

**New Jersey Wetlands Mitigation Council
Summary of February 10, 2015 Meeting**

A regular meeting of the Wetlands Mitigation Council was held on February 10, 2015 at The New Jersey Department of Environmental Protection, Hudson Room, 501 East State Street, 2nd floor, Trenton, New Jersey at 9:30 a.m.

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

COUNCIL MEMBER ABSENT: Dr. Robert Tucker

STAFF MEMBERS PRESENT: DAG Jill Denyes, Diane Dow, Natalie Young and Ana Incollingo

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 provided on January 23, 2015 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, 2014 Council meeting summary.

Ms. Susan Lockwood motioned to approve the minutes.

Ms. Patricia Burns seconded the motion.

All present voted in favor.

Update on the Mitigation Fund.

Ms. Natalie Young stated that as of December 31, 2014 the balance of the fund is \$8,215,451.70. The total amount of funds outstanding in approved projects is \$6,399,059.53. There were two expenditures in the months of November and December including \$126,000.00 to the Kittatinny Kenco project and \$930.00 to the Quakertown Preserve Project. The resulting new balance of the Wetland Mitigation Fund is \$1,816,392.17. This update does not subtract funds that may be allocated to projects that have received conceptual approval, but that have not submitted final proposal's for review.

Review and approval of a resolution memorializing the Council's decision to not approve a proposed monetary contribution from Francisco Salas in the amount of \$3,534.00 for impacts to 0.093 acres of freshwater and coastal wetland impacts as a condition of a stipulation of settlement.

Ms. Susan Lockwood motioned to approve the resolution.

Mr. David Roth seconded the motion.

All present voted in favor.

Review and approval of a resolution memorializing the Council's decision to approve the In-Lieu Fee Instrument for the State of New Jersey.

Ms. Susan Lockwood motioned to approve the resolution.

Ms. Claudia Rocca seconded the motion.

All present voted in favor.

Discussion of the change in the balance of the mitigation fund

Ms. Susan Lockwood discussed the change in the mitigation fund from a negative balance to a positive amount.

Diane Dow explained that the reason for the positive amount in the fund is because in the past the amount of funding for conceptual approvals has been subtracted from the balance. Even though conceptual approvals are not commitments for funding, the projected amount subtracted as a way to keep track of these conceptual projects that may be presented to the council in the future for final approval.

Public Comment

Mr. Andy Strauss, Bloomfield Township Planning Consultant, asked to discuss the In-Lieu Fee document and the new process in regards to the Bloomfield Township creation and enhancement project. He presented a letter to the Council that he received on January 21, 2015 from Ms. Jill Aspinwall, NJDEP.

The letter to Mr. Strauss stated that the Council approved the ILF document at the December 8th, 2014 meeting and that in accordance with the ILF document that the Council's procedures for reviewing grant proposals had changed. Specifically the letter explained that the Council would put forth a RFP on an annual basis.

Mr. Andy Strauss stated that the Township paid a lot of money to keep this project going and to get the property for this project.

Mr. Nick Joanow, Bloomfield Councilman, stated that he was concerned that this decision would cause a hardship for the township. He explained that they put a lot of time, money, and effort into the project including spending \$10 million on the property. He believes that stalling the project any further will cause a negative view from the community and asked the council to reconsider hearing the final proposal.

Mr. Ted Ehrenburg, Bloomfield Township Administrator, stated that this property is the last piece of open space in the township and that the township spent 10 million on the property. He asked that the Council put the project back in place.

Ms. Jill Denyes asked Mr. Ehrenburg if the township would have purchased the property without the conceptual approval.

Mr. Ehrenburg said that he didn't get a copy of Jill's letter but did not say whether or not the township would have purchased the property without conceptual approval from the Council.

Mr. Andy Strauss stated that he did not attend the December Council meeting when the Council approved the ILF document and said that he did not see anything in the meeting minutes about removing conceptual approvals from the fund update.

Ms. Susan Lockwood explained that the Council's intent all along was to operate in accordance with the ILF document once it was approved by the Council. She also explained that the ILF document is required by EPA in order to maintain assumption and that EPA has been pressuring the Department to get this document completed for years. She explained that if the Council doesn't operate in accordance with the document that the Council approved, EPA may have concerns. Ms. Lockwood also stated that the Council never had enough money in the fund to completely fund this project.

Mr. Ted Ehrenburg stated that they would take any amount that was available in the fund, as it became available.

Ms. Claudia Rocca stated that she did not know that the letter Andy Strauss presented was sent and that she favored this project.

Mr. David Roth stated that conceptual approval is not enough to release funds; there is still another step after conceptual approval that must take place. He also stated major decisions should not be made based on a conceptual approval. Mr. Roth asked Andy Strauss when they plan on coming in with their final proposal.

Andy Strauss stated that they do not yet have their permits to construct the property. He also stated that they have not yet had a pre-application meeting with the Division of Land Use Regulation or Site Remediation but are anxious to do so.

Mr. Mark Gallagher stated that they still need to conduct surveys on the property and prepare plans but if they had a 45-day notice to come back to the council, they would have. He also stated that time and effort had been put into this project.

Ms. Patricia Burns agreed with Ms. Claudia Rocca and Mr. David Roth that conceptual is not approval, but the Council was in favor of this project.

Ms. Susan Lockwood stated that if the project meets the requirements of the ILF document, then it can still go through and suggested that the applicant could demonstrate that their conceptual approval was prepared in accordance with the ILF document when the RFP goes out instead of being required to get another conceptual approval.

Ms. Claudia Rocca states that she is in favor of negating the letter and reinstating the project.

Ms. Jill Denyes suggested that the Council go into Executive Session to discuss the issue and then open the meeting up to the public and the end of the Executive Session.

Ms. Diane Dow apologized for the letter that was sent out. She stated that they had hoped the EPA would have signed the document by now but that it was the Department's understanding that once the Council approved the ILF document that they would operate in accordance with the document.

Ms. Patricia Burns inquired if a resubmission of a conceptual approval would solve the problem.

Ms. Claudia Rocca suggested that they do not need to resubmit a conceptual approval because they submitted their conceptual approval under the old procedure.

Ms. Susan Lockwood suggested that the Council should not push the EPA because the Department spent a lot of time working closely with the EPA on developing this document.

Ms. Claudia Rocca stated that the EPA never explained what to do if a situation like this arose and that she believes EPA would not have an is Susan with reinstating the conceptual approval in this case.

Mr. David Roth suggested tabling the discussion and decision and spending the remainder of the time in Executive Session.

Mr. Mark Renna stated that he was late to the meeting but that the minutes that were approved included a statement that there were no substantive comments received on the ILF document and that there were comments made at the meeting that should have been included in the minutes. Mr. Renna said that he spoke to the EPA on the confusion of the In-Lieu Fee document. He further stated that the EPA told him that the EPA plans on signing the document but has not yet and that he asked EPA when the comments on the ILF document will be responded to. Mr. Renna said that EPA informed him that DEP will respond to comments during rule making. Mr. Renna also stated that the EPA informed him that the EPA and the Department had a meeting to discuss the ILF document and assumption. Mr. Renna asked that the Department explain the rule process.

Ms. Diane Dow explained to Mr. Renna that the purpose of the meeting between the Department and the EPA was to discuss potential changes to the Freshwater Wetland rules (FWW rules), including draft ILF rule language. She also explained that the meeting had nothing to do with the Council. Ms. Dow explained that the Department is currently working on changes to the FWW rules and that once the amendments are formally proposed, there will be a public comment period for the public to comment on the changes proposed.

Ms. Beth Ravit asked the Council if it has the power to grandfather a conceptual approval. Ms. Ravit stated that the Council should not operate partially under the ILF document and that it should follow the document completely or not at all. She stated that she sent comments to the EPA and it is not clear to her if the document is in place.

Ms. Claudia Rocca motioned for the council to go into Executive Session and then reopen the meeting to the public.

Mr. Dave Roth seconded.

All present voted in favor.

Council members went into Executive Session

During the executive session, Ms. Patricia Burns left. Upon return to open session, the council could not take formal action because it did not have a quorum of members present.

Ms. Claudia Rocca stated that an official vote could not be made, but that the Council is leaning towards reinstating conceptual approval of this project.

Ms. Diane Dow stated that the question will be voted on during the April 14th meeting.

Ms. Susan Lockwood stated that she was leaning towards voting for conceptual approval.

Mr. David Roth stated that he was also leaning towards voting for conceptual approval.

Ms. Claudia Rocca stated that she was similarly leaning towards voting for conceptual approval and stated that Ms. Burns was as well.

Andy Strauss requested a letter recanting the letter stating that the conceptual approval was removed.

Ms. Claudia Rocca stated that the document stating the decision of the Council from the next meeting will resolve the letter.

Andy Strauss inquired on the amount of money to budget for.

Ms. Claudia Rocca stated that the budget would depend on the project, and a large part of the final proposal is the budget.

The next meeting date has been tentatively scheduled for April 14, 2015.