

MINUTES

NEW JERSEY HIGHLANDS COUNCIL MEETING OF DECEMBER 15, 2005

PRESENT:

JOHN WEINGART)	CHAIRMAN
KURT ALSTEDE)	COUNCIL MEMBERS
TRACY CARLUCCIO)	
LOIS CUCCINELLO)	
TIM DILLINGHAM)	
JANICE KOVACH)	
MIMI LETTS)	
DEBBIE PASQUARELLI)	
JACK SCHRIER)	
BEN SPINELLI)	
EILEEN SWAN)	
GLEN VETRANO)	
SCOTT WHITENACK)	

ABSENT:

MIKAEL SALOVAARA

The following are the minutes from the New Jersey Highlands Council meeting which was held at 100 North Road, Chester, New Jersey on December 15, 2005 at 10:00 a.m.

CALL TO ORDER:

The Chairman of the Council, Mr. John Weingart, called the twenty-first meeting of the New Jersey Highlands Water Protection and Planning Council to order at 10:10 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.

APPROVAL OF MINUTES (December 1, 2005):

Mr. Weingart asked if there were any comments to the minutes of December 1, 2005. Ms. Lois Cuccinello noted that on page one of the minutes she was erroneously listed as present and asked that she be noted as absent. Mr. Jack Schrier made a motion to approve, Ms. Janice Kovach seconded, Mr. Glen Vetrano and Ms. Lois Cuccinello abstained, all others were in favor, APPROVED.

CHAIRMAN'S REPORT:

Mr. Weingart noted that it was the Highlands Council's one year anniversary. He expressed his appreciation of the time and effort that the public and members have given over the last year, and thanked the public for their input and comments.

Mr. Weingart reported that DEP's proposed Highlands rules had been posted that morning on the Department's website and noted that these rules were being proposed to modify and amend the existing rules. He added that the notice on the website advised that the DEP would hold a public hearing on the proposed rules on January 25th at the Highlands Council's office in Chester and accept written public comments through February 17th. He then asked Mr. Adam Zellner for the Executive Director's report.

EXECUTIVE DIRECTOR'S REPORT:

Mr. Zellner welcomed the students of Waldwick High to the meeting. He noted that Highlands staff met earlier in the week with the counties to discuss the Highlands Regional Master Plan, and will be meeting again to share data. Mr. Zellner advised that the consultants are now working with the counties and making progress.

Mr. Zellner reminded that Ethics Training will need to be completed by the first of the year by all staff and members. He gave personal thanks to the Council members on this one year anniversary for making the past year successful, and also thanked the public and press for attending meetings throughout the year.

Mr. Weingart noted that he would like to switch items 12 and 11 of the agenda, in order to discuss draft plan conformance before voting on the proposed contracts resolutions.

Mr. Weingart then introduced Mr. Ted Opderbeck, head of the Photography Department at Waldwick High School, and the seven students who accompanied him to the meeting to give a DVD presentation highlighting the students' Highlands project.

PRESENTATION – Waldwick High School:

Mr. Opderbeck thanked the Council for inviting them to share their project and thanked the Council for its hard work over the last year. Mr. Opderbeck said 150 students and some teachers participated and created a 2006 New Jersey Highlands calendar which included pictures taken by the children.

Mr. Opderbeck noted that Waldwick High held a Highlands symposium in October which Mr. Zellner attended. He advised that the students made a movie which would be shown to the Council, and that most of the pictures in the movie were taken by his students. The project exposed the students to the ecology of the Highlands, as well as introduced facets of the political forum. Students Katie Gardner and Brittany DeBord introduced themselves, discussed the research they conducted and the photographs they created. It was noted that the DVD will be shown on NJN Channel 8 on January 9th and 14th on the show “Classroom Close-Up”.

Due to technical difficulties, the DVD containing the students’ movie could not be presented to the Council and public. Ms. Cuccinello said it is important that students get involved, and asked if the lesson plan Mr. Opderbeck used could be sent to other high schools. Mr. Opderbeck said the project was funded through grants by the New Jersey Education Association and hopes that it will be done again next year. He advised that he grew up in Hawthorne, and has always had an interest in the issues of New Jersey’s Highlands. Mr. Opderbeck noted that there were about 80 calendars left and that if anyone in the public wanted one, to call or e-mail Ms. Liz Maziarz of the Highlands staff.

Mr. Weingart opened a public comment period.

PUBLIC COMMENT PERIOD:

Jay Grant, Mendham. Mr. Grant is the President of Grant Homes, as well as a member of the New Jersey Builders Association and noted that he was selected by his peers to be Chair of the Highlands Committee. Mr. Grant thanked the Council in their capacity as public servants. He thought that when states control property rights, values are reduced and measures must be taken to balance these consequences. Mr. Grant noted his concern over the Council’s consideration of a process that would allow municipalities to partially opt-in to the Highlands Regional Master Plan. He noted that the Builders Association strongly objects to partial opt-in by municipalities. He requested an opportunity to provide input into the fiscal analysis which the Highlands Council will be conducting. He provided his comments in writing. Mr. Weingart thanked Mr. Grant for attending and said he could speak with Mr. Steve Balzano after the meeting about being involved in the fiscal analysis process.

Eric Stiles, New Jersey Audubon. Mr. Stiles noted that he greatly appreciates the work of the Council and has particular interest in promoting forest health. Mr. Stiles said that the bigger the patch of forest, the more varieties of wildlife you will find therein. He

believes that preservation starts with protecting contiguous forests. Mr. Stiles thanked Mr. Kurt Alstede for the activities he offers on his farm and stated that Audubon . Mr. Stiles offered the Council copies of information on the types of wildlife present in the Highlands.

Council member Pasquarelli then joined the meeting.

David Epstein, Director of Morris Land Conservancy and member of Highlands Coalition. Mr. Epstein said he believes 2005 has been the Highlands' best year to date, and preservation efforts have been very successful with 20 of the 23 projects were in the Highlands constituting over 2,800 acres. Mr. Epstein noted that there are 19 communities in the Highlands which he works with, and that they have a partnership with the North Jersey Water Supply Authority as well. He brought large maps detailing some state parks to the meeting and showed them to the Council. Mr. Epstein said that he believes land acquisition efforts dovetail the work of the Council and thanked them for their work.

Susan Buck, Oxford. Ms. Buck said that she believes the public critics who attend Council meetings are attempting to defend their property rights. She expressed concerns that the Highlands Act limits the rights of property owners. She stated that endless hours of research and constructive comments have been submitted on the issues surrounding the Highlands Act. Ms. Buck noted that she is in favor of preserving the Highlands as best as possible so that land owners are not negatively affected. Mr. Weingart welcomed the comments and criticisms and stated that since the Council has not proposed nor adopted the Regional Master Plan yet, the Council will continue to solicit public input.

COMMITTEE REPORTS:

Mr. Weingart reported on the **Plan Development Committee** which met most recently on December 8th to focus on the Highlands Regional Master Plan conformance process. The committee discussed the process for towns in the preservation area to bring their ordinances and plans into conformance with the Highlands Regional Master Plan once it is adopted in June 2006, and it also discussed the possibilities for towns in planning areas that choose to conform to the plan. The committee recommended to the Council the development of a framework which would establish that resource protection standards would generally be required and growth inducing measures would generally be discretionary.

Mr. Weingart noted that the committee also discussed the question of whether towns in the Planning Area should be allowed to opt-in to the Regional Master Plan for only a portion of the geographic boundaries of the municipality and concluded that it should, although one committee member disagreed. Mr. Weingart added that staff had drafted a resolution to address this issue to provide the framework for opting-in by municipalities. He asked Mr. Tom Borden to present the resolution to the Council for vote.

CONSIDERATION OF RESOLUTION REGARDING DRAFT PLAN CONFORMANCE PROCESS (voting matter with public comment):

Mr. Borden noted that there was a public input process regarding these issues through the October partnership meetings with municipal and county officials and various letters were also submitted on these issues. Mr. Borden read the draft resolution aloud to the Council and public which outlined a process for municipalities when opting-in to the Highlands Regional Master Plan. He noted that for towns to come into conformance with the plan, preservation standards will be required and growth recommendations will be discretionary. Mr. Borden noted that all members of the Committee except one were in favor of the entire town opt-in requirement. Mr. Borden advised that staff crafted the draft resolution also provided a process for municipalities to seek limited exceptions during Plan Conformance.

Mr. Schrier made a motion to approve, Ms. Swan seconded the motion. Mr. Weingart asked for public comment.

Monique Purcell, Department of Agriculture. Ms. Purcell stated that she agrees with the requirement that the entire municipality opt-in to the Highlands Regional Master Plan as to preservation standards, but stated that she thought the growth standards should also be mandatory. She added that changing land use practices on the ground is important, and that fragmented growth patterns do not support and interfere with the intent of the Highlands Act. Ms. Purcell said that if the Highlands Regional Master Plan identifies an area where growth should occur, but the town only opts into the preservation standards and not the growth, that the town is not really in conformance with the plan.

Mr. Spinelli noted that he does not believe the Council should require that towns accept maximum permissible growth or “ceilings” for growth but instead should leave towns control over how much they wish to grow. Ms. Purcell said that if the master plan recommends growth for a town, then it should grow in order to be considered in conformance with the plan. Ms. Pasquarelli emphasized that the Highlands Act does not mandate growth and that the Act specifically creates a voluntary process to accept additional growth. Mr. Alstede raised concerns over protection of the equity for lands in the Preservation Area and the impact on the TDR program where growth increases are discretionary. Mr. Dillingham asked whether the Department of Agriculture’s concerns were based upon TDR specifically or growth in general. Ms. Purcell stated that the concerns were based on both issues.

Jay Grant, Mendham. Mr. Grant, representing the New Jersey Builders Association, said he would like details regarding the second part of subparagraph e) of the resolution as to limited exceptions, adjustments or revisions. [DIDN’T HE HAVE A LITTLE MORE SUBSTANCE TO HIS COMMENTS?] Mr. Weingart said that will be addressed in the discussion by the full Council.

Wilma Frey, Highlands Coalition. Ms. Frey noted that the Coalition sent the Council a letter with its comments regarding partial opt-in. The letter states that the Coalition supports the provision that opt-in should be for the entire municipality and not partial. She noted they also support the Highlands Regional Master Plan being “blind to the line.”

In addition, the Highlands Coalition suggested that design standards should be required to ensure proper planning where growth does occur. The Highlands Coalition's letter was provided to the members and public.

Gabi Grunstern, representing the New Jersey Farm Bureau. Mr. Grunstern supported Mr. Alstede's comments regarding giving adequate attention to the effects on TDR receiving areas.

Tom Dallessio. Mr. Dallessio advised RPA was pleased to join in the letter provided by the Highlands Coalition to the Council. He supported the need for proper design standards as a required element of Plan Conformance. In addition, the Plan should include details on growth and population projections.

Ms. Letts stated that certain municipalities have sensitive environmental resources and that these areas need to be identified in the Regional master Plan.

Susan Buck, Oxford. Ms. Buck said that significant down zoning could occur in municipalities that decide to opt-in. She is concerned over financial impacts with such down zoning.

No further comments on the resolution were received from the public and the Highlands Council began to discuss the resolution.

Mr. Schrier noted he was the only "no" vote on the committee discussion of the issue of partial opt-in to whom Mr. Weingart had referred.. He stated that the Plan Conformance issue for the Planning Area municipalities is a crucial issues and the interpretation of this issue Act is a decision the Highlands Council must make. He said that of the 88 Highlands municipalities, 47 are partially in both the Preservation Area and Planning Area.

Various Council members expressed support to ensure that the Plan would reflect the sensitive areas in both the Preservation and Planning Areas. Mr. Schrier expressed concern that requiring complete geographic conformance with a process to raise exceptions. He stated that he worked with the staff to address his concerns and that this draft of the resolution is the best solution at this time and that he would support it.

Ms. Swan said without the Plan being complete, it is very difficult to know opting-in to "what" since it is not known what the plan is yet. She notes that the resolution states throughout that it is a draft which allows the staff to proceed with what is known at the present time. Mr. Weingart noted that section e) of the resolution states that towns must opt-in fully, but affords opportunity to the town to address certain portions of the town differently.

Mr. Dillingham stated that a regional approach should be promoted and noted that towns possess the ability to adopt special zoning requirements for areas that they deem sensitive. He stressed the need to have a holistic approach to regional planning and

suggested that the use of the term “or alternative approaches” would undermine regional planning and should be deleted from subparagraph e) line 6. Ms. Carluccio seconded the amendment. Mr. Schrier suggested that the whole sentence should be taken out. Ms. Letts proposes another whereas clause since we are being asked to approve a resolution about a plan which is not done yet, that it state therein. Mr. Alstede stated that this resolution sets forth a process and does not want to get caught up in what the plan will be and that he is in favor of complete opt in and should provide a process to allow municipalities to raise issues and corrections where appropriate rather than alternative approached.

Mr. Dillingham expressed concern over alternative approaches would open the door from the first round of our process and invite arguments. Mr. Schrier supports more flexibility for municipalities in the Plan Conformance process. He expressed concern that deleting provisions for more municipal control would not allow him to support the resolution. Ms. Carluccio stated she says she supported the approach because we are dealing with so many unknowns and we are dealing with the fear of what opting in will mean.

Mr. Weingart suggested two whereas clauses stating that the Highlands Master Plan will be based on environmental suitability and that there would be a process for petitions to make changes to the Plan. Mr. Schrier supported the resolution as originally drafted. Ms. Pasquarelli sought an explanation from staff on the drafting of the resolution.

Mr. Balzano states that this is guidance to staff and that further details will be developed according to the Council’s direction. Protection of water resources for this and future generations requires a regional approach and therefore existing municipal ordinances are fragmented at present and that partial Plan Conformance would only promote this fragmented approach. Mr. Balzano stated that it would be much easier for the Council if the Highlands Act had stated that growth areas which are identified be mandatory but the language supports the discretionary approach. Given the voluntary nature of the Act, the Council needs to take advantage of the opportunity to make opting-in as attractive as possible. The approach for required and discretionary standards recognizes the need to protect resources and provide flexibility for growth standards. The flexibility for alternative approaches would provide a mechanism to correct mapping errors and allow for innovative approaches to meeting the goals of the Regional Master Plan.

Mr. Schrier thanked him for his clarification and said he would support the resolution as it was presented. He wants the Council to succeed and is hoping the process come before the Council in the future for adjustments. Mr. Alstede stated that the Highlands Act itself provides that the framework. Mr. Weingart spoke against Mr. Dillingham’s amendment and supported the concept of alternative approaches.

The Council discussed Mr. Dillingham’s amendment to delete the term alternative approaches. Mr. Alstede said the resolution should reflect the act and Mr. Borden stated that the Plan Conformance process in the act is broad and that the Highlands Council needs to provide a more detailed process. Mr. Dillingham stressed that he doesn’t want to create loopholes for towns to object to the 300 foot buffers and therefore the council

will have to deal with innumerable requests for changes. Mr. Balzano stated that by excluding the phrase it does not change the intent of the resolution.

Mr. Zellner stated that staff needs guidance to move ahead and Mr. Vetrano stated that he agrees and that we can revisit this and that the word voluntary is very important and towns need to have the ability and leeway in opting in. He supports the resolution in its original form. Mr. Spinelli stated that he was under the impression that the need for this language was inspired by towns who have expressed the existence of parcels within the towns who will want to petition the council to add just those areas to the preservation standards of the regional master plan. He want to get as many towns as possible to opt in and if towns withhold opting in just because of one or two parcels, we want to alleviate those concerns. Ms. Cuccinello stated that she supports eliminating the phrase because she doesn't want the Council to create a loophole. Ms. Pasquarelli echoed that point and expressed the need for such a resolution to avoid opening a "Pandora's box" even though she supports preservation of home rule. She also stressed the need to provide more clarity regarding the issue of opting into the Regional Plan making it clear that municipalities do not opt into the Preservation Area standards.

Mr. Weingart called the question and asked for a vote on Mr. Dillingham's amendment. Nine were in favor of the amendment and Mr. Vetrano, Ms. Letts, Mr. Schrier and Mr. Weingart were opposed.

Mr. Alstede questioned the discretionary approach given the language in the Act regarding TDR receiving areas and the benefits for Plan Conformance. Mr. Borden stressed the language in the Act that TDR areas and recommendations and the Act provides incentive and substantial funding to encourage smart growth. However, the Highlands Act does not include provisions to mandate growth. Mr. Schrier continues to maintain that the Council is sending the wrong message to towns. Mr. Alstede wants to be sure there is ample funding for the TDR bank to ensure the protection of landowner equity. Mr. Zellner stated that the Legislature recognized that there will be a need to support and incentivize anticipated growth.

Ms. Carluccio suggested an amend subparagraph e), to add after the word however, "the highlands council will consider a provision.... allowing...". This would give the Council time to consider the issue. Ms. Swan seconded the motion. Mr. Schrier suggested a time frame and Mr. Weingart suggested that the staff will be drafting the Plan Conformance process.

Ten were in favor of the amendment and Mr. Vetrano, Mr. Alstede, and Mr. Schrier were opposed. Mr. Alstede wants an h) added: he wants to be cognizant of what the next steps are to get funding for TDR but decided not to make a formal motion to add this.

Mr. Weingart stated that this is for guidance only as to regional plan conformance process. Ms. Carluccio stated that there is a typo under 2a the word should be profession.

The Resolution was put to a vote and ten members voted to approve and three voted to reject, Mr. Vetrano, Ms. Letts, and Mr. Schrier, APPROVED.

Thereafter, Ms. Swan and Mr. Dillingham left to attend other meetings.

CONSIDERATION OF RESOLUTIONS TO APPROVE CONTRACTS WITH THE HIGHLANDS COUNCIL TO DEVELOP THE REGIONAL MASTER PLAN (voting matters with public comment):

Mr. Balzano advised that the Plan Development Committee recommends to the Council approval of the resolution to enter into contract with **Integra Realty Resources** for the production of a TDR valuation system in the amount of \$74,825. Under this contract, Integra will identify both sending and receiving area credit valuations.

Ms. Cuccinello made a motion to approve, Mr. Vetrano seconded. Mr. Weingart asked if anyone wished to comment.

Mr. Schrier asked how many bidders responded to the posting, and Mr. Balzano replied that two responses received were qualified. Integra was chosen because it has extensive private sector experience, which will be especially helpful to identify receiving area values since that area is key to the TDR program.

Ms. Pasquarelli, Chair of the **Budget and Finance Committee** reported that the committee met on December 1st and reviewed the Plan Development budget. She noted that the budget is summarized and contained in the members' meeting packets along with the meeting chair report. Ms. Pasquarelli noted that sufficient funds are available for all contracts under consideration, and that the Budget and Finance committee joins the Plan Development Committee in its recommendation to approve.

Mr. David Shope asked if the product by Integra will provide the number of TDR credits allocated, and the number of TDR credits which will need to be purchased. Mr. Balzano said the credit value potential of individual TDR receiving approvals will be provided and that the fiscal impact analysis will address the amounts of money needed to address land acquisition goals.

Ms. Letts asked about credit values in areas that are not in the Highlands. Mr. Balzano noted that a method will be addressed in this contract for the staff to initiate the process.

No further comments or questions were received and on the prior motion made and seconded, all were in favor, APPROVED.

Mr. Balzano noted that the next resolution was for contract with the **Center for Urban Policy Research with Rutgers (CUPR)** to complete work for the financial impact element of the Highlands Regional Master Plan. The recommendation from both the Plan Development Committee and Budget and Finance Committee is to adopt the resolution

which allows entering into contract with CUPR for an amount not to exceed \$49,000. No comments were received from the public or Council on the resolution.

Ms. Kovach made a motion to approve, Mr. Vetrano seconded, all were in favor, APPROVED.

Mr. Balzano advised that the next resolution for the Council's consideration was for contract with **Vertices, LLC** for production of data management services in the amount of \$10,000. Mr. Balzano noted that the contract is a task order agreement where Vertices will assist staff in the management of large amounts of data. The two committees and staff recommend the Council's approval of the resolution. Mr. Balzano noted that the agreement is incremental in scope and there may be a need in the future to amend the contract if more work is necessary. No comments were received from the public or Council on the resolution.

Ms. Cuccinello made a motion to approve, Ms. Kovach seconded, all were in favor, APPROVED.

Mr. Balzano noted that the next resolution for the Council's consideration was for amended contract with **Fountains Spatial Inc.** (formerly known as Applied GIS, Inc.). This resolution provides for the amendment to the previous contract for an amount not to exceed \$50,000 which would make the total contract amount not to exceed \$178,000 for production of supplemental GIS data development services. Mr. Balzano noted both committees and staff recommend Council approval. He noted that this contract was also incremental, and may need revision in the future if more work is necessary. No comments were received from the public or Council on the resolution.

Ms. Cuccinello made a motion to approve, Ms. Letts seconded, all were in favor, APPROVED.

CONSIDERATION OF RESOLUTION ADOPTING 2006 HIGHLANDS COUNCIL MEETING SCHEDULE (voting matter with public comment):

Mr. Weingart turned the Council's attention to Item 13 of the meeting agenda, the proposed 2006 Highlands Council meeting schedule. He noted that in 2005 the Council met 20, and that the 2006 schedule calls for 24 meetings in with 2/3 of the meetings at 10:00 a.m. and the other 1/3 at 4:00 p.m. Mr. Weingart advised that if necessary, the schedule could be changed in the future.

Mr. Vetrano made a motion to approve, Ms. Letts seconded. Mr. Alstede asked if the February 16th meeting could be changed to February 23rd. Mr. Vetrano and Ms. Letts accepted the requested revision, all were in favor, APPROVED.

Mr. Weingart noted that in January the Council's meetings will focus in further detail on the Highlands Regional Master Plan process. He asked Mr. Balzano to introduce the next resolution for the Council's consideration.

CONSIDERATION OF RESOLUTION REGARDING GRANTS TO MUNICIPALITIES AND COUNTIES (voting matter):

Mr. Balzano identified that the resolution contained two grants for the Council's consideration. He noted that this resolution is a continuation of what the Council has already been doing to provide towns with planning assistance grants.

The first grant goes to Liberty Township in the amount of \$7,500 to assist with COAH third round obligations.

The second grant goes to Prospect Park Borough in Passaic County for MP3 TDR pilot project in the amount of \$42,500.

No comments were received from the public or Council on the resolution.

Ms. Pasquarelli made a motion to approve, Ms. Kovach seconded, all were in favor, APPROVED.

PUBLIC COMMENT PERIOD:

David Shope, Long Valley. Mr. Shope read a portion of the first page of the Highlands Act which says that preservation of agricultural lands in New Jersey needs to be done but it doesn't say how that will be achieved. Mr. Shope states that farmers need to know how they can make money on their land when the state economy doesn't support the possibility.

Debra Post, Chester. Ms. Post brought written comments and read them aloud to the Council and public. She stated that she attends Council meetings as an act of protest against the taking of land by the government. She noted that she feels the accumulated net worth of property owners has been stolen by the government. She referred to past Council meetings where representatives from the Pinelands and Meadowlands offered information that proved the residents of both regions have not been compensated after many years. She recommended that the Council affirm that the Highlands Act has caused a loss of land value to land owners. She provided her written comments to the Council.

Mr. Weingart then noted the next meeting will be at 10:00 on January 5, 2006 at the Chester office.

ADJOURN:

Mr. Schrier made a motion to adjourn, Ms. Kovach seconded, all were in favor, and the meeting ADJOURNED at 1:30 p.m.