

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
MINUTES OF THE MEETING OF NOVEMBER 19, 2010

PRESENT

JACK SCHRIER)	ACTING CHAIRMAN
KURT ALSTEDE)	COUNCIL MEMBERS
BILL COGGER)	
MICHAEL FRANCIS)	
JANICE KOVACH)	
MIMI LETTS)	
CARL RICHKO)	
ROBERT HOLTAWAY)	
JAMES VISIOLI)	

VIA TELECONFERENCE

TRACY CARLUCCIO)

ABSENT

GLEN VETRANO)

CALL TO ORDER

The Acting Chairman of the Council, Jack Schrier, called the 99th meeting of the New Jersey Highlands Water Protection and Planning Council to order at 1:05pm.

ROLL CALL

Roll call was taken. Mr. Vetrano was absent. Ms. Carluccio was present via telephone conference. All other members were present.

OPEN PUBLIC MEETINGS ACT

Acting Chairman Schrier announced that the meeting was called in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 and that the Highlands Council had sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted on the Highlands Council website.

PLEDGE OF ALLEGIANCE was then recited.

APPROVAL OF MINUTES OF OCTOBER 21, 2010

Ms. Letts introduced a motion to approve the minutes. Ms. Kovach seconded it. Mr. Vetrano was absent. All other members present and on telephone conferencing voted to approve. The minutes were APPROVED 10-0.

ACTING CHAIRMAN'S AND COUNCIL MEMBER'S REPORT

There was nothing to report.

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PERSONNEL COMMITTEE REPORT

Ms. Letts reported that the Personnel Committee met with Executive Director to review the tasks at hand with staff to determine if we are short of personnel. Staff is short one planner and this will have an impact on the Plan Conformance process. Ms. Letts thanked Ms. Swan and staff for the leadership, great work ethics, team spirit and keeping the workload moving. Ms. Letts reported that Committee is pleased with Council staff and that the Executive Director should continue to try to get approval for the planner staff position from the State.

Mr. Cogger agreed with Ms. Letts on her assessment of the Personnel Committee meeting and reiterated that Council is understaffed and with the 20% reduction due to one of the five planner positions being vacant, it makes it harder to move forward. Mr. Cogger further commented that Council should try to get approval to hire a planner so Council may move through this Plan Conformance process more rapidly and respond to the municipalities.

Mr. Schrier made note that some members of the public need to leave early, so has asked Ms. Swan to give a condensed report to accommodate those members.

EXECUTIVE DIRECTOR'S REPORT

Plan Conformance Update

Ms. Swan gave a summarized update to the Council on Plan Conformance Petition reviews. To date, 64 Petitions for Plan Conformance have been submitted to the Highlands Council (59 Petitions from municipalities and 5 from Counties). 49 Petitions (including 2 counties) have been deemed administratively complete and posted to the Highlands Council website. Byram and Chester Townships have been approved by Council. Lebanon and Hampton Borough are on today's meeting agenda. Bethlehem and Mahwah Townships, Califon and Glen Gardner Boroughs, and Passaic County (all currently in Public Comment Periods) are anticipated for the December meeting. Council received municipal responses from Clinton Town and Rockaway Twp; municipal response period underway for Mount Olive, Tewksbury, Franklin and Washington (Morris) Townships. These municipalities are anticipated for upcoming meetings in early 2011. 24 Draft Consistency Reports prepared and under internal review; another 10 are in development by Staff. The public can follow the Plan Conformance process on our website. Ms. Swan noted that Council staff waits for the Governor's review period before the Plan Conformance map is updated on the website.

Plan Conformance Grant Program

Ms. Swan then provided an update on the Highlands grants programs as requested by the Council. The average amounts requested for reimbursement by municipalities that are participating in Plan Conformance grant activities were shown. On average, reimbursement requests to date are within the base amounts established by the Highlands Council. Ms. Swan further noted that Council staff anticipates that some towns will need additional grants due to unique circumstances.

<u>Towns</u>	<u>Base Amount</u>	<u>Average</u>	<u>Number</u>
Module 1	\$15,000	\$13,209	68
Module 2	\$10,000	\$ 6,318	64
Module 3	\$ 7,500	\$ 11,530	50
Module 4	\$ 2,000	\$ 3,180	55
Module 5	\$ 2,500	\$ 5,604	46

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Module 6	\$ 5,000	\$ 3,886	44
Module 7	<u>\$ 8,000</u>	<u>\$ 6,208</u>	40
Total	\$50,000	\$49,935	

Public Hearing and Consideration of Resolution – Petition for Plan Conformance by Borough of Hampton, Hunterdon County

The Council then commenced the Public Hearing on the Plan Conformance Petition of Hampton Borough. Ms. Swan acknowledged those in attendance at the hearing representing Hampton Borough: Mayor Kristine Peterson; prior Mayor and current Freeholder Robert Walton, Carl Hintz, Planner; Richard Cushing, Esq., Hampton Attorney.

Ms. Swan then proceeded with the PowerPoint presentation of the Petition of Hampton Borough for Plan Conformance and presented photographs of Hampton Borough so the Council could focus on the character of the community and the past planning and protection initiatives of Hampton Borough.

Ms. Swan presented background statistics and information for Hampton Borough.

- Established: 1895
- Population (2006): 1,546
- Land Area: 971.5 acres/1.5 sq. mi.
- Agricultural Lands: 227 acres
- Preserved Lands: 36.43 acres (2.67 acres State, 17.09 acres County, 16.67 acres Municipal)
- Wetlands: 60 acres
- Historic Districts: Imlaydale Historic District
- Sites on the Highlands Scenic Resource Inventory: Musconetcong River Wildlife Management Area (State)
- Major Parks: Hampton Borough Park

Ms. Swan presented significant Highlands statistics as they pertain to Hampton Borough:

- Preservation Area Lands: 835 acres – 86%
- Planning Area Lands: 136 Acres – 14%
 - Existing Community Zone: - 417.5 Acres - 43%
 - Protection Zone: 233 Acres - 24%
 - Conservation Zone: 261 Acres - 27%
 - Roads: 59.5 Acres – 6.2%
 - Agricultural Priority Areas: 761 Acres – 78%
 - Highlands Open Water Protection: 284 Acres – 29%
 - Forest Resource Area: 272 Acres – 28%
 - Conservation Priority Areas: 104 Acres – 11%

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Borough of Hampton Background Statistics – Land Use		
NJDEP Land Use/Land cover (2005/2007)	Acres	Percent
Residential(Single & Multi Family)	295.3	30.4%
Commercial (Retail)	27.6	2.8%
Industrial & Transportation & Utilities	21.3	2.2%
Agriculture (Crops & Plantations)	226.9	23.4%
Recreational lands (Public and Private)	16.3	1.7%
Other Urban or Built-Up Land	35.1	3.6%
Subtotal Developed Lands	622.6	64.1%
Mixed Forest	250.4	25.8%
Shrub & Scrub	28.6	2.9%
Mixed Wetlands	60.5	6.2%
Barren Lands	3.8	0.4%
Surface Waters (lakes, Ponds & Tributaries)	5.6	0.6%
Subtotal Natural Lands (incl. Open Space)	348.9	35.9%
Total	971.5	100.0%

Ms. Swan then showed a movie representing a ‘fly over’ of Hampton Borough. The movie offered an opportunity to focus on the landscape of the Borough, major infrastructure and natural resources. Ms. Swan showed ordinance maps for Hampton Borough and continued to provide an overview of the Petition of Plan Conformance and the administrative record for the Borough. Ms. Swan noted that Hampton Borough chose to waive the municipal response period.

12/8/09	Petition for Plan Conformance Submitted
2/8/10	Petition Deemed Administratively Complete
2/18/10	Petition Posted to Highlands Council Website
N/A	Draft Consistency Report Sent to Municipality
10/13/10	Final Draft Report Posted to Highlands Council Website
11/4/10	End of Public Comment Period (Start 10/14/10)
11/15/10	Final Report Posted to Highlands Council Website
11/19/10	Highlands Council Public Hearing

Ms. Swan noted that Hampton Borough had completed the following required Module Submittals:

1. Current Municipal Conditions & Build-Out Analysis
2. Land Use and Resource Capacity Analysis
3. Housing Element & Fair Share Plan
4. Environmental Resource Inventory
5. Master Plan Highlands Element
6. Highlands Area Land Use Ordinance
7. Petitioning Resolution, Municipal Self-Assessment, Highlands Implementation Plan & Schedule

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With respect to Module 1 and 2, the analysis uses a limiting factor analysis to examine land-based, resource-based, and utility-based capacities. Ms. Swan explained that the Highlands Municipal Build-Out Report for Hampton Borough was completed by the Highlands Council and then the information was verified by the municipality with any corrections being supported by information prior to a finding of Administrative Completeness of the Petition. The Report is dated July 2009 and was posted to the Highlands Council website on July 24, 2009. Staff RMP Consistency Finding is that Hampton Borough's Highlands Municipal Build-Out-Report is consistent with the RMP.

With respect to Module 3, Ms. Swan provided a summary of Hampton Borough's Fair Share obligations and plan:

- Rehabilitation Share: 2 Units
- Prior Round Obligation: 2 Units
- Growth Share Obligation: 7 Units

Summary of Hampton Borough Fair Share Plan:

- Municipal Rehabilitation Program – Borough to sponsor program or partner with Hunterdon County Housing Rehabilitation Program. Anticipated Credits: 2
- Accessory Apartment Program (4 units). Anticipated Credits: 4
- Group Home (4 bedrooms). Special needs project plus 1 bonus credit. Anticipated Credits: 5

The Staff RMP Consistency Finding is that Hampton Borough's Fair Share Plan and Housing Element is consistent with the RMP.

With reference to the Borough's Fair Share Plan Ms. Swan explained about a site that was included in the plan due to a 1988 Settlement Agreement and 1991 Judgment in which Hampton Borough agreed to create an affordable housing zone for a 300-unit development to satisfy a 27 unit rehabilitation obligation through a contribution of \$270,000 (\$10K per unit). The proposed 300-unit development did not include affordable housing and was to be located in the Preservation Area. Staff review of site found it to be inconsistent with the Highlands Act as a matter of law because the Act immediately revoked planned, but unbuilt, water and sewer infrastructure in the Preservation Area.

Thus, when Hampton filed their 2010 Fair Share Plan and Housing Element –with COAH they sought to remove this site and fulfill their rehabilitation obligation through other mechanisms and filed an action in the Law Division to set aside the Agreement.

Ms. Swan showed a photo of the Haberman site and explained that the Council would hear more about this issue at today's meeting.

With respect to the Environmental Resource Inventory, Module 4, Ms. Swan noted the following describes and illustrates Highlands Resources, Resource Areas, and Special Protection Areas in the Municipality:

- Hampton Borough Submittal Based on Highlands Council Model Environmental Resource Inventory
 - All Applicable Narrative Portions Retained
 - All Applicable Exhibits Included

The Staff RMP Consistency Finding is that Hampton Borough's Environmental Resource Inventory is consistent with the RMP.

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With respect to the Master Plan Highlands, Module 5, Ms. Swan noted the following incorporates RMP Goals & Objectives into local planning and provides basis for effectuation of RMP:

- Hampton Borough Submittal Based on Highlands Council Model
 - All Applicable Narrative Portions Retained
 - All Applicable Exhibits Provided (via ERI)

The Staff RMP Consistency Finding is that Hampton Borough's Master Plan Highlands Element is consistent with the RMP.

With respect to the Highlands Area Land Use Ordinance, Module 6, Ms. Swan noted the following sets forth regulatory provisions that protect Highlands Resources and effectuate the policies, goals, and objectives of RMP at the local level:

- Hampton Borough Submittal Based on Highlands Council Model
 - All Applicable Narrative Portions Retained
 - All Applicable Exhibits Provided by the Highlands Council (Parcel-Based)

The Staff RMP Consistency Finding is that Hampton Borough's Highlands Area Land Use Ordinance is consistent with the RMP.

With respect to the Municipal Petition for Plan Conformance, Module 7, Ms. Swan noted that it consists of all Petition Supporting Materials: Petitioning Resolution/Ordinance, Self-Assessment Report, List of Current Planning Documents, Highlands Implementation Plan & Schedule

- Hampton Borough Submittals Based on Highlands Council Models
 - Resolutions (#1-Preservation Area, #2-Planning Area) Complete
 - Self-Assessment Report Accurate & Complete
 - Highlands Implementation Plan and Schedule Completed

The Staff RMP Consistency Finding is that Hampton Borough's Petition for Plan Conformance is consistent with the RMP.

Ms. Swan then presented a summary of the public comments received and a summary of the responses given by Highlands staff for Hampton Borough Petition for Plan Conformance. The public comment period for Hampton Borough's Petition for Plan Conformance opened October 14, 2010, and closed November 9, 2010. Notice was given in area newspapers as well as on the Highlands Council website and through the Highlands Council e-mail alert system. Comments received from:

- Richard P. Cushing, Esq. on behalf of Hampton Borough
- Guilet Hirsch, Esq., on behalf of Hampton Farm, LLC
- Kevin Walsh, Esq. on behalf of the Fair Share Housing Center
- Julia Somers, on behalf of the New Jersey Highlands Coalition the comments received from the Coalition were in support of Hampton's Petition

Comment: The Borough requests that Highlands Council review of its Petition proceed and that deference be given to the outcome of any Law Division decision.

Comment: Hampton Farm requests that the Highlands Council defer its review of the Petition for Plan Conformance until after the Law Division rules on the 1991 Final Judgment on Compliance.

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- Response: Consideration of the Petition for Plan Conformance prior to final review by the COAH and/or the Law Division is appropriate and consistent with the Highlands Act, Executive Order 114, and the MOU. The review of the Highlands Council is to determine consistency with the RMP and COAH and the Law Division will respectively address the Fair Share Plan and the Settlement Agreement. Ms Swan noted that the Law Division just this week denied a request seeking to have the Borough withdraw the Petition for the Planning Area.

Comment: Hampton Farm raised the following: 1) objects to public review and comment process and timeframe; 2) questions if the Planning Area portion of the property contains legitimate Highlands Resources, removal of the parcel from the Borough Fair Share Plan, and lack of a request for a Map Adjustment; 3) claims Borough failed to adopt an Ordinance petitioning for Plan Conformance and adopt revised Master Plan and Development Regulations; 4) claims that Council failed to adopt regulations setting forth the framework for review and approval of Petitions for Plan Conformance; 5) questions RMP prohibitions on development within the 300-foot buffer surrounding freshwater wetlands in the Planning Area; 6) questions approval absent a Water Use & Conservation Management Plan and Critical Habitat Management Plan; 7) claims Council failed to affirmatively require realistic opportunities for affordable housing and that RMP fails to set forth standards and questions use of Highlands build-out; and 8) questions reliance on developer's fees and other funding for accessory apartments, and 100% affordable housing project.

- Summary Response: A detailed response has been provided regarding each item and is posted on the Highlands website. In summary, the Highlands Council does not see necessity to delay or defer consideration of the Borough's Petition; rebuts all claims regarding deficiency or unconstitutionality of the RMP, deficiency in findings regarding Highlands Resources, inapplicability of 300-foot Highlands Open Water buffer requirements, deficiency of Build-Out methodology, and lack of proper procedural requirements for review and disposition of Petitions for Plan Conformance; moreover, it defers to COAH as to satisfaction of the Borough's Fair Share Obligation and the Law Division as to the Settlement Agreement.

Comment: The Fair Share Housing Center objected to the use of Highlands Council Build-Out results to adjust the Borough's Fair Share Obligation.

- Summary Response: These comments specifically relate to matters that are pending before the Appellate Division in litigation filed by Fair Share Housing Center. Hampton Borough's Petition should be approved conditioned upon achieving and retaining compliance with the Fair Housing Act. In addition, the response clarifies that the Build-Out Report is based upon the Highlands Act and RMP requirements.

Ms. Swan then summarized the Staff Recommendation for Hampton Borough's Petition for Plan Conformance that it be approved with the following conditions:

- Adoption of Ordinance Petitioning for Planning Area
- Completion & Adoption of ERI
- Completion & Adoption of Master Plan Highlands Element
- Completion & Adoption of Highlands Land Use Ordinance
- Adoption of Updated Zoning Map
- Wastewater Management Plan (County Chapter)

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- Compliance with Fair Housing Act (COAH Certification). This condition requires updates on COAH and Law Division proceedings, Council review of any proposed changes to the Fair Share Plan and Housing Element, and specifies that conditional approval shall not be deemed to usurp the authority of the Law Division.
- Update/Development & Implementation of:
 - Water Use & Conservation Management Plan
 - Stormwater Management Plan (updates only)
 - Habitat Conservation & Management Plan
 - Land Preservation & Stewardship Program
 - Septic System Management/Maintenance Plan
 - Right to Farm Ordinance

Council Comments

Mr. Holtaway commented that while he attended the League of Municipality Conference he listened to some legislators (Senator McKeon and Senator Lesniak) to discussing the future of COAH and they both said that COAH is to be abolished and there was talk about replacement legislation to be completed by the end of the year. Mr. Holtaway further stated that in past Plan Conformance Petitions there has been COAH discussion/impact but this time Council has a Settlement Agreement to consider, which in his opinion, muddies the waters a bit and the 300-unit development would have a significant impact on Hampton Borough.

In response, Mr. Borden stated that in the present matter before the Law Division the Borough had requested that the Court invalidate that 1988 Settlement Agreement. As there is on-going litigation in the Law Division and an on-going Petition submitted to COAH, Mr. Borden commented that Council's approval would be conditional and would require Hampton Borough to reassess their affordable housing obligation consistent to whatever the law is at that time. Mr. Borden further stated that Council's approval of Hampton Borough's Petition for Plan Conformance at this time is consistent with the RMP.

Mr. Francis made a motion on the Resolution and Mr. Holtaway seconded it. Acting Chairman Schrier opened the public hearing on Hampton Borough's Petition for public comment on the proposed Resolution.

Public Comments

Guliet Hirsch, Esq. represents Hampton Farms (previously known by the name of the principal, Jacob Haberman). Ms. Hirsch had asked back in September that this application be deferred at least for a couple of months in order to allow the Court to review and determine whether the Final Judgment on compliance and underlying Settlement Agreement dealing with the affordable housing zoning of the Haberman site will stay in place or not. Ms. Hirsch further commented that if Council approves this application today, Council is assuming that relief from that Final Judgment would be granted. Ms. Hirsch stated that Final Judgment is still in full force and effect. Ms. Hirsch appreciated the comments suggested by Council staff however, she felt the Hampton Borough's Petition for Plan Conformance could wait until February-March timeframe which would allow the Court to come to a decision on the matter.

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Kristine Peterson, Mayor of Hampton Borough – Mayor Peterson gave a brief description of Hampton Borough and its abundant public spirit and limited financial resources. Mayor Peterson stated that the Borough appreciates the funding provided by the Highlands Council during the planning process, which permitted the Borough to undertake this application, where the best interests of Hampton’s residents and the interest of the entire State in protecting the natural resources of the Highlands area were accommodated. Mayor Peterson acknowledged the Highlands staff for their knowledge and professionalism when working with the Borough and its professionals. She stated that the Borough has no objection to the Highlands Council responses to the comments submitted and urged the Council to approve Hampton Borough’s Petition. Mayor Peterson concluded that she looks forward to a continued partnership that advances sound planning and protects the natural resources that help make the Borough of Hampton a wonderful place to live. The Mayor asked that Council allow her to speak at the end of the public hearing to respond to any further comments.

Richard Cushing, Esq. of Gebhardt & Kiefer, and Attorney for Hampton Borough – Mr. Cushing stated that the comments of Ms. Hirsch were very familiar to him because they were made to the Judge, this past week, who denied a request seeking to have the Borough withdraw the Petition for the Planning Area. Mr. Cushing did not believe that the Haberman development is going to be able to be built, since it was proposed in the 1980s and life has changed since then, at that time there was no Highlands Act, there were not same requirements regarding discharge surface water, etc. Mr. Cushing urged the Council to proceed with Hampton Borough’s Petition for Plan Conformance. Mr. Cushing believes that this particular site may require the Borough to come back before Council to make an application to amend the Petition.

David Shope owns a farm in Lebanon Township – Mr. Shope asked what the cost is per acre to the Council, towns, applicants, for pushing paper around. Mr. Shope suggested he might submit an OPRA request. Mr. Shope also questioned who the natural resources are valuable to if the property is devalued. Mr. Shope gave figures for agriculture in Hunterdon County and questioned the value of the investment.

Monique Purcell, New Jersey Department of Agriculture – Ms. Purcell had a general question on the Plan Conformance process and asked for clarification on what Council approves/requires now and what needs to be required as a condition for Plan Conformance. Ms. Purcell asked if it could be explained at an upcoming meeting. Acting Chairman Schrier commented that he thought it was a good idea and Ms. Swan that this could be accomplished.

Helen Heinrich, New Jersey Farmers Bureau – Ms. Heinrich commented that the Bureau’s questions/concerns seem to be generic to the model documents rather than what was done for Hampton Borough, in particular. Ms. Heinrich commented that the more the documents are read regarding the land use ordinance, she believed there were inconsistencies and confusing aspects of the documents. Ms. Heinrich would like to meet with staff to go over that process.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey urged Council to approve Hampton Borough’s Petition for Plan Conformance which is a well done Petition and will do what the Highlands Act intended be done which is to protect the natural and historic resources of this little Borough. Ms. Frey also stated that the development proposal in discussion bears no

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relationship to the current affordable housing needs or requirements. Ms. Frey stated that the proposal is just a market rate housing development.

Council Comments

Mr. Holtaway commented that there is one landowner in litigation and knowing how the law is in such flux, Council should move forward and protect our water resources.

Mr. Visioli commented that there has been significant interaction between Staff and Hampton Borough and that Council should move forward with this decision and not defer action. Ms. Visioli stated that this Petition is an excellent example of a Petition.

Mr. Francis commented that this is another example of good planning which allows for flexibility to comply with current and future legislation.

Ms. Letts appreciates comments made by Mayor Peterson. Council has always been committed to working with municipalities and to preserve and protect our lands and water and should approve Hampton Borough's Petition.

Acting Chair Schrier offered the Mayor an opportunity to speak in accordance with her earlier request to respond to comments. Mayor Peterson appreciated Council comments and that they were listening to the Borough's concerns. Ms. Peterson stated that COAH is similar to global warming and with each new administration we adjust our perception. Ms. Peterson said the Borough has met all Petition requirements and would like to move forward.

All members present and on telephone conferencing voted on the Resolution by roll call. The Resolution was APPROVED 10-0.

At this time commemorative photos were taken as the Acting Chair presented a framed certificate regarding the approval of the Plan Conformance Petition to Mayor Peterson.

Acting Chairman Schrier called for a recess at 2:15pm. Meeting resumed at 2:23pm.

Public Hearing and Consideration of Resolution– Petition for Plan Conformance by Borough of Lebanon Hunterdon County

The Council then proceeded with the Public Hearing on the Plan Conformance Petition of Lebanon Borough. Ms. Swan acknowledged those in attendance at the hearing representing Lebanon Borough, Mayor Mark Paradis; Carl Hintz, Planner; and Joseph Hauck.

Ms. Swan then proceeded with the PowerPoint presentation of the Petition of Lebanon Borough for Plan Conformance and presented photographs of Lebanon Borough so the council could focus on the character of the community and consider the past planning and protection initiatives of Lebanon Borough.

Ms. Swan presented background statistics and information for Lebanon Borough.

- Established: 1926
- Population (2006): 1,830
- Land Area: 577 acres/0.9 sq. mi.

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- Agricultural Lands: 43 acres
- Preserved Lands: 38 acres
- Wetlands: 53 acres
- Historic Districts: Lebanon Historic District
- Sites on the Highlands Scenic Resource Inventory: Part of Round Valley Recreation Area
- Preserved Properties: Round Valley Recreation Area (State, 10 acres); Holjes-Sheppard Memorial Park (Municipal, 4 acres); Spencer Farm (Preserved Farm, 24 acres)

Ms. Swan then presented significant Highlands statistics as they pertain to Lebanon Borough:

- Planning Area Lands: 577 Acres – 100%
 - Existing Community Zone: - 401.8 Acres - 70%
 - Protection Zone: 26.3 Acres – 4.5%
 - Conservation Zone: 45.6 Acres - 8%
 - Roads: 103 Acres – 18%
 - Highlands Open Water Protection: 326 Acres – 56%
 - Severe Steep Slope Areas: 107 Acres – 18%
 - Total Forest Area: 143 Acres – 25% (no Forest Resource Areas)
 - Agricultural Priority Areas: 64 Acres – 11%

Borough of Lebanon Background Statistics – Land Use		
NJDEP Land Use/Land cover (2005/2007)	Acres	Percent
Residential(Single & Multi Family)	169.5	27.9%
Commercial (Retail)	96.7	16.8%
Industrial & Transportation & Utilities	80.3	12.9%
Agriculture (Crops & Plantations)	30.3	5.2%
Recreational lands (Public and Private)	11.7	2.0%
Other Urban or Built-Up Land	56.7	9.8
Subtotal Developed Lands	445.1	75%
Mixed Forest	49.2	9.7%
Shrub & Scrub	29.0	5.3%
Mixed Wetlands	51.1	9.0%
Barren Lands	1.6	1.1%
Surface Waters (lakes, Ponds & Tributaries)	0.9	0.1%
Subtotal Natural Lands (incl. Open Space)	131.8	25.3%
Total	576.9	100.0%

Ms. Swan then showed a movie representing a ‘fly over’ of Lebanon Borough. Several landmarks were noted such as the Train Station and the apartments known as the ‘Heights of Lebanon’. As the fly over focused on the Corporate Center between I78 and Rte 22 Ms. Swan made note that Lebanon Borough had requested map adjustment for the Bellemead property. A development not visible in the “fly over” due to the date of the aerials was noted, this is the Pizzo site beside I78 which is currently developed and was updated in Council’s mapping as an RMP Update.

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Ms. Swan further stated that in addition to maintaining an up-to-date Comprehensive Master Plan (including all mandatory elements and numerous optional elements), Lebanon Borough has a history of proactive engagement in community planning and conservation initiatives some of which were highlighted:

- Stream Corridor Protection Ordinance – 2002
- Stormwater Pollution Prevention Plan – 2005
- Environmental Resource Inventory – 2008
- Historic District listed on State and National Register – 2008
- Community Forestry Management Plan – 2010
- Sign Ordinance (revision) – 2010. Ms. Swan commented that Mayor Paradis lead this initiative with 12 other municipalities and that Council made a motion to support the effort.

Ms. Swan again stated that Lebanon Borough's Petition requested a Map Adjustment to change from Protection Zone to Existing Community Zone for a site owned by the Bellemead Development Corporation:

- Portions of the lots were already modified from Protection Zone to Existing Community Zone, through an RMP Update, which looks only at factual corrections.
- The Map Adjustment requested by the Borough is for two parcels (Block 4, Lots 1.03 and 1.04) bounded by I-78 on the north, U.S. Route 22 on the south.
- Part of a larger tract of land designated by the Borough in 1985 as a Planned Commercial Development ("Route 78 Corporate Center") intended for a corporate campus development.
- Significant components of the project have been completed under prior approvals, with those of the subject parcels dating to April 2001.

Ms. Swan commented that as a result of the information submitted and a staff report from a Bellemeade site visit, it is recommended:

- That the Council approve a Map Adjustment as there is no loss of Protection Zone resource values, Council Resource Management Specialist Keri Benscoter visited the site and prepared a report on existing natural features. The site is highly disturbed and shows a large percentage of invasive, exotic species (50 % or greater). Vines dominate the understory and are stressing the shrubby tree species and few larger individual trees. The only portion of the lot that contains select mature trees is along the right of way for Interstate 78, which serves as a noise and visual buffer. No species of concern was noted during the assessment. It was concluded that the area is consistent with the Existing Community Zone and remaining resources will be protected through the adoption of the Highlands Land Use Ordinance.
- The Ordinance will apply should the existing approvals lapse and a new application for development regarding the parcels be reviewed by the municipality under the provisions of the Highlands Land Use Ordinance.
- The Land Use Capability Zone Map for the Bellemead property in Lebanon Borough has been revised to reflect the recommended Map Adjustment.

Ms. Swan then showed ordinance maps for Lebanon Borough and continued to provide an overview of the Petition of Plan Conformance and the administrative record for Lebanon Borough.

12/7/09	Petition for Plan Conformance Submitted
2/4/10	Petition Deemed Administratively Complete

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2/9/10	Petition Posted to Highlands Council Website
6/23/10	Draft Consistency Report Sent to Municipality
10/25/10	Final Draft Report Posted to Highlands Council Website
11/9/10	End of Public Comment Period (Start 10/25/10)
11/16/10	Final Report Posted to Highlands Council Website
11/19/10	Highlands Council Public Hearing

Ms. Swan noted that Lebanon Borough had completed the following required Module Submittals:

1. Current Municipal Conditions & Build-Out Analysis
2. Land Use and Resource Capacity Analysis
3. Housing Element & Fair Share Plan
4. Environmental Resource Inventory
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7. Petitioning Resolution, Municipal Self-Assessment, Highlands Implementation Plan & Schedule

With respect to Module 1 and 2, the analysis uses a limiting factor analysis to examine land-based, resource-based, and utility-based capacities. The Highlands Municipal Build-Out Report for Lebanon Borough was completed by the Highlands Council in collaboration with the municipality prior to a finding of Administrative Completeness of the Petition. The Report is dated July 2009 and was posted to the Highlands Council website on July 24, 2009.

Staff RMP Consistency Finding is that Lebanon Borough's Highlands Municipal Build-Out-Report is consistent with the RMP.

With respect to Module 3, Ms. Swan provided a summary of Lebanon Borough's Fair Share obligations and plan:

- Rehabilitation Share: 3 Units
- Prior Round Obligation: 34 Units
- Growth Share Obligation: 30 Units (17 with permitted exclusions)

Summary of Lebanon Borough Fair Share Plan:

- Municipal Rehabilitation Program: 2 Accessory apartments and 1 rebuilt single family home. 3 credits
- Inclusionary Development #1: Presidential Place (aka, Pizzo Development), located at Block 3 Lots 1 & 3, includes 150 housing units; 120 market rate units and 30 affordable rental units. Anticipated Credits: 13 toward Prior Round; 17 plus 7 bonus credits toward Third Round; Total: 37. This was the site that was mentioned in the 'fly over'
- Inclusionary Development #2: Heights of Lebanon (aka Kaplan Development), located at Block 10 Lot 2, Railroad Avenue (under construction). Anticipated Credits: 12 plus 9 bonus credits; total 21.
- Other Mechanism: Community Residence for Developmentally Disabled, Block 8 lot 26, Hunterdon Alliance for the Mentally Ill. Completed. 4 credits

The Staff RMP Consistency Finding is that Lebanon Borough's Fair Share Plan and Housing Element is consistent with the RMP.

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With respect to the Environmental Resource Inventory, Module 4, Ms. Swan noted the following describes and illustrates Highlands Resources, Resource Areas, and Special Protection Areas in the Municipality:

- Lebanon Borough Submittal Based on Highlands Council Model Environmental Resource Inventory
 - All Applicable Narrative Portions Retained
 - All Applicable Exhibits Included

The Staff RMP Consistency Finding is that Lebanon Borough's Environmental Resource Inventory is consistent with the RMP.

With respect to the Master Plan Highlands Element, Module 5, Ms. Swan noted Lebanon Borough submittal based on Highlands Council Model:

- All Applicable Narrative Portion Retained
- All Applicable Exhibits Provided

The Staff RMP Consistency Finding is that Lebanon Borough's Master Plan Highlands Element is consistent with the RMP.

With respect to the Highlands Area Land Use Ordinance, Module 6, Ms. Swan Lebanon Borough submittal based on Highlands Council Model:

- All Applicable Narrative Portion Retained
- All Applicable Exhibits Provided

The Staff RMP Consistency Finding is that Lebanon Borough's Highlands Area Land Use Ordinance is consistent with the RMP.

With respect to the Municipal Petition for Plan Conformance, Module 7, Ms. Swan noted that it consists of all Petition Supporting Materials: Petitioning Resolution/Ordinance, Self-Assessment Report, List of Current Planning Documents, Highlands Implementation Plan & Schedule that Lebanon Borough submittals based on Highlands Council Models:

- Resolutions (Planning Area) Complete
- Self-assessment report accurate and Complete
- Requested Planning Documents submitted to Highlands Council

The Staff RMP Consistency Finding is that Lebanon Borough's Petition is consistent with the RMP.

The public comment period for Lebanon Borough's Petition for Plan Conformance opened October 24, 2010, and closed November 9, 2010. Notice was given in area newspapers as well as on the Highlands Council website and through the Highlands Council e-mail alert systems. Comments were received from

- New Jersey Highlands Coalition – expressing support for Lebanon's Petition
- Glenn S. Patel of Drinker Biddle & Reath, LLC on behalf of Bellemead Development Corporation.

Comment: Bellemead requested that the entirety of the Corporate Center at Lebanon should be included within the Existing Community Zone and the Borough's Highlands Land Use Ordinance should include language making it clear that the entirety of the Corporate Center may be developed in the future free of any Highland Act limitations.

- Response: It is recommended that the Map Adjustment requested by the Borough be approved to change from Protection Zone to Existing Community Zone. As the

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Corporate Center has valid approvals, the Highlands Ordinance will only apply should those approvals lapse requiring review of a new application to the municipality under the provisions of the Highlands Land Use Ordinance.

Ms. Swan then summarized the Staff Recommendation for Lebanon Borough's Petition for Plan Conformance that it be approved with the following conditions: Adoption of Ordinance Petitioning for Planning Area

- Adoption of Environmental Resource Inventory
- Completion for Highlands Council Approval & Adoption of Final Highlands Element & Land Use Ordinance
- Adoption of Updated Zoning Map
- Compliance with Fair Housing Act (Court Approval)
- Update/Development & Implementation of:
 - Water Use & Conservation Management Plan
 - Stormwater Management Plan (updated only)
 - Habitat Conservation & Management Plan
 - Land Preservation & Stewardship Program
 - Septic System Management/Maintenance Plan
 - Scenic Resource Management Plan (optional)

Mr. Holtaway made a motion on the Resolution and Ms. Kovach seconded it. Acting Chairman Schrier opened the public hearing on Lebanon Borough's Petition for public comment on the proposed Resolution.

Council Comments

No comments were made by Council.

Public Comments

Glenn S. Pantel of Drinker Biddle & Reath, LLC on behalf of Bellemead Development Corporation – Mr. Pantel commented on two key points regarding his client's ownership and completion of the Bellemead buildout. 1) Grandfathering on the existing portion of the site that has already been approved for disturbance be free of any Highlands regulations 2) the request for a map adjustment from Protection Zone to Existing Community Zone which Mr. Pantel supports. He pointed out that even with the RMP Update and currently proposed Map Adjustment a portion of the site is still shown as Protection Zone. It is an area that runs along I78. Mr. Pantel gave a history of the Bellemead property and the substantial financial investment which were made. Mr. Pantel would welcome a meeting with the Council staff and the Borough to discuss his client's concerns.

Acting Chairman Schrier asked Ms. Swan to clarify Mr. Pantel's concern/request.

Ms. Swan stated that the request is to have a clause within the Highlands Land Use Ordinance that would allow for any future development if the current approvals lapse to be free of any Highland Act regulations. She clarified that while the Highlands Ordinance does not apply to the currently approved development should the approvals lapse or a revised application (with substantive differences) be proposed then the Highlands Ordinance would apply. She also clarified that the Map adjustment approach was agreed upon with the Borough and that Ms. Swan stated that Council needs to consider that there are approvals throughout the region that may lapse and new

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development applications may be file. What the Council is being asked to consider is that those new applications be excluded from the Highlands Land Use Ordinance. She advised that Council would be creating a precedent and should consider this request in that light. Ms. Swan further stated that if the municipality wanted to look at this area in terms of potential future development that is not contemplated under the current approvals there are two ways this may be done one of which is similar to the approach taken in Byram Township. The municipality may have a center based approach with a separate ordinance that governs that area. Another approach would be to consider the area a Highlands Redevelopment Area and treat it in that manner subsequent to the current Petition. She also explained why there is a strip of land still shown as Protection Zone, that marks the area of trees which provide a visual buffer along I78.

Mr. Pantel clarified the request would only be for the portion of the property which currently have approvals for disturbance or development instead of the entirety of the land.

Ms. Letts questioned if the area in the Protection Zone is currently part of the approved development plan that applicant has now. Mr. Pantel responded to say yes and that there would be some grading changes to the disturbed area. Ms. Swan responded that the approved plan would not be affected by this Petition. Acting Chairman Schrier asked if this petition would have any bearing on the property now. Ms. Swan responded to Council that it would have no bearing on the current approved application, however, should the approvals lapse or there were substantial changes to the application then at that time the petition elements would have effect.

Mr. Holtaway asked Mr. Pantel for the dates of the approvals on the lot for the original site plan. Mr. Pantel stated that the current approvals are extended until April 11, 2011 and are eligible for extension under the municipal land use law. Extensions for this particular application are not an issue.

Mr. Francis asked what would happen if an application for a site plan amendment was brought to Council. Ms. Swan responded that an amendment would make them fall under the Highlands land use ordinance. Mr. Borden clarified that if they were to do a substantial change they would be impacted by the Highlands Land Use Ordinance but at that time it would behoove the Borough to come to Council and Council staff who would then entertain an amendment if it were the will of the Borough.

Mark Paradis, Mayor of Lebanon Borough – Mayor Paradis thanked the Highlands Council for their efforts in assisting Lebanon Borough in this Plan Conformance. He stated that the Highlands Council, irrespective of whether one agrees or disagrees the intent of the Highlands Act, , should be a model for other governmental agencies and for positive change. Mayor Paradis further thanked the Council staff on their timely communication and support. Mayor Paradis concluded to say that Lebanon Borough has taken a lead in reapplying for scenic designation for I78 based on comments by Department of Transportation and working with 12 municipalities and 3 separate counties and have support of all governmental agencies, freeholder boards, assemblyman and hoping for a positive outcome. He thanked the Council for their support for this initiative.

Public Comment

Julia Somers, New Jersey Highlands Coalition – Ms. Somers supports the Council approval of this Petition as submitted to the Council today. Ms. Somers further commented that a terrible

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precedence would be set for the Bellemead property should the Council agree to the request that was made earlier and urged the Council to leave the Protection Zone the way it is. Ms. Somers salutes Lebanon Borough's efforts in protecting the Route 78 scenic road and their Sign Ordinance initiative.

Wilma Frey, New Jersey Conservation Foundation – Ms. Frey urges Council to support staff's recommendations and agreed with Ms. Somers about the bad precedence to allow grandfathering from the Land Use Ordinance. Ms. Frey stressed her disappointment with the Pizzo Project and felt that the Borough's plan conformance will allow for better outcomes.

David Peifer, Highlands Project Director for the Association of New Jersey Environmental Commissions – Mr. Peifer commented that he strongly supports the application submitted to the Highlands Council for Lebanon Borough Petition for Plan Conformance. Mr. Peifer stressed the importance of the \$30,000 fund for stream corridor studies and planning and that it is an important factor for the Round Valley drinking water, as the Route 78 construction has compromised that corridor. Mr. Peifer further stated regarding the Bellemead property that it is okay to grandfather things that have been approved, but not to grandfather things that are not.

Other Lebanon Borough professionals did not testify but Ms. Swan wanted to recognize Joseph Haulk of Lebanon Borough and mentioned that he is not only the Zoning Officer for the Borough but a member of the Planning Board and Environmental and Shade Tree Commissions. It was pointed out that he is also the Borough's Historian.

Mr. Alstede asked if there are plans for a transit village close to the rail station. Mr. Paradis stated that there are currently improvement plans in place by the Borough and Department of Transportation to construct sidewalks and a new crosswalk which would allow for residents to walk to school and use transportation. Mr. Alstede stated that Council continues to encourage proactive planning for projects and utilization of the Raritan Valley Line instead of Route 78.

Mr. Holtaway stated that he was in support of the Petition as recommended for the following reasons. He stated that the protection zone close to I78 should remain in place as it provides a buffer. As to the grandfathering issue with respect to the Bellemead site, Mr. Holtaway stated that we live in a risk reward world and that there are protection periods that have opportunities for extensions and sometimes when things do not happen, there are socioeconomic reasons. The existing law is very clear and Council should not be over stepping their bounds in order to treat this piece of property separately or singling out any applicant with any special advantages to anyone.

All members present and on telephone conferencing voted on the Resolution. The Resolution was APPROVED 10-0.

At this time commemorative photos were taken as the Acting Chair presented a framed certificate regarding the approval of the Plan Conformance Petition to Mayor Paradis.

At this time there was a brief recess. The meeting resumed at 3:35pm.

Mr. Richko asked Acting Chairman Schrier if he may ask the Executive Director a question on another matter. Mr. Richko stated that back in November, 2008 this Council approved the

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Tennessee Gas Pipeline project and understands there is a second project proposed. Ms Swan responded to say that Council staff met with Tennessee Gas and NJDEP and that staff would consider this an amended application and if the applicant submitted one it should include any changes, if there were any, and this amended application would come before Council for approval. Ms. Swan stated that the applicant suggested an amended application would be submitted to Council staff sometime in March for an Exemption 11. Mr. Richko responded that since we will discuss this application again, he will hold off on any comment until that time.

Consideration of Resolution – Approval of Fiscal Year 2011 Regional Master Plan Budget

Ms. Swan stated that staff was asked by the Governor's office to bring this budget before Council. When and if you approve this budget you will still see those anticipated contracts come back to Council. The proposed budget has been reviewed by the Treasurer and Budget and Finance Committee.

Council Comment

No comments.

Mr. Cogger made a motion on the Resolution and Ms. Letts seconded it. Acting Chairman Schrier opened the meeting for public comment on the proposed Fiscal Year 2011 Regional Master Plan Budget.

Public Comments

David Shope owns a farm in the Preservation Area. – Mr. Shope stated that he did not understand as to the transferring of money in and out of the General Operating Budget. Mr. Shope commented that, in his opinion, the intent of the budget is the COAH bribe and keeping poor people out.

Mr. Alstede asked why there is a transfer in and transfer out. Ms. Swan responded that historically the Highlands Council has in every year taken money from the General Operating Budget into the RMP budget because there were no monies appropriated by the State for the development of the RMP. Ms. Swan further stated that it is required every six years to review the RMP and amend the RMP and the cost associated with that was not put in the budget, so historically monies are transferred out. Ms. Swan continued to add that last year the Council was asked, as were all department, agencies and authorities, to find ways to cut from their budgets. She noted that the Highlands Council is particularly lean in our budget and did not have any money in our operating budget to cut to offer and to assist in balancing the budget, so what Council did was to take monies from the RMP budget and put them into the operating budget such that the Governor would then have to give less monies from the general fund. This was agreed upon with the Department of Treasury and the Governor's office and accepted as a one-time effort on Council's part.

All members present and on telephone conferencing voted on the Resolution by roll call. The Resolution was APPROVED 10-0.

Acting Schrier asked Council to consider the dates provided to them for 2011 meetings and that these dates will be voted on at our next meeting on December 16, 2010.

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Mr. Alstede requested that we reverse the times of the October and November meetings to accommodate his work schedule. It was agreed that the schedule would be adjusted accordingly and considered by the Council at their next meeting.

Mr. Holtaway commented on next month's meeting's very heavy agenda and suggested that perhaps Council should consider a second meeting in December given the fact that Council has five pending petitions for consideration. He further suggested that Council might consider two meetings a month to accommodate Plan Conformance Petitions. There was discussion among the Council about what was done in the past and whether or not to consider changing the time of the December meeting. It was decided to leave things as they are for the December meeting and to reconsider the meeting schedule at that time

Public Comment

There was no public comment.

Mr. Holtaway made a motion to adjourn the meeting. Ms. Kovach seconded it. The meeting was adjourned at 3:44pm.

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: 12/17/10

Name: Annette Tagliareni
Annette Tagliareni, Executive Assistant

Vote of the Approval of These Minutes	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede	_____	_____	✓	_____	_____	_____
Councilmember Carluccio	_____	_____	✓	_____	_____	_____
Councilmember Cogger	_____	_____	✓	_____	_____	_____
Councilmember Francis	_____	_____	✓	_____	_____	_____
Councilmember Holtaway	_____	_____	✓	_____	_____	_____
Councilmember Kovach	_____	✓	✓	_____	_____	_____
Councilmember Letts	_____	_____	✓	_____	_____	_____
Councilmember Richko	✓	_____	✓	_____	_____	_____
Councilmember Vetrano	_____	_____	_____	_____	_____	✓
Councilmember Visioli	_____	_____	✓	_____	_____	_____
Councilmember Schrier	_____	_____	✓	_____	_____	_____