

UPPER DELAWARE COUNCIL MEETING MINUTES

April 4, 2013

The Upper Delaware Council held its monthly meeting on Thursday, April 4, 2013 at the Council office in Narrowsburg, NY. Chairperson Jeffrey Dexter called the meeting to order at 7:08 p.m. The Pledge of Allegiance and roll call followed.

In attendance: Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Town of Delaware-Harold Roeder, Jr., Town of Cohecton-Larry Richardson, Town of Tusten-Susan Sullivan, Town of Highland-Andrew Boyar, Town of Lumberland-Nadia Rajs, Town of Deerpark-David Dean, Damascus Township-Jeffrey Dexter, Berlin Township-Alan Henry, Lackawaxen Township-John McKay, Shohola Township-Patricia Jeffer, Commonwealth of Pennsylvania-Dennis DeMara, Delaware River Basin Commission-Bob Tudor, National Park Service-Sean McGuinness. Staff in attendance: Executive Director-Laurie Ramie, Resource Specialist-Travis O'Dell, Secretary-Cindy Odell. Absent: Westfall Township, State of New York.

Approval of March 7 Meeting Minutes: A motion by Boyar seconded by Rajs to approve the March 7 meeting minutes was carried unanimously.

Public Comment on the Agenda: Aaron Robinson, Chairman of the Shohola Township Planning Commission, said he was at tonight's meeting on behalf of Shohola Township to discuss the consequences of the Pennsylvania Department of Environmental Protection's proposed "Sewage Facilities Planning Module Review for Onlot Sewage Systems Proposed in High Quality and Exceptional Value Watersheds." Robinson said the township learned about this policy about one month ago and was fortunate enough to have the time to start looking it over. Whenever the township receives new regulations, they look at them in terms of how they affect Shohola. Robinson was tasked with reviewing the policy and reported that it usurps their zoning. He added that what they currently have in place would be secondary to what these regulations would mandate. Robinson said the proposed regulations are targeted for areas of Exceptional Value (EV) or High Quality (HQ) waters, so only parts of the state that have already achieved a very high level of water quality will be affected. Wayne and Pike Counties have a high percentage of either EV or HQ waters. Robinson spoke about the on-lot sewage systems Nitrate Abatement Regulations (NAR) and the consequences of them. He provided a handout to members and said that some of the consequences include: overwhelming municipalities with preparing and maintaining costly, complex plans for the implementation of DEP's new standards and methods; potential use of conforming lots created in accordance with local law will be put in a state of uncertainty until an actual development plan is initiated; the landowner cost to satisfy the new regulations may render the use of a land parcel uneconomical; higher development costs will lower land values; the need for larger lot sizes will lower land values; existing lots could become unbuildable with limited value; lower land values will collapse the tax base that fund the towns, county, and school districts; and he said the proposed NAR is an irrefutable infringement of private property rights. Rajs asked for clarification of what areas would be affected. Robinson told her the DEP defines a stream as anything that runs water twice a year and that almost all of Shohola Township would be affected. Rajs then questioned why they are concerned only about nitrates. Robinson said he does not know, but that this policy does only focus on nitrates. Brian Smith, Chairman of the Wayne County, PA Commissioners, showed a map depicting special protection watersheds. He noted that all of Wayne and Pike Counties are in special protection watersheds, which is high quality, exceptional value water. He said

these areas will be hit hard as they consist of mostly privately-owned special protection watershed. Peckham questioned if the DRBC has commented on these proposed regulations. Bob Tudor of the DRBC said it is the first he is hearing of this. Robinson said it was not publicized at all, and if it were not for a few engineers and sewer enforcement officers bringing it to light, it would not have gotten any attention. Peckham asked if it would behoove the two counties to get the DRBC to comment or form an opinion on it. Robinson said he would think so. Robinson said these regulations would not need to go through any legislative overview. Sullivan asked what nitrates are. Robinson said that nitrates are part of the effluent from a septic system, but the concentrations aren't sufficient to impair the water. That is evident in the fact that the water is currently at the high and exceptional value state. Robinson said the Environmental Protection Agency has a standard of 10mg of nitrates per liter in drinking water and these regulations call for zero. Members commented that this is unattainable. Dexter said it is unachievable because of rain which contains nitrates. Robinson said that in 2010 a study by the U.S. Geological Survey entitled "Water Quality of the Upper Delaware Scenic and Recreational River and Tributary Streams, New York and Pennsylvania" concluded "no correlation between the percentage of suburbanization and water quality was detected." He added the DEP wants to put higher restrictions on septic systems and this recent study shows that it is unnecessary. Boyar questioned what Shohola Township is doing about this proposal. Robinson said they've attended a number of meetings to become knowledgeable about the subject so that they could prepare a letter of opposition of these standards. Robinson said the comment period deadline is May 1st. Boyar noted that May 1st is close and asked if this was a "stealth of the night" type of deal. Robinson said these were "stealth regulations". Brian Smith spoke passionately about commercial development and industry in Wayne County having grown in close proximity to the D & H Canal and how Chapter 102 Regulations will take away development possibilities. Dean asked if there are new parameters being set for sewage treatment plants. Smith said with DEP, as water quality improves, the designation of the water increases and as a result of that, the restrictions placed are greater. If you have Exceptional Value water, you can not expand on a sewer system which dumps effluent into a river, no matter how clean it is. Robinson spoke about concern for the township's tax base if these regulations are enacted. He said the township is in the process of revising its zoning and in doing so is looking at what impacts previous zoning had on how the town has built out. The new regulations could compromise these efforts, he said. He went on to say that we are blessed to live in an area where the water is so pure. The DEP wants to enforce these methods that are draconian in nature, when what is in place is obviously working and we have high quality water. In summary, Robinson said, Shohola Township would like the Council to look at the policy and pass a resolution against the implementation of it. "It is not good for the area, it's not good for the taxpayers of the area, and it's not good for the overall development of the area", he added. This policy is coming out of left field and was not vetted properly, Robinson said. McKay commented that the amount of salt that PennDOT applies to the road he lives on in Lackawaxen Township would negate any benefit this new policy may have. Henry asked if Robinson or Smith were going to talk about the additional costs that will be added if this policy is put into effect. Robinson said that at a recent meeting he attended, an engineering firm that was involved in a very simple development, as well as a single lot development in a commercial area, reported that they analyzed what this regulation would cost them. They said it would be an additional \$100,000 for the one development and it made the commercial development unfeasible. Peckham said he believes the Delaware Riverkeeper Network is a big proponent of this policy and they have been pushing it for a year. Dexter clarified that this proposal is a policy and not a regulation and as a result it is not subject to any legislative review so the DEP can just impose this. Robinson does not believe there is a hearing either. Dexter agreed; there is only written comment. Henry said he thought for this to apply, it has to be a regulation. He understands that policies are for personnel and regulations are applicable to citizens. Robinson said he refers to it as a regulation because they have to abide by it. They call it a policy because they are amending existing law, he added. Boyar said he knows of a piece of property that is 680' along the Delaware River, but is not more than 150' deep. He asked if what is being said is that this piece of property would be unbuildable if this new policy goes into effect. He was told yes. Dexter added that if you have a home and your septic system fails, this new policy would apply and the house may have to be abandoned. Peckham said it is "down basin trying to preserve up basin for their use." Robinson said we have achieved high quality water and we are being punished for it.

Brian Smith said the Wayne County Commissioners are working closely with the Pike County Commissioners on this issue. He said Peckham is very accurate when he says it is downstream people

trying to shut down what happens upstream. Smith said he understands the importance of water quality and spends a great deal of time in and on the Delaware River himself, but feels there is a balance that needs to be met. He said that when rainwater has more nitrates in it than what the DEP is trying to achieve, it illustrates the unreasonable effect of the policy. Smith said a moderate growth rate is required in the area in order to offset any tax increases and they have been working very hard in Wayne County to achieve this moderate growth rate; to be able to provide places where people can build houses, and provide an environment where industry can come in and start a business to provide jobs and expand the tax base. The latest numbers from the census show that Wayne County is beginning to lose population. This is very dangerous if you are concerned about taxes. He said we can not continue down a path of escalating our water quality where they escalate the designations to the point that we can't exist. He said, "Let's be reasonable." Smith characterized this proposed policy as "devastating." Smith spoke about the covenants that will be required to be recorded in the courthouse. Rajsz questioned how this policy was proposed. Smith spoke of an issue at the Pine Creek Development in Stroudsburg, PA. The DEP was challenged by an environmental group with the way they approved a septic system. DEP had a hearing with the Environmental Board. The Environmental Board ruled in favor of the environmental group and was subject to costs. As a result, the DEP has come up with this proposed policy, Smith explained. The difference between policy and regulation, Smith said, is that policy is easy to adopt. Smith said, as a person that has lived in this area all his life, he wants his children to live here and for their kids to live here and be able to afford to do it and be able to build a house. He noted "We can not build an economy by shutting an economy down, and this policy shuts us down." Smith said a quick study was conducted in the Wayne County Courthouse earlier in the day and it was determined that by imposing the 150' setback by the creeks and streams in Wayne County, 70,000 acres would be taken out of the usable arena. He encouraged members to go back to the local officials in their townships and ask that they read, understand, and don't agree to issues that don't make sense. Dean asked Smith if he had a sample resolution. Smith said that the Wayne County Builders Association has posted information regarding this proposed policy on their website and will have links for people to view letters and talking points for drafting their own letters. Henry asked if Pike, Wayne, and Monroe Counties have considered legal action. Smith said he sought legal advice and learned that until the policy is adopted and property has been identified as unusable, no legal action can be taken against the DEP. Sullivan questioned Pennsylvania taking the rights of a township to decide what that town wants to look like and develop the way it wants to develop. She wondered if there is something in the state's Constitution that precludes doing this. She was told not currently. Smith noted that he does not agree with the process of the DEP not having any accountability to the citizens of Pennsylvania to the point where they can pass policy without proper justification or science. He thanked the Council for their time and consideration.

Committee Reports: Committee reports were provided based on the meeting minutes. They were: March 19 Water Use/Resource Management by Henry; March 26 Operations by Dexter and March 26 Project Review by Richardson. Peckham noted that Hancock held their town meeting and all the necessary permits from the NYS DEC have been approved for the compressor station.

Status Reports

Delaware River Basin Commission: DRBC Deputy Director Tudor referenced the hydrologic report included in members' packets. The reservoirs are at about 90% full and for the Flexible Flow Management Plan, that is about where they should be in order to meet the multiple objectives. They are paying attention to the salt line in the lower basin. The salt line is about five miles farther up the river than it should be right now due to low flows. This could be a concern as it could compromise big drinking water intakes in the City of Philadelphia and south Jersey. Also included in the packets was a graphic showing stream gages in the basin. It shows that we are at very low stream flows currently. Last year at this time, we had the historic low flows based on this 80 year record and that is when we started to see the didymo problem. There was a major bloom all the way down to Trenton with different forms in different sections of the river based on the water chemistry. The DRBC biologist is working with the National Park Service biologist Don Hamilton to really monitor this time of year to try and determine what will happen this year. Tudor noted there is a handout titled "Concern Over 'Rock Snot' Stimulates Additional Study by DRBC" for members as an FYI.

Also included in members' packets is information on DRBC social media outlets they will be using to reach a broader audience with news on commission activities and related information. The DRBC web site will continue to be the primary place for DRBC information. Utilizing social media will help them reach others and pull them back to the web site to learn more about what they do.

Tudor said they are starting to see hundreds of people at their public meetings, mostly based on concern about natural gas regulations. What they do now is make decisions based on the existing rules, because the natural gas rule proposal is on hold. There are many pipeline proposals coming across the basin; Tudor is aware of about 15 or 20 of them up and down the basin. At the last meeting in March, the DRBC decided to try a 2-day format in order to give the commissioners time to digest the public comment received on the first day before they would vote on any actions. He reported that this format did not work so well as on day 2, the objectors took over the meeting and business could not be conducted until the very end amongst much disruption. He feels more security will have to be put in place at future meetings. Peckham asked if the Commission has moved on any of their gas regulations. Tudor said, "We're dead in the water." His sense is that the Commissioners want to wait and see what happens in New York in terms of the public health study. He does not anticipate that dynamic will change in the near future in terms of the DRBC moving out ahead of one of the states. Tudor reported the DRBC is doing a lot of baseline monitoring for natural gas development. He asked that a link for a YouTube presentation be sent out to members and included in the minutes. That link is <https://www.youtube.com/watch?v=IieM-Os6ulU>. This will enable the DRBC to be able to characterize what all the streams are and be able to make sure that the industry is accountable. Tudor said the DRBC received a grant for a substantial amount of money from the William Penn Foundation to use toward the development of an innovative tool and planning process to reduce the impact of natural gas extraction on critical water resources in the Upper Delaware River basin. More details on this tool could be provided at a future meeting, Tudor added. Richardson asked where the baseline monitoring is taking place. Tudor said it is being done both in New York and Pennsylvania. Peckham said that Equinunk Creek has a monitor in it. Tudor said the DRBC is using HOBO Conductivity Loggers and they are placed in six areas in the Upper Basin. He said the YouTube presentation, which is in a Power Point format, does have all of this information in it.

Richardson said he had a local farmer express concern to him already that he feels it is dry in Sullivan County.

Boyar asked if a map of real-time streamflow would be available showing just the Delaware River basin. Tudor said that is available in real-time to your computer. He told Boyar he would have the map adjusted to show just that area. Boyar noted that he is concerned that not enough monitoring is going on. Tudor told him the DRBC is sampling at about 100 different stations. Boyar asked if where the sampling is being done is random. Tudor told him the focus is based on where the DRBC thinks, based on USGS information from the Oil and Gas Industry, the highest potential is for wells to have strong yields. Boyar asked if the applications for the proposed pipelines address where the pipelines are going. He was told to New York City. Sullivan questioned why there are 15 different applications for pipelines. Tudor said there are companies competing for these trans-continental pipelines. He understands that the grand plan is to export the gas to other companies. Boyar said he was under the impression that the natural gas was to be "American gas for America." There are proposals in the Chesapeake Region, Tudor said, to have Liquefied Natural Gas (LNG) facilities. Sullivan questioned if there are any regulations at all on the number of pipelines that can be built. A brief discussion on this subject took place. Tudor said that many of the pipelines that are being proposed are in areas where there are already existing pipelines. Dean noted that you need "feeder" lines to feed the "trunk" lines. Roeder said that New York City will be converting many buildings to natural gas.

NYS Dept. of Environmental Conservation: NYS DEC was absent, however, copies of two press releases were provided at Bill Rudge's request. The first dated March 12, 2013 was titled "DEC Reminds Small Communities of High Fire Risk Season and State Ban of Brush Burning" and the second dated March 19, 2013 was titled "DEC Accepting Applications For 10th Anniversary Environmental Excellence Awards".

PA Dept. of Conservation & Natural Resources: DeMara spoke of a couple of upcoming events. One will take place on April 17th at Nescopeck State Park. It is a workshop on planting trees to improve water

quality. There will be free 2-3 foot trees and tree shelter give-aways at the program. The other program is a one-day Sustainable Landscapes Bus Tour that will demonstrate ideas and best management practices to manage lands through cost-effective, environmentally friendly ways. This will take place on May 31st beginning at the Kirby Park Natural Area. Information on both events was provided in members' packets. DeMara provided members with Pennsylvania State Parks and Forests Recreational Guide and Highway Maps and Park Visitor Welcome Maps. Copies of each are available in the UDC office.

National Park Service-Upper Delaware: McGuinness reported that the dates have been set for the Foundation Document Planning 3-day workshop that will take place. The primary focus of the workshop will be to look at how the Park Service works in the valley. He would like to have some participation from the Council. The workshop will start with reviewing the enabling legislation. A draft plan will be drawn up at the end of the workshop and eventually be available for review. The plan will lay out the direction the Park Service wants to go in the valley in the future. There are many issues they have been struggling with and these issues change with each superintendent. McGuinness said the workshop will be a great opportunity to determine the direction the Park Service will go in the future and have it in writing. The workshop will be funded by the Washington Planning Office and will be facilitated by Park personnel from Denver and the Regional office. A venue has not been determined, but is in the works, McGuinness said.

McGuinness said he did contact Jill Weyer, the acting Sullivan County Planning Commissioner, about the Open Space Plan. He said the Upper Delaware is mentioned in the Plan that will be forwarded to Albany. He emphasized to Weyer that the Upper Delaware region is separate from the Hudson Valley region and we do have needs here in terms of access areas and noted there may be other opportunities for conservation easements and possible scenic easements on private property. He noted that if there is funding available, it would be nice to obtain some for anybody in the valley that would like to participate in these programs.

McGuinness said that three interpretive seasonals have started and are currently working on education programs. He said this is the time of year where the Park Service contacts about 1,200 students in the schools up and down the river. Some of the programs currently being worked on are the Water Snapshot, Canal Days, and Bridging the Watershed. These are great programs where the students get to go to the river and learn about water quality and talk about natural resources. McGuinness said that the maintenance personnel are starting to clean up the accesses. He told members that if they see anything they feel needs attention, to let him know.

McGuinness referenced the Upper Delaware Scenic and Recreational River FY 2013 Work Plans in members' packets as promised. He said the work plan is a list of programs and tasks that are being worked on above and beyond the day-to-day work.

UDC Executive Director's Report: Ramie reported that we have received shipment of the first-ever UDC promotional and fundraising t-shirts on April 1st. The map on the back was illustrated by Jamie Myers of the Park Service to whom we are very grateful, she said. The shirts will be offered first to UDC representatives, alternates, and Park Service staff. We have eight dozen on hand in various adult sizes and the cost will be a \$15 donation. The remaining t-shirts will be offered for sale at the awards banquet on April 28th. After that staff will assess the inventory and then either order more or proceed with issuing a news release and announcing their availability on our website.

Ramie announced that we received delivery of our Spring/Summer edition of "*The Upper Delaware*" newsletter. The printer was two days late for our contract and the postal service was two days late getting it in the mail as we were a bit short in our postage account due to the increase in postal rates. Ramie said she had to drive to Callicoon earlier in the day with a personal check in order for the post office to mail them. Extra copies are available in the office. The newsletter is currently sent to 9,417 mailboxes, Ramie added.

Ramie noted that the proof we received for our Visitor Information Map and Guide brochure looked beautiful. We have changed everything in it, she said. We should receive delivery of 35,000 from Courier Printing on April 15th at which point distribution will begin. We did raise \$925 from 18 local businesses to offset our printing costs. Those donors were acknowledged in the newsletter and will be reiterated in a news release.

Ramie reported that the Awards Banquet which is coming up on Sunday, April 28th at The Lackawaxen Inn is coming along. The honorees were announced on March 25th. A copy of the press release noting who those honorees are was provided in members' packets. The itinerary is set, the invitations have been issued and are included in the packets, and the souvenir gifts have been received. Reservations are due by April 19th and the cost is \$27 per person. A number of special programs are planned to commemorate the 25th anniversary, Ramie said. She hopes that all are able to attend as it is a milestone anniversary.

Ramie said we have decided to proceed with our "Strides Across the Delaware" 5K Run/Walk in Equinunk and Lordville on September 28th. We are partnering with the Equinunk Watershed Alliance to do a lot of our logistical planning with us. They will also have food available after the event. We will be holding our first formal planning meeting on April 12th at 11:00 a.m. here in the Council office. We do welcome input and participation Ramie told the members. She said we are going to need a lot of assistance to pull this event off. Some of the tasks include, but are not limited to, logistics, permitting, solicitations for sponsors and goods or services, publicity, commemorative t-shirts, traffic control, and event day volunteers. She asked that members let staff know what they can offer for assistance and reminded them that this is an event for us all to commemorate the UDC's anniversary.

Ramie said we received Modification #12 to our Cooperative Agreement with the Park Service which frees up the 52% balance of our FY 2013 funding that had been restricted under the Continuing Resolution from September 2012. She noted that the modification also formalizes the 5% federal sequester cut to our funding, which required the submission of a revised budget.

Ramie referenced the April calendar of UDC meetings, activities, and deadlines provided in members' packets. She noted that proposed upcoming presentations include that Marie Stewart, the Deputy Delaware River Master, has been invited to the April 16th WU/RM Committee meeting. We await confirmation of her availability. On May 2nd, students from Lackawanna College will present at the full Council meeting. Students of the Ecological Sustainability degree at the Lake Region Campus took interest in our River Management Plan and especially the *Land and Water Use Guidelines*. As a Service Learning Project, they partnered with the National Park Service and guest instructors to use the principles of sustainable development acquired through the *Land Use Planning and Sustainable Development course* to design a program considering the impact of our Land and Water Use Guidelines into the future. At the June 6th full Council meeting, Thomas Murphy, Jr., chief of the NYS Dept. of Environmental Protection's Bureau of Water Supply, Reservoir Releases Policy Development, will attend and talk to the Council about how the whole Delaware River Reservoir system works and the proposed Cannonsville Hydroelectric Project. The upcoming presentations will be announced in our meeting notices, she added.

Old Business:

PA DEP Proposed Sewage Facilities Planning Module Review for Onlot Sewage Systems: Dexter said he understands that this is not a traditional matter normally seen before the UDC, but it is something that is very vital to the participating Pennsylvania townships and he feels he could speak for all the townships when he says they would appreciate any support they can get on this issue. Peckham made a motion to write a letter in support of any of the Pennsylvania townships that oppose this policy. Dean said he would second it, but would like to modify it to say that we are against the DEP policy that was discussed earlier in the meeting. Boyar suggested reaching out to the Wayne County Builders Associations to review some of the draft letters, then crafting a letter of our own to send out to members for comments and suggestions. Discussion took place about the letter going through the Project Review Committee on April 23rd. Ramie noted that the Project Review Committee has authority to issue comment letters on time sensitive matters. Peckham reiterated that his motion is to write a letter to be reviewed by the Project Review Committee, noting that he personally does not like any letters going out by committees. Boyar said he would like the letter, once drafted, to be sent out to the entire Council for proper vetting. Richardson said, as the Chairman of the Project Review Committee, it is his opinion that the letter should go through the committee. He made a motion that a draft letter be written by staff and circulated prior to the April 23rd meeting to try and get some feedback in order to come up with a finished letter at the meeting. Rajsz seconded the motion. Boyar said the "Council should speak with the Council's voice." Richardson noted it is understood that a letter is going to be sent in support of the Pennsylvania townships to meet the deadline. Peckham said he would like to see a copy of the resolution where authority is given to committees to issue letters on time sensitive

issues. After brief discussion, the motion was carried with Peckham abstaining. Dean suggested that the letter be sent to all appropriate agencies and the Governor of Pennsylvania. Ramie said that will be done.

Other: None

New Business:

Draft letter of support: Sullivan County Trailkeeper.org Grant Application: Ramie said a request for this letter of support was received from the Sullivan County Planning Office on behalf of all the partners involved in this project. A copy was sent out to members in advance of tonight's meeting. The grant would cover three phases of work. Ramie described those phases. She noted this is the organization that is receiving the Council's Recreation Achievement award for this very project and the origins of it were in a Technical Assistance Grant from 2012 that the Council awarded. A motion to send the letter was made by Richardson, seconded by Henry and carried with Dean abstaining. Dean said he abstained as he was not sure where the money was coming from. He was told the application is to the New York State Department of Environmental Conservation.

Other: Boyar suggested that the Council re-convene on the 28th of April at the Awards Banquet to vote on the letter to the DEP so that it would be coming from the Council. Peckham noted there is not always a quorum at the banquet. Ramie said it was her plan that the letter would say it was coming from the full Council because consensus has been expressed that everyone does want this letter to go out. Because it will be sent out for e-mail proxy vote, it would come from the full Council as the position of this organization to oppose this policy. It was noted that the Project Review Committee meeting could be attended by any of the Council members.

Public Comment: None

A motion to go into Executive Session at 9:22 p.m. for personnel reasons was made by Richardson, seconded by Rajsiz and carried. A motion to come out of Executive Session and return to regular session at 9:55 p.m. was made by Richardson, seconded by Rajsiz and carried.

Dexter reported that discussion of the end of T. O'Dell's 6-month probation took place. A motion to offer a full-time position to Travis O'Dell was made by Richardson, seconded by Niflot and carried unanimously.

Richardson said that during the session, it was discussed that the issue of employee sick leave will have to be clarified in the future. Boyar said it is his opinion that employees should not be paid for sick leave upon termination of employment and that there should be a cap on how many can be accumulated. Ramie said currently that is the policy that sick leave can not be compensated, only vacation leave can upon the termination of employment. Placing a cap would be the issue.

Adjournment: A motion by McKay, seconded by Rajsiz, to adjourn the meeting at 9:55 p.m. was carried unanimously.

Minutes prepared by Cindy Odell 4/11/13