

New Jersey Freshwater Wetlands Mitigation Council Meeting

February 9, 2016

9:30 a.m.

A regular meeting of the Wetlands Mitigation Council was held on February 9, 2016 at the New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2nd floor, Trenton New Jersey at 9:30 am.

COUNCIL MEMBERS PRESENT: Claudia Rocca, Patricia Burns, David Roth and Susan Lockwood.

STAFF MEMBERS PRESENT: Jill Aspinwall, DAG John Doyle, and Regina L. Kukola

Meeting called to order

Claudia Rocca called the meeting to order, read the Sunshine Law statement and stated that public notice for this meeting was given on January 22, 2016 to the Secretary of the State's office and written notice was sent to the following newspapers; The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press.

Review and approval of the December 8, 2015 Council meeting minutes.

Ms. Jill Aspinwall informed the Council that Ms. Susan Lockwood submitted editorial comments, which were distributed to the Council yesterday. Ms. Aspinwall asked Ms. Lockwood to outline the edits with the Council.

After Ms. Lockwood reviewed the edits she made, Ms. Claudia Rocca motioned to approve the December 8, 2015 meeting minutes.

Ms. Lockwood seconded to approve the December 8, 2015 meeting minutes.

All present voted in favor.

Update on the Mitigation Fund.

Ms. Aspinwall stated that as of December 31, 2015, the balance of the Mitigation Fund was **\$6,811,998.84**. There were three expenditures since the last report: Lenape (\$430,740.17), Thompson Park (\$545,499.87), and Quakertown Preserve (\$7,760.66). Ms. Aspinwall stated that the Lenape and Thompson Park expenditures were large because those projects have received their permits and are moving towards construction. Quakertown Preserve's expenditure includes two payments made for monitoring activities. There are a total of 12 Outstanding Approved Projects with remaining balances: Walnut Brook (\$4,455.00), Cadwalader Park (\$8,640.00), Quakertown Preserve (\$17,377.27), Lake Hudsonia (\$350,000.00), Lenape (\$164,329.69), Skillman Park (\$40,000), Kittatinny (\$1,967,000.00), Pin Oak (\$1,388,769.58), Thompson Park (\$162,230.88), Jamesburg (\$430,836.24), Deep Run Preserve (\$505,240.37), and Bloomfield Township (\$1,755,746.67). The total of allocated funds for these projects is **\$6,794,625.70**, which brings the new fund balance to **\$17,373.14**.

Ms. Lockwood asked if the upcoming contribution for the Carteret Waterfront Marina would be reflected on the Mitigation Fund update in future meetings. Ms. Aspinwall responded that because the Carteret contribution is being received under the new In-Lieu-Fee instrument, future Mitigation Fund updates will include two tables: one table tracking projects approved and funds received before the implementation of the In-Lieu-Fee instrument and one table tracking projects approved and funds received after the implementation of the In-Lieu-Fee instrument.

Old Business

Review of a resolution memorializing the Council's decision to approve a monetary contribution in the amount of \$765,325.00 for NJDEP Permit # 1201-05-0004.2, Carteret Waterfront Marina, Borough of Carteret, Middlesex County.

Ms. Lockwood motioned to approve the Resolution.

Ms. Burns seconded the motion to approve the Resolution.

All present voted in favor.

Mr. Mark Renna asked if the Council was accepting public comment and Ms. Rocca stated that the Council would hear public comment.

Mr. Renna referenced the clause in the resolution that states that "there are no other approved wetland mitigation banks servicing the applicable watershed management area", and informed the Council that there is a tidal mitigation bank that serves a portion of WMA 7. In addition, Mr. Renna stated that the amount of the contribution was insufficient and that he did not foresee the contribution being used on an in-kind mitigation project to create or enhance intertidal subtidal shallows in WMA 7.

Ms. Lockwood asked what bank Mr. Renna was referring to, and Mr. Renna responded that MRI-3 Mitigation Bank serves portions of WMA 7. He explained to the Council that tidal mitigation banks are driven by HUCs rather than WMAs, and determined by interagency review teams co-chaired by the Army Corps and NJDEP.

Ms. Lockwood clarified that the MRI-3 Mitigation Bank serves a portion of WMA 7 that does not include the Carteret Waterfront Marina project site. She suggested that future resolutions should read that there is no mitigation bank covering the area of the project site. Ms. Aspinwall responded that at the meeting it was stated that there were no mitigation banks servicing the applicable watershed management area, so the resolution was an accurate depiction of what transpired during the meeting. Ms. Aspinwall agreed that better clarification could be provided in the future.

Review of a resolution memorializing the Council's decision to approve the use \$13,248.83 of the approved Cadwalader Park Ecological Restoration budget to remove and dispose of a perimeter fence, City of Trenton, Mercer County.

Ms. Lockwood motioned to approve the Resolution.

Ms. Burns seconded the motion to approve the Resolution.

Ms. Rocca asked for clarification explaining why the resolution approved the use of \$13,248.83, while the update on the Mitigation Fund lists Cadwalader Park's remaining balance as \$8,640.00. Ms. Aspinwall explained that the prior Council which approved the grant for this project authorized two advance payments in 2009 and 2010 totaling \$51,360.00 to the City of Trenton. The \$13,248.83 request amount includes an amount of \$4,608.83 already paid to the City of Trenton that was not able to be accounted for because D&R Greenway completed the monitoring, but utilized other grant funds to complete the project. Ms. Aspinwall informed the Council that if the City of Trenton spends less than \$4,608.83 on the removal of the perimeter fence and installation of interpretative signage, then the City of Trenton will owe the Council any remaining balance. Ms. Aspinwall also stated that no additional funds will be released to the City of Trenton until they document expenditures totaling the sum of the advance payments made in 2009 and 2010.

Ms. Rocca asked if there were any public comments on the resolution and none were made.

All present voted in favor.

New Business

Ms. Rocca stated that there were no New Business items on the agenda.

Public Comment

Ms. Rocca asked if there was any additional public comment.

Mr. Renna asked if all Council members currently present would be attending the next meeting. Ms. Patti Burns responded that she would be resigning from the Council to pursue other opportunities, and will not be present at future meetings. Mr. Renna thanked her for her service and asked if future meetings will have a quorum. Ms. Burns responded that she will be available to call into meetings if needed until June 2016.

ADJOURNMENT: Ms. Claudia Rocca motioned to adjourn the meeting. Mr. David Roth seconded the motion. All present voted in favor of adjourning the meeting.

The next meeting date has tentatively scheduled for April 12, 2016.

New Jersey Freshwater Wetlands Mitigation Council Meeting

April 12, 2016

9:41 a.m.

A regular meeting of the Wetlands Mitigation Council was held on April 12, 2016, at the New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2nd floor, Trenton New Jersey at 9:41 am.

COUNCIL MEMBERS PRESENT: Claudia Rocca, Robert Tucker, David Roth, and Susan Lockwood.

STAFF MEMBERS PRESENT: DAG Jill Denyes, Anika Andrews-Spilman, Ana Incollingo

Meeting called to order

Claudia Rocca called the meeting to order, and stated that public notice for this meeting was given to the Secretary of State's office and written notice was sent to the following newspapers: The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press.

Review and approval of the February 9, 2016 Council meeting minutes.

Ms. Susan Lockwood motioned to approve the February 9, 2016 Council meeting minutes.

Mr. David Roth seconded the motion to approve the February 9, 2016 Council meeting minutes.

Ms. Claudia Rocca and Mr. Robert Tucker voted in favor of approving the February 9, 2016 minutes.

Mr. Mark Renna of Evergreen Environmental asked if the minutes could be approved by a member of the Council who wasn't present for the meeting, referring to Mr. Robert Tucker's vote in favor.

DAG Jill Denyes stated that she would have to follow up on his question. She suggested having former Council member Patricia Burns provide a written approval of the February 9, 2016 Council meeting minutes.

Approval of the minutes is pending.

Update on the Mitigation Fund.

Ms. Andrews-Spilman stated that as of February 29, 2016, the Mitigation Fund balance is \$6,819,307.97.

There were no expenditures since the last report. There are a total of 12 outstanding approved projects with remaining balances: Walnut Brook (\$4,455), Cadwalader Park (\$8,640), Quakertown Preserve (\$17,377.27), Lake Hudsonia (\$350,000), Lenape (\$164,329.69), Skillman Park (\$40,000), Kittatinny (\$1,967,700), Pin Oak (\$1,388,769.58), Thompson Park (\$162, 230.88)

Jamesburg (\$430,836.24), Deep Run Preserve (\$505,240.37), and Bloomfield Township (\$1,755,746.67). Total Amount of Funds Allocated: \$6,794,625.70. New Balance: \$24,682.27.

Ms. Lockwood stated that there was a contribution from Carteret of \$765,325.00 that should be reflected in the fund balance.

The Council discussed when the next solicitation of bids may go out. There was no decision at this time.

Presentation by Nancy Makofka of Makofka Environmental Consulting on a proposed monetary contribution by Umberto Rescinio in the amount of \$8,322.00 for NJDEP Permit 1338-02-0017.1 FWW 060001, Borough of Oceanport, Monmouth County.

Ms. Makofka stated that Mr. Rescinio obtained a Freshwater Wetlands Individual Permit in 2006 to build a single family home on property he purchased in 1968, and for improvements to Ithaca Avenue which serves as access to the home. The permit required a monetary contribution to the Council as mitigation for 0.219 acres of impacts on Freshwater Wetlands. At the time there were no mitigation banks available in the area. The permit states that if a bank became available in the future, the mitigation requirement could be met by the purchase of bank credits. Due to a downturn in the economy, Mr. Rescinio did not proceed with construction on the project at the time. In 2011 Mr. Rescinio applied for an extension of the permit which DEP granted. The permit extension expires in August 2016.

Ms. Makofka stated that the cost for the required credits to satisfy the mitigation would be \$87,600.00 which would be an economic hardship for Mr. Rescinio. Mr. Rescinio therefore requests that the Council approve a contribution of \$8,322.00 instead.

Mr. Roth suggested minimizing impacts by reducing in the width of the driveway. Ms. Makofka explained that the current plan does already represent minimization of impacts from the original design proposed.

Ms. Andrews-Spilman stated that as it was mentioned previously, Mr. Rescinio received the Individual permit in the amount of 0.219 acres impacts of freshwater wetlands in order to construct a single family dwelling. At the time of the original permit there were no mitigation banks available and therefore DEP required a monetary contribution to mitigate for disturbance to wetlands. At the time the permit was issued, the Council accepted monetary contributions for single family homeowners in the amount of \$28,000 per acre regardless of whether the permit was a general permit or individual permit. Based on that policy, Mr. Rescinio proposed his contribution at the current single-family contribution rate of \$38,000.00 per acre. The permit conditions stated that if credits from a wetland mitigation bank did become available, purchase of credits would become an option to satisfy the mitigation requirements. Ms. Andrews-Spilman stated that the Manasquan bank currently has credits available for purchase. The cost quoted to Mr. Rescinio for the required credits was \$87,600.00, which he represented to the Department was not a feasible option. Mr. Rescinio proposed to make a monetary contribution in the amount of \$8,322.00 based on the current single family homeowner contribution rate for a FWPA general permit.

Dr. Robert Tucker motioned to accept the monetary contribution.

Ms. Susan Lockwood seconded the motion to accept the monetary contribution.

Mr. Mark Renna opposed the monetary contribution and commented that it violated the Freshwater Wetlands Protection Act, because the single family homeowner contribution is allowed for general permits only and that “smaller disturbances” should be directed to mitigation banks. Mr. Renna requested that there be a means test to determine if an “economic hardship” actually exist and expressed that there is no clear definition of who is subject to the single family homeowner rate. He stated that the amount of money collected will not replace wetlands lost. He requested that the monetary contribution be rejected or tabled.

Mr. Roth asked if a smaller driveway footprint was applied for originally. Ms. Makofka responded that they had proposed a narrower driveway, but that the town required that the driveway be a certain width for safety reasons, in order to provide access for emergency vehicles. Mr. Rescinio said that the town planning board agreed to the 21-foot gravel road. DEP had agreed at the time of the permit issuance that it was needed.

Mr. Roth asked about the purchase price of the property in 1968. Mr. Rescinio responded that it was \$4,500.00.

DAG Denyes stated that Mr. Rescinio received approval for permit extension which extends the terms and conditions of the original permit. DEP considered minimization during the application process. At the time that the permit was issued, the Council had a resolution in place that allowed single family home owner under an IP to make contribution under 28,000.00 which could be considered to be extended condition of the permit.

Ms. Rocca stated the Department had reviewed the project in detail as well as potential alternatives and DEP considered financial aspects during the permit review process. Ms. Rocca stated that a homeowner should not be at fault for poor guidance in the regulations for the single family home owners.

Mr. Damian Holynskyj, from GreenVest asked for an explanation of the single family homeowner exception.

Ms. Lockwood responded that considerations include: is it a single family lot, is it the only one, how long was owned, was this lot owned before the Freshwater Wetlands Protection Act and the Federal Wetland Act. Ms. Lockwood explained how the exception would apply to a single family lot based on these considerations. Ms. Lockwood and Mr. Holynskyj discussed the regulatory basis for the single family homeowner rate. Ms. Lockwood explained the history of the contribution amount and the distinction between general permit mitigation requirements and individual permit mitigation requirements. She expressed that the property owner must be allowed to have fair use of the lot.

Mr. Holynskyj stated that having a separate rate for single family homes undermines the concept of no net loss.

Mr. Roth, Ms. Makofka, and Mr. Rescinio discussed Mr. Rescinio’s financial investment in the property, including property taxes, and his efforts to sell the lot.

The Council discussed their role and how they are affected by the Freshwater Wetlands Protection Act Rules and the single family homeowner contribution process.

Mr. Roth questioned the financial details of Mr. Rescinio's purchase and investment in the property.

A Roll call vote was taken:

Mr. David Roth yes

Ms. Claudia Rocca yes

Ms. Susan Lockwood yes

Mr. Robert Tucker yes

The Motion passed.

Mr. Renna reiterated his previous comments opposing the monetary contribution. He asserted that the Council did not protect wetlands because the monetary contribution does not appropriately compensate for the loss of wetlands.

Mr. Holynskyj suggested an increase in the monetary contribution and a clearer demonstration of financial hardship.

Mr. Roth disagreed with the idea of treating single family homeowners who purchased their land prior to the Freshwater Wetlands Act differently than other property owners.

Mr. Renna discussed the difficulties in establishing a mitigation bank.

Mr. Holynskyj echoed Mr. Roth's comments.

Ms. Lockwood explained the Council's establishment of a single family homeowner rate.

Mr. Renna and Ms. Lockwood discussed how no net loss may be achieved under the current structure.

Mr. Renna and the Council continued to discuss the collection and use of monetary contributions by the Council.

Mr. Roth suggested that the rules be changed to clarify and improve the process. Dr. Tucker agreed and expressed the need for more detail to demonstrate economic hardship. Ms. Lockwood asked those who have an idea to please provide their ideas to her and Jill Aspinwall as they work on revising the Freshwater Wetlands Protection Act rules. The Council and Mr. Renna continued to discuss mitigation regulations, procedures, and difficulties. Mr. Holynskyj reiterated the need for clarity in the rules and expressed the need for citizens to know that mitigation will be commensurate with impacts.

ADJOURNMENT: Mr. David Roth motioned to adjourn the meeting.

Mr. Robert Tucker seconded the motion.

All present voted in favor of adjourning the meeting.

The next meeting date is tentatively scheduled for June 14, 2016.