

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF SEPTEMBER 20, 2012

PRESENT

JIM RILEE)	CHAIRMAN
KURT ALSTED)	COUNCIL MEMBERS
TIMOTHY P. DOUGHERTY)	
MICHAEL R. DRESSLER)	
MICHAEL FRANCIS)	
JAMES MENGUCCI)	
MICHAEL TFANK)	
CARL RICHKO)	
MICHAEL SEBETICH)	
JAMES VISIOLI)	
RICHARD VOHDEN)	
ROBERT G. WALTON)	

VIA TELECONFERENCE

TRACY CARLUCCIO)

ABSENT

ROBERT HOLTAWAY)
BRUCE JAMES)

CALL TO ORDER

Chairman Rilee called the 117th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 4:06pm.

ROLL CALL

Roll call was taken. Council Members Dougherty, Dressler, Holtaway and James were absent. Council Member Carluccio was present via teleconference. All other members were present.

OPEN PUBLIC MEETINGS ACT

Chairman Rilee 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 MINUTES OF JULY 19, 2012

Mr. Vobden introduced a motion to approve the minutes. Mr. Walton seconded it. All members present voted to approve. The minutes were APPROVED 10-0, with an abstention by Mr. Alstede.

Mr. Dressler was present at 4:20pm.

CHAIRMAN'S REPORT

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Chairman Rilee provided an update on the MOU between the Highlands Council and the NJDEP on the Highlands Area Delegated Exemptions in which both have been working diligently over the last two months. A very early draft was submitted to the Chairman late Wednesday, September 19. Chairman Rilee wants to review the procedures, have legal review, and then hopes to get the draft Highlands Delegated Exemption Program put before Council at the next meeting. Chairman Rilee would like to get Highlands municipalities up-to-speed this fall on the delegation of authority to grant exemptions.

Mr. Dougherty was present at 4:23pm.

COMMITTEE REPORTS

Mr. Vohden provided an update on the Bylaws Committee. The first meeting was held on July 27, 2012. A list of suggested changes was discussed. The Committee has requested and will receive an organizational chart and copy of the original bylaws. A meeting will be held before the next regular council meeting.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Feyl gave a brief PowerPoint update to the Council on Plan Conformance Petition reviews.

Wanaque Borough, Passaic County
Petition for Plan Conformance deemed complete 8/10/12

Pohatcong Township, Warren County
Planning Area Petition Ordinance passed 8/21/12
TDR feasibility grant application submitted 8/29/12

Roxbury Township, Morris County
Received Municipal Response 8/16/12

Far Hills Borough, Somerset County
Requested additional time for Municipal Response (3/31/13)

Hopatcong Borough, Sussex County
Public hearing tonight

Of 60 Petitions: 42 Approved, 15 Complete and in Review Process; 3 Incomplete

Mr. Feyl also reported that Highlands Council Staff continues to talk with towns and counties about how Highlands Council can help them. Mr. Feyl added that since he and Ms. Nordstrom have joined the staff they have been engaged in significant outreach. They met with: 12 towns, 6 counties, 19 DEP/state meetings, 6 other events. (43 total). Mr. Feyl then showed a slide on the Implementation Status of Plan Conformance.

Implementation Status # Municipalities (new in bold)

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Planning Ordinance	Area	Petition	14	Alpha, Bethlehem, Byram, Clinton Town, Hackettstown, Hampton, High Bridge, Holland, Lebanon, Lopatcong, Mahwah, Oxford, Phillipsburg, Tewksbury
Master Plan Report	Re-examination		12	Bethlehem, Byram, Franklin Twp, Hackettstown, High Bridge, Holland, Lebanon, Mahwah, Mount Olive, Tewksbury, West Milford, Ringwood
Environmental Inventory		Resource	12	Byram, Califon, Franklin Twp, Hackettstown, High Bridge, Lebanon, Lopatcong, Mahwah, Mount Olive, Phillipsburg, Ringwood, Tewksbury
Highlands Master Plan Element Checklist Ordinance			4	Califon, Franklin Twp, High Bridge, Lebanon Twp
			8	Byram, Hackettstown, Holland, Mahwah, Mount Olive, Tewksbury, Ringwood, Washington Twp (Morris)
Highlands Land Use Ordinance			1	High Bridge (w/ zoning map)

Mr. Feyl then gave an overview of Council’s Constituent Support Team efforts:

- Constituent Support Team responds to calls, emails, and walk-ins.
- Typically questions re: specific properties and/or possible projects.
- Provide clarification, direction.
- Since 2006, more than 2,000 cases.
- Average per month: 27 calls

At this time, Mr. Feyl started a video presentation showcasing the wonders of the Highlands. This presentation was prepared by staff member Nathan McLean.

Mr. Feyl continued with his Executive Director’s report by introducing a brief informational presentation about the Highlands Redevelopment Process. The presentation was given by Director of Planning and Science, Chris Danis and Senior Resource Management Specialist, Chris Ross.

Ms. Danis and Ms. Ross presented the following PowerPoint presentation:

Highlands Redevelopment Area Designation

- Highlands Act allows three types of waivers from NJDEP Preservation Area rules:
 - for public health and safety
 - for redevelopment areas identified by the Highlands Council
 - to avoid a taking of property without just compensation

Site Qualifications

- Limited to:
 - Previously developed lands with minimum of 70% existing impervious surface

OR

- Brownfields*
- Can be all or a portion of a parcel or parcels
- Projects that do not qualify for Highlands Act exemption

*NJDEP certification of brownfield required.

Process Overview

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- Two-step process:
 1. Highlands Council designates Redevelopment Area
 2. NJDEP issues Highlands Preservation Area Approval (HPAA) with Redevelopment Waiver.
- If applying based on impervious surface, apply directly to Highlands Council.
- If applying for brownfield, NJDEP must first certify the site as an eligible brownfield

Process Detail/Steps

1. Inquiry meeting
2. Applicant submits preliminary documents
3. Pre-application meeting
4. Applicant submits complete petition (application)
5. Highlands Council staff review and draft recommendations posted for public comment
6. Staff revised report to Council for vote.
7. Once Redevelopment Area designation approved, to NJDEP for HPAA with waiver.

Redevelopment Process Map

A process map was presented

Decision Criteria

- Does the site qualify based on impervious surface or certified brownfields?
- Will the Highlands Redevelopment Area avoid disturbance of Highlands resources, or minimize disturbance where waiver is sought?
- Is the Highlands Redevelopment Area consistent with RMP policies regarding such designations?
- Does sufficient water supply and wastewater capacity exist for the site?
- Is the site compatible with municipal zoning?
- Are there unique or mitigating criteria based on the RMP policies?

Approved Projects to date

<u>Project/Redevelopment Area</u>	<u>Municipality</u>	<u>Approval Date</u>
Route 46/Mt Olive (Debeck)	Mount Olive	January 19, 2012
Former Fenimore Sanitary Landfill	Roxbury	October 13, 2011
Givaudan Fragrances Corporation	Mount Olive	August 3, 2011
Sand Shore Road/Mt Olive (Jehovah's Witness)	Mount Olive	May 19, 2011
Goldmine Partners, L.L.C.	Mount Olive	August 19, 2010
Heath Village Retirement Community	Washington (Morris)	April 15, 2010
Borealis Compounds, L.L.C	Mansfield	March 4, 2010
West Milford Municipal Complex and Public Library	West Milford	March 4, 2010
Oak Ridge Road Associates, L.L.C.	West Milford	June 25, 2009

Ms. Ross ended her presentation by displaying website and her contact information.

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www.highlands.state.nj.us

> Project Review

> 3. Highlands Redevelopment Area Designation

Christine Ross
Senior Resource Management Specialist
(908) 879-6737 ext. 116
chris.ross@highlands.state.nj.us

This concluded Mr. Feyl's Executive Director's report.

Resolution – Petition For Plan Conformance By The Borough Of Hopatcong, Sussex County

Chairman Rilee introduced the Resolution. Messrs. Francis and Vohden recused themselves.

Mr. Mengucci made a motion on the Resolution. Mr. Visioli seconded it.

Mr. Feyl acknowledged Hopatcong Borough representatives present at the meeting: Mayor Sylvia Petillo and Susan Gruel, Borough Planner.

Mr. Feyl then introduced Ms. Danis, Director of Planning and Science and Ms. Ross, Senior Resource Management Specialist and Highlands Staff Liaison for the Borough of Hopatcong.

Ms. Danis thanked Chairman Rilee and Council and was pleased to present to Council the Hopatcong Borough Petition for Plan Conformance. The Council's work with Hopatcong Borough and its professionals started in December 2009 with a Petition for the Preservation Area only and as a result of rolling up our sleeves and working with the Borough as a regional planning team led by Chris Ross the Borough recognized that it was important for its Planning Area to benefit from Conformance with the RMP. As a result of that work, in February 2012 the Borough adopted a Resolution to Petition for the Planning Area. Ms. Danis further stated that working as a partnership a Highlands Center was also proposed for a portion of the Planning Area in accordance with the criteria indicated in the Section 10 Planning Area RMP Goals by encouraging "*Appropriate patterns of compatible residential, commercial, and industrial development and redevelopment and economic growth, in or adjacent to areas already utilized for such purposes.*" Ms. Danis reported that this is the 10th proposed Highlands Center and has been a long time in development. Highlands Centers are unique opportunities to protect and enhance Highlands Resources such as Lake Hopatcong, while supporting quality of life for Borough and region residents and stakeholders through enhanced planning and technical support in accordance with the RMP. Ms. Danis thanked Chris Ross for all of her hard work and to Hopatcong for its Highlands partnership. Ms. Ross then gave a presentation on Borough of Hopatcong's Petition for Plan Conformance.

Borough of Hopatcong "Town by the Lake"

- Lake Hopatcong largest lake in NJ
- Incorporated: 1898
- Population 2010: 15,147

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- Land Area: 7,948 acres/12 sq. mi.
- Preserved Lands: 728 acres (9%)
- Total Forest: 4,229 acres (53%)

Borough of Hopatcong Petition for Plan Conformance

- Planning Area Lands: 5,333 acres (67%)
- Preservation Area Lands: 2,615 acres (33%)
- Petition for both Areas
- Requesting Highlands Center Designation
- Possible interest in Redevelopment Designations
- Interested in Intra-Municipal TDR

Plan Conformance Modules

Petition Requirements	RMP Consistent	Specific Issues
Modules 1-2 Municipal Build-Out Report	X	None
Module 3 Housing Element/Fair Share Plan	X	None
Module 4 Environmental Resource Inventory	X	None
Module 5 Highlands Element	X	None
Module 6 Land Use Ordinance	X	None
Module 7 Petition for Plan Conformance	X	None

Optional Requests

Optional Submission Items	Submission Date	Status/Recommendation
Highlands Center Designation Request	7/20/12	Highlands Center designation planning is ongoing; staff recommends preliminary approval with conditions – follow-up required.
Highlands Redevelopment Area Designation Request	8/12/11	Borough may in the future seek Highlands Redevelopment designations for certain properties in the M-1 Zone.

Proposed Highlands Center

- Highlands Center to include most of Lake Hopatcong waterfront within the Borough; densely developed residential and commercial areas.
- Opportunity to address water and sewer infrastructure needs in existing residential areas.
- Facilitate development and redevelopment where appropriate.
- Support long-term health and vibrancy of the community.

Public Comments

- Public comment period: 8/30 – 9/12/12
- Comments received from:

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- Erica Van Auken, Campaign and Grassroots Coordinator, Highlands Coalition
- Comment/Response Document provided detailed responses to all public comments received.
 - Posted to Highlands website: 9/17/12

Staff Recommendation: Approve with conditions

- Complete & Adopt Highlands ERI, Master Plan Element and Land Use Ordinance
- Sustainable Economic Development Plan
- Stream Corridor Protection & Restoration Plan
- Wastewater Management Plan
- Habitat Conservation & Management Plan

Council Discussion

Mr. Visioli asked the staff to explain the status of the Housing Element and Fair Share Plan in relation to this petition for Plan Conformance. Ms. Danis replied that the Council on Affordable Housing (COAH) is in a holding pattern with respect to the 3rd round reports, which are pending. She noted that staff will continue to monitor the situation with COAH.

Dr. Sebetich noted that the conceptual map for the Highlands Center shows the eastern boundary of the Center to be in Lake Hopatcong and asked why this was the case. Ms. Danis explained that it is the state municipal boundary of the Borough; not something that we created.

Chairman Rilee opened the meeting to the public for comments.

Public Comment

Deborah Post, property owner in Chester Township – Ms. Post noted that the suggested voluntary receiving areas are for intra-municipal Transfer of Development Rights (TDR) to compensate land owners within the Borough. She notes however that the majority of the Borough is in within the Planning Area. Ms. Post believes that property owners in the Preservation Area should be considered for compensation first before property owners in the Planning Area.

Wilma Frey, New Jersey Conservation Foundation - Ms. Frey stated that the New Jersey Conservation Foundation supports the petition for Plan Conformance for both the Preservation Area and the Planning Area and is delighted that the Borough is petitioning for both. She did express concerns about the proposed Highlands Center. She stated that the other Centers approved by the Highlands Council focused on specific attributes of, and benefits for, the municipality and considered historic components and Highlands Environmental Resource sites. Ms. Frey feels that a broad brush approach was used to develop the proposed Highlands Center for Hopatcong by using the Existing Community Zone and Lake Community Sub-Zones as the drivers. She believes that as currently drawn, the Center is out of scale for the municipality and does not take into account water deficiencies in the Borough and the fact that much of the Center is mapped as Wellhead Protection Area. She encourages continued collaborative work on the Center by the Borough and the Highlands Council with the goals to define the Center and substantially reduce its size, to develop clear objectives, to conserve open space, and to protect historic and sensitive environmental resources.

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David Shope, owns property in Lebanon Township – Mr. Shope stated that there was no mention of the amount of money that is allocated for the various studies that would take place, unlike past Council considerations of other municipalities. He indicated that he also would have hoped by now that a rough balance could have been determined regarding how much the proposed receiving areas could absorb from Preservation Area land owners who have been greatly impacted by the Highlands Act, in the consideration of the proposed inter-municipal TDRs. He noted that approximately \$23,000 was allocated to the Town of Clinton by the Council to study TDRs when everyone knew that there is no such opportunity in that town. Mr. Shope feels that chosen professionals continue to feast on his hide as a taxpayer using the Highlands Council as a vehicle for doing so. Mr. Shope stated that to summarize, he would like to know how much of the Center's Planning Area can be absorbed by Preservation Area landowners who have been so impacted by the Act and how much money the Highlands Council will provide to Hopatcong Borough to study inter-municipal TDRs when such a program may not be feasible. Chairman Rilee noted that the TDR program is not mandatory. He also noted that if there was a determination that intra-municipal TDR was not feasible, no more funding would be provided. Further, Chairman Rilee noted this is an on-going, evolving process.

Elliot Ruga, New Jersey Highlands Coalition – Mr. Ruga stated that as Chris Ross pointed out, the New Jersey Highlands Coalition had submitted written comments to the Highlands Council regarding this petition. He stated that the Coalition appreciated the comprehensive response and consideration of the comments and that the Highlands Council staff did an excellent job. He stated that he understands that the Center designation is a work in progress and how important the planning process is in order to create a Center that comes to be a livable community. He looks forward to seeing the upcoming success of the Center in the Borough.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer indicated that he supports the Center Designation in the Borough but wanted to identify a couple of issues. Lake Hopatcong is the largest lake in the State of New Jersey and is surrounded by several municipalities. He hopes that the Highlands Council can facilitate inter-municipal coordination to address the issues facing Lake Hopatcong. He expressed concern that one municipality may use up all utility capacity to the detriment of other municipalities. With respect to water supply, Mr. Peifer noted that much of the Borough is supplied by ground water from a limited aquifer. He noted his understanding that the intent of the Borough is to install sewers and export wastewater to the Musconetcong Sewage Treatment Plant, which is downstream from Lake Hopatcong in a different subwatershed. He noted that there should be careful consideration and that a water balance model should be conducted. Mr. Peifer closed by stating that it was good to see action being undertaken with regard to this important resource – Lake Hopatcong.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 9-2 with the recusal of Messrs. Francis and Vobden.

At this time commemorative photos were taken as Chairman Rilee presented a framed certificate regarding the approval of the Plan Conformance Petition to Mayor Petillo.

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Resolution – Approval Of A Transfer Of Development Rights Receiving Zone Feasibility Grant To The Township Of Pohatcong, Warren County

Chairman Rilee introduced the Resolution.

Mr. Visioli made a motion to approve the Resolution. Mr. Walton seconded it.

Chairman Rilee asked if there were any staff comment on this Resolution. Mr. Feyl responded that there were no staff comments as this is a fairly routine grant process item. Ms. Danis commented that all the known details are in the Resolution.

Chairman Rilee opened the meeting to the public for comments.

Public Comment

Jerry Kern, property owner in Pohatcong Township – Mr. Kern thanked Council for letting him speak today. He agreed with Mr. Shope's concern with TDRs as there are not enough receiving areas. Mr. Kern commented that it was a mistake that these receiving areas are only in the Highlands Region. Mr. Feyl responded that it is no longer the case and it is approved statewide for Highlands TDR Receiving Areas. Mr. Feyl added that Highlands staff is working with counties and the State Planning Office at the state to assist with TDR Receiving Areas. Mr. Kern asked why is it not working and why has that not helped the price of a TDR for my property. Mr. Nordstrom responded that we are just getting started. Mr. Kern further asked Council what they consider a fair price would be. Chairman Rilee responded that it would not be appropriate for this Council to answer that question. Chairman Rilee understood and appreciated his concern.

Mr. Kern further hoped there will be fair compensation. Mr. Kern commented on Pohatcong Township Council meeting when they passed a Resolution regarding the placement of Pohatcong in the Highlands Region and the location of the Preservation Area boundary. Mr. Kern proceeded to read a copy of the Resolution. (*Note: Draft Resolution Petitioning the Legislature for the Restoration of the Scientifically Determined Preservation Area Boundary in Pohatcong Township, Warren County, New Jersey is attached for informational purposes only*). Mr. Kern commented that he would hope that the Council would support this Resolution and back the scientific basis of the Preservation Area boundary. Mr. Kern also hopes Council would review this information and support Pohatcong Township with this resolution. Mr. Kern urged Council to write a letter of support to support the science of the Highlands Act.

Chairman Rilee informed Mr. Kern that his time was up and Council appreciates his concern. Chairman Rilee further stated that this requires legislative changes which is not a function of this Council and will follow up with Mr. Feyl regarding any action item.

Deborah Post, property owner in Chester Township – Ms. Post commented that she heard a query regarding the fair price of an HDC, the fair price is the appraised value which was determined by this Council own appraiser at \$64,000 this is listed on page 34 on the Council's Technical Report. Regarding this resolution I would request that if a receiving zone is not implemented the Township should give back the grant money. Ms. Post also requests that some of this grant money should be reserved for landowners to assist landowners with professional costs in the determination of the lost land values. Municipalities have been provided with endless funds for endless studies but not one

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penny has been provided to landowners to assist them with their own professional costs to determine the amount of their own lost land values.

Patrick Moffit, Peapack – Mr. Moffit gave a heads up about water conservation as part of this plan. Mr. Moffit gave a warning that sewers were designed with a certain flow amount and when you implement a water conservation program you may reduce this flow and in the older systems particularly you are subject to the buildup of hydrogen sulfide gas that may cause odor problems and lead to damage of the pipes and systems. Mr. Moffit commented that there was a case last year in California where the water conservation measures in older systems caused thousands of dollars of damages due to the buildup of hydrogen sulfide gas.

Mr. Feyl responded to a Council question regarding the HDC Bank. The HDC Bank exists and we are at the fifth round. The HDC Bank is currently addressing hardship cases and we need more funds in the bank. We are in early discussions with the state about increasing the funding in the HDC Bank.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 12-1.

Resolution – Authority For Plan Conformance And Highlands Project Review

Chairman Rilee introduced the Resolution.

Mr. Francis made a motion to approve the Resolution. Mr. Vobden seconded it.

Council Comment

Mr. Rilee commended Mr. Feyl for doing a good job as noted by the vote to extend the executive director's authority.

Mr. Alstede stated this is a six-month extension and the Bylaws committee is expected to have a discussion about this prior to this resolution being introduced again. Chairman Rilee stated that he was not so sure where the bylaws were going but they would not address all aspects of this resolution. Mr. Alstede also wants regular reporting by Mr. Feyl on what the staff is doing pursuant to the delegation of authority and will vote yes now as the Bylaws committee will be reviewing matters.

Chairman Rilee opened the meeting to the public for comments

Public Comment

Deborah Post, property owner in Chester Township – Ms. Post addressed item #2 which delegates authority for all TDR matters to the executive director. Ms. Post feels the council does not care about the TDR program, nor has it adopted the deed of easement which is on the website. Ms. Post is curious as to how we can direct authority to an executive director when we have not adopted a document.

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David Shope, owns property in Lebanon Township – Mr. Shope states that Black’s Law dictionary definition of exemption means exemption and that we should not review and issue exemptions. He objects to the wording of item # 4.. He questions the meaning of item #6 which says the executive director *may* make recommendations to the council and would like the word *may* changed to *must*. Mr. Shope also stated that former previous senior staff had run amuck.

Council Discussion

Mr. Visioli commented on Mr. Shope’s comments and stated that he was not aware of the Highlands Council making any deals.

Mr. Dressler asked if the word “*may*” should be changed to “*shall*” and Mr. Jablonski believes it’s the intent that it is at the Executive Director’s discretion to make a recommendation to the Council. Mr. Dressler states he is not comfortable with the permissive nature of the word “*may*”. Mr. Feyl stated that all easements and closings are reviewed by the attorney general’s office and he attends TDR closings to be sure everything is filed properly. Mr. Vohden asked if the deeds of easements should be reviewed by the Council. Mr. Feyl stated the format is the same but there may be something unique to the property.

Mr. Dougherty asked Ms. Post to explain her position on easements. Ms. Post stated there is a TDR easement which was prepared by Tom Borden on the website and although it says final it has never been adopted by the council. Mr. Alstede remembered that the easements had been discussed at a previous council meeting. Mr. Dressler stated he would vote yes but wants to look at the easement in detail. He is also impressed with the executive director’s performance over the past few months.

Ms. Carluccio stated she would not support this resolution as the Council has no track record regarding the delegation of authority in item #5.

Monique Purcell, Department of Agriculture – Ms. Purcell stated that Ms. Post is correct and the easements were not adopted and that there are 4 types of easements; Agriculture, Agriculture with Bonus, Non agriculture and Non agriculture with bonus. Ms Purcell disagrees that there is one for everybody.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 12-1.

Chairman Rilee opened the meeting for public comment.

Public Comment

Elliot Ruga, New Jersey Highlands Coalition – Mr. Ruga commented that everyone is quite aware how important it is to have a TDR program associated with the RMP up and running for continued success of Council’s effort. Mr. Ruga stated that the Office of Planning and Advocacy and State Planning Commission (SPC) currently has a draft strategic plan out for comment and the plan has a criteria known as planned investment areas, which are the areas that they define that this state would focus its resources for development and growth throughout the state. Mr. Ruga asked if this Council has had any conversations with the Office of Planning Advocacy to include the Highlands TDR Program as an opportunity to be part of those planning investment area criteria so that this state and the Council are working together. Mr. Feyl responded yes to Mr. Ruga’s question.

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Mr. Ruga asked if he can be hopeful. Mr. Feyl responded yes, but said it is early to speculate on the end results.

David Shope, owns property in Lebanon Township – Mr. Shope commented on pictures he sent to the Council some time ago that showed the other sides of the Highland: barns, silos and other dilapidated structures. Mr. Shope is sick of the pretty pictures of the Highlands and commented that it is only part of the story. Mr. Shope plans to resubmit his pictures to Council again. Mr. Shope also commented that Council should review legal documents and act on them as well as allow the person on the other side of the process availability of acting within 45 days on a final agency action. Mr. Shope commented on deeds of easements and said that they were never approved by the Council. Mr. Shope added that when he was upset about the process, Mr. Borden let him know that this was basically a starting point for negotiations and also made him strongly aware that this was the best deal a landowner would get. Mr. Shope commented that legal documents affect people's lives and Council needs to review.

Deborah Post, property owner in Chester Township – Ms. Post commented on Mr. Shope's comment that Mr. Borden advised that a deed restriction was a negotiable document and his draft was the best any landowner could expect. The threat that this Council's previous staff would make all efforts to implement even more onerous deed restrictions was always clear. Ms. Post commented on Item 3 of the deed restriction currently posted on this Council's website, which reads: "All uses of the Property shall be allowed to the extent permissible under the Highlands Act and the Highlands Regional Master Plan." Ms. Post added that a deed restriction issued to a hardship case last year does not include the words "uses shall be allowed" but states instead "new uses of the Property shall not be allowed." Ms. Post provided Council with the Pitkin County Colorado TDR deed restriction and that the Council's deed restriction should be read similarly. Chairman Rilee asked Mr. Feyl to research and respond to Ms. Post's concern. Ms. Post submitted her comment to Council for the record.

Jerry Kern, property owner in Pohatcong Township – Mr. Kern commented on Pohatcong's meeting last Tuesday whereby Pohatcong passed a resolution to adopt the RMP for their Planning Area. Mr. Kern stated that he believes Pohatcong is the first town that added language for true compensation, not TDR compensation, for landowners in the Preservation Area in a timely fashion. He is hoping that that language stays in the resolution and Council does not ignore it. Chairman Rilee commented that he does feel landowners should be compensated and that Council is working within the boundaries of the Act and continues to work on this issue.

Council Member Dressler responded that he has had discussions with Chairman Rilee and the Executive Director was in his office a couple weeks ago with regard to compensation. Mr. Dressler added that we do not want it to be a political football and it has to be done the right way if it is going to be done.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer submitted to the Council for the record ANJEC's Monthly Highlands Issues of Concern to develop routine communication with the Council and to assist the Council in its tasks of implementing the Highlands Act and the RMP. Mr. Peifer expressed concerns regarding Exemption 11 Issues/Open Space Diversions/Lack of Energy Policy to Protect Highlands Resources; Outreach and Coordination between the Council and Water Consuming Communities and Utilities; Exemption Authority Delegation; need for sub-regional planning coordination; and local issues.

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Mary Lee Fulcher, Boonton Township – Ms. Fulcher commented on her opposition to Split Rock Reservoir Boat Ramp project proposed by F&W. Ms. Fulcher submitted her comments to Council for the record. Chairman Rilee responded that at this time there is nothing before Council on this project.

Chairman Rilee closed the public portion of the meeting at 6:20pm.

Resolution – Executive Session

Chairman Rilee introduced a Resolution to go into Executive Session where action may or may not be taken by Council. Public will be dismissed and may come back after the session.

For the record, Mr. Jablonski read the resolution before Council to go into Executive Session:

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., permits the holding of closed sessions by public bodies in certain circumstances, and the Council is of the opinion that those circumstances presently exist; and

WHEREAS, the general nature of the subjects to be discussed include pending litigation in the matter of Hampton Farm v. Borough of Hampton and the Highlands Council, Docket No. HNT-L-588-11, as well as anticipated litigation and other matters involving attorney-client privilege.

NOW, THEREFORE, BE IT RESOLVED, that the Council may enter into closed session at its public meeting of September 20, 2012 for that purpose. It is anticipated at this time that the nature of the closed session will be made public upon completion or resolution of the issues to be discussed, except any matter protected by the attorney-client privilege will not be disclosed.
the

Mr. Visioli made a motion to go into Executive Session. Mr. Vobden seconded it.

All members present voted on the resolution. The resolution was APPROVED 10-0. Ms. Carluccio was absent due to a lost connection via teleconferencing.

Chairman Rilee called for a 10 minute break.

[Executive Session]

Council Member Richko made a motion to close the Executive Session and resume the Highlands Council meeting at 7:23pm. Council Member Dougherty seconded the motion and the motion was approved.

Resolution – Approval of Payment in the Settlement of OPRA Litigation

Chairman Rilee introduced the Resolution.

Mr. Visioli made a motion to approve the Resolution. Mr. Dougherty seconded it.

Chairman Rilee opened the meeting for public comments.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
 MINUTES OF THE MEETING OF SEPTEMBER 20, 2012

There was no public comment.

There was no Council Discussion.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 10-0.

Mr. Visioli made a motion to adjourn the meeting. Mr. Dougherty seconded it. The meeting was adjourned at 7:30pm.

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: 10-18-12

Name: Sabina Martine
 Sabina Martine, Administrative Assistant

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			✓			

* See Meeting Minutes of October 18, 2012