

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF APRIL 16, 2009

PRESENT

JOHN WEINGART) CHAIRMAN

KURT ALSTEDE)
TRACY CARLUCCIO) COUNCIL MEMBERS
MIMI LETTS)
JANICE KOVACH)
DEBBIE PASQUARELLI)
JACK SCHRIER)
SCOTT WHITENACK)

TELECONFERENCE

ERIK PETERSON)

ABSENT

ELIZABETH CALABRESE)
BILL COGGER)
GLEN VETRANO)
TAHESHA WAY)

CALL TO ORDER

The Chairman of the Council, John Weingart, called the 84th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:08 pm.

ROLL CALL

The members introduced themselves.

OPEN PUBLIC MEETINGS ACT

Chairman Weingart announced that the meeting was called in accordance with the Open Public meetings Act, N.J.S.A. 10:4-6 and that the Highlands Council had sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted on the Highlands Council website.

PLEDGE OF ALLEGIANCE

Mr. Alstede joined the meeting.

APPROVAL OF MINUTES OF March 19, 2009

Mr. Schrier introduced a motion to approve. Ms. Letts seconded it. Mr. Peterson abstained. Ms. Way, Ms. Calabrese, Mr. Cogger and Mr. Vetrano were absent. All other members present voted to approve. The minutes were APPROVED.

CHAIRMAN'S REPORT

Chairman Weingart announced that the agenda would be adjusted to allow for the voting matters to come first as there were some members who had to leave the meeting. He continued with a brief discussion of Ms. Swan's testimony earlier in the day before the joint Senate/Assembly Committee on the Environment to discuss the need for reauthorization of the Garden State Preservation Trust Fund as a source for land acquisition and preservation.

The Chairman mentioned the lead article published by the American Planning Association regional planning magazine on the Highlands Regional Master Plan. He also discussed the recent decision from the Department of Environmental Protection (NJDEP) on the proposed Wastewater Management Plan Amendment for the Huntington Knolls project. He noted that the project was in the Planning Area and thus required a consistency determination from the Highlands Council before the NJDEP finalized any action. He summarized the previous action of the Highlands Council in January 2008 that was a recommendation not to approve this plan as it was inconsistent with the Regional Master Plan. He expressed concern for the process because NJDEP deemed the project consistent with the Highlands Regional Master Plan and according to the Highlands Act it was the responsibility of the Highlands Council to make a consistency determination.

He asked the Council Members if they would endorse sending a letter to NJDEP noting that it was not the responsibility of the NJDEP to interpret the Regional Master Plan, reiterating that the Highlands Council recommendations are recommendations of consistency, that NJDEP should give weight to those recommendations and that it was a duplication of state resources for both NJDEP and the Highlands Council to analyze consistency with the Regional Master Plan. Chairman Weingart emphasized that the purpose of the letter would be to ask NJDEP to consider a modification of the basis for the decision as well as a request to schedule a meeting to work collaboratively on a mechanism for communication. There was some additional discussion by Council Members about the need to have a consistent message. It was also noted that Ms. Swan was listed as a commenter in NJDEP report, but not as a representative of the Highlands Council. The Council Members supported the preparation and sending of the letter described by Chairman Weingart.

EXECUTIVE DIRECTORS REPORT

Ms. Swan introduced the planning grant resolutions noting that the first two were Initial Assessment grants. To date, 71 municipalities have applied for initial assessment grants. In summary, 1) Morris County has applied for a \$15,000 grant and Ms. Swan explained that this was their first request and 2) Bloomingdale has also applied for a \$15,000 grant and Bloomingdale had previously had a \$12,500 COAH, but it was not paid out as they are under jurisdiction of the Court. Bloomingdale has also applied for the 2009 Plan Conformance Grant Program.

RESOLUTIONS

I. CONSIDERATION OF RESOLUTION – Approval of Certain Planning Assistance Grant to Morris County - (voting matter with public comment)

The Highlands Council initiated a grant application process for Initial Assessment grants to municipalities within the seven Highlands Counties in furtherance of Plan Conformance, in an annual amount not to exceed \$1,500,000. Council staff reviewed the grant applications and recommend grants for Council consideration.

Ms. Letts introduced a motion to approve. Ms. Carluccio seconded it. There was no public comment. Ms. Calabrese, Ms. Way, Mr. Cogger and Mr. Vetrano were absent. Mr. Schrier abstained. All other members present voted to approve. The resolution was APPROVED.

- II. **CONSIDERATION OF RESOLUTION – Approval of Certain Planning Assistance Grant to Bloomingdale Borough - (voting matter with public comment)** *Mr. Schrier introduced a motion to approve. Ms. Kovach seconded it. Ms. Calabrese, Ms. Way, Mr. Cogger and Mr. Vetrano were absent. All other members present voted to approve. The resolution was APPROVED.*

- III. **CONSIDERATION OF RESOLUTION – Approval of a Transfer of Development Rights Receiving Zone Feasibility Grant to Chester Borough – (voting matter with public comment)** Ms. Swan explained that the Council had previously approved a resolution for a \$25,000 grant, but that the grant had not been executed because Chester Borough was doing additional work. They submitted a revised grant application requesting \$48,820 to do a town wide feasibility analysis and infrastructure analysis. She explained that they are considering package plant to address current non-sewered areas where they are experiencing system failures and also the package plant would serve the receiving areas if they went ahead with the TDR grant. The staff has reviewed the new scope and recommending \$40,000 because of some duplication in the scope. The Borough Administrator has been contacted regarding this recommendation.

PUBLIC COMMENT ON THIS RESOLUTION

Mr. Hank Klumpp, Tewksbury Township

He believes the grant dollar amount is too high.

Ms. Kovach introduced a motion to approve. Mr. Schrier seconded it. Ms. Calabrese, Ms. Way, Mr. Cogger and Mr. Vetrano were absent. All other members present voted to approve. The resolution was APPROVED.

- IV. **CONSIDERATION OF RESOLUTION – Approval of Contract for Land Preservation Program Consultant for Conservation Resources Inc. – (voting matter with public comment)** Ms. Swan introduced this resolution commenting that she had given the scope for the Request for Qualifications (RFQ) in her previous Executive Director's report. She reviewed the Scope of Services again. She noted that three firms had submitted responses and qualifications by the deadline of March 17, 2009. The Highlands Council staff has evaluated the submissions and recommends the proposal submitted by Conservation Resources, Inc. She summarized the qualifications of Conservation Resources Inc. as having extensive experience in providing technical and financial assistance for regional land preservation, including Transfer of Development Rights (TDR), for such programs as the Pinelands Commission, for the Sourland Mountain area working with the Stony Brook-Millstone Watershed Association, and for the Raritan Piedmont Wildlife Habitat Partnership. She noted that the President serves on the Board of the Pinelands Development Credit Bank and is a member of the Burlington County TDR Bank. Regional land preservation experience and TDR experience are two critical components of the Scope of Services outlined in the RFQ. The proposed project team is comprised of an effective blend of staff with vast experience in land acquisition, stewardship, restoration and TDR projects for both agricultural and environmentally sensitive resources.

She concluded by saying that the Highlands Council staff recommends that the Council enter into a contract with Conservation Resources Inc. for Land Preservation consulting services based on time and expenses for an amount not to exceed \$75,000.

Mr. Schrier introduced a motion to approve the resolution. Ms. Carluccio seconded it. Ms. Calabrese, Ms. Way, Mr. Cogger and Mr. Vetrano were absent. Ms. Pasquarelli voted no. All other members present voted to approve. The resolution was APPROVED 8-1 votes.

Ms. Letts commented that she had heard positive feedback about the informational meetings that staff where staff had been presenting in Morris County. Mr. Alstede apologized to the public that he had a conflict and could not stay for the entire meeting.

PRESENTATION

Ms. Swan introduced The Tennessee Gas presentation. Their attorney Mike Gross introduced Mark Hamarich, Engineering Consultant for Tennessee Gas Pipeline. Mr. Hamarich gave a power point presentation that described how the company is organized (El Paso), the background of Tennessee, the need for the project, including a description of where the project would be located and a timeline, their environmental stewardship and a general discussion of natural gas that was led by Mr. Bookstaber, also from Tennessee Gas. The power point is provided on the Highlands Council website. www.highlands.state.nj.us

Ms. Pasquarelli joined the meeting in person during the presentation. Mr. Alstede left the meeting.

Ms. Carluccio asked if the marcellus shale area was involved in this project. Mr. Bookstaber responded that his company was a transporter (common carrier) of natural gas and the primary source was the Big Sandy Basin in West Virginia.

EXECUTIVE DIRECTOR REPORT CONTINUED

Ms. Swan continued her presentation with an update on Plan Conformance. To date, there are 73 municipalities that have filed a Notice of Intent to conform to the RMP, 71 have applied for Initial Assessment grants, and 66 for Plan Conformance grants. She mentioned the ongoing informational meetings at municipalities and spoke about the Module 1 submissions that have been completed by 59 municipalities. She noted that Module 1 is the most complicated with verification at the block and lost analysis for capacity analysis. She summarized the current work plan noting that Module 4 (Environmental Resource Inventory) was completed and individual CDs would be mailed shortly to the municipalities and that Module 5 (Highlands Master Plan Element) was on the website seeking public comment, and that work was continuing on Module 6 (Land Use Ordinances and Board of Health Ordinances).

Ms. Swan then addressed Highlands Project Reviews detailing the status for WQMP review procedures that will be posted on the Council website for public comment, followed by a presentation to the Council for formal approval. She noted on the Exemption review process that Council staff continues to review selected applications for Exemptions 9 and 11. She mentioned that the Tennessee Gas Pipeline project is one of the reviews and have applied for an exemption #11 from NJDEP and were advised by the Chief Counsel to apply for an exemption for the

Planning Area. For exemptions in the Preservation Area, the Highlands Council and NJDEP have dual jurisdiction and the Highlands Council has exemption review jurisdiction in the Planning Area.

Ms. Swan next provided a litigation update. She summarized various appeals of the Highlands Regional Master Plan and Governor Corzine's Executive Order 114 (EO114). Three of the appellants (the nonprofit affordable housing group Fair Share Housing center and two affordable housing developers) filed a Motion for Summary Disposition arguing that EO114 should be invalidated. The Attorney General's office filed briefs in response arguing for the validity of EO114 and they were victorious. She noted that this was not the end of these appeals as they now will be briefed in full. She expects the process to take several months or more to brief the cases and argue the matter with decisions in the Fall at the earliest.

Highlands Redevelopment Area Designation

Ms. Swan mentioned that the Highlands Council had adopted Highlands Redevelopment Area Designation Procedures on October 30, 2008. She reviewed the Highlands Act section that allows three types of waivers from NJDEP's Preservation Area rules: for public health and safety, for redevelopment areas identified by the Highlands Council and to avoid a taking of property without just compensation. She then explained the designation procedures, site qualifications, and administrative process. There is a project ready to post to the website (Oak Ridge Road Associates, LLC) and she said that Mayor Bieri had been advised of the proposed designation. Ms. Swan showed an aerial slide depicting the project area. She reviewed next steps as posting, taking comments and then the staff would bring the review back to the Council for a decision. She highlighted the draft staff recommendations for the Highlands Redevelopment Area designation with conditions.

Mr. Weingart asked about the deed restriction. Ms. Swan explained that the remainder of the land would be protected in perpetuity. There were additional questions about the necessity for deed restrictions and methodology of the process.

TDR Update

Ms. Swan continued with an update of the Highlands TDR Program showing a slide giving illustrating the steps to receiving an HDC certificate. She also mentioned that the TDR tool was not yet available on the website. She also described the TDR program Conservation Restriction and next steps for the Highlands Council: post draft conservation restriction on the website for public comment, refine and finalize the conservation restriction, complete HDC tool and Highlands website, and complete the HDC Allocation Determination application and council approval process.

PUBLIC COMMENT

David Shope, Lebanon Township

He would like to know the costs associated with making a presentation to the Highlands Council and also would like the results of the grant application made by the Town of Clinton in March, 2008.

Hank Klumpp, Tewksbury Township

He believes that his equity in his farmland has been stolen by the Highlands Act. He took issue with the Executive Director's comment that the loss in equity had to do with the economic downturn and not the Highlands Act. He again asked for a scientific analysis of why a portion of his property was placed in the Preservation Area. He submitted a written public comment for the record

Deborah Post, Chester Township

She spoke against the removal of a landowner from the previous Council meeting. She does not agree with the methodology used to establish the initial Highlands Development Credit price.

Andrew Drysdale, Chester Township

He believes that his property rights have been taken giving less than 20% of the value of his land referring to the discount of the initial Highlands Development Credit price. He expressed his opinion that the TDR program was unconstitutional.

Wilma Frey, NJ Conservation Foundation

She asked that the Tennessee Gas Pipeline presentation be put on the Highlands Council website. She spoke in support of the Council sending a letter to the NJDEP regarding Holland Township. She also asked if the litigation with respect to EO114 be placed on the website.

Harold Danielson, Hampton Borough

He commented on the commitment made by Senator Smith and Assemblyman McKeon in March of 2004 to put a dedicated source of money in place to compensate landowners for loss of value. He also mentioned that he intends to initiate legal action against the Council Members personally.

Peter Gonzalez, Bloomingdale Borough

He is a landowner and asked for compensation for lost land value and what mechanism there was for compensation.

Mark Zakutansky, NJ Highlands Coalition

He complimented Ms. Swan for her testimony earlier in the day before the Senate and Assembly Committees in support of the Garden State Preservation Trust. He asked everyone to reach out to their legislators to support land preservation and praised the proactive steps the council has taken.

Dave Peifer, ANJEC

He advocated for an energy section to be included in the Regional Master Plan citing the large scale energy projects that were currently proposed in the Highlands. He asked for the completed resolutions to be posted prior to the meeting so that commenters could prepare with the specifics. He complimented the Module 5 draft and expressed disappointment that the first redevelopment project was the expansion of a parking lot. He also spoke to the more narrow definition of low impact development that the NJDEP used as compared to the far more comprehensive definition from the Highlands Council. Finally, he asked that the new ERI document be posted.

Rick Sparling, Jefferson Township

He commented on his property issues including the loss of farm status, his frustration with not being able to develop his property, and his disappointment that he has to pay full property tax. He asked for restitution.

The meeting was adjourned at 5:52 pm.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: June 25, 2009

Name: Paula M. Dees

Paula M. Dees Executive Assistant

TRUE COPY

Vote on the Approval of these

Minutes

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede			✓			
Councilmember Calabrese						✓
Councilmember Carluccio			✓			
Councilmember Cogger					✓	
Councilmember Kovach		✓	✓			
Councilmember Letts			✓			
Councilmember Pasquarelli			✓			
Councilmember Peterson					✓	
Councilmember Schrier	✓		✓			
Councilmember Vetrano					✓	
Councilmember Way					✓	
Councilmember Whitenack			✓			
Councilmember Weingart			✓			

PUBLIC COMMENTS SUBMITTED

①

I've read that a landowner showed his anger at a Highlands meeting because he was so upset over not receiving the compensation that he was promised five years ago for his property value losses. While I don't condone disruption during a meeting, I can totally sympathize and understand where he was coming from.

What is very disturbing and outrageous to me is when Council Executive Director Mrs. Swan said, "I think it

(2)

was indicative of the frustration people are having in this economy." Mrs. Swar how dare you blame the property losses this gentleman and I are experiencing on the economy of today. My loss goes back to 2004, when the Highlands Act was so carelessly slapped together and both Gov. McGreevey and Gov. Corzine signed. That is when the property value theft took place. Trenton took the land even though they didn't then - or now - have the money to pay for. Has the present day economy made -

③ theft even worse? of course -
but shame on you Mrs. Swan for
implying that the economy was the
cause for the frustration felt.

The members of this council
have come and gone as if in a
revolving door. There has never
been - and still is not - one single
person facing me on the council
who has suffered loss from the
Highlands Act - none of you can
relate. Perhaps your stocks or
investments are suffering because
of the economy today, but

④ don't look for sympathy from me.
Where is my buy out? The
Highlands Act promised that no one
would get hurt - but we are
hurting - Where is the promised
compensation for the over 6 billion
dollar land theft that took
place in 2004?

I've been standing in front
of this council for almost 5 years
now asking to see the scientific
study that put my farm into the
Highlands Preservation Area, and
no one can find it. Could

⑤ someone please be honest enough to admit to me that there is no scientific study concerning my farm. My property on one side of the road is in the preservation - on the other side of the road land is not in the preservation. What kind of scientific study was that? Do roads form the scientific boundaries?

Ask yourself - is that scientific - or maybe - could it be political ??

Thank you.

Hank Klumpp
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