

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF JUNE 21, 2012

PRESENT

JIM RILEE) CHAIRMAN
KURT ALSTEDDE) COUNCIL MEMBERS
MICHAEL R. DRESSLER)
MICHAEL FRANCIS)
ROBERT HOLTAWAY)
CARL RICHKO)
MICHAEL SEBETICH)
JAMES VISIOLI)
RICHARD VOHDEN)
ROBERT G. WALTON)

TELECONFERENCE:

TRACY CARLUCCIO)

ABSENT:

TIMOTHY P. DOUGHERTY)
BRUCE JAMES)
JAMES MENGUCCI)
MICHAEL TFANK)

CALL TO ORDER

Chairman Rilee called the 115th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:00pm.

ROLL CALL

Roll call was taken. Council Members Dougherty, James, Mengucci and Tfank were absent. Ms. Carluccio was on teleconference. All other Council Members were present.

OPEN PUBLIC MEETINGS ACT

Ms. Tagliareni announced that the meeting is being held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6. The Highlands Council sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted notice on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF PARTIAL MINUTES OF MAY 17, 2012

Mr. Richko introduced a motion to approve the minutes and Mr. Francis seconded it. All members present voted to approve. The minutes were APPROVED 11-0.

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APPROVAL OF FULL MINUTES OF MAY 17, 2012

Mr. Visioli introduced a motion to approve the minutes and Mr. Richko seconded it. All members present voted to approve. The minutes were APPROVED 11-0.

CHAIRMAN'S REPORT

Chairman Rilee reported that Council agreed to put together a Bylaws Committee and commented that the following members showed an interest in the Committee: Council Members Dougherty, James, Vohden and Francis. Chairman Rilee asked Mr. Vohden to chair the committee and he complied. Chairman Rilee also reported that due to some legalities the Memorandum of Understanding with the NJDEP regarding exemption delegation authority was withdrawn from today's agenda. Chairman Rilee further commented that Council's intent is to move forward and promises it will be on next month's meeting agenda.

COMMITTEE REPORTS

Mr. Holtaway reported on the Budget Committee. Mr. Holtaway advised Council that the budget is flat for 2013 and asked Highlands staff if there was any other information. Mr. Feyl reported that the budget and grant information has been delegated to Deputy Executive Director Margaret Nordstrom. Ms. Nordstrom responded and concurred that Council's funding is flat for the coming fiscal year and does not anticipate any changes.

EXECUTIVE DIRECTOR'S REPORT

Mr. Feyl reported that the Council will now receive a new Plan Conformance report on a monthly basis, which shows Preservation and Planning Area towns and those municipalities that have petitioned with Council and those that have not. Mr. Feyl added that we will not replace the colored chart at this time. Both charts show that Council has received 60 Petitions and approved 42 petitions. 27 Planning Area only municipalities have not submitted Petitions and one Preservation and Planning Area municipality has not submitted a Petition.

Mr. Feyl also reported that the resolution to hire a replacement for Dr. Van Abs is on today's agenda and noted it has been his commitment to look internally first as Council has an extraordinary staff. Mr. Feyl interviewed four highly qualified applicants from within and wants to thank them for putting themselves forward. Mr. Feyl made a recommendation to the Personnel Committee and Chairman Rilee will have a report on the naming of Christine Danis who has been a Principal Planner since 2005. Mr. Feyl noted that Ms. Danis has extraordinary experience in both science and planning and was a program director at the Edward J. Bloustein School of Planning and Public Policy at Rutgers University. Ms. Danis worked in the private sector at International Technology Group serving as the Senior Environmental Scientist for components of the Fresh Kills Landfill Closure Plan. Mr. Feyl added that Ms. Danis is a published contributor to numerous professional journals and texts and is active in planning and water related scientific associations. She is a licensed Professional Planner, a member of the American Institute of Certified Planners (AICP) and has attained a BS degree in Biology from Stockton State College, a MS degree in Environmental Science from Rutgers and a MCRP (Master of City and Regional Planning) from the Edward J. Bloustein School of Planning and Public Policy. Mr. Feyl believes Ms. Danis has an extraordinary set of skills and can serve this agency and residents in this region extremely well.

Mr. Feyl also commented that another resolution on Council's agenda is the delegation of executive authority. Mr. Feyl mentioned that a briefing memo has been provided in the Council Member's

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packets and was emailed as well. Mr. Feyl noted that a staff attorney and DAG representative were present to address any questions.

Mr. Feyl reported that Council staff took a tour on Tuesday, June 19th of the Tennessee Gas Pipeline 300-Line Extension on the ground and in the air. Deputy Executive Director Margaret Nordstrom and Resource Management Specialist Ms. Keri Benscoter attended the tour as well. Mr. Feyl was satisfied with what he saw regarding the vegetation and re-growth. Mr. Feyl added that the vegetation and re-growth around the pipeline is a lot like money, it takes time to grow.

Mr. Feyl continued to report that he would like Council and the Public, with the Chairman's permission, to become more acquainted with the Highlands staff to understand how things happen and what we do and to have this at every meeting, if the agenda allows. Mr. Feyl would also like to invite state agencies to give presentations as well. Mr. Feyl then introduced Mr. Roger Keren, Director of GIS who unfortunately has accepted a job in the private sector and will be leaving the agency, but will give a brief presentation about how our GIS applications work and how our planning tools are used in the Highlands.

GIS Demonstration

Mr. Walton left the meeting temporarily at 4:22pm.

Mr. Keren gave a brief overview about some of the interactive applications the Highlands Council currently has on its website. Mr. Keren noted that a number of years ago the most common question from the public was "What can I do with my property?" In response, the GIS team saw an opportunity to help the public and staff and developed a suite of applications: 1) Highlands Interactive Map; 2) Consistency Review Application; and 3) HDC Estimator Tool. Mr. Keren then gave a brief demo of each application, which is currently available on Council's website.

Mr. Walton returned to the meeting at 4:28pm.

This concluded the Executive Director's report.

Resolution – Memorandum of Understanding Between The Highlands Water Protection and Planning Council And The New Jersey Department of Environmental Protection

Chairman Rilee reported that this resolution was pulled.

Resolution – Authority for Plan Conformance and Highlands Project Review

Chairman Rilee introduced the Resolution.

Mr. Vobden made a motion on the Resolution. Mr. Francis seconded it.

Chairman Rilee reported that the Executive Director has provided a briefing memo on this delegation. Chairman Rilee felt it was important to move forward on these delegations. These delegations have been provided since 2009.

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Mr. Dressler commented that he would like to hold this resolution until we get a report from the Bylaws Committee indicating where they want to go and what rights Council has and the responsibilities they want to give to the Executive Director. Chairman Rilee suggested that the Council act on the resolution to ensure staff work can continue. He also requested Council Members provide a list of the current responsibilities they would like reviewed. Mr. Dressler asked how long the resolution would extend the current situation and Chairman Rilee indicated that it was longer than 30 days but could be adjusted. Mr. Feyl recommended that Council extend the resolution the full 90 days as specified to avoid any potential issues with ensuring a quorum due to summer vacations.

Mr. Holtaway commented on #4, page 3 of the resolution, regarding “Highlands Act exemption determinations, review and issue exemption determinations.” Mr. Holtaway asked what would happen if an applicant disagrees with the Executive Director’s decision; what would be their appeal process? Mr. Feyl invited Staff Attorney Kim Kaiser to give Council an overview of what authority is retained. Mr. Feyl noted that Council would not be giving up anything [in passing this resolution] and that they would always have an appeal process.

Mr. Alstede stated that he was not convinced that applicants were told that they were able to bring an appeal of an exemption determination to the entire Council. It was Mr. Alstede’s understanding that members of the public would come to the Council office, get information, ask if something was exempt and be told they would have to go to the DEP and get an HAD. They would then have to hire an engineer, hire an attorney, pay the fee, get the HAD. Mr. Alstede said that he was familiar with many cases and he was not aware that any of them were told they could appeal that decision to the Council.

Ms. Kaiser explained that in the conforming Planning Area the Highlands Council has just started making exemption determinations. She clarified that the Planning Area is where the Council has jurisdiction and those are the only exemption determinations staff is involved with. These have been posted online and as of the date of this meeting, Ms. Kaiser indicated there have only been three requests and only two determinations since the third application was actually not in the Council’s jurisdiction but rather the DEP’s.

Mr. Alstede asked if, under the current situation, someone in the Preservation Area came to the Council and were told they were not exempt, their only recourse was to go to the DEP. Ms. Kaiser clarified DEP has jurisdiction in the Preservation Area. She further explained that in the cases of exemptions 9 and 11, while the DEP retains jurisdiction and applications must be submitted to the DEP, the DEP sends copies of the applications to Council staff to make consistency determinations – to determine if the project is consistent with the Regional Master Plan (RMP). Once Council staff makes that determination, the DEP makes the final decision.

Mr. Alstede asked about Exemption 1, in the case of a property owner in the Preservation Area who owned their lot prior to implementation of the Act. Ms. Kaiser confirmed that the Preservation Area is the jurisdiction of the DEP.

Mr. Alstede then asked about the executive order that authorizes municipalities to make exemption determinations. He asked if that was only being done in the Planning Area. Ms Kaiser confirmed that Council was only making those determinations in the Planning Area.

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Mr. Alstede attempted to clarify the point that a property owner in the Preservation Area would still be required to get a HAD [*from the DEP*] to build a house on a lot owned prior to the passing of the Act, under the pending MOU.

Ms. Kaiser responded that she could not speak to the specifics of the MOU with the DEP and again clarified that the Highlands Council has jurisdiction in the Planning Area and the DEP has jurisdiction in the Preservation Area.

Mr. Walton commented that this process was crazy since there is an exemption in the law that states property owners can do what they want to do.

Mr. Dressler asked if the legislation did in fact say that. Ms. Kaiser noted that the Council's discussion may be confusing the prior resolution [*MOU with DEP, which was held*] and the resolution currently being considered [*Authority for Plan Conformance and Highlands Project Review*]. She then confirmed that yes, the legislation specified that the DEP has jurisdiction over the 17 exemptions in the Preservation Area and that the Highlands Council had jurisdiction for the exemptions in the Planning Area where municipalities were conforming. She further clarified that the Master Plan was written for the entire region.

Mr. Dressler then asked if this meant that the Council would not be involved in the non-conforming Planning Areas. Ms. Kaiser confirmed that was correct.

[*Chairman Rilee – inaudible, referencing MOU.*]

[*Mr. Dressler- inaudible.*]

Mr. Dressler asked if it would be possible to find out why the legislation made a distinction in the Preservation and Planning Areas jurisdictions. Ms. Kaiser responded that there have been two federal studies completed and will provide this information to Council.

Mr. Vohden referred to Section 17.a part 1.d of the Act which says that any member of the public can request that the Council can review an application for development in the Preservation Area. Mr. Vohden would like to understand how that section applies as that decision is moved to the municipalities.

[*Actual citation is 17.a part (2).d: “Any member of the public may request the council to consider reviewing an application for development in the preservation area as provided in this section.”*]

At this point, Mr. Jablonski commented that some of these questions are relating to the Memorandum of understanding, which is part of an ongoing dialog and not on the resolution being considered. He clarified that the concerns of Council members would be taken into consideration in that context.

Mr. Walton read from the Act text clarifying the nature of exemptions and then asked how that language could be construed that the NJDEP has any right to say something is exempt. Mr. Jablonski commented that this type of situation comes up with other statutes that clarify exemptions, but added that as a practical matter, individuals often require a piece of paper stating they are exempt. Mr. Walton feels the law states it very clearly.

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There was continued Council discussion about the MOU and getting approvals for exemptions. In returning to the discussion of the resolution at hand, Mr. Feyl clarified that it is his understanding that the Council has the right to review any decision made by the Executive Director.

Mr. Alstede said he believed exemption determinations were being made without the opportunity for review by Council. There has been no opportunity for Council to review the history of exemptions.

Ms. Kaiser clarified that, other than exemptions 9 and 11 in the Preservation Area, the Highlands Council has only rendered exemption determinations in the Planning Area twice. She further clarified that for the cases where determinations were made in the Preservation Area for 9 and 11, DEP had the final decision.

Mr. Alstede asked who is making determinations in the Planning Area. Ms. Kaiser clarified that if they are non-conforming there is no jurisdiction.

Mr. Walton expressed his concern about all the potential developers that didn't even bother asking because the law has been a death knell to any construction, improvement, or development which he believes was the intent of the Act.

Mr. Alstede asked Council is there language in the act that specifically empowers authority to NJDEP in the Preservation Area. Ms. Kaiser responded that it is in the Act and will provide it to Council.

There was further discussion on a mechanism for Council to review exemptions by the Executive Director.

Mr. Vohden made an amendment to his motion to review this resolution in 90 days. Mr. Francis seconded it.

Chairman Rilee opened the meeting to the public for comments on this Resolution.

Public Comment

David Shope, owns property in Lebanon Township – Mr. Shope commented that he has documentation from people who had to submit exemption determinations to the NJDEP. Mr. Shope also commented on Item #2 of the resolutions which states: For Highlands TDR Program, review and issue HC Allocation Determinations and execute any related documents and deeds of easement. Mr. Shope commented that the deed of easements are owner's document and have never been heard by this Council and Mr. Shope would like to put these deeds of easements before Council for review.

All members present voted on the Resolution for 90 days. A roll call was taken. The Resolution was APPROVED by a vote of 10-1.

Resolution – Position of Director of Planning and Science

Chairman Rilee introduced the Resolution and reported that Christine Danis has been recommended to the Personnel Committee on Monday, June 18, 2012 for the position of Director of Planning and Science at a salary of \$98,000.

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Mr. Richko made a motion to approve the Resolution and Mr. Vohden seconded it.

Mr. Holtaway commented on the extraordinary science experience of Dr. Van Abs and expressed concern on Council's need to fulfill that expertise. Mr. Feyl responded that currently we have some scientists on staff and as we have needs on a particular experience we can utilize the academic community or other resources.

Mr. Richko commented that he would like to be informed in the Executive Director's report on any staff members who are resigning and who Council plans to hire. Mr. Feyl responded that he will be happy to keep Council up to date on these matters. Mr. Feyl added that he plans to take a 30-day break to see what Council's needs are and is committed to promoting from within.

Ms. Carluccio commented that she is pleased with the recommendation by the Personnel Committee and has been impressed with Ms. Danis' work over the years.

Chairman Rilee opened the meeting to the public for comments on this Resolution.

There was no public comment.

All members present voted on the Resolution. A roll call was taken. The Resolution was APPROVED by a vote of 11-0.

Chairman Rilee congratulated Ms. Danis. Ms. Danis thanked the Council for this appointment. Ms. Danis noted that she attended the first Council meeting and has a Masters in Environmental Science and it has taken her seven years to get to this position. Ms. Danis thanked the Council for their recognition and looks forward to working with Mr. Feyl, Ms. Nordstrom, and the Council.

Council Discussion

Mr. Vohden commented that he would like a presentation on the Highlands Exemption Training Program either during a meeting or with the municipalities once the MOU is approved to see what staff is teaching the municipalities. Mr. Feyl responded that once the MOU is complete there will be a lot of training.

Mr. Dressler reminded Council about having a meeting to discuss land preservation and landowner compensation. Chairman Rilee responded that Mr. Feyl is putting together a few things for Council members. Chairman Rilee commented that compensation is out of Council's hands in the Preservation Area. Mr. Dressler added that the discussion can still take place and a recommendation made to the legislature on what Council can and cannot do.

Mr. Alstede asked where Council is regarding the TDR and perhaps a presentation on this topic is necessary. Ms. Danis responded that the Bank is in the fifth round of applications and the next HDC Bank Meeting is scheduled for November 1, 2012. Ms. Danis reported that there is approximately \$1.2 million available for the fifth round and the Bank's current credit value is \$16,000 per credit.

Mr. Vohden commented on section 6n. of the Act and thought Council may include this language in our resolutions.

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Mr. Walton commented that Council staff should make a concerted effort to go and implore and find communities that will accept development credits for our TDR program. Mr. Feyl responded that Council has a talented staff to make this effort.

Mr. Dressler left the meeting temporarily at 5:24pm.

Chairman Rilee opened the meeting for public comments.

Public Comments

Hank Klumpp, owns property in Tewksbury Township – Mr. Klumpp commented on his loss of equity on his property due to the Highlands Act and saving the water. Mr. Klumpp believes the scientific study was incorrect and for political plans. Mr. Klumpp further commented that landowners were led to believe that five million people needed the water for the land grab. Mr. Klumpp believes that the use of water has no restrictions. Mr. Klumpp commented that he would like to see his public comments attached to the minutes. Mr. Klumpp submitted his comments for the record.

Mr. Dressler returned to the meeting at 5:29pm.

Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich commented that it is fantastic that Council is talking about farmland preservation and landowner compensation. Ms. Heinrich commented on the exemption system which is not working well, as well as the TDR system. Ms. Heinrich is grateful for Council's continued effort to focus on these topics.

Patrick Moffitt, resides in Peapack – Mr. Moffitt commented that the 2004 Highlands Task Force claimed that without passage of the Act the safety of our drinking water would be compromised and treatment costs escalate. Mr. Moffitt provided a letter for the record from the Office of Legislative Services to Senator Oroho's on-going efforts to resolve this matter which stated "in brief, it would seem that no such report or other documentation is readily identifiable." Mr. Moffitt concluded that such actions invite the proliferation of perverse consequences and accelerate the continued erosion of Public trust. Mr. Moffitt submitted his comments for the records.

George Graham, Sussex County – Mr. Graham complimented on the balance of Council and appreciated the conversation. Mr. Graham commented that opting in or out of the plan conformance process is a land grab.

Mr. Visioli left the meeting at 5:40pm.

David Shope, owns property in Lebanon Township – Mr. Shope commented that in the beginning there was a lie. Mr. Shope then commented on Senator Smith's comment regarding landowner compensation and that Senators McKeon and Smith will "show you the money". Mr. Shope also commented that the TDR program is a lie as you need a hardship to apply. Mr. Shope concluded that he believes the Highlands plan is to eliminate building and that farming will disappear.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey requested that the resolution for the MOU with NJDEP be available to the public at least a week prior to its consideration to the Council. Ms. Frey added that in the interest of transparency please allow for advanced notice to the public.

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Elliot Ruga, New Jersey Highlands Coalition - Mr. Ruga commented that the Council has gone through a tremendous disruption of business and these are vulnerable times. Mr. Ruga thinks Council has an important job to do. Mr. Ruga stated that this is not the Highlands Act, Council is not the complaint department for the Highlands, Council has a master plan which was drafted and adopted. Mr. Ruga continued to state that the option of conforming is a very positive and productive thing to do to maintain the character of municipalities and determine growth. Mr. Ruga supports Council in moving forward and doing their job the best way Council can.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer complimented Mr. Feyl for having a presentation on the GIS system. Mr. Peifer commented that if Council looks around for other GIS systems in the United States, the Council is the leader. Mr. Peifer added that ANJEC does training for municipalities on a broad range of issues and would be happy to cooperate with Council to take over the exemption process. Regarding Mr. Vohden's comments about adding language to the resolutions, Mr. Peifer thinks it is a great idea. Mr. Peifer commends Council's own open space report that was produced at the end of 2010 and urged Council to look at and see where Council is regarding open space. Mr. Peifer also urged Council to be a little bit more active when it comes to the funding debate about open space in Trenton. Chairman Rilee responded that getting involved in the funding debate is a political decision and does not think it is necessarily up to Council. Mr. Peifer responded that letting the legislature know what your needs are, is not a bad idea.

Gabrielle Salvetti, Califon – Mr. Salvetti commented he owns property in Liberty Township called Mountain Lake General Store. Mr. Salvetti added that he met with one of our staff members approximately six years ago and just wants Council to let him know that his property is grandfathered and to simplify the process. Mr. Salvetti would like Council to help him with what he needs. Chairman Rilee responded that Mr. Salvetti should contact Mr. Feyl to address his concern.

Mr. Holtaway made a motion to adjourn the meeting and Mr. Alstede seconded. The meeting was adjourned at 5:58pm.

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: 7/20/12

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

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**Vote on the Approval of
These Minutes**

	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede	_____	_____	_____	_____	_____	✓
Councilmember Carluccio	_____	_____	✓	_____	_____	_____
Councilmember Dougherty	_____	_____	_____	_____	_____	✓
Councilmember Dressler	_____	_____	_____	_____	_____	✓
Councilmember Francis	_____	_____	✓	_____	_____	_____
Councilmember Holtaway	_____	_____	✓	_____	_____	_____
Councilmember James	_____	_____	_____	_____	✓	_____
Councilmember Mengucci	_____	_____	_____	_____	✓	_____
Councilmember Richko	_____	_____	✓	_____	_____	_____
Councilmember Sebetich	_____	_____	✓	_____	_____	_____
Councilmember Tfank	_____	_____	_____	_____	✓	_____
Councilmember Visioli	_____	✓	✓	_____	_____	_____
Councilmember Vohden	✓	_____	✓	_____	_____	_____
Councilmember Walton	_____	_____	✓	_____	_____	_____
Chairman Rilee	_____	_____	✓	_____	_____	_____