

MORRIS COUNTY TRAILS CONSTRUCTION GRANT PROGRAM

SPECIAL MEETING MINUTES 6/28/18 (3-5 PM)

ROLL CALL

Betty Cass-Schmitt (Chairperson)	Barbara Shepard
Julie Baron	Isobel Olcott
Nita Galate	Dick Seabury
Tom Malinousky	Marty Epstein

NOT PRESENT

Duncan Douglas

STAFF IN ATTENDANCE

Morris County Counsel John Napolitano, Esq.
Christine Marion, Director, MC Office of Planning & Preservation
Barbara Murray, Coordinator, MC Open Space Program
Denise Chaplick, MCPC, Coordinator, Trails Construction Grant Program
Jim Hutzelmann, MCPC, Engineering Manager

OPEN PUBLIC MEETING

The Committee Chair began the meeting and requested staff to read the Open Public Meeting Statement, which was done at 3:03 PM.

PUBLIC SESSION

At 3:03 PM Commissioner Betty Cass-Schmidt opened the public portion part of the meeting. The motion was made by Commissioner Barbara Shepard and seconded by Ms. Isobel Olcott. At 3:03 PM Commission and Committee Chair Betty Cass-Schmidt asked for a motion to close the public portion of the meeting, being no one from the public was present. Commissioner Barbara Shepard made the motion that was seconded by Commissioner Julie Baron, and unanimously approved by voice vote.

MINUTES

Commissioner Betty Cass-Schmidt asked for a motion to approve the minutes of the January 23, 2018 meeting. The motion was made by Commissioner Baron and seconded by Commissioner Shepard, and unanimously approved by voice vote at 3:05 PM.

SCHEDULE

Staff reviewed the 2018 schedule, Letter of Intent due on June 29 and full applications are due on July 31. Applications will be reviewed throughout August and September by staff then a summary book will be distributed to the Committee by the end of September. The Committee will get together on October 11 to review the summary book.

The book will be sent out two weeks before the October 11 meeting so the Committee can review the book and develop any questions.

The Q&A session will be held on Thursday, October 30 from 3pm to 7pm and November 1 from 3pm to 7pm if needed, to continue with deliberations.

We would like to make all recommendations by the end of the calendar year and award them at the December Freeholder meeting.

PROGRAM UPDATE

Staff gave a brief update on the mandatory Orientation Session held on April 26, where Penn Trails gave a presentation. We had 50 attendees representing 20 different municipalities and other non-profits. County and Park Commission staff also attended. Attendees had very positive feedback, felt it was extremely helpful, and would like to see more of the same.

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2016 PROJECT UPDATE

Staff presented an update for the projects awarded in 2016. Of the 13 grants awarded, one is complete.

Florham Park is the first grant project to finish. They did request additional dollars to cover unforeseen items, but we informed them that additional funding is not allowed.

Chatham Borough's Historic Riverside Trail is moving along smoothly. We have done a pre-application with them this year and they indicated that they might dollar remaining. They would like to reassign them in some other way. They are about 70% done and we did have a pre-construction meeting with them last year. They have stopped work over the summer and will pick it up again in the fall to finish the project.

Randolph Township Heritage Trail Extension. We have not done a pre-construction meeting with them and we are looking to schedule it before the end of next month. They have indicated that they have started doing some clearing and the permits have been received. There has been some changes but we have no detail of what the changes are.

Harding Township's Bayne Park/Kirby Municipal Campus Trail. A pre-construction meeting was held last June where they walked us through the project area. A few months ago, they made a request to the Freeholders for additional funding to cover changes that occurred to their project. Staff then met with Harding to review changes and request in more detail. Harding explained they felt it was necessary to widen the trail from four feet wide to six feet. They got approval from the Township Committee to increase their project cost and constructed a six-foot wide trail. Their request has prompted the Committee to explore if we will allow an applicant to come back for additional dollars and what the criteria would be.

The Committee asked if Harding's project bid the four feet or the six-foot path. Staff noted that their Initial and second bid was for the four feet trail. They chose a contractor from their second bid. Staff noted that the trail is complete or very nearly completed construction. Staff also noted that the project eliminated a section of the proposed trail around the pond due to push back from residents. The Committee noted that this would be considered a reduction from the original scope of the project.

Washington Township - South Branch Drakestown Preserves Connector. We did a pre-construction meeting, they are nearly finished, and we will have a final inspection in July. They should be the next in line to finish.

Denville Township - Meriel Hepner Park Bridge. They went out to bid twice, and got excessive costs back. Their initial project estimates were \$89,000.00 and their bids came back at \$187,000.00. Denville also requested more funding. There will be a pre-construction meeting with them in mid-July.

Long Hill Township - Matthew G. Kantor Park Trail. The pre-construction meeting was just held and their costs have nearly doubled based on the DEP feedback. The project is in their Municipal Complex. The intent is to complete a gap of an existing loop asphalt path. Unfortunately, that section goes into the buffer area of a wetlands zone so DEP would not let them use asphalt they want them to use impervious surface that caused their costs to escalate. They are now waiting on bids to come back for a stone dust material for their trail. During our pre-construction meeting, they were on the fence as to whether they would continue the project or give back the grant.

The Committee suggested that maybe the Committee should have a discussion with DEP regarding their requirements related to trail projects.

Mendham Township - Scott Farm Perimeter Loop Walking Trail. They purchased the property using Open Space funds with the intention of building the trail. DEP set strict limitations as to where the trail could be located, leaving few options. Ultimately, they decided to hand back the grant because the efforts expended have exceeded what they were going to spend on a trail.

Staff informed the Committee that this would be the first grant to be returned. We requested that the municipality send a formal letter of stating withdraw of the grant award and provide a justification. One of their questions was if they could come back with the same project at a later year.

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Morristown – Foote’s Pond Wood Trail. Staff received an update that they are moving forward and they have had feedback from DEP that has not changed from their application submitted.

Morris Township – Jockey Hollow Top Preserve Accessible Loop Trail. To date, staff has not heard from them however, their earlier updates from the progress reports indicate that design is 100% complete and they were expected to go out for bid in May.

Montville – Reilly Field Loop and Crossover Trail. We have not received an update since January and today received an undeliverable response from an e-mail sent to the project point of contact. We are assuming that person no longer works there. We are assuming the changes in administration have caused delays.

Mine Hill Township – Mine Hill Town Center Trail Construction. We have not received any Progress Reports from Mine Hill Township. We have repeatedly send our email updates. We also sent a letter to the Mayor on May 11, letting them know that we have tried to contact them on several occasions. The letter requests that they contact us by May 31, 2018, otherwise they would be in jeopardy of having the grant rescinded. Staff has not been contacted and would like to know what the Committee feels needs to be done. Can we pull the grant?

Staff explained that quarterly e-mail reminders are distributed requested required Project Updates, which for the most part has been successful, with a few exceptions.

The Committee felt that we should continue to send monthly requests, and as we get closer to the March 31, 2020 deadline, tell them that they should be aware of the deadline date.

The Committee members agreed that his would be a good process to follow. Staff recommended including reference to current grant status in future application considerations such as “if you are unresponsiveness to communication it could result in a refusal for qualifying for future grants.” Staff recommends adding such reference in the Rules and Regulations.

The Committee asked if Mine Hill in fact did sign the original grant agreement, and staff responded that they did.

Roxbury Township- Emmans Greenway Connector. We had a pre-construction meeting with them in February; they seem to be moving along smoothly.

Staff noted that seven of the thirteen grantees have either come back to request additional funds or made some type of significant change in the project that was different from what was in the application. Staff feels that we will probably see more of the same as projects progress. In the meantime, staff needs the Committee to consider how the program should address several of the current issues including how we handle requests for additional funds.

The Committee asked if we decided about a ten percent contingency. A Committee rep suggested that requests for additional funds could come from any funds remaining. We should not take it out of new project money, we could wait until we decide what monies we are expended and then if there is monies left over and decide on those. This may be something to consider since we now have the 10% for new applications.

Another Committee rep suggested that those requesting more money put in a supplemental application and we consider it with all the other applications. There is a problem with the applicant who has already expended all their funds completed the project and is now coming back to us for extra money. That is different from someone who has put their project on hold because they do not have enough funding versus the town that has completed everything.

Staff noted that we need find out more about other programs precedence for allowing requests for additional funds. Morris County explained that there is no opportunity in any other programs to request additional funds when there is a current grant agreement outside of a funding round. Once a grant agreement is executed, an applicant cannot come back to request more funding. In Historic Preservation when bids come in higher than estimates, due to a variety of factors such as construction prices going up, the applicant comes back to the Committee and reduces the scope of work before anything is done. They do not get any additional money; they can only reduce the scope of work.

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A Committee rep stated that that this is also the way that DOT grants work as well. If you are doing road resurfacing and you are going to do 5 miles of road and you get your bids in and you are only going to be able to do 3-1/2 because the bids came in high you have to go back and get them to sign off on that before you proceed with the work. We have approved one program and we have to stick by what we have approved.

Park Commission staff asked if there is a grant cancellation process for Historic Preservation grants. So far, in Historic Preservation there has been anyone who has returned the monies, historically there has always been more money available within the total grant. Any change within the grant must come back before the Committee before it can be started. This is also in our Rules and Regulations and in the Grant Agreement.

Park Commission staff read from the existing Trail Grant Rules and Regulations that there is two ways a project can be amended. The first is staff review, the rules define the issue as a significant amendment, and it is not limited to but requires considerable revisions such as the original alignment, routing, budget and overall impact of the facility. Significant amendments must be documented by the Grantee, justifying the requested change, and reported to the Trail Program Advisory Committee for approval prior to proceeding. Trail Grant staff can review to determine what is deemed minor amendments to the approved project upon consultation with staff. This is limitedly defined, but would generally consist of things like unanticipated permit requirements or on-site field conditions. This is what staff can help guide.

Harding Township did none of the above and informed staff of the changes after construction had started. They changed the route and the width of the trail, which are deemed as significant project changes. Park Commission staff noted that if Harding Township had come to the Committee beforehand maybe we would have agreed to acceptable modifications.

Morris County staff wanted to point out that the two other examples we have are Mendham Borough and Long Hill that we met with. They have both encountered cost issues and are willing to return the grant and re-evaluate. Staff has been notified of project changes and that they are going to have significant costs. So, rather than come before the Committee requesting more funding they chose to pull back and re-evaluate and resubmit.

The Committee also brought up Chatham. There was a meeting with them and they feel they will have some money leftover and want to apply it to a different component of the trail such as exhibits and signage. Staff cautioned them that not knowing the cost they should compare the dollars since our rules state that amenities cannot cost more than total cost of trail construction. We asked them to be sure this was not the case. They need to provide us with more information related to this.

The Committee suggested that for ease of administration we should follow the path of the other grant program that the County administers. We really need to hold the line because otherwise every year you will have two or three applicants who have extra money or not enough money. You need to establish a hard set of rules and stick by them. Let them come back in the next year's round and apply for additional funding.

Another member asked the if Committee want to permits a return for amendments to their original trail application that they are applying for additional money for amenities or to improve the surface, etc. Can they come back for the same trail?

The Committee questioned, at what point does the change in the scope suggest that you ask them to return the funding and come back in the future funding cycles for another grant? Staff responded that this could be done at various phases of work. If permitting requirements force changes. If bids came in too high, this is a critical decision making point, knowing you cannot do as much trail as originally anticipated. At this point, the Program Administrator has to be informed, be brought back to Committee, and have them discuss whether that is an acceptable change in scope.

A Committee member wanted to clarify and use Florham Park as an example. Their decision to include curb stops was made mid-construction, the Committee was not meeting again until November, its June and they need to put the curb cuts in. Park Commission staff noted that these minor sort of decisions would be made by staff and ideally would be covered by the 10% contingency.

Counsel noted that you need to look at the requests and/or scope changes and see if they would have changed the Committee's decision. Would it be something that would have been considered when going over the application? If there was a curb cut no one would have questioned it, but once you change the alignment significantly it becomes a different project. If you are changing the material from being paved to stone dust it becomes a different project. When you are doing your review process, these things are

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discussed to award the grant. You can make some rules of thumb but some of them will be that the changes make some sense, if a change just changes the alignment a little.

Staff did inform the Committee that when the recipients takes the application they are told to take their time preparing it and they should be able to construct the project as outlined in the application and cost estimate, otherwise they may be leaving money on the table. We encourage people to ask for what they will need to complete the project. If they ask for something, there is a high degree of them getting it. The ratio of awards is that they are funding the majority of requests. We encourage people to spend the money either at the beginning to prepare the design and engineering or spend it at the end for unforeseen costs. It is the municipalities gamble for them to decide where it is they want to spend the dollars.

Morris County staff noted that the Historic Preservation Program requires a Preservation Plan first, and then construction documents, then you proceed. They learned from their mistakes as they grew and eliminated certain items. It was through trial and error that they got to their present requirements and procedures.

Park Commission staff noted that there are many different nuances for each trail projects. Other Park Commission staff noted that, to date, the majority of cost estimates being submitted are based on conceptual plans, and assumes a 20% to 30% contingency. Because the projects and estimates that are coming in are conceptual, the applicant is not able to identify critical elements of the project and in turn are not reflected in the cost estimate.

Design can now be used as part of the match, so we hope we will begin to see better plans. Committee rep did point out that was one thing that was stressed at the training session the fact that you need to do all of the planning up front so that you get a better design and that you know how it is going to be used and what type of surface, etc. Although the training was mandatory, it may take some time to learn. It was also suggested that some type of forum take place between the people that have already gone through the grants and the new people who are new for information sharing. A session like that would also help people to avoid what issues or at least to brainstorm through different approaches.

During the training session an attendee brought up the fact that maybe, there should be some dialogue with neighbors in the area, suggesting that towns should have an open meeting regarding their project prior to submitting an application. Morris County staff mentioned that the Open Space Program requires applicants to have a public meeting related to Open Space applications.

Committee rep noted that there are certain policy basics that should be set. Will we ever consider supplemental applications to cover cost overages? Has it been decided that moving forward the 10% contingency will be used to address this? Or we could allow people to reapply for overages with specific reasons why? Another Committee noted that we need to separate that out and decide where we even contemplate a reapplication for extra funds. The Committee needs to decide and take a vote.

Morris County staff asked if that would mean the difference between withdrawing or keeping a current grant. A Committee member noted that that it is a question of does the Committee want a separate cycle for the process that allows for requesting additional funds.

If we already Ok'd part of the project and they came back for more, it would be difficult for the Committee to say no to a project that they have already approved. Where if they withdrew the project, came back, and submitted it all at once you can look at it as a whole instead of two parts.

Committee Chair asked if an applicant withdrew/return of their awarded grant and resubmitted, in effect the applicant would lose their grant and would have to compete for money again when they resubmit. Everyone agreed that this would be a good direction.

Counsel Napolitano feels that that is the only way that they can do that it. Because, the Advisory Committee gets an allocation of funds and give that money out, it is competitive, and you make a decision and balance numbers, since you do not do partial funding. He feels that requests for additional funding should be done as a withdrawal/return of an awarded grant and a new application submitted reflecting additional costs.

Committee Chair stated that the applicants would have to understand the process, and the timing of such decisions. Staff will need to establish a process that if there are overages, a municipality has the option to withdraw/return the grant and resubmit on a subsequent funding cycle prior to construction or they cover the additional costs themselves and move forward.

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Starting with 2018 funding cycle, applicants will have a 10% contingency, which hopefully, will cover the cost overruns they encounter.

A Committee member noted that there seem to be two things that tripping up applicants. When their bids come back higher than estimates and when DEP permitting puts certain conditions on the project. For example, DEP might require a change in type of surface material used. This could cause a big change in costs to be two to three times more than the original estimate. These are encountered after the grant is awarded.

Committee Chair stated that the Committee wants to establish a process where an existing grant can be withdrawn and be able to be resubmitted as a new application that would be then be reviewed on its own merits. However, a grant cannot be withdrawn if construction has already begun. All Committee members were in agreement and approved unanimously by voice vote.

Further, there should be criteria established as to what constitutes minor and significant changes. If someone reduces scope or changes a project scope, we would in effect have a minor revision process, which would go to staff to review, and that if it was a major revision process that would require it to come back to the Committee. Harding would be an example of significant changes. The Committee would be required to complete their review and recommendation within 30 business days of request. Changes in grant dollar amount will not be considered. All Committee members agreed and approved unanimously by voice vote. They also agreed that the review and recommendation could be conducted via email with the Committee members.

Park Commission staff noted that we need to further define "good standing" in future Grant Agreements and Rules & Regulations.

Committee Chair asked when a grant should be pulled. Counsel Napolitano recommended that if a project is still within the allowable grant period, 3 years plus extensions, it should be allowed to run its course.

The Chair requested a motion to adjourn, where Mr. Seabury moved the motion and Ms. Olcott seconded. The meeting adjourned at 5:02 PM.