

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
August 23, 2011

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

The UDC's Project Review Committee held its monthly meeting on Tuesday, August 23, 2011 at the Council office in Narrowsburg, NY. Chairperson Fred Peckham called the meeting to order at 7:46 p.m. A motion by Richardson seconded by Roeder to approve the July 26 meeting minutes was carried with one abstention by Rajsz due to her absence from the meeting. 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: A copy of Soete's Aug. 10, 2011 letter summarizing his review of Cochection's proposed Zoning Law, Subdivision Law, and Comprehensive Plan was included in the meeting packets. Richardson said that the Cochection Town Board met that night and adopted the ordinance. They were disappointed not to receive the letter sooner. There were some good comments made but it was too late to incorporate them into the final document. Soete apologized. He pointed out that the town's planning consultant Tom Shepstone sent out new drafts the day before Cochection's meeting which further delayed his timing. Since there was no time to send the comment letter through the committee review process, Soete signed and sent it as Senior Resource Specialist. Rajsz noted that she will be sure to have the Lumberland Planning Board send a draft of her town's zoning re-write to Soete to review.

Tennessee Gas Pipeline Expansion Project: Soete displayed a photo taken by Sandy Long of *The River Reporter* depicting work on the pipeline crossing of the Lackawaxen River.

Natural Gas Leasing/Drilling in the Region Update: Several environmental groups are suing the DRBC based on their contention that the agency is not following the National Environmental Protection Act for their draft natural gas development regulations.

Pond Eddy Bridge Update: Soete noted that the UDC is being asked to sign a Memorandum of Agreement (MOA) for the Pond Eddy Bridge Replacement as a concurring party by a Sept. 6 deadline.

AT&T Mobility, LLC Proposed Telecommunications Facility (off Henderson Road in Mileses, Town of Fremont): EBI Consulting contends that their balloon used for a viewshed analysis test was not visible from the river. Soete pointed out that the areas photographed during the balloon test were from the perspective of the roads and not the river.

Barnes Landfill, Town of Highland: Soete said it does not appear that anybody is pumping out the effluent from this closed landfill property. NYS DEC representative Bill Rudge's most recent Nov. 2010 status report was that the matter has been referred to the NYS Attorney General's Office and that they are trying to identify responsible parties. The DEC was not aware of any problems at the landfill at that time.

Holbert Bros. Bluestone (Lackawaxen Township) Update: Actions following the Lackawaxen Township Board of Supervisors' July 20 approval of a Conditional Use Permit for the Holbert Quarry 40-acre expansion include: on Aug. 4, the UDC approved a letter to the supervisors requesting clarification to Condition #2. Wayne Holbert was at the meeting and provided a verbal response. At that same Aug. 4 meeting, the UDC approved retaining legal representation following an executive session. On Aug. 11, the UDC received a copy of the PA Department of Environmental Protection's inspection report from July 21

alleging that the Holbert Quarry has exceeded its allowable state-permitted mining area by 4.7 acres and that the boundaries are not accurately marked. On Aug. 17, the UDC executive director signed an Engagement Letter with the attorneys that the UDC hired to file an appeal against Lackawaxen board's July 20 decision. A response to the UDC's Aug. 4 clarification letter was received on Aug. 17 from Lackawaxen Township Solicitor Tony Waldron. He basically said that providing that clarification was a moot point since the board had already approved the permit. On Aug. 18, a group of property owners near the quarry filed an appeal under the name of "Save Lackawaxen". On Aug. 19, the UDC's attorneys filed the Council's appeal in the Pike County Court of Common Pleas within the 30-day allotted timeframe. Soete offered as a possible action item a draft letter to Lackawaxen Township regarding the events that have occurred since the July 20 Holbert Quarry permit approval and making a statement on the township's substantial conformance status with the River Management Plan. Richardson said he didn't consider it unreasonable to ask the Lackawaxen board to interpret the intent of the ordinance they approved. Soete said that Solicitor Waldron's letter essentially said that the matter would have to be appealed for it to be reopened. Soete added that it would behoove the UDC to have legal representation if the court upholds the appeal. Ritter asked what the process is for the Court of Common Pleas. Soete said the attorneys have advised that it will take at least one month for the court to consider the appeal. Peckham said he would expect 90 days. The quarry can't operate under the township's approved expansion plan until it receives a DEP permit to do so. Roeder commented that the pile of overburden at the quarry is very high. They have to get rid of that before the state will consider granting the permit. Rajsz said she understood that crushing rock isn't a permitted use in the River Management Plan. Roeder said Holbert needs a permit for it. It's a huge pile but he can't reclaim it until he gets the larger permit. He can't pull out the rubble because there is no place to put it. He can only work with the big pieces of rock lying around. That quarry is supplying stone for the current Hawk's Nest repairs. It also provided stone for the Roebling Bridge wall. Roeder said that Holbert can't do what we want him to until he gets the state permit. He's literally stuck between a rock and a hard place. Peckham said that the DEP won't delay or ban the issuance of a permit based on pending litigation. They could even override the township decision. Roeder added that you can't see this quarry from below. He said it would be good for everyone to make an appointment and see for themselves what it going on there. It's a small mom-and-pop operation with only one saw. Niflot agreed that the quarry is located right on top of the mountain. Roeder said that whatever runoff may come down from there is from rain. McGuinness asked whether Holbert could manage this business on five acres. Roeder said it would be a constant procedure of getting rid of the rock, reclaiming, and starting over. He is sure that the DEP will be vigilant in monitoring the operation.

Johnston & Rhodes Bluestone Company New Quarry Road, Manchester Township: Soete reported that he had been contacted by neighbors of an existing bluestone quarry in Manchester Township objecting to the construction of a large new road, allegedly over 1,000 feet long and 100 feet wide, up the mountain off of River Road east of Equinunk. The road reportedly doesn't have a state E&S control permit. Peckham said he has viewed the road and disagrees with the dimensions suggested. He could not see it from the New York side. It goes up and over the mountain to the quarry that has always been there. McGuinness said that the National Park Service has received complaint calls too. The Wayne Conservation District inspected the site. They have concerns that the soils aren't stable and there is a 25% slope which causes serious potential for siltation and erosion problems, especially with a hurricane forecast for this weekend. Manchester Township has no zoning or road standards in place. Peckham said that the crew was putting up hay bales to try to stabilize the road when he visited and they are posting the private road. McGuinness said that his rangers will document this work before and after since Manchester is a non-participating township in the UDC, which therefore means that NPS has jurisdiction for substantial conformance reviews. It's not fair to other property owners if the siltation does affect them. The DRBC doesn't get involved unless certain thresholds kick in or they are asked to do so by a state or federal agency. There are also considerations regarding permits and the viewshed. McGuinness said that this road may not amount to a big issue individually but actions like this have a cumulative effect on the river valley. A neighbor has hired an attorney to look into this matter.

Soete said that concluded his report. Richardson commented about the Millennium Pipeline failure in western New York. The Town of Cocheton had received a very general letter saying that the owners would be doing an inspection. Now Richardson understands what the motivation was for that. Somebody knew that a section of the pipe was bad. Peckham said they will now have the test the whole system again.

New Business

9/1/11 Draft Letter to Lackawaxen Township on Substantial Conformance Determination: Peckham said he believes the UDC should hold off on sending the draft letter that Soete had prepared for the committee's consideration in advance of the next UDC meeting on 9/1. Richardson agreed that he's not sure we should do anything more at this point. Peckham advised letting the court action proceed without any further correspondence at this time. He added that it would be unlikely to receive a response anyway.

Technical Assistance Grant (TAG) Program Reminders: Applications for the UDC's FY 2012 TAG program are due by 4:30 p.m. on Friday, Sept. 2. A special meeting of the Project Review Committee will convene on Tuesday, Sept. 13, at 6:30 p.m. to review the TAG applications. All outstanding FY 2009 TAG projects must be completed by Sept. 30, 2011.

Other: None

Old Business

Use of 1988 Project Review Workbook: Richardson said he feels this workbook is a good tool in that it lays out consistent procedures for UDC reviews of projects. Peckham said he hasn't had a chance to review the workbook in any detail and would like to table this discussion. He asked Soete to write down a synopsis analyzing pros and cons of using the Project Review Workbook. McGuinness noted that the manual could be condensed because it has a lot of duplication. This would be an internal document for the committee's use. Peckham said it would essentially be used as a flow chart.

Other: 1) Ramie referenced the handout of an Aug. 19 article from the *Sullivan County Democrat* headlined, "DEC says fish farm being rectified: DEC says **illegal fish farm** placed in the Delaware River is now being cleaned up" pertaining to Big Island in the Town of Delaware. McGuinness reported that all of the tilapia that were being grown have been condensed into one manufactured pond now. The monofilament line placed over the ponds is gone. The DEC's decision against pursuing violation charges and a fine against the Spring Valley, NY operator if the site is reclaimed to its original condition in a timely manner does not mean that there won't be any penalties levied by other regulators, McGuinness said. The water for the ponds was being pumped out of the river at the rate of 100,000 gallons a day to refresh the fish with no permits in hand. Ritter said it was obvious to anyone familiar with that section of the river that something was amiss due to the sudden construction of holding ponds, the noise from the compressors, and the PVC pipes extending into the water, and yet the activity was not visible from the road. Therefore it's possible that the operator didn't think he would ever be called on it. He leased this land from the property owner and had apparently invested a great deal of money in this operation. Ritter said that he's shocked that the DEC does not plan to levy any fines. The fish farm clearly violated regulations by disturbing the earth and starting a commercial venture without a permit. Others commit lesser offenses and find all their equipment confiscated or worse. McGuinness reiterated that this is an ongoing law enforcement issue and the story is not yet over. Rando asked if there was documentation of birds being killed or injured from the monofilament wire covering the ponds. McGuinness confirmed that they have photos and testimony. 2) An additional handout included the agenda for the Aug. 30 meeting of the Delaware River Basin Commission's **Regulated Flows Advisory Committee** (RFAC) meeting to be held at the DRBC office in West Trenton, NJ and a copy of the draft minutes from the last meeting held on May 5. Ramie said this would normally be a handout for the UDC's Water Use/Resource Management Committee but the short timeframe of the meeting didn't allow it to wait for that next meeting.

Public Comment: Anne Willard of *The River Reporter* asked Roeder to clarify what he meant by saying that Holbert can't reclaim the quarry land without first getting rid of the overburden. Roeder said Holbert can't crush the rock without a permit to do that activity but he has to meet the criteria to get that permit. It's a round circle. If and when he gets the 40-acre expansion permit, he can go and reclaim the rubble. Peckham commented that overburden is a big problem for any quarry. McGuinness stated that all businesses have to plan. He should have gotten rid of this before it accumulated to that extent. Niflot

countered that maybe the neighbors who object to the quarry should have planned on the possibility of it resuming operations when they moved there. It works both ways.

Adjournment: A motion by Richardson seconded by Roeder to adjourn the meeting at 8:39 p.m. was carried unanimously.

Minutes prepared by Laurie Ramie, 8/30/11