

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF MARCH 21, 2013

PRESENT

JIM RILEE) CHAIRMAN
KURT ALSTED) COUNCIL MEMBERS
TRACY CARLUCCIO)
TIMOTHY P. DOUGHERTY)
MICHAEL FRANCIS)
ROBERT HOLTAWAY)
BRUCE JAMES)
CARL RICHKO)
MICHAEL SEBETICH)
JAMES VISIOLI)
RICHARD VOHDEN)
ROBERT G. WALTON)

VIA TELECONFERENCE

MICHAEL TFANK)

ABSENT

MICHAEL R. DRESSLER)

CALL TO ORDER

Chairman Rilee called the 121ST meeting of the New Jersey Highlands Water Protection and Planning Council to order at 5:04pm.

ROLL CALL

Roll call was taken. Council Members Dressler and Tfank were absent. All other members were present. *The following staff members were present: Gene Feyl, Margaret Nordstrom, Chris Danis, Kim Kaiser, Maryjude Haddock-Weiler, Chris Ross, Carole Dixon, and Tom Tagliareni. Also present were Dean Jablonski, Deputy Attorney General and Nicole Crifo, Senior Counsel, Governor's Authority Unit.*

OPEN PUBLIC MEETINGS ACT

Ms. Tagliareni announced that the meeting is being held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6. The Highlands Council sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted notice on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF MINUTES OF FEBRUARY 21, 2013

Mr. Walton introduced a motion to approve the minutes. Mr. Visioli seconded it. All members present voted to approve. The minutes were APPROVED 12-0.

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CHAIRMAN'S REPORT

Chairman Rilee announced that Member Mengucci has resigned from the Council. Chairman Rilee appreciated Mr. Mengucci's service on the Council and wished him well. Mr. Mengucci was appointed to the Warren County Community College board.

COUNCIL MEMBER REPORTS

Ms. Carluccio handed out a resolution for Council's consideration on the issue raised at Council's last meeting regarding Council's support of sustainable State funding for preservation and stewardship of open space, parks, farmlands and historic sites in New Jersey.

Chairman Rilee responded that he had a resolution on the same matter. Both resolutions were handed to Council members for their review and for discussion later in the meeting.

APPROVAL OF THE HIGHLANDS DEVELOPMENT CREDIT BANK MINUTES AND EXECUTIVE SESSION MINUTES OF MARCH 14, 2012

Mr. Vobden introduced a motion to approve the minutes. Mr. Visioli seconded it. All members present voted to approve. The minutes were APPROVED 12-0.

COMMITTEE REPORTS

Chairman Rilee reported that there will be an Executive Session to discuss Personnel Committee matters and hiring of Chief Counsel.

Resolution – Approval Submission of the 2012 Annual Report

Chairman Rilee introduced the Resolution.

There was no Council comment.

Mr. Dougherty made a motion on the Resolution. Mr. James seconded it. All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 12-0.

Resolution – Approval of a Transfer of Development Rights Receiving Zone Feasibility Grant to City of Clifton

Chairman Rilee introduced the Resolution.

Mr. Sebetich made a motion on the Resolution. Mr. Visioli seconded it.

Chairman Rilee turned the meeting over to Council staff to present this resolution. Ms. Nordstrom reported that at last month's Council meeting Council staff gave a presentation about the Transfer of Development Rights (TDR) Program indicating that grants had been awarded in the past to some towns, but did not go forward. Ms. Nordstrom stated that staff wanted to circle back with these towns and start partnerships with additional towns. Ms. Nordstrom added that the City of Clifton

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was awarded a grant, produced everything they were supposed to produce, but did not move forward because Council did not have a process in place. Ms. Nordstrom noted that during last month's presentation increased staff interaction with grantees was an important new aspect to the grant program, as was the addition of a scope of work for an economic feasibility study. Ms. Nordstrom further noted that Council staff feels we have a much better chance of bringing these projects to fruition to establish TDR receiving areas. Ms. Nordstrom added that Clifton is a wonderful town to work with and they are very excited about this new process. Ms. Nordstrom also noted that Council staff hopes to bring additional towns before Council in the next few months who are new to the process.

Council Discussion

Mr. Richko commented on Council's Resolution 2007-24 authorizing to enter in a grant agreement with the City of Clifton for a TDR Receiving Zone Feasibility Grant in the amount of \$40,000. Ms. Nordstrom responded that the City of Clifton received \$20,000 because all the TDR grantees at that time were given half of their awards upfront. Ms. Nordstrom added that staff hopes the City of Clifton will be able to build on what they did before and it would not be anywhere near \$40,000. Mr. Richko asked what Clifton did so far. Ms. Nordstrom responded that they hired a consultant and identified receiving zones and submitted work to Council staff.

Public Comment

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer supports the grant and believes finding TDR receiving zones is a critical element of the Highlands. Mr. Peifer is concerned that the municipality did not perform entirely before. Mr. Peifer added that Clifton does have zoning in place which always for 97 units per acre. Mr. Peifer requests that the scope of work be evaluated against the Act, the RMP, and State TDR enabling statutes.

David Shope, owns property in Lebanon Township – Mr. Shope stated that he is a proud possessor of 10.5 TDR credits on 51 acres valued at \$168,000, potentially, and added that the TDRs are devalued by this Highlands Council's own methodology at a minimum of 75% devaluation. Mr. Shope added that the first thing Council need to do is: 1) value the TDR credits at market value; and 2) tally up what Highlands Council has spent so far on grants like this and balance what you have accomplished.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 12-0.

EXECUTIVE DIRECTOR'S REPORT

Mr. Feyl gave a personnel update of Highlands Council and reported that Corey Piasecki, Regional Planner joined us after Council's approval. Mr. Feyl also reported that Matt Vitullo resigned his position as GIS Specialist and has taken a position in the private sector.

Regarding Plan Conformance, Mr. Feyl reported that municipalities continue to complete implementation task components, including preparation and adoption of Planning Area Petition Ordinances, Re-examination Reports, Highlands Environmental Resource Inventories, Highlands

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Checklist Ordinances, and Master Plan Highlands Elements. Mr. Feyl also reported that Plan Conformance Information Sessions were held in February for municipal professionals and were well attended and well received. Mr. Feyl noted that petitions nearing readiness for Council consideration include:

- Roxbury Township, Morris County (Preservation Area only)
- Liberty Township, Warren County (Preservation Area only)
- Oakland Borough, Bergen County (Preservation and Planning Areas)

Regarding the Council's outreach efforts, Council staff has participated in the following meetings since last month and Council staff continues their education and liaison responsibilities:

- 13 Municipal/County meetings
- 5 agency meetings
- 5 conferences/workshops
- 1 Site Visit
- 1 HDC Closing
- 3 Constituent/HDC Applicant meetings

Mr. Feyl also reported on Council staff constituent efforts:

- 2013: 58 calls to-date
- Since 2006: 2,200+ (Average per month: 27 calls)

Mr. Feyl added that under Executive Director's Resolution 2012-18 and as promised a year ago, Council has in their packet a report on the items approved under the Executive Director's delegated authority. Mr. Feyl noted that this past month there was only one issue under his authority. This resolution is on today's agenda for renewal.

Regarding Tennessee Gas Reports, Mr. Feyl reported as a follow up to Member Dougherty's question at last month's meeting, the draft of the 300 Line: 325 Loop - Post-Construction Monitoring Report, Year 1 was received by Highlands Council staff on February 19, 2013 and is under review. The report is posted on the Project Review page of Highlands Council website, as well as links to weekly status reports to FERC for both 300 Line and NEUP.

Mr. Feyl gave a summary of the Highlands Development Credit Bank Board. Mr. Feyl reported that the Fifth Round concluded March 14 as the Bank Board approved five offers to property owners in Hunterdon, Passaic, Sussex, and Warren Counties. Mr. Feyl noted that offers represent investment of \$1,516,000 in land preservation in the Highlands; additional 193.58 acres permanently preserved. Mr. Feyl added should all pending offers close 467 acres permanently preserved. Mr. Feyl acknowledged Member Walton as the new leadership for the Bank Board.

As an update to the Municipal Exemption Delegation, Mr. Feyl reported that the Memorandum of Understanding (MOU) is a joint program between Highlands Council and NJDEP regarding Exemptions 1, 2, 4, 5, 6, 7, 8 for conforming municipalities only. Mr. Feyl added that the Certification Program completion is required by Municipality Exemption Designee(s) and training will be provided the weeks of April 22nd and 29th. Mr. Feyl noted that a specific ordinance will apply.

Mr. Feyl then turned the meeting over to Ms. Nordstrom for the RMP Update presentation.

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RMP Update: Beginning the Process

Ms. Nordstrom began her presentation with an excerpt from the Act:

“The goal of the Regional Master Plan with respect to the entire Highlands Region shall be to protect and enhance the significant values of the resources thereof in a manner which is consistent with the purposes and provisions of this act.” *Highlands Water Protection and Planning Act, section 10.a.*

Guidance from Act on Process

- Highlands Act requires RMP review “at least once every six years.” (Section 8.a.)

Guidance from RMP on Methodology

- RMP (Policy 10A5) prescribes “tracking and monitoring of regional indicators” through preparation of:
 - a) A Highlands Monitoring Report and
 - b) A fiscal impact assessment

Detail: Highlands Act Process Guidance

- Section 8.a.
 - “The Highlands Regional Master Plan shall be periodically revised and updated at least once every six years, after public hearings.”
- Section 9.
 - “Consultations, etc. relative to preparation, revisions of regional master plan.”
 - (specifies stakeholders and sources to be consulted during creation and review of RMP)

Detail: RMP Guidance on Methodology

- Policy 10A5

“To ensure the long term success of the RMP, evaluate regional conditions, identify new or emerging issues, and develop future RMP priorities through the tracking and monitoring of regional **indicators.**”

- Objective 10A5a
 - “Prepare a Highlands **RMP Monitoring Review Report** at least every six years to ensure that the RMP is meeting its goals.”
- Objective 10A5b

“Prepare a **fiscal impact assessment** that measures the overall economic health of the Region as compared to the rest of the State, to be included in the Highlands RMP Monitoring Review Report.”

- Chapter 6: Implementation, Subpart B - Regional Master Plan Monitoring
 - Indicators to be identified and tracked
 - Environmental, social, and economic health indicators will be used to document changes in the Highlands Region.

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- Indicators will be chosen based upon the usefulness of information and data availability and may be either quantitative or qualitative depending on the parameter measured.

What could inform determination of indicators.

- Public Hearings
 - See Act, Section 8.a.
- Consultations with State agencies, etc.
 - See Act, Section 9
- Science Agenda
 - See RMP, Chapter 6, “Implementation” (pg 366)
- Technical Reports
 - Developed to support RMP; define science agenda

Proposed RMP Update Process

1. Identify/Define/Agree Upon indicators
 - a) Consult with stakeholders and public agencies
 - b) Consult Technical Reports
 - c) Derive milestones from indicators to measure the indicators’ impact
2. Set timeline
3. Measure milestones
4. Report out
5. Incorporate insights/new info into RMP

Ms. Carluccio left the meeting temporarily at 5:35pm.

Other Considerations

- Sequence of events
 - Beyond what has been provided here
 - Public hearings happen when?
- Extent of monitoring
 - Budget impact

Chairman Rilee commented that the Act and the RMP as written gives Council an outline and guidelines for the RMP Update process and public input is very important. Chairman Rilee has asked Highlands Council staff to start scheduling these meetings in each County within the Highlands region as it is very important to get that feedback no matter where you stand on this Act. He anticipates that the public portion could start within the next two months to gather that data, form subcommittees, etc. This is a very important step for the Highlands and this RMP and an opportunity to see what is working right and wrong. It will start out with public portion. Chairman Rilee encourages Council members to attend the meeting in their Counties. Chairman Rilee commented that his Council members should not participate in the process but he encourage Council members to attend so they could hear what people are saying.

Ms. Carluccio returned to the meeting at 5:37pm.

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Mr. Visioli commented that Council members should be notified of when, where and the time of these events and then get back to Council staff indicating their attendance to ensure that if there is a quorum of members the meeting would have to be noticed accordingly.

Ms. Nordstrom added that she hopes that Council representatives will help with locating venues to hold the public meetings.

Mr. James commented that the campus in Wanaque would be appropriate for a meeting in Passaic County.

Mr. Dougherty left the meeting temporarily at 5:40pm.

Ms. Nordstrom added that we are open to suggestions as to how we can better interface with you to get your thoughts and opinions.

Ms. Carluccio commented that the last time the Council had these hearings they were very enlightening and a way for the council members to hear from the public directly. She encouraged Council members to go to as many of the meetings as possible, even if it requires a public notice.

Chairman Rilee emphasized that it is not a Council meeting per se but meetings to gather information from the public.

Ms. Carluccio added that it would be helpful to get timely notices from Highlands Council staff. Ms. Nordstrom responded that as soon as staff knows the Council will know.

Chairman Rilee stated that he would like to post all the meetings at one time.

Mr. Dougherty returned to the meeting at 5:44pm.

Mr. Feyl added that Council staff is looking for suggestions on the format for these meetings. Ms. Carluccio suggested that the majority of the time should be for the public.

Mr. Rickho left the meeting temporarily at 5:45pm.

Mr. Feyl concluded his report.

Mr. Alstede complimented Highlands Council staff on getting the MOU moving forward to delegate simple exemptions to the municipalities. Mr. Alstede asked what the goal of the training is, who plans to attend and if there is a charge for these exemptions. Mr. Feyl responded that the training materials will be posted to the website and they describe the process, which indicates that whether or not to charge for these exemptions determinations is up to the municipalities.

Ms. Carluccio commented on the plan conformance process and that Council needs to think about how to kick-start this process.

Mr. Feyl responded that we are not slowing the process down.

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Mr. Richko returned to the meeting at 5:48pm.

Resolution – Authority for Plan Conformance and Highlands Project Review

Chairman Rilee introduced the Resolution.

Mr. James made a motion on the Resolution. Mr. Visioli seconded it.

There was no Council discussion and no public comment.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 10-2.

Resolution – Council Support for a Dedicated Source of Funding for Land Conservation

Chairman Rilee introduced the Resolution.

Mr. Walton made a motion on the Resolution. Mr. Vohden seconded it.

Public Comment

Erica Van Auken, New Jersey Highlands Coalition – Ms. Van Auken thanked Council for taking steps to begin addressing this issue on open space funding.

Mr. Walton left the meeting temporarily at 5:54pm.

Helen Heinrich, New Jersey Farmers Bureau – Ms. Heinrich commented that this is one of the three issues very important to the farm community. Ms. Heinrich expects that the Council would support the concept and whatever is finally decided. She added that the landowners in the Highlands would like to see some designation of the money for property in the Highlands.

Mr. Walton returned to the meeting at 5:56pm.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer commented that he supports the resolution and has a request that the actual needs and provisions of the RMP be clearly explained to the Legislature and the Governor's office and suggests Council update their Land Preservation in the Highlands Region report. Mr. Peifer added that closely coordinating language should be considered for the ballot. Mr. Peifer commented that it is the fastest route for compensation.

Elliot Ruga, New Jersey Highlands Coalition – Mr. Ruga applauds the Highlands Council for this resolution because it indicates a desire to make the Act work and it is our fundamental belief that this Act can work with win-win results for all stakeholders in this process. Mr. Ruga is very pleased to see that Council is trying to make it work.

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Hank Klumpp, owns 150 acres in the Highlands Preservation Area – Mr. Klumpp commented on the third WHEREAS paragraph on the resolution and would like to add language that the land value going back to 2004 should be made permanent forever as it has always been extended. Mr. Klumpp added that there has been no funding for nine years.

David Shope, owns property in Lebanon Township – Mr. Shope commented that the direct loss to landowners is a drop in the bucket and the Legislature never intended to compensate property owners. Mr. Shope added that he does not buy into this resolution.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey thanked Council for having this on the agenda and NJCF supports it. Ms. Frey added that many of the people complaining have never attempted to take advantage of the programs that currently exists. Ms. Frey urges Council to lobby the Legislature and hope that there will be a new measure on the ballot.

Jerry Kern, property owner in Pohatcong Township – Mr. Kern does not feel he is obligated to sell his land. Mr. Kern appreciates the fact that Council is looking at this resolution, but can only support it if Council adds that this money is 100% for the Highlands Preservation Area.

Council Discussion

Mr. Francis commented that he is concern that legislation Council is trying to support is not specific enough to address the issues of landowner compensation in the Highlands Region and cannot support it.

Ms. Carluccio commented that it is important to take this first step but it is a small step when you read the result. Ms. Carluccio noted that the resolution does not direct the Executive Director to support and speak on behalf of the Council to the Legislature in particular regarding a sustainable source of funding for the Garden State Preservation Trust and the programs that the Highlands Region has already benefited from for open space preservation. Ms. Carluccio is concerned that this is more of a feel good kind of thing. Ms. Carluccio added that the resolution does not address the concerns she and other Council members brought up at the last meeting to advocate for the Highlands. Ms. Carluccio supports the concept of this resolution but asks that Council consider this resolution as a first step but would still like Council to entertain her resolution as time is short.

Chairman Rilee responded that he was not planning to entertain her resolution as her resolution was not received in a timely fashion, but will bring it up later.

Mr. Richko asked if this resolution is passed who it will be sent to. Chairman Rilee responded that it would be sent to the Governor and Legislature. Mr. Richko thinks as a next step it is important for Mr. Feyl to follow up by approaching the Legislature and discussing the funding for the Highlands. Chairman Rilee responded that it would be more important for the Council to speak than the Executive Director.

Mr. Sebetich commented that the resolution is a good first step but it is weak and does not have any clout to it. Mr. Sebetich commented that if Council votes on this resolution, Ms. Carluccio's resolution be moot.

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Mr. James commented that it is a good step, but Council has the ability to meet with people we put in office. Mr. James added that Council is looking for a revenue stream to compensate landowners. Mr. James added that it is worth a conversation to discuss these problems as we have the ability to talk to the Legislature. Chairman Rilee commented that he agrees with Mr. James but one of his problems is that Council is not discussing dedicated funding to the Highlands and that is where our goals should be but he is prepared to support it. Mr. James responded that Council hears the problems the law made on both sides and we owe it to the legislators to let them know what has been created.

Mr. Visioli commented that he will support this resolution as an initial step as it is strong enough to send our message.

Ms. Carluccio is concerned that her resolution will not be considered. Ms. Carluccio wanted to know if she would have an opportunity to present her resolution. Chairman Rilee responded that Council can review it and consider it for the next meeting.

Ms. Carluccio commented that the Garden State Preservation Trust (GSPT) funds the Green Acres Program, the Farmland Preservation Program and Highlands TDR land acquisition programs and landowner programs that Council has in place and that Council has used since the adoption of the RMP. Council prepared (when the RMP was put together) a Land Preservation Report and put into the RMP a charge for the Council to seek sustainable funding for the acquisition of open space and the preservation of our resources through these programs for the Highlands region and the way you do that is by supporting the state programs. Ms. Carluccio added that in order for Council to protect Highlands lands Council needs to look at the state funding program; and the program that is being considered by the Legislature is the Garden State Preservation Trust and other funding sources that were talked about at Council's last meeting. Ms. Carluccio concluded that Council has a very vague and weak resolution if Council does not consider her resolution.

Mr. Francis stated that the GSPT has not paid any affected landowners a dime. Ms. Carluccio responded that 46% of the GSPT funds spent on land preservation to Highlands landowners have been compensated.

Mr. Dougherty commented that he does not think Mr. Francis statement was true and would like clarification.

Monique Purcell of the Department of Agriculture clarified that the GSPT through Green Acres and Farmland Preservation programs has acquired easements in the Highlands Preservation Area and believes in the report it is over 30,000 acres. Ms. Purcell also stated that the GSPT through Green Acres and Farmland Preservation programs' monies are statewide but there has been quite a bit of focus in the Highlands Region.

Mr. Alstede commented that there is something very unique Council is missing tonight that differentiates the need to have dedicated funding to the Highland Region and not the whole state. Mr. Alstede added that in this instant the Legislation felt there is a need to preserve resource in the Highlands, took the resources and nine years later it is not paid for and as a member of the farm

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community as a Highlands Council member troubled by the thought of the HC being coerced in supporting a statewide preservation effort right now with a limited state budget, economic situation the state is in when Council has people in the Highlands that have lost something for nine years and still haven't been paid. Mr. Alstede added that as a Council member he has a tough time saying let's go forward with the GSPT with some mechanism that hasn't been identified yet in hopes that we might get greater than 30% back into the Highlands, because there is a big difference between perhaps a preservation project in Salem County compared to the Highlands Region (someone voluntarily wants to preserve and someone involuntarily preserved in the Highlands Region). Council needs to be very careful on how we exercise and flex our muscles as Council members.

Ms. Carluccio commented for the record that between 2000 and 2012, 106,077 acres were preserved in the Highlands through the GSPT and in the same period 230,191 acres were preserved in the entire state, so 46% of the GSPT monies came to the Highlands in the last 12 years.

Mr. Alstede commented that Council needs to focus on the future based on the political climate and financial reality of the state. Mr. Alstede is hesitant to come forward and say as a member of this Council in favor of opening and endorsing any type of mechanism to protect preservation statewide because selfishly it should be directed to the Highlands region and the state owes these people.

Ms. Carluccio commented that she cannot support this resolution and Council should look at a more robust one.

Mr. Richko commented that it is a unique situation where Council has Members Alstede and Carluccio in agreement. Mr. Richko added that perhaps Council should wait a month to rewrite this resolution as it does not have enough power. Chairman Rilee responded that currently Council is entertaining the motion on the table. Chairman Rilee asked for a roll call.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 10-2.

Ms. Carluccio then introduced a resolution supporting sustainable state funding for preservation and stewardship of open space, parks, farmland and historic sites in New Jersey.

Chairman Rilee asked for an opinion from counsel about whether Ms. Carluccio could introduce the resolution without the Chair's approval. Mr. Jablonski responded that the Chair controls the agenda and the resolutions introduced. Mr. James asked if there is a super majority who decides to put something on the agenda, Council does not have power. DAG Mr. Jablonski responded that the Bylaws are guided by Robert's Rules of Order.

Mr. James would like to see if Council has a super majority.

Mr. James made a motion to move Ms. Carluccio's Resolution. Mr. Dougherty seconded it.

Mr. Dougherty wants to get a written opinion and clarification on what Council's rights are under Robert's Rules as he feels Mr. Jablonski has conflicted himself. Mr. Dougherty would like the minutes pulled from the meeting when Mr. Feyl was hired.

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Mr. Vohden asked if Council will be setting a precedent by allowing this resolution to move forward. Chairman Rilee emphasized that he adds onto Mr. Dougherty's request that Council gets clarification on what Council's rights are under Robert's Rules.

Mr. Alstede commented that Council should conduct these meetings consistently and there needs to be order in an organized manner. Mr. Alstede added that he is uncomfortable with how this resolution is coming about, although he does not have a problem considering the resolution, but because how it came about he plans to vote no.

All members present voted on the resolution. A roll call was taken. The resolution was TIED 6-6 and did not pass.

Chairman Rilee asked Mr. Alstede to report on the Personnel Committee.

Personnel Committee

Mr. Alstede reported that the position to hire a Chief Counsel was approved and subject to that our Executive Director and Deputy Executive Director have advertised, received applications, did a preliminary review of applicants, brought in the highest ranking applicants for interviews, and made a selection and presented that nominee to the Personnel Committee. The Personnel Committee met via teleconference on Friday, March 15th, the Committee reviewed the candidate and is prepared to submit the candidate to Council.

Resolution – Executive Session

Chairman Rilee introduced the Resolution to go into Executive Session to discuss the Chief Counsel position. Mr. Jablonski read the resolution to hold Executive Session.

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., permits the holding of closed sessions by public bodies in certain circumstances, and the Highlands Water Protection and Planning Council ("Council") is of the opinion that those circumstances presently exist; and

WHEREAS, the Council will discuss personnel matters concerning a prospective employee within the meaning of N.J.S.A. 10:4-12(b)(8);

NOW, THEREFORE, BE IT RESOLVED, that the Council may enter into closed session at its public meeting of March 21, 2013 for that purpose. It is anticipated at this time that the nature of the closed session will be made public upon completion or resolution of the issues to be discussed, except any matter protected by the attorney-client privilege will not be disclosed.

This Resolution shall become effective upon a roll-call vote of the Council.

Mr. Walton made a motion to go into Executive Session. Mr. Dougherty seconded it.

Chairman Rilee announced that Council will take a short break before Executive Session and then come back to public session. Mr. Feyl noted that when Council comes out of closed session Council may or may not take action.

A break was taken at 6:43pm and the Executive Session followed.

[EXECUTIVE SESSION]

Director Rilee made a motion to close the Executive Session and resume the New Jersey Highlands Water Protection and Planning Council meeting at 7:44pm. Director Walton seconded the motion.

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Resolution – Appointment of Chief Counsel

Chairman Rilee introduced the Resolution to appoint Andrew R. Davis as Chief Counsel at an annual salary of \$107,500.

Mr. Francis made a motion on the Resolution. Mr. Visioli seconded it.

Public Comment

Hank Klumpp, owns 150 acres in the Highlands Preservation Area – Mr. Klumpp commented that he likes Council current lawyer. Mr. Klumpp asked Mr. Davis' base salary. Chairman Rilee responded that the salary is \$107,500. Mr. Klumpp added that the Council could save money by continuing to use Mr. Jablonski as counsel. Mr. Feyl responded that the Council pays for legal services from the DAG's office and have currently expended \$88,000 to date. Chairman Rilee added that it is not a savings.

David Shope, owns property in Lebanon Township – Mr. Shope commented that the public did not know the candidate or the salary until now so when Council is hiring someone that has a potential effect on his life, he needs to know more about him than hearing his name and his salary.

Elliot Ruga, New Jersey Highlands Coalition – Mr. Ruga commented that the only information on Council's prospective new Chief Counsel is an article that appeared in the New Jersey Law Journal, November 2, 2011. Mr. Ruga commented that he suspects Council is aware of this article and has read it as it brings to mind many questions of the soundness of the legal advice Mr. Davis may provide. Mr. Davis claims that the Act is toothless, yet in this article he proposes folding the work of the Highlands Council to the State Planning Commission. Mr. Ruga added that Mr. Davis writes that the financial burden of the Act is unfair and unconstitutional. Mr. Ruga asks how Mr. Davis can state the Act is "unconstitutional" when in the same paragraph he writes, "In the seven years that Highlands issues have been litigated, no Court has found a regulatory taking." Mr. Ruga concluded that Mr. Davis' information concerns the Coalition.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey commented that her remarks regarding Mr. Davis are not personal however his appointment to the Council would appear to be inappropriate. Ms. Frey stated that she read the article from the New Jersey Law Journal, November 2, 2011 and in it Mr. Davis states that "...Highlands Act has been an abject failure. It's time for a new plan. The Highlands Act should be repealed, and the planning function of the council reallocated elsewhere in state government, preferable through an act of the Legislature. If no legislation if forthcoming, the powers of the Executive Reorganization Act could be exercised by the governor to achieve the same results." She finds this extremely troubling for a number of reasons as Mr. Davis will be in a leadership position that has a commitment to the Act and to the program entrusted in administering. Based on this article, it does not sound like Mr. Davis would have that commitment. Ms. Frey submitted for the record the New Jersey Law Journal article by Mr. Davis.

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Jerry Kern, property owner in Pohatcong Township – Mr. Kern commented that based on Mr. Ruga’s comments it sounds to him that Mr. Davis is a bright fellow and has blood running through his veins. Mr. Kern hopes Council appoints Mr. Davis.

Patrick Moffitt, Peapack, New Jersey – Mr. Moffitt addressed the comment of Mr. Ruga made that water quality is the bases of the Highlands Act. Mr. Moffitt stated that it is from a North Jersey District Water Supply Commission that informed the Highlands task force and that report is the only named report for the basis of NJAC 7:38 (Highlands Act Regulations). It has been almost a year since Office of Legislative Services asked for that report and was told that it does not exist.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer commented that he disagrees with Mr. Moffitt’s last comments; there were a number of detailed studies done for the Act. Mr. Peifer is also concerned that a report has gone missing; however, it doesn’t diminish the value of the Highlands. Regarding Mr. Davis, Mr. Peifer is dismayed that he is before Council this evening. Mr. Peifer added that there are a number of issues he disagrees with. Mr. Peifer suggests to Council that this would be a dangerous and bad precedent for Council to engage in.

Council Comments

Ms. Carluccio stated that she is not going to vote in favor of Mr. Davis. Ms. Carluccio’s concerns come out of “A Fix for the Highlands Problems,” *New Jersey Law Journal*. Ms. Carluccio states that even if Mr. Davis has changed his opinion since writing this article there is a logical flaw in it and she does not find it credible.

Mr. Holtaway commented that Mr. Davis is an acceptable candidate.

Mr. Sebetich will vote no mainly for the same reasons Ms. Carluccio summarized.

Mr. Dougherty commented that he does not plan to vote in the affirmative on Mr. Davis due to the process.

Mr. Richko commented that he is concerned about Mr. Davis’ article and cannot support him.

Mr. Walton commented that the electronic packets went out on March 15, 2013 and based on many articles, Mr. Walton will be voting for the candidate.

All members present voted on the resolution. A roll call was taken. The resolution was APPROVED 8-5.

Chairman Rilee stated after the minutes review the hiring of Mr. Davis will be confirmed.

Chairman Rilee opened the meeting for public comment.

Mr. Tjank left the meeting via teleconference at 8:12pm.

Public Comment

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Monique Purcell, Department of Agriculture – Ms. Purcell suggested for public hearing process outline this evening that there is some type of framework for the RMP to focus the discussion because there may be an opportunity where we skip people in the room as we know the issues and they are significant, but RMP analysis, Council needs a framework to get that discussion narrowed.

Messrs. Dougherty and Visioli left the meeting at 8:14pm.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer asked if environmental commissions will be invited to the MOU Training sessions. Mr. Feyl responded that at the Council's discretion another meeting may be planned for non-municipal representatives. Mr. Peifer commented on fees that are permissive to the municipality in the Council model ordinance. Mr. Peifer stated that Council needs to clarify that the adoption of the ordinance, which allows the issuance of exemptions is voluntary to conforming towns. Mr. Peifer suggested that Council look at the Pinelands Fiscal Analysis for lands outside and in the Pinelands for the RMP update and that Council needs to frame the issues for the public and an internal process for the proceedings should be done as well.

Heather Baird Loya, Mine Road, High Bridge, New Jersey – Ms. Loya submitted her comments for the record, which were questions raised at Council's meeting on February 21, 2013 regarding High Bridge Borough's ordinance on sewer access and setting priority to only those on the existing sewer lines and no acknowledgment to properties outside the sewer lines. Ms. Loya emphasized that the situation has evolved from a neighborhood in hardship to now an environmental issue to Lake Solitude, which feeds into the South Branch River. Ms. Loya asked Council to better communicate the importance of these protections to the High Bridge Council.

Patrick Moffitt, Peapack, New Jersey – Mr. Moffitt commented on the reports that support the claims of the Highlands Act as he cannot find the calculations or the main referenced document which does not exist.

David Shope, owns property in Lebanon Township – Mr. Shope commented that when Council reviews the Pinelands assessment of land values, Council should not compare vacant land values in and out of the Pinelands to the land values in and out of the Highlands. Mr. Shope suggested that Council needs to determine who the public will be for the RMP update process. Mr. Shope also commented on Mr. Walton question at the February 21, 2013 meeting regarding how the \$16,000 was derived and Mr. Feyl responded that the new program will be market based.

Helen Heinrich, New Jersey Farm Bureau – Ms. Heinrich submitted her comments for the record and urged Council to read her comments regarding zoning densities and land values determined by the way the nitrate dilution model sets septic densities in the Highlands. Ms. Heinrich also commented on the lack of permanent funding source for Highlands landowner compensation. Lastly, Ms. Heinrich commented on the RMP's recommendations on equity for landowners.

Hank Klumpp, owns 150 acres in the Highlands Preservation Area – Mr. Klumpp asked Mr. Jablonski what the status is on the septic density litigation 8825. Mr. Jablonski responded that his

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understanding is that the Court dismissed it subject to give NJDEP time. Mr. Klumpp asked for clarification on the litigation.

Jerry Kern, property owner in Pohatcong Township – Mr. Kern commented that Council look at nitrate models and do not confuse Pinelands with the Highlands and do not use the Pinelands data.

David Peifer, Association of New Jersey Environmental Commission – Mr. Peifer withdraws his support for his organization on open space because of the lack of Council’s ability to see Ms. Carluccio’s resolution.

Mr. Richko made a motion to adjourn the meeting. Mr. Francis seconded it. The meeting was adjourned at 8:30pm.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: 5/20/13

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

Vote on the Approval of These Minutes

	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede			✓			
Councilmember Carluccio			✓			
Councilmember Dougherty						✓
Councilmember Dressler						✓
Councilmember Francis			✓			
Councilmember Holtaway			✓			
Councilmember James			✓			
Councilmember Richko						✓
Councilmember Sebetich			✓			
Councilmember Tfrank			✓			
Councilmember Visioli						✓
Councilmember Vohden		✓	✓			
Councilmember Walton	✓		✓			
Chairman Rilee			✓			