

Holland Township Environmental Commission Minutes

January 6, 2021 7 PM Meeting

Chairman Keady called the meeting to order. I call to order the January 6, 2021 Reorganizational Meeting of the Holland Township Environmental Commission. Adequate notice of this meeting was given pursuant to the Open Public Meeting Act Law by the Environmental Commission Secretary by:

1. Posting such notice on the bulletin board at the Municipal Building.
2. Publishing the notice in the December 10, 2020 edition of the Hunterdon County Democrat
3. And faxing to the Express-Times for informational purposes only.

HOLLAND TOWNSHIP ENVIRONMENTAL COMMISSION PUBLIC NOTICE TOWNSHIP OF HOLLAND

NOTICE OF CHANGE OF FORMAT OF REGULAR TOWNSHIP ENVIRONMENTAL COMMISSION MEETING AND PUBLIC PARTICIPATION FOR THE MEETING SCHEDULED FOR 7:00 PM WEDNESDAY JANUARY 6, 2021

PLEASE TAKE NOTICE.

THE MEETING FORMAT HAS BEEN CHANGED FROM IN-PERSON ATTENDANCE AT THE MUNICIPAL BUILDING, 61 CHURCH ROAD, TO TELECONFERENCE DUE TO COVID-19 OUTBREAK AND THE STATE OF EMERGENCY DECLARED BY GOVERNOR MURPHY. IN LIEU OF IN-PERSON ATTENDANCE, THE PUBLIC MAY ATTEND THIS MEETING VIA TELECONFERENCING AND COMMENT DURING THE DESIGNATED PUBLIC COMMENT PORTION IN COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT.

OFFICIAL ACTION TO BE TAKEN

Join Zoom Meeting

<https://zoom.us/j/92518975908?pwd=SitIRGsxK0RUajVDTGZsaStvdC9kdz09>

Phone: 1 646-558-8656

Meeting ID: 925 1897 5908

Passcode: 119220

All stood for the pledge of allegiance. All were reminded to turn off their cell phones or put them in silent mode.

Members Present: Regina Barna (new member sworn in below), Jerry Bowers, Mike Keady, David Harrison (arrived 7:07 pm), Susan Meacham, Ray Note, Dwight Pederson, and Township Committee Liaison Dan Bush, Secretary Maria Elena Jennette Kozak.

Absent: Township Committee Alternate Liaison: Ray Krov.

Let the record show we have a quorum.

Oath of Allegiance and Office for Jerry Bowers and Regina Barna administered by Holland Township Committee liaison Dan Bush.

Minutes: A motion was made by David Harrison and seconded by Dwight Pederson to dispense with the reading of the minutes of the November 3 and December 2, 2020 meetings and to approve the minutes as recorded. All present were in favor of the motion. Motion carried.

Secretary Kozak was asked to update the 2021 EC contact list and to distribute.

PennEast Pipeline update: Susan Meacham and Mike Keady –. Susan Meacham explained that PennEast wants to split the project into two Phases. Phase 1 would be in PA and Phase 2 would be in NJ. There is a Pennsylvania DEP hearing scheduled for January 13, 2021 regarding permits. Comment forms are being shared and people are encouraged to say NO. The recommendation in the past has been to stall the pipeline and it has been working for six years. The course of action is to deny permits with the Delaware River Basin Commission, deny permits with the PA Dep and then to move forward with legal actions. Susan Meacham expressed her opinion that this is all positive actions especially with the new administration. Mayor Bush stated that the Township is acting like the pipeline is coming to the township and the township is positioned to being against it.

Sub-Committees:

Trails – Jerry Bowers, Ray Note and Regina Barna. It has still been mentioned that more people are using the trails in Holland. Jerry Bowers will speak with Mayor Bush to see if the County can clear the Cyphers Road access. Last fall, it was noted that the County trail off Cyphers is all overgrown.

Community Forestry Plan – Ray Note, David Harrison, and Secretary Kozak

Community Forestry Plan Goals - David Harrison previously outlined the goals for 2020 and will resend to the EC members for discussion at the next scheduled meeting.

1. Arbor Day – Secretary Kozak to follow up with DPW Supervisor Colaluce. A tree was planted. We need to get a picture and a copy of the invoice.
2. Track Hours – Secretary Kozak to work with DPW Supervisor Colaluce for hours worked above.
3. Submit 2 articles – Secretary Kozak to get a copy of the Holland Happenings – spring and December editions.
4. Plan Development Outreach – COVID did not allow this to happen.
5. Tree Label – Secretary Kozak needs to work on this. Arbor Day tree planted. Also check info from David Harrison.
6. Community Day – cancelled due to Covid-19
7. Seedling – made arrangements but another event where COVID did not let it happen
8. Reg 3rd graders for tree give away – we need to get more info and work with the school to see if they do this or if they can
9. Recruit Volunteers for Help
10. Complete Hazardous Tree Survey Grant – we need to finish the tree inventory grant first and then the state says funding might be available. Maybe February 2021.

Secretary Kozak reached out to the school to discuss the 3rd grade project mentioned in the report but did not receive any follow up nor was she able to locate anything on the internet regarding this. It was an older program and she will explore if the county was involved with it.

Tree Inventory –Dwight Pederson and David Harrison continued working on integrating the data collected. Secretary Kozak reminded everyone to keep track of volunteer hours and send them in as soon as possible. Consultant Farr is working on his portion of the tree inventory project and Jerry Bowers offered to create a Google docs link for everyone to comment on the plan for Consultant Farr to revise. Submittal to the state should be by February 1, 2021.

Tree Map update – Dwight Pederson will work on this and is looking to change the current map to be more like the map that was recently used for the Christmas Decorating contest. Dwight Pederson will work with the Township web representatives. As a reminder, the 2020 Arbor Day celebration was cancelled however the Arbor Day tree (Red Oak) was planted in the Grove by our DPW. The identification tag is received and the DPW will in nice weather, install as they have in the past. We also ordered some additional tree identification tags that will need to be installed on the specific tree in the nice weather. Dwight Pederson will also incorporate them into our tree map. We will also need to update the website with information for these trees. All to be worked on in the spring when the weather is nicer.

Highlands Conformance – Jerry Bowers, Mike Keady and Dwight Pederson. – The Holland Township Highlands Council subcommittee completed and adopted several tasks in 2020. Progress is being made with the Fair Share Housing Plan which is the next task that will be before the Planning Board.

Highlands Council Environmental and Economic Sustainability Grant Awards Program update: Secretary Kozak continues to work with Maser and the Highlands Council but distribution of funds is on hold. The Retention/Detention basin inventory is still an important project. Shifting of monies from previously approved tasks is being considered but the council is thinking that everything is on hold per the Governor. Secretary Kozak to touch base with HC liaison Green for any update.

Hunterdon County Economic Development Grant – Secretary Kozak and Planner Green worked with HCED Director Saluk with a proposal to update zoning ordinances in Holland Township identified in the Redevelopment Plan and refining the Home Occupation Ordinance. Maser Consulting submitted a proposal in the amount of \$5,850.00 with Holland Township agreeing to match the grant with 10%. Holland Township has been awarded the grant. Planner Green will begin working on this. The Planning Board and the Township Committee will be reviewing the proposed ordinances for consideration.

Stormwater Education – Mike Keady, Jerry Bowers, Susan Meacham and Maria Elena Jennette Kozak as Secretary – Nothing new to report. Secretary Kozak is working on the 2020 report.

Community Education and Outreach – Jerry Bowers, Dwight Pederson, and Susan Meacham – Nothing new to report.

The EC webpage is: <http://www.hollandtownshipnj.gov/14-ec/46-environmental-commission.html>. Please send any additions or corrections to Secretary Kozak for posting

Inventory of Fauna and Flora subcommittee - David Harrison, Dwight Pederson, Ray Note – Nothing new to report.

Wild and Scenic – Liaison Pederson did not have anything new to report from the Musconetcong Watershed Management Council.

Planning Board Hearing - - Solar Project at the Hughesville Mill Property on Cyphers Road. A history was presented for new member Barna. Board members Jerry Bowers, Mike Keady and Susan Meacham prepared a memo on behalf of the Environmental Commission expressing concerns with the Solar Project. The memo is as follows:

To: Cathy Miller, Township Clerk

From: Holland Township Environmental Commission

Subject: The Holland Solar Farm Project

Date: December 10, 2020

At the December 1, 2020 meeting of the Township Committee (TC), the Township Attorney asked the Township Environmental Commission (EC) to prepare a memorandum to the TC setting forth EC concerns regarding a recently approved (Planning Board meeting of Nov. 9, 2020) application by Holland Solar Farms LLC to install solar panels on the site of the demolished Hughesville Paper mill. The Township Attorney further indicated that the topic of that memorandum would be placed on the TC agenda for a meeting in January 2021. This is the memorandum requested by the Township Attorney. The EC would be grateful if you would schedule a discussion of the matter at a January meeting of the TC.

CONTEXT:

About 20 years ago, a firm specializing in the purchase of failed or struggling manufacturing plants purchased the Hughesville Paper mill with a view to salvage and sell the plant's machinery & equipment, mostly to buyers in developing countries. Once the new owners extracted and sold the mill's equipment, they left the buildings to deteriorate—creating an increasingly unsightly and unsafe set of derelict structures that were the first view of Holland Township for anyone entering the community off Route 627 at Cyphers Rd.

Approximately ten years later, Holland Township received, reviewed, and approved an application to develop the Township's first major-scale solar field on a site behind the Shepherd of the Valley Church off County Route 614. In order to secure Holland Township approval of the project, the Applicant requested, and was granted, a number of variances—notwithstanding a proposal forwarded by a member of the Board of Adjustment (BoA), who recommended that the Applicant be asked to post a performance bond that would cover the eventual cost of removal of the solar panels when the project reached its end of useful life and/or if the applicant might decide to abandon the project due to negative changes in the applicant's financial health and/or changes in the technical and/or financial viability of the project. The BoA member's concern was provoked specifically by the analogous situation at the abandoned Hughesville Paper mill and represented at attempt to ensure that the Township would not be burdened one day by the cost of dismantling and removing solar panels once the project completed its useful life. The BoA member's proposition was rejected by the BoA attorney, however, who concluded that such a requirement would impose an unreasonable and inequitable burden on the applicant.

Essentially the same process played out in 2018-2019 in the instance of a solar installation at Cyphers Road (Applicant: Milford Solar Farm LLC). In that case, however, the recommendation (for a performance bond) was supported and forwarded by the Township Environmental Commission (EC). The EC's recommendation was turned aside by the Planning Board for the same reason cited years earlier by the BoA attorney.

*Subsequent to that decision, the EC conducted an extensive record search of state, county and municipal databases across the country, and discovered that virtually every state, and hundreds of counties and local jurisdictions in the U.S. had enacted ordinances that closely mirrored the recommendations put forward by the BoA member and by the EC over the previous decade. Drawing on those models, and with the EC's cooperation, **the Holland Township Attorney developed an ordinance (Ordinance 2019-19, dated November 7, 2019)** that provided the protections described above.*

In 2020, Holland Township received an application from Holland Solar Farm LLC for a third solar installation that would be co-situated on the same property (the old Hughesville mill) used for the earlier Milford Solar Farm LLC project. The third project would be the first project in the Township that would be subject to the requirements of Ordinance 2019-19, most notably including the ordinance's requirement that applicants post a performance bond as a condition to the receipt of a building permit. The Holland Solar Farm LLC application was approved by the Holland Township Planning Board (PB) on November 9, 2020.

The purposes of this memorandum are 1) to identify some aspects of the PB approval process that were flawed and that have the potential to undermine the intent and objectives of the ordinance; and 2) to urge the Township Committee to exercise leadership in

ensuring compliance with the ordinance as it applies to this third solar installation. Ultimately, the EC's objective is to help ensure that the Holland Solar Farm project—and future projects—do not create significant operational and financial burdens on the Township and its citizens in the event that the project's operators become unable or unwilling to restore the site at the end of the project's useful life. END CONTEXT.

In late summer of this year Holland Solar Farm LLC (“Applicant”) submitted an application to install solar panels on the site of the demolished Hughesville Paper mill. The Holland Township Planning Board (PB) held hearings on that application in September and October—approving the application at its October meeting—and met on November 9 to memorialize the Board’s October approval of the application. Representatives of the Holland Township Environmental Commission (EC) attended the three PB meetings and offered testimony at the September and October sessions.

The PB’s September–October review of the application identified several concerns with the proposed project and established a lengthy list of conditions that must be addressed by the Applicant prior to issuance of a building permit. **This memorandum focuses on one of those conditions, namely the successful execution of a DECOMMISSIONING AGREEMENT AND DEED RESTRICTION, the signatories of which would include Holland Township, Holland Solar Farm LLC, and (property owner) Fiberville Estates LLC.** The core element of that Agreement would acknowledge and codify the Applicant’s responsibility, per Ordinance 2019-19, to submit to the Township a performance bond (or similar instrument) that would be sufficient to cover the cost of the eventual decommissioning of the solar field, and the restoration of the project site to its *status quo ante* the project.

In the course of his presentation at the September and October meetings the Applicant’s attorney acknowledged his client’s obligation per the ordinance and noted the Applicant’s readiness to comply with that requirement. As a demonstration of that readiness, the Applicant had submitted, prior to the PB’s September meeting, a first draft of the required DECOMMISSIONING AGREEMENT AND DEED RESTRICTION.

The PB gave the EC an opportunity to review the draft decommissioning agreement prior to the September PB meeting. The EC reviewed the document and distributed its comments/suggestions to the PB and to the Applicant’s attorney before the September meeting. The EC review identified several elements in the draft agreement that would, if included in the final version, be inconsistent with the letter and intent of Ordinance 2019-20. **Among the changes suggested by the EC were:**

a) **Removal of a clause indicating that “The Developer shall make application for the performance bond within 180 days of the issuance of a demolition permit by the Township”** The EC noted that Ordinance 2019-19 requires the submission of a performance bond prior to the issuance of a building permit—not decades later, when the project would no longer be in operation. This phrase in the proposed draft agreement, incidentally, is identical to language in the Decommissioning Agreement executed between Holland Township, Fiberville Estates LLC, and Milford Solar Farm LLC on October 17, 2018, in the instance of the previous project--also located on the site of the Hughesville Paper mill; and

b) **The removal of text stating that “In the event that this Decommissioning Agreement is assigned to and or assumed by a company or entity listed on any publicly traded stock exchange in good standing or a public utility company or any subsidiary of a public utility company authorized to do business in New Jersey (a “Qualified Assignee”), there shall be no requirement that the Developers obligations of decommission be guaranteed by performance bond.”** Again, the EC noted that the relevant ordinance was explicit in its requirement that an Applicant submit a performance bond or functionally equivalent instrument prior to the issuance of a building permit and made no provision for a waiver of that requirement. Moreover, noted the EC, **the participation of a publicly traded utility or subsidiary in a project would not provide the Township with protections from operator insolvency, as utilities (example: Pacific Gas & Electric) could also fall into bankruptcy.** This phrase, like the clause cited in “a” above, appears in the Decommissioning Agreement executed in relation to the predecessor Milford Solar Farm project.

By the time the PB met for its September meeting, the Applicant had submitted a revised draft of the Decommissioning Agreement. That draft removed any reference to an end-of-project submission of a performance bond (item “a” above) and acknowledged the Applicant’s responsibility to post that bond prior to the issuance of a building permit. **The revised draft did not, however, change or delete the Applicant’s implied call for a waiver of that responsibility if certain conditions (i.e., their partnering with a publicly traded utility) were in effect.**

An EC representative testified at the September meeting, and pointed out that the language re a potential waiver was inconsistent with the intent of the Ordinance.

At its October 12 meeting the PB reviewed a third draft of the Decommissioning Agreement. Again, the language regarding a possible waiver of the performance bond (item “b” above) carried over to the revised draft, and again an EC representative testified in opposition to the proposed language. Specifically, the EC representative reminded the Applicant and the PB that the ordinance was unambiguous in its requirement that an applicant submit a performance bond prior to the issuance of a building permit and that the ordinance included no provision for a waiver.

The Applicant’s attorney responded, noting encouragingly that the Applicant was prepared to comply with the requirement for a performance bond, but that the Township Committee had issued an “accommodation” (waiver) of that requirement in the instance of the Milford Solar Farm project--largely because that project was owned by a New Jersey public utility. The EC representative asked the Applicant’s attorney if the principals to the Holland Solar Farm application currently before the PB had enlisted a public utility or subsidiary in the venture. The attorney replied that they had not. **(NB: There is no record that the Township Committee issued any such “accommodation”/waiver in the case of the predecessor Milford Solar Farm project. Indeed, no such waiver would have been necessary in that case, as the project pre-dated the issuance of Ordinance 2019-19, so neither the Developer nor the landowner would have been obligated to post a performance bond as a condition to receipt of a building permit).**

The PB met on November 9 to memorialize its approval of the proposed activity. Unfortunately, the PB’s resolution included several errors, all of which could have been avoided by reference to the relevant ordinance and to testimony offered at the September and October meetings of the PB. These errors included:

1. A statement that the Applicant will provide an estimate for the cost of decommissioning. Ordinance No. 2019-19 says that the cost estimate will be prepared by the Township Engineer
2. A statement that “The adequacy of the Decommissioning plan/agreement shall be reviewed and approved by the Township Attorney as a condition of approval”—not that the successful execution of the agreement with the Township Committee is the condition of approval
3. Most significantly, and notwithstanding testimony by both the EC representative and the Applicant’s attorney, the resolution incorporated the Applicant’s implied request for a waiver of the performance bond requirement if the Applicant should partner with a publicly traded utility/subsidiary of a utility. This, despite a) the Applicant’s acknowledgment that no such partner was involved in their project; b) the Attorney’s statement that the Applicant was prepared to comply with the requirement for a performance bond if that was the preference of the TC; and c) the inclusion of a factually incorrect statement that the Township had extended the same accommodation to the managers of the predecessor Milford Solar Farm project.

At the conclusion of the November PB meeting, the EC representative identified these errors, but was informed by the PB Attorney that the PB would not consider them, as the enabling Resolution had been approved that evening.

Next Steps:

The Applicant is obliged to satisfy several conditions laid out in the November resolution—one of which is the successful negotiation of the Decommissioning Agreement with the TC. That negotiation process, however, could be burdened by the errors included in the November resolution. Most notably, the resolution opens the door to that “accommodation”—the consequence of which would be the effective nullification of the central requirement and key protections laid out in Ordinance 2019-19.

Briefly, the Township’s interests will only be protected if the funds needed for an eventual cleanup & restoration of the project site are in hand **before** the project is approved for implementation--and now is the only time when the Township will have the opportunity to ensure that happens, i.e., via the Decommissioning Agreement. A waiver eliminates that protection. Promises to provide funds at the end of the project are vulnerable to a host of risks, including obsolescence, bankruptcy, or a change in corporate priorities.

From a more positive perspective, nothing in the Resolution—errors notwithstanding—will necessarily confound the successful negotiation of a Decommissioning Agreement that complies with the Ordinance, and which reflects long-term strategic priorities of the Township Committee. **The key elements that need to be included in that Agreement include**

1) the incorporation, by reference, of Section 3(a)[2] “Decommissioning Process Description” of the ordinance.

2) the Applicant’s commitment to comply with Section 5 of the ordinance, a portion of which states that “as a condition of site plan approval and prior to the issuance of any building permits...the land owner or operator of the facility shall obtain

and submit to the Township a performance bond or other agreed-upon secured funding in a form approved by the Township Attorney to ensure that the decommissioning plan provides financial assurance that there will be sufficient funds available for decommissioning and site restoration”; and

3) removal of language suggesting the possibility of a waiver of the Applicant’s obligation to post a performance bond.

The starting point for negotiation of the Decommissioning Agreement can be the Applicant’s own draft of that document, albeit with corrections to some errors of fact therein, and the revision of the draft to include the three elements noted above. If considered useful by the Township Committee and the Township Attorney, the EC would be pleased to review a draft of the Applicant’s agreement, and to offer its comments and recommendations regarding the agreement to the Township Attorney. The EC’s intent in providing that assistance—if invited to do so by the Township Attorney—would be to help ensure compatibility between the Decommissioning Agreement and Ordinance 2019-19, and to thereby help protect the long-term financial and aesthetic interests of the Township and its citizens.

The Environmental Commission is hoping for an invitation from the Township Committee to attend a meeting and discuss the memo.

Dwight Pederson discussed the access to the Musconetcong River for Fisherman project and expressed the concern that progress is not being made. Property owner IPPE is addressing potential concerns. Communication is on-going however; it might be something that is impossible to do. Dwight Pederson will keep everyone posted.

Chairman Keady is working on a thank you letter to member Harwick for his participation with the Environmental Commission. Secretary Kozak will work with Chairman Keady. The first oath administered was January 1, 2013.

Public Comment: There was no public comment as there was no public in attendance.

At 8:35 pm Susan Meacham made a motion to adjourn.

Respectfully Submitted

Maria Elena Jennette Kozak

Maria Elena Jennette Kozak

Environmental Commission Secretary