

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
July 26, 2011

Committee Members Present: Fred Peckham, Harold Roeder, Scott Rando, Larry Richardson, Debra Conway
Committee Members Absent: Nadia Rajsz
NPS Partner: Sean McGuinness
Staff: Dave Soete, Laurie Ramie
Guests: Tony Ritter, Dolores Keesler

The UDC's Project Review Committee held its monthly meeting on Tuesday, July 26, 2011 at the Council office in Narrowsburg, NY. Chairperson Fred Peckham called the meeting to order at 7:36 p.m. A motion by Rando seconded by Conway to approve the June 28 meeting minutes was carried unanimously. There was no public comment on the agenda.

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

Town of Cochection Zoning Law Amendments Update: Soete said that he has not yet reviewed Cochection's proposed Zoning Law, Subdivision Law, and Comprehensive Plan. Richardson said it would be pretty serious if the UDC can't find the time to comment on a member municipality's zoning. The Cochection Town Board met the previous night to finalize the State Environmental Quality Review Act process. A vote is expected in two weeks. That leaves no time to bring back a comment letter to this committee. Conway noted that Soete had requested approval at the earlier Operations Committee meeting to attend a July 28 public information meeting on the Town of Lumberland's Zoning Law revision. Since Lumberland is just beginning its zoning update process, shouldn't Soete prioritize Cochection which is nearly at the end of its process over that, she asked? Richardson said the reality is that there aren't a lot of changes in the Cochection law. Just zero in on those and it shouldn't take a long time. Right or wrong, Cochection has taken out all references to natural gas drilling. The document simply acknowledges that these issues must continue to be studied. Soete agreed that he would not attend the Lumberland meeting and will use that time to concentrate on the Cochection zoning instead.

Natural Gas Leasing/Drilling in the Region Update: The NYS Department of Environmental Conservation (DEC) posted their 2011 draft Supplemental Generic Environmental Impact Statement (dSGEIS) for natural gas development online on July 8. The draft document is over 1,000 pages long at this point but the final draft is expected to be approximately 1,400 pages. Peckham noted that there are social and economic studies pending to include in that final draft. The state will start the 60-day comment period when the complete draft is released. In Pennsylvania, Soete reported that the Commonwealth's Marcellus Shale Advisory Committee released recommendations on July 22.

Pond Eddy Bridge Update: Soete asked if there are any further updates on the Pond Eddy Bridge. Ramie reported that the "Friends of the Pond Eddy Bridge" recently sent a letter to PennDOT in which they continue objecting to the bridge replacement plan and the process that has prefaced the pending Memorandum of Agreement signing by the consulting parties. McGuinness reported that NPS Upper Delaware Scenic and Recreational River held a meeting with Department of Transportation (DOT) officials about moving into the design phase. They want an attractive bridge that incorporates certain aesthetic elements. While NPS agrees that the bridge needs to be replaced, they requested that DOT consider the possibility of using the same footprint. DOT provided evidence of why replacing the bridge in its exact location would be problematic. The new bridge will be built to modern standards and there will probably be three piers. When construction gets underway, DOT plans to open causeways that will require portage of that river section for approximately two years. The 12-foot-high causeways will provide DOT with access needed to build the piers. Richardson asked what the river height flood stage is at Pond Eddy. Rando noted that the river has gone over the road and guardrails at that location in the past.

Upper Delaware River Roundtable: The next meeting of the Upper Delaware River Roundtable will take place on Aug. 4. It will consist of a river trip from Narrowsburg to Ten Mile River with a talk at the end by McGuinness. Conway asked what time the program will be at the Ten Mile River Access for those who can't participate in the boating trip. McGuinness said that the itinerary is still being finalized but that the Roundtable organizers will circulate an agenda in advance. He will focus his presentation on the role of the National Park Service and the River Management Plan, and what our future looks like in this river valley. He'd like to get input from the stakeholders on how we can improve on the quality of life, economics, environmental, recreational, and other conditions.

AT&T Mobility, LLC Proposed Telecommunications Facility (off Henderson Road in Mileses, Town of Fremont): Soete reported that the National Park Service GIS specialist had prepared a viewshed analysis which suggests that this proposed 198-foot cell tower in the Town of Fremont could be visible from the Delaware River. He will follow up with EBI Consulting to see if they can provide further documentation on that. Soete displayed a color-coded illustration that the consultants had previously submitted that purports to show the visual impact with and without vegetation. The UDC would like to ensure that the tower is as unobtrusive as possible.

Holbert Bros. Bluestone (Lackawaxen Township) Update: Soete reported that the Lackawaxen Township Supervisors did not consider the UDC's approved July 7 comment letter on the Holbert Bros. Bluestone conditional use permit application for a 40-acre quarry expansion at their July 20 meeting on the basis that it wasn't submitted at the June 8 public hearing. Douglass, Soete, Chase, Rando, McGuinness, and Hamilton attended the July 20 Lackawaxen board meeting at which the application was approved with conditions. The supervisors didn't take any public statements in advance of the vote. The 10 conditions that their attorney read verbally were not available for advance review. Soete obtained a copy of the written Conditional Use Decision on July 25, along with a transcript of the June 8 public hearing. He said that the UDC will need to determine at some point whether Lackawaxen is still in substantial conformance with the River Management Plan after analyzing the conditions that were approved. The committee received handouts of the Conditional Use Permit Decision and Findings of Fact (Written Decision).

Soete read aloud Condition #2: "Applicant shall be permitted to expand the NRU to a total of forty (40) acres as set forth on the plan submitted. Provided, however, that applicant shall only mine one (1) acre at a time and shall reclaim and/or bond each acre, pursuant to the DEP and Section 506.3 of the Zoning Ordinance, when that mining is concluded before commencing mining of the next one (1) acre. Applicant shall be able to remove the overburden or waste rock that does not involve new mining within the permitted area."

At the Lackawaxen Township meeting, Soete said the impression was given that Holbert would mine one acre then reclaim it before moving on. This wording, however, says "reclaim and/or bond". That could mean that the applicant would be allowed to have the full 40 acres open and un-reclaimed. If the UDC had had an opportunity for input on these conditions before they were approved, we could have keyed in on this question. Condition #6 states that "The Applicant shall limit heavy truck traffic on SPR 1014 north of the Westcolang trestle to an average of 180 vehicular trips per month, as more particularly set forth in Exhibit A-2, which is attached hereto and incorporated by reference into the terms of this Permit." Soete said that this is another example where it sounded like a compromise from the original proposal of 375 truck trips, but he is now aware that this limitation pertains to a specific agreement negotiated with property owner John McKay. The 375 truck trips will presumably still be allowed elsewhere in the neighborhood.

McGuinness noted that the township's permit approval is for a 40-acre quarry but Holbert will still require a permit from the PA Department of Environmental Protection (DEP) to implement the project. Soete said that no such application has been filed with the agency as of that date. Richardson said that "and/or" in the condition gives the quarry owners an out to bond instead of reclaim. But Roeder pointed out that the condition also states "when that mining is concluded before commencing mining of the next acre." Peckham said we need to find out the intent of the language in that condition. Soete said that could be difficult since the township did not accept the UDC as an interested party, made us file a Freedom of Information request to obtain copies of the documents, and does not appear to be communicating about it otherwise. There is a 30-day period to appeal the Conditional Use decision. McGuinness said that the

township has acted to allow a variance of their own zoning ordinance pertaining to allowed uses in the river district zone. The next step is for Holbert to apply to the state. Roeder said that since the DEP has the final permitting authority, we should make that agency aware of our concerns. McGuinness quoted excerpts from the transcript of the June 8 Lackawaxen Township public hearing at which UDC Executive Director Bill Douglass was interrogated by the applicant's attorney on his authority to represent the Council as he attempted to gain standing for the organization. McGuinness said he found some of the discourse to be insulting to the UDC and Park Service. When he had the opportunity to speak at the July 20 township meeting after the vote was taken, McGuinness said he explained one provision of the River Management Plan is that the UDC be given 45 days to review a major project in the river corridor. That should have been the case with the proposed conditions to the permit application as well.

Richardson asked what we can legally do under these time constraints. McGuinness said that an appeal could be made to the Pike County Court of Common Pleas. It would be faster for the UDC to do that than for NPS, since he would have to go through various levels of approvals to take that action. The appeal must be made within 30 days of the July 23 date of the decision. Richardson said that the UDC's first priority is to get a clarification of these conditions. If we wait for a response by letter, we could get locked out of the appeal window. The UDC has an attorney available to review these documents. Both actions could be taken simultaneously to be ready for the next step of a legal challenge in case a response isn't received or it isn't satisfactory. Roeder said he would like to see if the UDC could approach Lackawaxen as a member township to try to rectify this. Tell them we agree with the one-acre condition but we're concerned that the fine print in this language could allow it to go way beyond that. If they took out the "and/or" clause, we might be satisfied. McGuinness said he had asked the supervisors and attorneys at the end of the July 20 meeting about arranging a site visit to the Holbert Quarry, but the property owners left after the decision was made. Soete said that meeting with the Holberts would be nice but it won't change the township's decision. The Holberts proposed the one-acre language and agreed to abide by the list of conditions. McGuinness said they also stipulated that the quarry is located within the river corridor boundaries. There was a discussion about whether the River Management Plan (RMP) guidelines for major surface mining only apply to new uses. Peckham said that argument would be that the Holbert Quarry preceded the RMP in its operation and is therefore grandfathered in as an existing use. McGuinness suggested that we get a copy of the current PA DEP permit under which the Holbert Quarry is operating to see what they are allowed to do as an existing use. Pennsylvania has an Executive Order in effect for its state agencies to follow the RMP.

A motion by Richardson to send a letter to the Lackawaxen Township Board of Supervisors asking for a clarification of Condition #2 of the Holbert Brothers Bluestone Co. Conditional Use Permit Decision, and to have the UDC's attorney review these documents and advise us on the appeal procedure was not immediately seconded as further discussion ensued. Richardson said that any action recommended by the attorney would require full Council approval to proceed. McGuinness said the attorney could be asked to interpret these conditions in the context of the RMP.

Town of Tusten UDC Alternate Representative Tony Ritter referenced Condition #9, which states, "This approval is granted to the Holberts and their company and is based, in part, upon their family history in this use of the property. This approval shall be rescinded in the event that either: 1) the property is no longer owned by a member of the Holbert family; or 2) the business is operated by a person not a member of the Holbert family or an entity not entirely owned by the Holbert family." Ritter said that condition appears to provide this permit as a privilege for only the Holberts. What would happen if there was another quarry in the township?

A motion by Richardson seconded by Roeder was carried unanimously for the UDC to: 1) Prepare a draft letter addressed to the Lackawaxen Township Board of Supervisors for action at the Aug. 4 full Council meeting requesting clarification of the intent of Condition #2 of the Holbert Brothers Bluestone Co. Conditional Use Permit Decision; and 2) Contact UDC Attorney John Keating with a request to review the materials relevant to the Holbert Brothers Bluestone Co. Conditional Use Permit to advise on: a) whether the terms and conditions of the decision comply with the River Management Plan guidelines for mining operations; b) whether the UDC can become a party to the PA Department of Environmental Protection's

permit application process for the Holbert quarry expansion; and c) what is the procedure to file an appeal through the Pike County Court of Common Pleas within the 30-day allotted time period for this decision.

Town of Lumberland Zoning Law Revisions: The Town of Lumberland will hold a public information meeting on July 28 at 7 p.m. at the Town Hall in Glen Spey. A draft revision of the Zoning Law is available on the town's website. Section 5.15 "River Overlay District" is currently blank on the draft.

Town of Highland Zoning Law Revisions: Soete asked Conway if she is aware of the status of this project. Conway said that the town has not yet released a draft of the revised Zoning Law.

Illegal Fish Hatchery on Big Island (Town of Delaware): Soete reported that the NYS DEC investigated what was reported as an illegal fish hatchery on Big Island in the Town of Delaware. There were five ponds built for the alleged purpose of growing Tilapia and vegetables. McGuinness confirmed that the DEC took action as a law enforcement issue to shut down the operation, which may violate Section 7 of the Wild and Scenic Rivers Act. The agency is requiring disposal of the fish. Soete said this was an odd situation for the river valley, but hopefully one that has now been resolved.

New Business

Lackawaxen Township Holbert Conditional Use Permit & Written Decision: Previously discussed.

FY 2011 Technical Assistance Grant Projects: Soete summarized the accomplishments of five final FY 2011 TAG projects that were completed by the July 25, 2011 deadline. A motion by Richardson seconded by Peckham to accept the following projects and request approval for their payments at the Aug. 23, 2011 Operations Committee meeting was carried unanimously: 1) TAG 2011-02, Town of Delaware, Create/Post Zoning Law Index, \$2,400; 2) TAG 2011-03, Town of Tusten, Road Use Agreement Process, \$2,520; 3) TAG 2011-04, Shohola Township, PA Laws Natural Gas Brochure, \$2,500; 4) TAG 2011-05, Town of Deerpark, Update/Print Town Brochure, \$2,600 (spent \$2,313.97, de-obligate \$286.03); and 5) TAG 2011-06, Town of Cochection, Develop Town Website, \$3,880. Soete pointed out that all of the member municipalities except the Town of Deerpark had spent the full amounts of their grant awards.

Letter of Request from Keep Cochection Green: A letter dated July 12 from Laurie McFadden on behalf of the "Keep Cochection Green" membership was handed out for review. The letter requested an extension of TAG 2009-07 which awards the Town of Cochection \$4,000 to update the town's zoning law. The grant will expire on Sept. 30, 2011. The citizens' group feels that a more extensive review of the draft is necessary because the proposed regulations "are inadequate, offer no protections from the hazards of gas drilling and do not reflect the UDC's position regarding gas drilling in the river valley. In addition the review process was seriously flawed and did not permit sufficient review by Cochection residents." Richardson pointed out that requests for TAG extensions must come from the sponsoring municipality, which this had not. This particular TAG project has already had the two six-month extensions that the Technical Assistance Grant contract previously allowed. Richardson confirmed that if the project is therefore not completed by the Sept. 30 deadline, the town is in jeopardy of losing the grant funds.

"NYC Scaling Down Hydroelectric Plants": A *Times Herald-Record* article from July 22, 2011 states that the New York City Department of Environmental Protection has scaled back its original plan to install 11 hydroelectric turbines at the Cannonsville, Neversink, Pepacton and Schoharie reservoirs following a year of analysis. The new plan calls for six turbines at three reservoirs, no longer including Schoharie. They would be capable of generating 16.72 megawatts, compared to the original 38.75 megawatts that would have been produced from 11 turbines. The 16.72 megawatts would be enough to power approximately 6,500 average homes during peak output. Richardson recalled that the Delaware County Electric Cooperative originally proposed to establish the hydroelectric turbines until New York City took over the idea. Soete said that this plan reportedly wouldn't change the flows or discharges from the reservoirs. It would just harness the energy created by the hydropower.

Other: None

Old Business

Use of 1988 Project Review Workbook: Soete said that he has some concerns over using this manual to guide the UDC's review of projects. Richardson recommended that committee members take additional time to review their copies of the workbook that had been provided by NPS after being recently rediscovered. A motion by Richardson seconded by Rando to table the discussion of this item to the Aug. 23 Project Review Committee meeting was carried unanimously.

UDC TAG Applications Due: A copy of Ramie's July 11 news release, "UDC Technical Assistance Grant Applications Due by Sept. 2", was handed out as a reminder of the deadline for the FY 2012 round. Soete observed that \$16,700 has been budgeted. A special meeting of the Project Review Committee to review TAG applications has been set for Tuesday, Sept. 13, at 6:30 p.m.

Adopted FY 2012 Project Review Work Plan Available Upon Request: It was announced that anyone interested in receiving the final FY 2012 Project Review Committee Work Plan as adopted at the July 7 UDC meeting may request it.

Other: Soete handed out copies of a brochure that he had recently come across titled, "Wild & Scenic Rivers Guide for Riverfront Property Owners." The Nov. 2005 brochure was produced by the National Wild and Scenic Rivers System. It offers best management practices for building along water bodies and similar issues.

Public Comment: None

Adjournment: A motion by Rando seconded by Roeder to adjourn the meeting at 9:24 p.m. was carried.

Minutes prepared by Laurie Ramie, 8/1/11