

New Jersey Freshwater Wetlands Mitigation Council Meeting

May 16, 2019

A regular meeting of the Wetlands Mitigation Council was held on May 16, 2019, at the NJDEP Offices located at 501 East State Street in Trenton, NJ.

COUNCIL MEMBERS PRESENT: Dr. Lenore Tedesco (Chair), Mark Renna, Dr. Philip Orton (by phone), Bryon DuBois (by phone), Susan Lockwood

STAFF MEMBERS PRESENT: DAG Kristina Miles, Jill Aspinwall, Kim Springer

Dr. Tedesco called the meeting to order at 9:30 am, 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 on May 2, 2019.

A roll call attendance was taken:

Dr. Tedesco- present

Ms. Rocca- absent

Mr. Renna- present

Mr. Orton- present- via phone

Mr. DuBois- present- via phone

Ms. Lockwood- present

Review and decision of the March 21, 2019 Council meeting minutes

Mr. Renna made a motion to approve the March 21, 2019 Council meeting minutes.

Ms. Lockwood seconded the motion to approve the March 21, 2019 Council meeting minutes.

All Council members voted in favor of approving the March 21, 2019 meeting minutes.

Update on the Mitigation Fund

Ms. Aspinwall stated that as of March 26, 2019, the Mitigation Fund balance is \$4,257,277.64. There were two expenditures during this reporting period: \$14,175.91 for Lenape Farms and \$57,400.000 for Kittatinny.

Ms. Aspinwall provided an update for each of the approved projects that are still ongoing. A total of \$3,225,793.07 has been allocated to approved projects, leaving a balance of \$1,031,484.57 of non-allocated funds. The total interest earned on the account is \$245,615.57

Mr. Renna asked what time period the interest is from. Ms. Aspinwall stated that it is interest earned from the inception of the Council.

Ms. Aspinwall also announced that the amount of money for a monetary contribution for a general permit has been increased. As of May 6, 2019, the monetary contribution amount for a Single-Family Homeowner is \$44,200.00 and for all other general permits is \$349,400.00

Mr. Renna requested that the agenda be changed to allow for an Executive session prior to moving forward with the remainder of the meeting. Mr. Renna was requesting that the Council go into executive session in order for Mr. Renna to receive guidance on whether or not he needed to recuse himself from an agenda item. DAG Miles gave guidance as to when executive sessions are permitted under the Open Public Meetings Act and advised that recusal matters do not require an executive session under the Open Public Meetings Act. DAG Miles then clarified that Mr. Renna had opened a mitigation bank in the same area after the applicant for Agenda Item #4 received a permit and that, due to the new mitigation bank, Mr. Renna had been advised to recuse himself from Agenda Item #4.

Old Business

Review and decision of the Request For Proposals for the Raritan Region

Dr. Tedesco gave a brief summary of the purpose of the RFP and asked for questions. Ms. Lockwood asked to move the last paragraph in section 1.1, Introduction, to follow the first full paragraph. Ms. Lockwood also suggested changing the language in the first sentence under Section 1.6, Eligible Costs, by replacing “proposed project costs” with “project costs for funding.” Mr. Renna suggested changing the deadline for conceptual ILF proposals to August 30 because the original deadline, August 31, is a Saturday. Mr. Renna also stated that he did not believe it was the Council’s intent to seek proposals consisting solely of preservation, and suggested adding the following sentence in Section 1.1: “However, projects that consist of 100% preservation shall not be funded.”

Ms. Lockwood made a motion to approve the RFP for publication with the changes requested.

Mr. Renna seconded the motion to approve the RFP for publication with the changes requested.

A roll call vote was taken:

Mr. Renna- yes

Ms. Lockwood-yes

Dr. Tedesco- yes

Mr. DuBois- yes

Dr. Orton- yes

The RFP was approved with changes and will be posted shortly.

New Business

Review and decision regarding a monetary contribution from Donald F. Burke Jr., NJDEP File # 1502-12-0003.1. Bayhead, Ocean County, New Jersey

Mr. Renna recused himself from the discussion.

Ms. Aspinwall stated that the staff reviewed the application and that the submitted application was complete and accurate. Ms. Aspinwall stated that Mr. Burke was at the meeting to address the Council and answer any questions that the Council may have.

Mr. Donald Burke stated that he was attending the meeting with his wife and his environmental consultant. Mr. Burke began by thanking the Council for this opportunity. Mr. Burke stated that he acquired the property 3 years ago and the previous owner had already received an individual permit to build a single-family house. Mr. Burke stated that he applied for a modification to the existing individual permit in order to reduce the total disturbance to the wetlands on the property by 854 square feet. Mr. Burke stated that the property is almost surrounded by developed properties. To the north the property is bordered by six homes, to the south and west the property is bordered by the New Jersey Transit Railroad Yard, and to the east there is some undeveloped land bordering a cul-de-sac with numerous homes. The disturbance area for which mitigation is required is less than one-tenth of acre. The modified individual permit maintained the mitigation requirement, which the previous owner did not complete. At the time of application, there were no mitigation banks available.

Ms. Aspinwall stated that the permit is an individual permit and therefore would not typically be eligible for the general permit monetary contribution rate. In this particular case, the applicant is claiming an economic hardship if he is required to complete mitigation in accordance with the Individual Permit standards. The Freshwater Wetland Protection Act Rules allow for economic feasibility when determining mitigation. In addition, the Council may consider economic hardships when determining if a monetary contribution is acceptable. The Council has been considering economics in monetary contributions since prior to 2004, when they determined the monetary contribution rate for single family homeowners would be \$28,000 per acre of impact. For instance, the Council approved a reduced rate for Umberto Rescinio, NJDEP 1338-02-0017.1, wherein the estimated cost to purchase wetland mitigation credits was \$87,600.00, causing an economic hardship for Mr. Rescinio. The 2006 standards under which Mr. Rescinio's request was reviewed permitted monetary contributions from single family homeowners at a rate of \$28,000 per acre, regardless of whether the applicant received an individual permit or a general permit. Applying the 2006 standards, the Council determined Mr. Rescinio's proposed reduced contribution of \$8,322.00 satisfied the mitigation requirements that were applied to similarly situated single-family homeowners at the time he received his permit and because Mr. Rescinio would face a significant hardship if the reduced monetary contribution was not accepted. Ms. Aspinwall stated that Mr. Burke's monetary contribution proposal for individual permits used appraisal comparisons from mainland Brick New Jersey, which may not be comparable to where the property is located. It is likely that the true cost of an individual permit monetary contribution is higher than presented to the Council, thereby creating a greater economic hardship. Therefore, Council staff recommended that the Council accept the proposed monetary contribution in the amount of \$4,026.96 as mitigation for 0.0952 acres of impact. This would be consistent with Council's previous decisions.

Dr. Tedesco thanked Mr. Burke for his presentation.

Mr. DuBois outlined Mr. Burke's comments and position, then asked if Mr. Burke had hardships or could trace the property ownership to prior to 1988 and, if so, what the hardships were. Mr.

DuBois also asked when the permit was issued. Mr. Burke responded that that his project was similar to Mr. Myers and that the permit was approved in December of 2014.

Ms. Lockwood stated that the current owner may not have known that the previous owner did not complete the required mitigation prior to the transfer of the permit.

Mr. DuBois stated that the owner should have completed the monetary contribution once they were done with permit process.

Dr. Tedesco clarified that the Council is being asked to determine if the individual permit monetary contribution monetary contribution number or the general permit monetary contribution number is appropriate.

Ms. Lockwood stated she has seen several single-family home proposals, that this proposal was very complete, and that the applicants have done everything that the regulations require.

Dr. Orton asked if this property is in Bay Head and, if so, whether this property impacts coastal wetlands.

Mr. Burke replied, stating that it is Freshwater wetlands.

Ms. Lockwood stated the Council can accept monetary contributions for both tidal and Freshwater wetlands.

Ms. Lockwood moved to accept the monetary contribution at the single-family general permit rate in the amount of \$4,026.96.

Dr. Orton seconded motion to accept the monetary contribution at the single-family general permit rate in the amount of \$4,026.96.

Mark Gallagher stated he typically agrees to accept the single-family homeowner rate and questioned the process for applicants in this situation.

Ms. Lockwood stated the statue requires that for an individual permit you have to follow the steps through the process and that there is no way to streamline the process.

Dr. Tedesco stated that the Council does not always make an affirmative decision.

A role call vote was taken:

Mr. Renna- Recused

Ms. Lockwood-yes

Dr. Tedesco- yes

Mr. DuBois- yes

Dr. Orton- yes

The monetary contribution and resolution both passed.

Mr. Renna rejoined the meeting.

Review and decision regarding a proposal from the New Jersey Department of Environmental Protection's Division of Land Use Regulation to streamline mitigation associated with intertidal/subtidal shallows at single-family properties.

Mr. Ryan Anderson, NJDEP, stated that when filling of Intertidal Subtidal Shallows occurs at a single-family homeowner (SFH) property, the applicant is required to provide mitigation. Generally, on-site creation of ISS is not feasible at these properties due to their small size and the presence of shore stabilization structures. Applicants are directed to submit a monetary contribution to the Wetland Mitigation Fund pursuant to the Coastal Zone Management Rules (Coastal Rules), specifically N.J.A.C. 7:7-17.11(c)1. These regulations do not allow a SFH to do any other form of mitigation besides a monetary contribution to the Council. Applicants for other types of developments may utilize other mitigation alternatives, including a mitigation bank. Although the Division would prefer that SFH applicants pursue another form of mitigation such as credit purchase from an appropriate mitigation bank, the Coastal Rules do not allow this option at this time, though the Division anticipates changing the Coastal Rules in the future to address this issue. The Coastal Rules require that the monetary contribution amount be calculated based on the value of the land filled and the cost of creating ISS of equal ecological value to that which was lost. The Division proposes a more efficient process for SFH ISS applicants that would result in meeting the standard of the Coastal Rules in a timely and less costly manner. Specifically, the Division is proposing acceptance of a streamlined process, similar to that adopted by the Council and used for mitigation for general permits, to calculate the cost of ISS monetary contributions at SFH properties. That streamlined process would address both elements of a mitigation proposal: the value of land and the cost to perform ISS mitigation. The value of the land would be determined using a tax assessment and the cost to perform ISS would be approximated by determining the cost to do excavation on the property in question. The total for the contribution to the Mitigation Fund will be the sum of the costs for the land value and the cost of ISS construction.

Mr. Renna stated that the State assumed the 404 program, however in 2008 the US Environmental Protection Agency and the United States Corps of Engineers (USACE) issued the 2008 Mitigation Rules which says that bank should be equitable. Mr. Renna noted this requires a regulatory change and therefore requested an interim and expiration date for this policy.

Ms. Lockwood stated that this policy would not be a conflict with the USACE and that typically the USACE does not require mitigation for these types of projects.

Mr. Renna stated that even though the USACE does not require mitigation, two wrongs don't make a right.

Mr. Gallagher asked what are the differences in cost? Mr. Anderson stated that the calculation was based on small amount of impact and that the costs were less than what it would cost to get a consultant to calculate the costs.

Ms. Lockwood states that it is too much work for too little money.

Mr. Renna stated that the Department has rules and that the State was trying to trump Federal Rules. Ms. Lockwood stated that in non-assumable areas, the State permits meet State rules and the State has never been in conflict with Federal Rules.

Ms. Lockwood moved to approve the procedure for ISS at SFH for calculating monetary contribution as outlined in the proposal.

Dr. Tedesco seconded the motion to approve the procedure for ISS at SFH for calculating monetary contribution as outlined in the proposal.

Mr. Renna moved to approve the procedure for ISS at SFH for calculating monetary contributions with both an interim and expiration date.

Ms. Lockwood then suggested that this item be placed on the agenda in one year to revisit. Ms. Lockwood stated that she is not expecting a change but does not want to put a date on the procedure. There was brief discussion on when an interim review should take place but no seconds were received on either Mr. Renna or Ms. Lockwood's proposal.

Dr. Tedesco moved to amend the motion to approve the procedure for ISS at SFH for calculating monetary contribution as outlined in the proposal with an interim review date.

Ms. Lockwood seconded the motion to approve the procedure for ISS at SFH for calculating monetary contribution as outlined in the proposal with an interim review date.

A roll call vote was taken:

Mr. Renna: No

Dr. Tedesco: Yes

Mr. DuBois: Yes

Dr. Orton: Yes

Ms. Lockwood: Yes

Presentation by Mark Gallagher, Princeton Hydro, on an update on the status of the Bloomfield Township.

Nick Janow wished greetings to the Council and stated that the Township was thrilled with participation from the March 15, 2019 ground breaking ceremony which had 150-175 people in attendance including the Mayor and Council, Federal Representatives, members of NJDEP, the Bay keeper, and a Hackensack Riverkeeper. A sincere thank you from the Mayor and Council.

Mr. Gallagher stated that this is a highly urbanized site and that the Township acquired the site from a builder who had a sales truck, stormwater basin constructed, and curbs and concrete wall

in place. This is historically a superfund site, with fill material on the edge of the site. Mr. Gallagher reviewed the plan for the site, which includes enhancement and 4 acres of wetland creation. All the waste on the site will be removed. Hydrology on an urbanized site is not necessarily the same as other sites. Mr. Gallagher noted they were using a skimmer pipe to take water offsite during high flow, so there will be limited erosion. Mr. Gallagher explained that the project has started to remove the fill and existing wetlands are getting close to wetland grade. There is a lot of earth being moved offsite today. Four feet of material has been removed with three more feet to go. Lots of miscellaneous waste and invasive species were removed from the site. They are working to get the site to clean native soil so that the wetland planting can begin.

Mr. Renna asked what the worst contaminant is. Mr. Gallagher stated that it is Asbestosis shingles and metals. They will be adding 2 feet of organic material, 18-inch substrate/soil and 6 inches of top soil.

Mr. Renna asked when the planting will occur. Mr. Gallagher stated in the Fall.

Ms. Aspinwall stated that she will be on site on Monday to check progress.

Council Comment

Mr. Renna thanked everyone for coming and told the public that they are able to receive copies of everything on the agenda.

Public Comment

No Public Comment

ADJOURNMENT:

Ms. Lockwood moved to adjourn the meeting.

Mr. DuBois seconded the motion to adjourn the meeting.

A roll call vote was taken:

Mr. Renna: Yes

Dr. Tedesco: Yes

Mr. DuBois: Yes

Dr. Orton: Yes

Ms. Lockwood: Yes

The next Wetland Mitigation Council meeting has been tentatively scheduled for July 18, 2019.