

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF JULY 16, 2020

PRESENT

VIA TELECONFERENCE:

CARL J. RICHKO)	CHAIR
KURT ALSTED)	VICE CHAIR
TRACY CARLUCCIO)	COUNCIL MEMBERS
TIMOTHY P. DOUGHERTY)	
MICHAEL R. DRESSLER)	
MICHAEL FRANCIS)	
ROBERT HOLTAWAY)	
BRUCE JAMES)	
MICHAEL SEBETICH)	
JAMES VISIOLI)	
RICHARD VOHDEN)	
ROBERT G. WALTON)	

CALL TO ORDER 175th meeting of the New Jersey Highlands Water Protection and Planning Council was called to order at 4:10pm by teleconference due to COVID-19.

ROLL CALL

Roll call was taken. Member Francis was absent. All other Council Members were present via teleconference. *The following staff members were present via teleconference: Lisa J. Plevin, Christine LaRocca, James Humphries, Gabrielle Gallagher, Keri Green, Herbert August, Annette Tagliareni, Carole Ann Dicton, and Tom Tagliareni. Also present via teleconference were Lauren Nathan-LaRusso, Senior Counsel, Governor's Authorities Unit; and Jason Kane, Deputy Attorney General (DAG).*

OPEN PUBLIC MEETINGS ACT was then recited.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF HIGHLANDS COUNCIL MINUTES OF JUNE 18, 2020

Chairman Richko asked for a motion on the Highlands Council Minutes of June 18, 2020.

Member Visioli made a motion to approve the Highlands Council Minutes of June 18, 2020. Member Dressler seconded it.

A roll call vote was taken. The Highlands Council Minutes of June 18, 2020 were APPROVED 11-0.

CHAIRMAN'S REPORT

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF JULY 16, 2020

Chairman Richko reported that the New Jersey State Board of Education announced in early June its new Student Learning Standards, incorporating Climate Change education across all content areas in kindergarten through high school graduation.

EXECUTIVE DIRECTOR'S REPORT

Ms. Plevin highlighted the following updates and staff activities:

COVID-19 Response

Chester Office Closure/Remote Work

The Highlands Council office in Chester continues to remain closed in support of Executive Order 104. All staff members are fully functional and working remotely. Operations continue without interruption.

Interagency Council on Climate Resilience

On June 30, 2020, Governor Murphy and the NJDEP issued the [2020 New Jersey Scientific Report on Climate Change](#), which will allow us to better understand the effects Climate Change will have on New Jersey and to develop a Statewide Climate Resilience Strategy. Highlands Council staff provided significant input on this issue, resulting in a report that includes significant analysis of issues that will directly affect the Highlands region. These issues include flooding, drought, increased frequency and intensity of storms, agricultural viability, invasive species and pest management, water and wastewater systems, and impacts on other critical infrastructure.

The report provides Highlands Council staff with a crucial baseline from which to expand our research and implement necessary adjustments to our policies and programs to ensure a healthy, vibrant, and resilient future for the Highlands region.

Plan Conformance Updates

Parsippany's Petition for Plan Conformance was deemed complete 7/6/20. The Township needs to respond to our draft review, following that the petition will be posted for the 30-day public comment period.

Municipally Issued Exemptions

Since Ms. Plevin's prior report, the Highlands Council has been notified of sixteen (16) municipally issued exemptions – all in Washington Township, Morris County and all Exemption #5s.

Project Review Updates

- Staff completed one (1) Water Allocation Permit modification review related to maintenance issues at a quarry in Pohatcong Township, Warren County. Highlands staff determined there to be no impact on Net Water Availability and thus the modification was found to be consistent with the RMP.
- Staff initiated three (3) new Water Quality Management Plan amendment reviews:
 - One for a proposed residential project in Franklin Borough, Sussex County;
 - One for a combination of residential and commercial development, in Chester Borough, Morris County;
 - One for residential development in Mine Hill Township, Morris County.
 - All three reviews are still in progress.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF JULY 16, 2020

- Staff also provided comments to NJDOT on the potential historic and cultural impacts of an NJDOT project in Wharton Borough and Rockaway Township, Morris County. Consistent with the findings of the NJ Historic Preservation Office, Highlands staff found no expected impacts to historic or cultural resources.

Open Space Update

In late June, the Highlands Council closed on a farmland preservation project in Franklin Township, Warren County. The nearly 400-acre Hart farm had been a preservation target for Warren County for many years. The Highlands Council provided nearly half the \$1.3 million purchase price. The project marked a significant milestone for Warren County as the 300th farm preserved in the County. Warren County holds the distinction of having the most preserved farms and the most total preserved farmland acreage of any Highlands County.

TDR/HDC Update

Since last month's report, staff closed on a 103-acre residential property in Mount Olive Township, Morris County. The HDC Bank purchased 35.75 HDCs for \$572,000. An important side note about this transaction: as of this closing, there are no additional pending HDC transactions waiting to close.

Outreach and Constituent Assistance

Staff continues to provide guidance to landowners and their representatives regarding the NJDEP Highlands Area Rules and the RMP.

The next Council Meeting is scheduled for August 20, 2020.

Chairman Richko announced the next agenda item: consideration of a Motion to Stay Highlands Council Resolution No. 2020-03, filed with the Highlands Council by DPF Chester, LLC.

At this time, James Humphries, Director of Planning and Science, provided Council with background on this resolution.

Chairman Richko then announced that the attorney for DPF Chester, LLC and Chester Borough have been offered an opportunity to make a brief statement to the Council.

At this time, John Wisniewski, Esq., (Wisniewski & Associates, LLC) attorney for DPF Chester, LLC announced that he was present (via teleconference) and provided a brief statement to the Council.

Chairman Richko noted that Brian Mason, Esq, representing Chester Borough indicated by letter that he declined an opportunity to make a statement. Brian Mason, Esq., attorney for Chester Borough announced that he was present (via telephone conference) and concurred that he would not give a full presentation, but was available for any questions by the Council.

Resolution – Executive Session

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF JULY 16, 2020

Chair Richko announced that Council would enter into Executive Session so that Council's Deputy Attorney General can provide the Council with legal guidance for deliberation of the resolution. Chief Counsel Christine LaRocca read the Executive Session resolution into the record.

Chairman Richko asked for a motion on the resolution to enter Executive Session.

Member James made a motion. Member Holtaway seconded it.

There was no Council discussion.

A roll call vote was taken. The Resolution was approved 11-0.

Public portion of the meeting was temporarily dismissed at 4:36pm.

[EXECUTIVE SESSION]

The New Jersey Highlands Water Protection and Planning Council public meeting resumed at 4:58pm.

ROLL CALL

Roll call was taken: Member Francis was absent. All other Council members were present via teleconference.

Resolution - Consideration of the Motion to Stay Highlands Council Resolution No. 2020-03 Filed with the Highlands Council by DPF Chester, LLC

Chairman Richko asked for a motion on the resolution.

Member James made a motion. Member Holtaway seconded it.

Council Comment

Member Holtaway observed that in its brief, the Appellant contended that, in considering the Amended Petition for Plan Conformance in January, the Council relied on information that was incomplete and had missing information. Mr. Humphries responded that the report, in his opinion, was not incomplete and conformed with all Plan Conformance procedures adopted in 2019 and the center designation complied with all standards. Member Holtaway also asked if the affordable housing portion of the report is considered an inherently beneficial use. Mr. Humphries declined to respond on whether the site would qualify as an inherently beneficial use, as he is unsure of the inclusionary percentage of the site that would be part of the consideration of an inherently beneficial use determination.

Member Vohden asked if it is correct to say that in voting to deny the Stay, the Council made a right decision in the original resolution and now we are voting to prevent the landowner from appealing the previous decision. Chief Counsel Christine LaRocca responded that the resolution that is before the Council to deny the Stay does not have any bearing on the underlying Council decision. The Council must consider the legal standard for the Stay and may decide that the appellant (DPF Chester, LLC) did not

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF JULY 16, 2020

meet that legal standard for the Stay request. Ms. LaRocca added it does not mean that the Council is making any determination on the underlying Petition.

Member Vohden further asked does Council's vote to deny the Stay prevent the landowner from appealing further. Ms. LaRocca responded that it would not stop the appeal process. Ms. LaRocca responded that if the Council votes to deny the Stay, the Appellant could make a similar application to the Appellate Division for injunctive relief and has every opportunity to proceed with the litigation and the appeal of the Petition.

Lastly, Member Vohden asked, if Council does not deny the Stay, how will the case go forward. Ms. LaRocca responded that the underlying case in the Appellate Division will proceed. In the interim period, Chester Borough will not be able to take any steps towards implementation of the underlying Petition and it also means that the Council will be prevented from taking any implementation steps.

Public Comment

David Shope – Lebanon Township, NJ – Mr. Shope was confused by Chester Borough's primary concern in its request. In his opinion, Mr. Shope can site two concerns: failing septic systems and affordable housing.

George Cassa – Mr. Cassa agreed with Mr. Shope on that the Stay request is somewhat confusing. Mr. Cassa asked if the Fair Share Housing Settlement Agreement is still binding on the Borough after it's reviewed by the Highlands Council. Mr. Cassa supports the Council's decision to deny the Stay.

Elliott Ruga, New Jersey Highlands Coalition – Mr. Ruga commented that the Coalition supports the denial of the request for a stay, but agrees with the petitioner regarding the loss of historic resources., He further clarified that the issue of the historic resources alone should not justify a stay of Resolution 2020-03.

Wilma Frey, on leave from New Jersey Conservation Foundation – Ms. Frey agrees with Mr. Ruga's comments regarding the protection of historic resources and the character of buildings located in the Borough. Ms. Frey also added that the spatial aspect of the current historic structure should be maintained, instead of tearing it down.

Member Francis was present via teleconference at 5:19pm.

Edward Ng, President of Chester Borough Historical Society – Mr. Ng commented on the historic buildings and mention of the "Chester Historical Society" on page 5 of Mason Thompson LLC's letter memorandum. Mr. Ng, in agreement with previous commenters, stated that as part of the center designation conditions there should be a review of Chester Borough's historical preservation ordinances. Mr. Ng's comments were submitted for the record.

Council Comment

Member Holtaway commented that the hardships brought forth do not rise to the level of a Stay.

A roll call vote was taken. The resolution was APPROVED 9-2, with one (1) abstention by Member Francis.

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF JULY 16, 2020

OLD/NEW BUSINESS:

Member Visioli left the meeting via teleconference at 5:25pm.

There was no old/new business reported.

Chairman Richko opened the meeting to the public for any other comments.

Public Comment

Hank Klumpp, property owner, Tewksbury, NJ – Mr. Klumpp commented on the climate change for schools. Mr. Klumpp suggested that perhaps funding may be found for the harmed landowners. Mr. Klumpp also asked if it would be possible for Council staff to send him a copy of all meeting materials for Council meetings.

Chairman Richko asked Mr. Klumpp to contact Ms. Plevin to discuss his request regarding meeting materials.

David Shope, property owner, Lebanon Township – Mr. Shope commented on articles in the publication Lancaster Farming and what is happening in the farm community regarding bankruptcy and mental health issues.

Member Holtaway made a motion to adjourn the meeting. Member Walton seconded it. All were in favor. The meeting was adjourned at 5:33pm.

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: 10/16/2020

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MEETING MINUTES OF JULY 16, 2020

Vote on the Approval of Minutes	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede			√			
Councilmember Dougherty			√			
Councilmember Dressler			√			
Councilmember Francis			√			
Councilmember Holtaway			√			
Councilmember James			√			
Councilmember Sebetich		√	√			
Councilmember Van Abs					√	
Councilmember Visioli	√		√			
Councilmember Vohden			√			
Councilmember Walton			√			
Chairman Richko			√			