

MINUTES

NEW JERSEY HIGHLANDS COUNCIL MEETING OF APRIL 21, 2005

PRESENT:

JOHN WEINGART)	CHAIRMAN
KURT ALSTED)	COUNCIL MEMBERS
TRACY CARLUCCIO)	
LOIS CUCCINELLO)	
JANICE KOVACH)	
MIKAEL SALOVAARA)	
MIMI LETTS)	
JACK SCHRIER)	
BEN SPINELLI)	
EILEEN SWAN)	
GLEN VETRANO)	
SCOTT WHITENACK)	

ABSENT:

DEBBIE PASQUARELLI
TIM DILLINGHAM

The following are the minutes from the New Jersey Highlands Council meeting which was held at Raritan Valley Community College, on Route 28 and Lamington Avenue, North Branch, New Jersey on April 21, 2005 at 10:00 a.m.

CALL TO ORDER:

The Chairman of the Council, Mr. John Weingart, called the eighth meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:05 a.m.

ROLL CALL: The members of the Council introduced themselves.

PLEDGE OF ALLEGIANCE was then recited.

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 of circulation throughout the State.

COUNCIL MINUTES (APRIL 7, 2005 meeting):

Regarding the minutes of April 7, 2005, Mr. Jack Schrier made a motion to approve, Ms. Tracy Carluccio seconded the motion, all were in favor, APPROVED.

CHAIRMAN'S REPORT:

Mr. Weingart noted that he had nothing new to report and asked if Council members had reports. Since none did, the Chairman then asked Executive Director Zellner to give his report.

EXECUTIVE DIRECTOR'S REPORT:

Mr. Adam Zellner thanked the Highlands staff for setting up the meeting and also Somerset County for providing the facility.

Mr. Zellner then introduced four new staff members to the Council: Ms. Christine Danis, Mr. Chuck Gallagher, Ms. Kim Kaiser, and Ms. Lynn Brass-Smith.

With regard to the Chester office, Mr. Zellner noted that construction projects were being completed and also that installation of the computer server had begun and was going well.

Mr. Zellner noted that the press schedule has been full and thanked Ms. Liz Maziarz for sending press advisories out and for publishing upcoming events on the Highlands Council website.

Mr. Zellner then asked Mr. Tom Borden for a breakdown of the "benefits" abstract which was sent out on April 20th to the public and media.

Mr. Borden referenced the two page abstract outlining provisions of the Highlands Act as to benefits for municipalities in the preservation area as they come into conformance, as well as incentives for planning areas that voluntarily conform.

Mr. Borden noted that a major incentive provided by the Legislature is the legal shield afforded to towns that come into compliance with the Highlands Regional Master Plan.

Mr. Borden said that all decisions towns and counties make regarding ordinances, zoning, master plans, etc., will be afforded enhanced protection and presumption of validity by virtue of conformance with the Regional Master Plan. Regarding legal challenges, Mr. Borden noted that parties attacking site approvals will have difficulty overturning those decisions because they were made pursuant to the Regional Master Plan and are presumed valid.

Mr. Weingart asked whether the state would provide legal assistance with regard to such challenges. Mr. Borden said that the legislation provides that towns can choose to utilize the legal services of the Highlands Council or that of the County.

Mr. Scott Whitenack asked if there was a timeframe for protection. Mr. Borden responded that the Act provides that the Regional Master Plan will be enacted in 2006 and will be modified every 5 years. He noted that towns and counties that stay in conformance with the Regional Master Plan will continue to be protected.

Mr. Borden noted the Legislature set aside funding for grants to municipalities and counties for planning costs and that it is a reimbursement system.

Mr. Borden stated that regarding all 88 Highlands towns, the Act provides that COAH will first look to the Regional Master Plan before they make decisions on COAH obligations.

Mr. Borden added with regard to tax stabilization, he is working on and would be providing a more detailed analysis.

Mr. Zellner then asked Mr. Steve Balzano to give a status report on partnership and master plan development

Mr. Balzano referred to information included in the members' meeting packets which detailed three upcoming partnership meetings, one in each zone of the Highlands region.

Mr. Balzano noted that all three meetings would be from 3:30 to 6:30 pm, the first occurring on May 16th at the Wanaque Academic Center, the second on May 23rd at Warren County Community College, and the third on May 24th at the Frelinghuesen Arboretum in Morris County. He noted that 600 invitations were sent out.

Mr. Balzano said that break out sessions would be held to give municipalities an opportunity to provide input as to what the plan should address. Mr. Balzano said the master plan development timeline provides for a 90 day scoping and due diligence process for obtaining the input from municipalities and counties. The next phase is implementation of the technical advisory committee, which will provide professional, industrial and business representation in development of the plan.

Mr. Zellner thanked Mr. Balzano for his report, and also thanked Mr. Bob Bzik and Mr. Richard Nieuwenhuis for coming to the meeting to give presentations.

Mr. Weingart asked Mr. Zellner for an update on the new website and he replied that progress had been delayed by OIT due to a staffing problem in Trenton.

PUBLIC COMMENT PERIOD:

Mr. Weingart then opened the meeting to the public for comments. He asked that anyone that had documents to offer, to kindly provide them to Mr. Zellner.

Ronald Diana, Mendham Township. Mr. Diana expressed that he believes the Highlands legislation is unconstitutional and that the taking of land is going to be challenged.

Tracy Kate, Frelinghuesen Township. Mr. Kate is the manager of a 180 acre tree farm. He stated that he first obtained a forest management plan in 1978. In 2000, his tree farm was selected as NJ's Outstanding Tree Farm of the Year. Mr. Kate noted that the forestry community hopes the Council utilizes science in protecting water and hopes that foresters are on its committees. Mr. Kate invited the Council to his farm.

Robert Barth, Canal Society of NJ. Mr. Barth noted the importance of the Morris Canal. He stated that three-fourths of the canal is in the Highlands and that it is a crucial connector waterway. He asked that the Council look to preserve the canal. Mr. Barth offered brochures to Mr. Zellner.

Heather Gracie, consultant forester. Ms. Gracie noted that important meetings by the NJ Forestry Association are coming up on May 5th, 10th and June 3rd. Ms. Gracie provided documents outlining the upcoming meetings to Mr. Zellner.

Ms. Letts expressed her appreciation to the speakers in the Forestry Association for their input. Mr. Zellner added that staff has also approached foresters for assistance. Mr. Salovaara noted for the record, as a matter of disclosure, that he employs Heather Gracie and her firm's professional services.

James Kessler, Mansfield Township. Mr. Kessler is a 7th generation farmer who owns 146 acres, and farms fruits and vegetables. Mr. Kessler thought the Highlands Act should be amended as to the Musconetcong Valley because it should be in the preservation area. He also stated that a water tax should be imposed.

Mr. Weingart then asked Mr. Bob Bzik, Director of Somerset County Planning Department to give his presentation.

PRESENTATION (Somerset County Planning Dept):

Mr. Bzik thanked Mr. Zellner for attending the County's planning meeting earlier that week, and noted that Mr. Zellner helped to clear up some misconceptions regarding TDR.

Mr. Bzik then provided a detailed power point presentation. He noted that there are 5 Highlands communities in Somerset County, Bernards, Peapack, Gladstone, Bedminster, and Bernardsville comprising 6% of the total Highlands area.

Mr. Bzik noted that the majority of the Somerset hills region is within the planning area. He stated the area is traversed by the I-287 and 78 corridors. Somerset hills houses some of the State's high priority endangered species.

Mr. Bzik noted that cross-acceptance priorities include protecting rural character, retaining farmland, and preserving historic sites. He stated that a planning priority is resource assessment. New environmental data has been embraced due to the public's awareness of environmental issues, and there has been public support for stream protection, and the protection of water quality and its maintenance.

Mr. Bzik said the exchange of model ordinances has facilitated consistency and that utilizing the planning process as a framework for resolving inter-jurisdictional issues has helped coordinate efforts.

He pointed out that transportation in Somerset hills is a big concern, including truck traffic on Route 206 and the I-78 corridor.

Mr. Bzik said there is strong opposition to growth which exceeds the capacity of infrastructure. He noted that determining baseline conditions is critical and that sewer planning needs to follow, not lead land use planning.

Mr. Bzik noted that fiscal impact should be addressed as part of the planning process and that tax stabilization pilots, tax increment financing etc., will require education and negotiation.

In conclusion, Mr. Bzik noted the importance of consensus building, interagency coordination, land use consistency, and smart growth principles. He thanked the Council for the opportunity to give his presentation.

Ms. Janice Kovach asked if the County will work with a municipality on priorities after cross-acceptance. Mr. Bzik stated the County will continue to work with municipalities throughout the negotiation phase. He noted that after counties receive feedback from the Office of Smart Growth, it will then take that input to the State Planning Commission. Municipalities will be part of the process.

Mr. Weingart asked Mr. Bzik if the Act was accounted for with regard to the growth projections he noted through the year 2015. Mr. Bzik stated that it was not.

Mr. Weingart thanked Mr. Bzik and then asked Mr. Richard Nieuwenhuis, President of the New Jersey Farm Bureau to give his presentation.

PRESENTATION (NJ Farm Bureau):

Mr. Nieuwenhuis thanked the Council for inviting him to speak. He noted that he has been in the agriculture field all his life.

Mr. Nieuwenhuis then introduced two Farm Bureau staffers, Mr. Ed Wengryn and Nicki Goger. Mr. Wengryn and Ms. Goger deal specifically with Highlands Act issues and Ms. Goger attends every Council meeting.

Mr. Nieuwenhuis noted that the Farmland Preservation Program has been successful and that New Jersey is leading the nation for percent of farmland preserved.

He said that New Jersey's farmland is maturing and landowners complain that appraisals and land values are not accurate. Mr. Nieuwenhuis expressed that benefits should be distributed evenly across all facets of farmland preservation.

Mr. Nieuwenhuis stated that people receiving water from the Highlands could pay more for it. He also said that the Farm Bureau embraces the concept of farmland preservation.

He stated that the Farm Bureau has had extensive history with Transfer of Development Rights (TDR). Mr. Nieuwenhuis said that in Burlington County, Chesterfield Township invited the Farm Bureau in for its input in drafting the State TDR bill.

Mr. Nieuwenhuis stated that the Farm Bureau worked with a local group of farmers and landowners in East Amwell Township to combat a 25 acre lot zoning scheme that began in 1998. The Farm Bureau commissioned the preparation of a farmland preservation zoning proposal and presented it to the town. Mr. Nieuwenhuis said that East Amwell abandoned dialogue with the farmers, and adopted a down zoning ordinance and the Farm Bureau subsequently sued the township. The case is pending in the Appellate Division now.

Mr. Nieuwenhuis noted that a major point of the Highlands legislation is the agricultural exemption. The Highlands Act states that agricultural practices and protections under the Right to Farm Act are preserved. Mr. Nieuwenhuis stated that the Right to Farm Act has withstood many court challenges and has remained a viable and effective tool for New Jersey's farming industry.

Mr. Nieuwenhuis pointed out that the most important and emotional area of his constituents is the issue of land owner equity. The reason that the Farm Bureau did not support the final Highlands legislation was because of the lack of a dedicated funding source. He said they provided input regarding their support of a water user tax and also that what the farmers want is the dedicated funding source for the preservation of farmland.

Mr. Nieuwenhuis gave an overview of agriculture in the Highlands and summarized it as very diverse. He offered a copy of a document which noted the public's response to a

Farm Bureau sponsored Dickinson University Public Mind Poll conducted in the fall of 2004, which found that over 80% of the State's population felt that it is important to have New Jersey's agricultural industry as part of its future.

Mr. Nieuwenhuis also offered a copy of the study and plan that the Farm Bureau conducted in East Amwell Township regarding zoning and planning cluster zoning. The Farm Bureau hired a planner to do a study of the effects on land by down zoning. He stated the analysis was done from north to south, and used real life comparisons of what land was worth before and after down zoning.

Mr. Nieuwenhuis thanked the Council for its attention and asked if there were any questions.

Ms. Carluccio thanked Mr. Nieuwenhuis for his presentation, however thought that his representation of the Farm Bureau's involvement over the zoning issues in East Amwell was one-sided. Ms. Carluccio said that the Farm Bureau did not fight a 25 acre zoning. The zoning element was a new valley agricultural zone in East Amwell, and what was adopted by the town was an open lands ratio approach not downzoning which is used in the State Plan. She stated that the documentation from the master plan shows that the master plan element was agriculturally based, and that it did not adversely affect the land owners in East Amwell. East Amwell prevailed in the first legal challenge brought by the Farm Bureau which is on appeal. Ms. Carluccio stated that many residents of East Amwell were dismayed over the Farm Bureau's objection to sound planning in the town.

Mr. Spinelli asked with regard to Highlands Act protection for farmers that choose to go into the Farmland Preservation Program, if there is protection for pre-Act equity so that farmers can borrow funds. Mr. Nieuwenhuis said that First Pioneer Farm Credit, based throughout the State, makes loans to agricultural entities and that the basis for approval of a loan is on cash flow and ability to repay. As an example, he stated that a farmer may own land worth a million dollars, however could have difficulty paying a thousand dollar monthly mortgage. Mr. Nieuwenhuis noted that farm loans are not primarily based on land value but on the capability to make payments.

Mr. Spinelli asked how to preserve the farms of today for the farming industry of tomorrow. Mr. Nieuwenhuis thought that less restriction could enable flexibility in the future.

Mr. Spinelli also asked what incentives would be necessary to encourage farmers to use environmentally friendly methods. Mr. Nieuwenhuis said that through the NRCS, many methods have already been implemented for example, manure management, and noted that most farmers are coming into compliance now. He stated that farmers need a secure funding source to aid them in compliance.

Mr. Schrier asked with regard to farmland preservation, in light of the ever changing nature of farmland in New Jersey, what defines a farm. Mr. Nieuwenhuis noted that farm preservation dollars have saved open space and that the program is maturing. He

said there are current issues that weren't foreseen when the program was created. Mr. Nieuwenhuis personally thought it becomes aesthetics and what should happen is a type of surety bond placed so that if a farm goes out of business, and someone purchases the property, the buildings can be removed. Mr. Schrier noted that equine rules will come out next month.

Ms. Swan thanked Mr. Nieuwenhuis and pointed out that the task force focused on preserving farmlands in the Highlands. She asked what the Farm Bureau thinks about the counties that have shut the door on farmland preservation and have pulled out of the program. The farmers in those counties have been shut out.

Mr. Nieuwenhuis said the Bureau's position is that County funds should be blind to the line and it is wrong for counties to pull funding. The issue needs to be addressed in general as farmland preservation. He noted the Farmland Preservation Program was not intended to be handled that manner, and the Bureau's position unofficially is that County funds need to be used broadly. Ms. Swan asked Mr. Nieuwenhuis to share that with the Bureau. Mr. Nieuwenhuis noted that as a statewide organization, its members don't always share the same view, but that the Farm Bureau would not wish to deny funding.

Mr. Alstede said that he appreciated the agricultural dialog. With regard to Mr. Spinelli's question as to what is in the future for agriculture in New Jersey and Mr. Schrier's comments about new types of agriculture, he pointed out that it is very difficult to predict the future of agriculture. Twenty years ago he couldn't have envisioned what his farm is doing today.

Mr. Alstede noted that New Jersey leads the country in agriculture however things change rapidly. He added that if we inhibit the ability for farmers to change, it will cause the farms to become a burden. Mr. Alstede stressed that the equine industry in New Jersey is now crucial. There used to be 500 dairy farms but that number is now down to 113.

Mr. Nieuwenhuis noted that a bus trip to visit farms throughout the Highlands is being organized and invited everyone interested in seeing the diversity of New Jersey's farms. He again thanked the Council for giving him the opportunity to speak at the meeting.

Mr. Weingart called for a ten minute break at 11:45 a.m., and at 11:55 a.m. he called the meeting back to order. Mr. Weingart stated that next on the agenda is the Natural Resource Committee report. In Mr. Dillingham's absence, Mr. Di Pirro would present the report.

Mr. Weingart reminded that at the last Council meeting in Passaic County, many people spoke about their opposition to the Eagle Ridge townhouse development. Mr. Weingart noted that Mr. Zellner and Mr. Di Pirro have since spoken with Commissioner Campbell to convey the public's concerns and the intensity of their opposition to the project. The DEP understood the concerns and Council staff is currently reviewing the project.

COMMITTEE REPORT (Natural Resource):

Mr. Di Pirro advised that all those who have presented the Council with comments or information on Eagle Ridge, including Skylands Clean and Ella Fillipone, that staff is actively reviewing all data.

As to the status of DEP rules, Mr. Di Pirro explained that the DEP will issue its immediately effective rules on May 5th, 2005 and the rules will be in effect for one year. The Natural Resource Committee will review the rules and bring in technical advisors for their input. The Council will provide input to the DEP. The DEP will then repropose the rules in late summer 2005 and that those rules will go into effect in 2006.

Ms. Letts asked for clarification on the Council's review period of the DEP rules. Mr. Di Pirro noted that on May 5th, 2005, DEP will adopt the immediately effective regulations. Within 45 days from May 5th, the Council will submit its input to the DEP. The rules will then be redrafted and repropose in late summer 2005.

Mr. Weingart noted that once the immediately effective rules are adopted on May 5th, 2005, the Council will then take a position on any changes it thinks should be in the new rules to be adopted in May 2006. Mr. Vetrano asked that the rules the DEP adopts on May 5th, 2005 will remain in effect until May of 2006, and Mr. Weingart confirmed that was correct.

Mr. Salovaara noted that he received a letter from attorneys threatening litigation over Eagle Ridge. Mr. Borden stated that a response letter was being drafted, however an Executive Session could be called to further address the letter. Mr. Weingart confirmed that an Executive Session could be held later. Mr. Weingart then opened a public comment period.

PUBLIC COMMENT PERIOD:

Robert Frey, NJ Farm Bureau; Warren County Board of Agriculture. Mr. Frey said that farmers in the core area feel a vendetta is against them. Farmers who applied for farmland preservation now feel that they will not be allowed to build.

Chuck Forbes, Ringwood. Mr. Forbes owns a commercial property. He said he received local approvals and no DEP approvals were required. The DEP issued a stop work order because he did not get local approvals early enough to qualify as grandfathered under the Highlands Act. He asked if the Act requires him to have gotten legal approval before the grandfather date.

Mr. DiPirro said the Act requires that he does. He asked Mr. Forbes to stay to meet with him or Mr. Ross Mac Donald to go over the specifics of his situation.

Wilma Frey, NJ Conservation Foundation. Ms. Frey was delighted to hear the presentation from the Farm Bureau. She expressed that the majority of loans are based on ability to repay not on property value.

Ms. Letts noted that it would be beneficial for the Council to do more research regarding lending opportunities for farmers.

Mr. Alstede stated that farmers need a viable business plan in place when applying for loans. If the business plan does not support repayment of the loan, equity is the next step. It is not just about cash flow.

Tina Bologna, ANJEC. Ms. Bologna notified that ANJEC is planning a workshop on May 25th at the arboretum in Morris County. She invited the Council and staff to the workshop and offered brochures to Mr. Zellner.

Tom Dallessio, Regional Plan Association. Mr. Dallessio said he appreciated the input of the Farm Bureau. He noted Mr. Bzik's presentation regarding fiscal costs. He asked how to insure investments and maintain them. Mr. Dallessio noted a need to stop the destruction of assets as well as the need for flexibility. He said a plan should be devised to guide what uses should occur on preserved farmland. Mr. Dallessio said he looks forward to working on technical advisory groups.

Mr. Weingart then noted there were no other items on the agenda and that the next meeting will be on May 5th.

At 12:20 p.m. Mr. Salovaara made a motion to go into Executive Session, Ms. Lois Cuccinello seconded the motion, all in favor.

EXECUTIVE SESSION:

At 12:45 p.m. Mr. Weingart called the meeting back to order and noted that in Executive Session the Council addressed how Mr. Salovaara should respond to a letter he received.

ADJOURN:

Mr. Glen Vetrano made a motion to adjourn, Ms. Letts seconded the motion, all in favor, and the meeting adjourned at 12:50 p.m.