't want five acres. Greier thinks the Town of Highland is going through something similar. Greier believes they dropped their zoning down to two-acres. Claster said it can be two-acres and be perfectly conforming. Dean asked if UDC finds that this doesn't conform, will UDC say they can't be a member of UDC? Richardson said they can be a member just like Town of Hancock is. Claster said there would be a higher level of review. Discussion continued. Richardson said don't forget this is going to the full Council then the full Council has to make an effort to resolve these differences and though it's been done we will have to spell out to the Town once more, the implications of a Council member who is not in substantial conformance. If they remain a Council member, which Richardson hopes they do, UDC will have to review everything that is proposed in Town. Dean said so the onus falls on UDC for the Town of Highland not conforming. Robinson said UDC has spent an inordinate amount of time on Highland. If a member has no interest with complying with an organization and its bylaws it doesn't serve anybody good. Robinson said he's not saying this arrogantly but practically they should resign from UDC. Hauser-Hahn suggested UDC going to a Town of Highland board meeting instead of them coming to UDC. Richardson said we have met in the town and offered to go to them repeatedly. A motion by Henry, seconded by Robinson to forward this recommendation to full Council with one abstention by Dexter, motion carried.

Other: Robinson asked do you remember when we reviewed a project where they were going to use the Springhouse property in Barryville to retrieve a group from a Hasidic girls camp about 12 times out of the camping season? It was previously used as an access. Buses were going to come off of Rt. 97 and pick them up. Robinson said he was in Barryville two Saturdays ago and Rt. 97 was backed up due to a farmer's market that has been relocated. There were cars all over the place and they did their best to control traffic. Robinson said he supports farmer's markets but noted you have a situation that will go on every Saturday from 10-2. Robinson assumes it was approved and here was someone who wanted to use his own property in a structured manner for 12 times out of the year and he was turned down. He's paying \$30,000 in real estate tax and now he's bankrupt. Robinson is just comparing the two and the hypocrisy of the matter. Greier said that's not UDC's problem. That's the Town of Highland's. It's not our job to micromanage. Hauser-Hahn said that proposed river access would not have been limited to serving Hasidic girls and there had been other issues raised with it that led to the town's denial of the application.

Public Comment: None

Adjournment: A motion by Henry, seconded by Dexter, to adjourn the meeting at 8:30 p.m. was carried.

Minutes prepared by Ashley Hall-Bagdonas, 6/5/19