

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF MAY 20, 2010

**PRESENT**

JACK SCHRIER ) ACTING CHAIRMAN  
KURT ALSTEDDE )  
BILL COGGER ) COUNCIL MEMBERS  
MICHAEL FRANCIS )  
ROBERT HOLTAWAY )  
JANICE KOVACH )  
CARL RICHKO )

**VIA TELECONFERENCE**

TRACY CARLUCCIO )  
GLEN VETRANO )  
JAMES VISIOLI )

**ABSENT**

MIMI LETTS )

**CALL TO ORDER**

The Chairman of the Council, Jack Schrier, called the 94<sup>th</sup> meeting of the New Jersey Highlands Water Protection and Planning Council to order at 1:09 pm.

**ROLL CALL**

Council members Carluccio, Vetrano and Visioli called in to the meeting. Ms. Letts was absent. All other members were present.

**OPEN PUBLIC MEETINGS ACT**

Acting Chairman Schrier 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** was then recited.

**APPROVAL OF MINUTES OF APRIL 15, 2010**

*Ms Kovach introduced a motion to approve the minutes. Mr. Cogger seconded it. Ms. Letts was absent. All other members voted to approve. The minutes were APPROVED 10-0.*

**ACTING CHAIRMAN'S REPORT AND MEMBER'S REPORTS**

Acting Chairman had nothing to report.

**APPROVAL OF HDC MINUTES OF MAY 6, 2010**

Ms. Swan stated that the HDC Bank minutes are before the Highlands Council today and Council action is subject to a Governor's review period. She further explained that there were regular

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minutes as well as Executive session minutes. Ms. Swan then used a PowerPoint presentation for the Council to consider affirmative approval of the HDC Bank minutes.

Ms. Swan provided the status of the HDC Allocation Applications received by the Highlands Council. To date, eighteen (18) HDC Allocation applications were received; one (1) application was for a property located in the Planning Area and is ineligible for consideration at this time. Of the seventeen (17) applications for property in the Preservation Area, ten (10) applications sought to be reviewed under the hardship criteria established by the Highlands Council and the HDC Bank; and four (4) applications have satisfied the hardship criteria. One (1) application sought review under the Highlands Act priority for just missing to qualify for Exemption #3 and that application demonstrated it qualifies for priority. Eleven (11) applicants have received an allocation letter from the Highlands Council with ten (10) of the properties receiving an allocation of HDCs. The 11<sup>th</sup> property did not receive an allocation as it is subject to a prior deed restriction through a Highlands exemption that already severed any development potential.

Ms. Swan continued with her presentation on the status of HDC Allocations. A total of 286 HDCs have been allocated to date with a total value of \$4,576,000 based upon the \$16,000 initial HDC price established by the Highlands Council. A total acreage receiving an HDC allocation to date is 492.55 acres. Based upon the total value of HDCs allocated to date, the average per acre price for the eligible parcels is \$9,290.43. This represents a total of 127 pre-Highlands Act residential development opportunities and 63,117 square feet of pre-Act non-residential development that would be reduced if the allocations were transferred through the program or purchased by the HDC Bank. On May 6, 2010, the HDC Bank resolved to make offers to the 4 property owners that qualified for hardship consideration and the 1 property owner that qualified for priority consideration due to having just missed Exemption #3. The HDC Bank minutes are before the Council today and Council action will be subject to a Governor's review period. Ms. Swan then presented a chart of HDC Bank Offers pending review.

Municipality	Block & Lot	Acreage	Lost Development Opportunities (Pre-Act)	Allocated HDCs	Total HDC Value	Applicable Easement	Exemption	Comments
Liberty	B.11/L.45	40.95	8	16	\$256,000.00	Non-Ag	NA	Developed with a single family home.
Bethlehem	B.9/L.6	15.45	2	4	\$64,000.00	Ag	NA	Developed with a single family home.
Washington (Morris)	B.59/L.12	51.5	1	2.75	\$44,000.00	Non-Ag	NA	Developed with a single family home.
Jefferson	B.250/L.18	19.8	1	2	\$32,000.00	Non-Ag	Retiring Exemption	Undeveloped; lot access completely constrained; surrounded on three sides by Morris County's Minnisink Park.
Washington (Morris)	B.37/L.4, 9	93.19	26 (24)	83 (66.5)	\$1,328,000.00 (\$1,064,000.00)	Non-Ag	Considering Retaining 2 Exemptions	Undeveloped; owner received final subdivision approval for 26 lots.
TOTAL		220.89	38	107.75	\$1,724,000.00			

If approved, the offer letter will include the following information:

- A listing of the municipality and block and lot of the parcel(s);

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- The number of HDCs to be purchased;
- The price per HDC to be acquired by the HDC Bank;
- A statement that the offer must be accepted and acknowledged within thirty (30) days of the date of the offer letter; letter will have to be signed and returned to the HDC Bank within the time period established; and
- Offer to pay closing costs associated with HDC transaction, up to a maximum of \$2,500. All costs would be paid on a reimbursement basis upon presentation of invoices indicating the closing costs incurred.
- An explanation of the documentation necessary to complete the transaction, including a deed of easement.

If authorized to proceed, the Executive Director will issue Offer Letters to purchase HDCs. The letter would specify that offers must be accepted within 30 days of date of offer letter and the HDC Bank staff and property owner would work to complete necessary documentation to effectuate transaction, including recording of appropriate deed of easement and issuance of HDC Certificate. Closing of HDC purchase to occur at Highlands Council office in Chester with transfer of HDC Certificate and issuance of check. If authorized to proceed, the HDC Bank will consider opening of second round of Hardship Consideration:

- HDC Allocation Applications due to Highlands Council by July 1, 2010;
- HDC Certificate Applications due to HDC Bank by August 8, 2010;
- HDC Bank to consider second round applications at September 2, 2010 meeting

### **COUNCIL DISCUSSION**

Mr. Alstede stated that he felt Highlands Council should retain the authority to determine allocations and hardship determinations and he noted his disagreement with a prior Council decision to delegate this authority to staff. Ms. Swan responded to say that Council members may look at the applications in the office and that the applications are highly confidential. The applicants have expressed their concerns about confidentiality.

Mr. Francis asked for clarification that the \$9,290.43 was an average per acre price. Ms. Swan concurred that all allocations are an average and that actual value depended on the land and other conditions. Mr. Francis then asked about the Dual Appraisal Bill and Ms. Swan responded to say that the HDC Allocation process only looks at pre-Highlands Act zoning and regulations in accordance with the Highlands Act. She specified that the Green Acres Program and the Farmland Preservation Program are subject to a separate process where dual appraisal process examines pre-Highlands Act zoning as well as current conditions and the higher of these two is the basis for the beginning of negotiations. Ms. Swan further stated that she will address this issue in the Legislature Update in her presentation.

Mr. Alstede asked if we delegate the hardship determinations to staff shouldn't they get a report. Ms. Swan commented that she did not send the confidential information electronically. Landowners stressed grave concern about the confidentiality of hardship information. Ms Swan further stated that Council may come to the office anytime to review the applications. Mr. Alstede stated that he would like to be involved in the process and also asked if applicants can appeal to the Council and Bank Board if their application was not approved in the first round. Ms. Swan responded to say that

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if applicants were not approved as a hardship in the first round it was because of insufficient information but they could be considered in the second round hardship determinations.

Mr. Cogger asked what is considered confidential and if it is personal information. Ms. Swan responded to say that hardship applications are confidential and not publicly available information and that the financial and personal circumstances were all considered sensitive. Mr. Schrier commented that this process along with other Highlands processes is to make things easier for applicants to gain maximum benefits.

Mr. Alstede asked about the modification to the deeds of easement by the Attorney General's Office. Mr. Borden responded to say that they are non-substantive changes.

*Ms. Alstede introduced a motion to approve the two sets of HDC Bank minutes of May 6, 2010. Ms. Kovach seconded it. Ms. Letts was absent. All other members present voted to approve. The HDC Bank minutes were APPROVED 10-0.*

Mr. Alstede asked how long the closing would take. Ms. Swan responded to say that applicant has thirty (30) days to respond back to staff son the offer letter and she estimated that a best case would be a couple of months. Mr. Alstede sought confirmation that the \$1,724,000 comes out of the initial \$10 million in the HDC Bank. Ms. Swan concurred.

*Council members Vetrano and Visioli left the meeting from their call-in status.*

## **EXECUTIVE DIRECTOR'S REPORT**

### **Plan Conformance Update**

Ms Swan updated the Council on Plan Conformance activities. Two additional Municipal Initial Assessment Grant reports received and reviewed, for a total of 49 municipalities. As for Plan Conformance Petitions to date, 38 of 54 submitted Petitions have been deemed Administratively Complete and posted to website.

Draft Consistency Review and Recommendations Report are being drafted for the first round of municipal Petitions. Once completed these will be provided to the municipality for review prior to Council action. In response to the Council's preliminary review of Byram Township's proposed Center, numerous Highlands municipalities have also expressed interest in a Highlands Center. As for Module 3 (Fair Share Plan and Housing Element) submissions for the March 1<sup>st</sup> deadline, these have been reviewed and municipalities that have not submitted draft plans have been urged to act quickly as the deadline to submit to COAH is June 8<sup>th</sup>. Staff has received phone calls from municipalities regarding their affordable housing obligations and the staff has responded that until a new law is passed regarding Fair Share Plans it is best to comply with the current laws in order to best protect towns.

### **Legislative Update**

On May 5, Governor Christie signed the Highlands TDR expansion bill (S-80/A-602) amending section 13 of the Highlands Act to permit any municipality statewide to serve as a TDR receiving zone. The bill also amends the requirement that the municipality receive Plan Endorsement before it may serve as a Highlands receiving zone. Now, the State Planning Commission and the Highlands

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Council may agree that a project area is appropriate to serve as a receiving zone. Information developed during the feasibility studies supported by the Council's TDR grant program will be used to demonstrate appropriateness. Ms. Swan noted that this bill was signed the day before the Highlands Development Credit Bank meeting on May 6, 2010.

On May 13, the New Jersey Assembly Environment and Solid Waste Committee unanimously voted to release A-2217, which would extend a dual-appraisal process for Green Acres and farmland preservation programs in the Highlands Region from 2009 to 2014. The earlier dual-appraisal process had expired on June 30, 2009. The bill's sponsors includes Assembly members John McKeon, D-West Orange, Erik Peterson, R-Hunterdon and Warren, and Gary Chiusano and Alison Littell McHose, both R-Sussex, Morris and Hunterdon. Ms. Swan reported that the Assembly will vote on this bill today. Mr. Cogger commented that this would help property values.

Mrs. Alstede asked if the Executive Order #114 signed by Governor Corzine was rescinded by Governor Christie. Ms. Swan and Mr. Borden responded that it has not been rescinded and that while certain aspects may be moot, no action has been taken to rescind the Order.

### **Work Session**

Ms. Swan specified that the work session will include a discussion of:

- 1) Highlands Ordinance Mapping: a series of maps for municipalities to adopt as part of a conforming Highlands Ordinance; and
- 2) Interim Wastewater Management Plan Mapping: a series of maps and narrative for Highlands Counties and conforming municipalities to expedite wastewater planning.

### *Highlands Ordinance Mapping*

Highlands Ordinances for conforming municipalities require the mapping of Highlands resources at a municipal scale. An essential role of the Council in the Plan Conformance process is to provide Highlands municipalities with model documents and technical assistance. This service provides essential cost savings to Highlands municipalities. Accordingly, GIS mapping of the Highlands resources that were gathered and mapped in the RMP have been mapped at a municipal scale to assist municipalities.

Municipalities will use only those maps that are relevant to the municipality and the Highlands Council has developed ordinance maps for the following ordinance issues:

- |  |   |
|--|---|
| 1. Highlands Zones and Sub-Zones         | 13. Vernal Pools  |
| 2. Forest Resource Area                  | 14. Carbonate Rock Area                                       |
| 3. Total Forest Area                     | 15. Prime Groundwater Recharge Area                           |
| 4. Forest Subwatershed Integrity Areas   | 16. Wellhead Protection Areas                                 |
| 5. Highlands Open Waters                 | 17. Highlands Special Environmental Zone                      |
| 6. Watershed Resource Value Areas        | 18. Agricultural Resource Area                                |
| 7. Lake Management Areas                 | 19. Highlands Historic, Cultural and Archaeological Resources |
| 8. Riparian Area                         | 20. Highlands Scenic Resources                                |
| 9. Riparian Subwatershed Integrity Areas | 21. Net Water Availability by HUC14 Subwatershed              |
| 10. Steep Slope Protection Areas         |   |
| 11. Critical Wildlife Habitat            |   |
| 12. Significant Natural Areas            |   |

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22. Highlands Domestic Sewerage  
Facilities

23. Public Community Water Systems

These Highlands RMP issues have been consolidated such that there are 10 ordinance maps that link together similar issues on one map. Ms. Swan asked staff member Roger Keren to provide additional information on the Steep Slopes map. He described that the original slopes data was based on 30 meter squared grids (9,683 sq ft) and that the more recent LiDAR data is based on 25 square foot grids.

Mr. Cogger stated that these will be the maps for municipalities to use. Ms. Swan commented maps are part of the RMP update process. Mr. Borden commented that this use of the Highlands resource maps with overlays of parcels is crucial for municipalities. Ms. Swan proceeded to show ordinance maps for several municipalities which staff has developed for the above ordinance issues.

Ms. Swan then specified that in response to municipal suggestions, this mapping will include an enhanced Land Use Capability Map which will help streamline municipal and Highlands conformance review and add clarity for individual property owners when applying Land Use Capability Zone policies. At a municipal scale, the Land Use Capability Zone Map will use tax parcel lines and use existing dominant Land Use Capability Zones. Many of the smaller individual tax parcels will have one zone per tax parcel but for tax parcels over 5 acres, multiple zones may still be appropriate as significant resources need to be considered, thus these tax parcels maintained their existing Land Use Capability Zone designations.

The process will allow municipalities to refine the mapping provided by the Council by tax parcel to be more consistent with existing land uses. Importantly, these maps will be approved through the formal Plan Conformance approval process where the Council approves municipal Plan Conformance through formal resolution. Ms. Swan stressed that mapping and subsequent consideration of individual environmental resources are in no way lost or changed as a result of this process (Highlands Open Water areas, Forest Resource Areas etc. and their appropriate policies are still applicable).

Ms. Swan commented on the statistics for Hunterdon County where the Council staff conducted a test area for the Land Use Capability Mapping. For the Existing Community Zone, it was a reduction of 2.78%; for the Conservation Zone, it was .99%; for the Protection Zone an increase of 1.64%; and for Wildlife Management Sub-zone a reduction of .37%. Mr. Francis commented to say that tax maps are not accurate or up to date so having a more accurate block/lot mapping is a great thing.

*Interim Wastewater Management Plan*

Ms. Swan described Interim WMP which are encouraged by NJDEP for municipalities pursuing Plan Conformance for the area covered by a Notice of Intent where the Notice addresses the full municipality. The purpose of the Interim WMP is to remove future sewer service areas that are inconsistent with the Land Use Capability Zone Map designations and policies of the RMP while the Plan Conformance Process is being completed. Interim WMPs will be replaced by Final WMPs that will result from the Plan Conformance process and be adopted into the County WMPs by municipality where County WMPs are developed, or as stand-alone documents where a County WMP is not developed.

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Working with NJDEP, Highlands staff have developed a template for Interim WMP Planning maps, using Clinton Township as a pilot. Waste water mapping has been prepared identifying Existing Sewer Service Area, Future Sewer Service Area, and Potential Future Sewer Service Area. Interim WMP Planning maps and will be coordinating with NJDEP and the appropriate municipalities and counties as they become available. The Interim WMP also includes an extensive narrative using the results of the Highlands Municipal Build-Out Reports. We are very hopeful that this work product prepared for the Highlands municipalities will expedite the adoption of updated WMPs.

**Council Comment**

Mr. Alstede asked if there was any word from NJDEP on exemptions. Mr. Borden responded he does not have any updated information on exemption coordination. Mr. Alstede asked about the Stakeholder Meetings and if staff is attending. Ms. Swan said that she will be attending the Stakeholder Meetings. The first one was cancelled and the rescheduled date has not been finalized. Mr. Alstede asked if the Department of Agriculture has received an invitation and Monica Purcell who was in the audience responded that they has a meeting recently to coordinate with the Stakeholder process.

**Public Comment**

**Wayne Najduch**, Independence Township – Mr. Najduch expressed concern that Independence Township is choosing not to conform to the Highlands Regional Master Plan. He further noted that the Council should be cautious in reviewing a possible redevelopment area, known as Liberty Square Development, because he believes there are environmental issues associated with the site which have not been adequately investigated.

**Julia Somers**, Highlands Coalition – Ms. Somers asked how many towns have expressed an interest in being designated as a Highlands Center. Executive Director Swan responded there has been much expression of interest, although it is not yet known how many will follow through. She stated that 6 or 7 towns have thus far expressed interest. Ms. Somers further congratulated the Council on the phenomenal mapping that they have been producing and noted that no one else in the State has anything to compare to it.

**David Shope**, Washington Township (Morris County) – Mr. Shope suggested that the LUCM presentation should have included a map which would demonstrate the cumulative effect of all environmental resource constraints on one town. He also raised a question about the date of deeds of easements on Highlands properties and stated that the Highlands Region should not be considered a “park,” but rather privately owned lands. Finally he stated that he felt his comments have not been adequately captured in past minutes and that the summary of his comments was despicable.

**Wilma Frey**, New Jersey Conservation Foundation – Ms. Frey questioned whether or not certain resources had been mapped for the town-specific, parcel-based maps. It was pointed out that the maps illustrate resources that are specific to municipal land use ordinances for purposes of local implementation and that other maps may be in the ERI mapping.

*Mr. Holtaway made a motion to adjourn the meeting, Ms. Kovach seconded it and the meeting was adjourned at 2:07pm.*

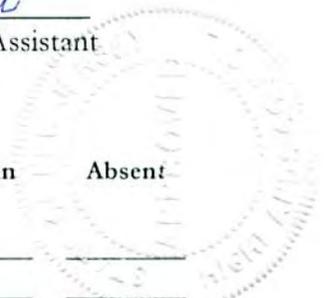
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**CERTIFICATION**

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: 6/25/10

Name: Annette Tagliareni  
Annette Tagliareni, Executive Assistant



Vote of the Approval of These Minutes	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede			✓			
Councilmember Carluccio			✓			
Councilmember Cogger			✓			
Councilmember Francis			✓			
Councilmember Holtaway			✓			
Councilmember Kovach	✓		✓			
Councilmember Letts		✓	✓			
Councilmember Richko			✓			
Councilmember Vetrano						✓
Councilmember Visioli			✓			
Councilmember Schrier			✓			

## **Address to Highlands Council    20 May 2010**

My name is Wayne Najduch. I am a resident of Independence Township. It is my understanding, from attendance to Independence Township Committee Meetings and Land Use Board Meetings, that they are refusing to accept the Highlands Preservation Area requirements. They cannot come to grips with putting in writing to the Highlands Council that they will comply with the law as it applies to the Preservation Area. They are also adamant about not opting into the Planning Area. Despite our pleas to reconsider, the Mayor of Independence Township appears to be determined to take an adversarial stance to the Highlands Act, at a cost to the taxpayers.

At the same time our township is in negotiations with the Highlands Council to place Block 8 Lot 21 and 22.04 known as Liberty Square Development, which is located in the Preservation Area, into a redevelopment area, therefore eligible for a waiver or exemption for the law. This would allow them to build. I would plead with you to please be cautious. Look carefully at their maps and plans. This property has karst geology and has a sinkhole that is located within the Well Head Protection Area of a Hackettstown Municipal Well. Our township will go to any length to allow this developer to build. The township has shown little interest in the past in adhering to its own zoning standards, granting at least seven variances and issuing building permits for a project with no stormwater plan or final site plan approval. They show even less interests in environmental concerns or protection of water resources. I fear that these components and stormwater requirements will be compromised if this is permitted. Please do not allow them to develop this environmentally sensitive site. Please, please be very vigilant in your decisions on this property.