



**Minutes of the Meeting
Delaware and Raritan Canal Commission
March 20, 2019**

TIME: 10:10 a.m.
DATE: March 20, 2019
PLACE: DRCC Office, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman John Loos, Commissioner Bruce Stout, Commission Philip Lubitz. Commissioners Douglas Palmer and Julia Allen attended via telephone.

STAFF: Executive Director John Hutchison, Mr. Joseph Ruggeri, Ms. Colleen Christie Maloney, Deputy Attorney General Melissa Abatemarco.

GUESTS: Superintendent Patricia Kalleser; Mr. Michael Sellar; New Jersey Water Supply Authority (NJWSA); Mr. Robert von Zumbusch, D&R Canal Commission Advisory Committee; Mrs. Linda Barth and Mr. Robert Barth, D&R Canal Watch; Mr. Mohammed El-Hawwat, MEH Consulting Engineers; Mr. Teddy Gadeh; Mr. Matthew Bersch and Mr. Doug Hanley, Dynamic Engineering.

Vice-Chairman Loos announced that this was a monthly meeting of the Delaware and Raritan Canal Commission and that the provisions of the "Senator Byron Baer Open Public Meetings Act" (OPMA) had been complied with in the scheduling of the meeting.

Administrative Items

Vice-Chairman Loos confirmed that the next regular meeting of the Commission would take place on April 17, 2019.

Minutes

Vice-Chairman Loos called for a motion on the February 20, 2019 meeting minutes. Commissioner Stout made a motion to approve the minutes and Commissioner Lubitz seconded the motion. Vice-Chairman Loos asked if the Commissioners proposed any corrections or wished to have a discussion on the content of the minutes. Hearing none, he called for a vote. The motion was approved unanimously.

Commissioner Stout noted that he did not have an opportunity to review the February 20, 2019 executive session minutes. Vice-Chairman Loos proposed that consideration and adoption of the

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executive session minutes from the February 20, 2019 meeting be deferred until the April Commission meeting.

Review Zone Projects

Zone A Projects

19-5361 Delaware River Access Point Education Signage (Kingwood, Delaware, West Amwell)
17-3723A 17 Wilson Street Duplex (Lambertville)

Vice-Chairman Loos asked for a motion on the two Zone A projects. Commissioner Lubitz moved to approve both projects, and specified that the motion on DRCC #19-5361 (Delaware River Access Point Signage) incorporate the condition set forth in the staff report; namely, that the applicant would consult with DEP State Historic Preservation Office (SHPO) prior to commencing the project, given the fact that the project sites are all within Commission Review Zone A and are located within the boundaries of the Delaware and Raritan Canal Historic District. Commissioner Stout seconded the motion. Vice-Chairman Loos asked for further comment. Mrs. Barth questioned that purposes of the proposed signage. Her query was answered by Superintendent Kalleser, who explained that the purpose of the signage project was to provide recreational watercraft users with information regarding good river practices and provide individuals with information to make decisions based on up-to-date water conditions. Vice-Chairman Loos called for a vote. The projects were approved unanimously.

18-3604A 415 Weston Canal Road (Franklin)

Vice-Chairman Loos asked the engineer of record, Mr. El-Hawwat, to briefly explain the project. Mr. El-Hawwat displayed photographs of the project site from the view of a person in the Delaware and Raritan Canal State Park, as well as a rendering of the proposed project and proposed sign that would be installed facing Weston Canal Road. Mr. El-Hawwat further noted that the Commission granted a certificate of approval in 2008 for a proposed warehouse project on the site, and that the current project was a similar flex-office and warehouse project with a single access from Weston Canal Road with improved stormwater runoff from three detention basins.

Mr. El-Hawwat and Commissioners discussed the setback of the project from the Delaware and Raritan Canal State Park. Commissioners discussed whether the proposed landscape plan sufficiently screened the project from the canal park, and that, if the existing vegetation did not provide adequate winter screening, whether the project should be revised to include additional landscaping to protect the park's visual environment. Mr. von Zumbusch criticized the landscaping undertaken to screen the various projects undertaken at the Zarapeth Christian Church campus as being a failure.

Director Hutchison and Deputy Attorney General Abatemarco noted that the standard for winter visual screening in the setback provision of the visual, historic and natural quality impact standards of the Commission's regulations at N.J.A.C. 7:45-10.4(a)4 was "adequate" and cautioned employing a standard that demanded a project be completely and entirely blocked the project from view of the canal.

Commissioner Stout noted his concern about the application, citing both the proposed landscaping plan and the proposed mitigation for stream corridor impact. Commissioner Lubitz and Vice Chairman Loos discussed the value of the mitigation area, noting that the proposed 1:1 ratio of mitigation involved the acquisition by the applicant of land from an adjacent, but nevertheless separate, lot. Commissioner

Stout and Vice-Chairman Loos discussed whether it would be appropriate for the applicant to consolidate the lot containing the mitigation area with the lot upon which the proposed project was to occur. Vice-Chairman Loos noted that the lot line adjustment was an administrative action that could be taken by the municipality without involving the approval of the planning board.

Mr. von Zumbusch expressed his concern that the viewshed of Weston Canal Road has not been protected, and also criticized the construction of numerous access roads onto Weston Canal Road, proposing instead that the project's access road exit onto Cottontail Road. Mr. El-Hawwat noted that Franklin Township specifically opposed such an idea. Mr. Ruggeri noted that an access road onto Cottontail Road would involve additional intrusions into the Commission-regulated stream corridor beyond those being proposed as part of the project. Mr. Barth expressed the concern that the proposed warehouse building could be visible for 30 years and voiced a general concern about the approval of additional development projects on Weston Canal Road.

Commissioner Stout made a motion to deny the project without prejudice with the suggestion that the applicant consult with staff from the Commission and the DEP Division of Forestry to determine whether a revised landscaping plan could be devised using native species of coniferous trees that would adequately screen the project from view of the park throughout the year. Commissioner Lubitz seconded the motion.

Vice-Chairman Loos called for further discussion. Mr. Barth requested a modification of the motion to provide that the applicant would also consult with the State Park Service regarding the proposed revised landscaping planting plan. Vice-Chairman Loos and the Commissioners agreed that the additional consultation be included in the motion.

The project applicant, Mr. Gadeh, expressed his concern about delaying the approval of the project until the April Commission meeting, and noted his company's necessity to relocate from their present warehouse in Jersey City to the proposed facility to Franklin Township by December of 2019. Vice-Chairman Loos and Commissioner Palmer indicated that if a revised landscaping plan could be completed relatively quickly, then they would support scheduling a special Commission meeting to reconsider the project.

Vice-Chairman Loos called for a vote on the motion to deny the project without prejudice. Commissioners Stout, Lubitz, and Allen voted to deny the project without prejudice. Vice-Chairman Loos and Commissioner Palmer voted against the motion. The motion was approved.

Vice-Chairman Loos voiced the view that the project would benefit from additional work on the landscaping elements. Commissioner Lubitz requested line-of-sight and perspective drawings of any revised project, so that they could better convey a physical representation of the screening of the project after five years. Commissioner Stout asked that any proposed landscaping plan include conditional language to require the survival of the proposed trees in the vegetative screen for a defined number of years. Commissioner Palmer noted his sympathy with the applicant's time constraints and need to advance the project and encouraged the applicant to work with Commission and DEP staff and come back to the Commission at the next meeting.

Zone B Projects

- 18-5337 Zimmer Athletic Field Artificial Turf (Lawrence)
- 18-0204B PIM Brands Building Expansion (Franklin)
- 18-1217B 1425 Lower Ferry Road-South (Ewing)
- 18-1217C 1445 Lower Ferry Road-North (Ewing)
- 18-5152 Parker at McCarrick (Franklin)
- 19-2632E Princeton Day School 10-Year Master Plan Major Modification (Princeton)
- 18-2840A Terrace Industrial Park (Hillsborough)
- 18-2068B Wawa of North Brunswick (North Brunswick)

Vice-Chairman Loos called for a motion on the Review Zone B projects. Commissioner Stout moved to approve the projects and Commissioner Lubitz seconded the motion. Vice-Chairman Loos asked for comment from the Commission and the public. Hearing none, he called for a vote. The Zone B projects were approved unanimously.

Executive Director's Report

Director Hutchison reported on the monthly workload and fee collections, including that Commission staff had hosted eight pre-application meetings and attended two permit coordination meetings at the DEP building in Trenton. He observed that the pace of applications has not appreciably slowed, given the 18 deficient staff reports issued in the prior month. He also noted that fee deposits for Fiscal Year 2019 totaled \$308,591, which keeps the fees on track with the FY 19 appropriation.

Director Hutchison noted that the replacement of inoperative interior and exterior fluorescent lights in the engineering office with modern LED fixtures was completed by Bryan Electric.

The Director noted that Commission hourly employee Tiffany Bennett had completed cataloging nearly all of the Commission's paper records and, noted with regret, that she had left the Commission to take a job out of state. Director Hutchison noted that Ms. Bennett had done an outstanding job during her time with the Commission and expressed his personal thanks for her work.

The Director reported that Commission staff was continuing a dialogue with DEP General Services to address poor telephone reception that has plagued the Commission offices for a number of years. The option to change from a landline service to voice over internet protocol (VOIP) was being discussed; although it was unclear whether Verizon (which provides telephone service) or Comcast (which provides Internet service) would provide the VOIP service.

Director Hutchison reported that the New Jersey Department of Transportation (NJDOT) had commenced a tree removal on state Highway Route 29 in Stockton Borough without having first complied with the conditions placed upon that approval by the Commission and noted in the certificate of approval. The project (DRCC #19-3921D) was approved with a condition that NJDOT submit a tree replanting plan to Commission staff for approval prior to beginning work. Director Hutchison informed the Commissioners that he contacted the NJDOT's contractor and advised them that the failure of an applicant to comply with the conditions set forth in Commission certificate of approval rendered that approval null and void pursuant to N.J.A.C. 7:45-4.1(e). The Director was subsequently notified that the NJDOT had ceased work, and that the Commission staff, Park Service and NJDOT would discuss the matter in detail at a future meeting.

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Park Superintendent's Report

Superintendent Kallesser noted she could share a draft landscaping plan prepared by NJDOT and approved by DEP Division of Parks and Forestry to mitigate for tree removal along State Highway Route 29 in the Titusville section of Hopewell Township, which was approved by the Commission (DRCC #19-3921C).

The Superintendent reported on strong volunteer turn out for park clean-ups both in Delaware Township and at Six-Mile Run portion of the Delaware and Raritan Canal State Park.

The Superintendent also reported on the status of the multipurpose trail resurfacing project within the park, and noted that information on the project and any potential trail closures that would result from the work would be posted on the Division of Parks and Forestry website. She further anticipated that the resurfacing project will be completed by late April. She discussed potential grant opportunities for the Park Service to conduct additional resurfacing projects within the park. Superintendent Kallesser also noted the upcoming "South Jersey Scrub" event hosted by the Division on April 6, 2019.

Superintendent Kallesser and Commissioner Stout discussed the status of the proposed design and funding of the proposed swing bridge project to be located at Moore's Creek in Hopewell Township. Commissioner Stout inquired whether it might be preferable to search for alternative funding sources, rather than reducing the project cost through design changes that would compromise the historically-representative design for the structure.

Commissioner Lubitz reported he had seen progress on the construction of the bike/pedestrian ramp that would provide access to the Delaware and Raritan Canal State Park from the Interstate Route 95/Scudder Falls Bridge project.

Commissioner Lubitz asked the Superintendent about the total number of Ash trees that have been removed as a result of the EAB infestation. Superintendent Kallesser said she did not have that information, but that she promised to furnish it at a future Commission meeting.

Vice-Chairman Loos and Superintendent Kallesser discussed tree species and replacement ratios related to recent projects within the canal park. The Vice-Chairman inquired about the ratio of replacement for trees removed from the Delaware and Raritan Canal as a result of Emerald Ash Borer (EAB). Superintendent Kallesser responded that the trees were being replaced at a ratio of 2:1, using "whips" -- unbranched young tree seedlings that have been grown for planting out, and placed in areas where there was sufficient grass to accommodate them. Mr. Sellar noted that with respect to the canal dredging project, that most trees were being trimmed to accommodate the dredge apparatus rather than removed. Superintendent Kallesser noted that replanting for any tree removals related to the dredging had already been undertaken at Blackwells Mills. Mr. von Zumbusch commented that any trees removed from between the towpath and the canal should not be replaced at all. The Vice-Chairman then clarified that the purpose of the replacement planting was to provide trees for the entire park, rather than just the area between the towpath and the canal.

Mrs. Barth inquired of the Superintendent about tree removal on State Highway Route 29 at a variety of locations, including Washington Crossing State Park, Trap Rock Industries and in Hopewell Township

generally. The Superintendent then attempted to clarify that there were a number of tree removal projects underway at different locations that were being undertaken by different State agencies. Mrs. Barth responded by stating that she meant the trees under the public utility lines that had been "slaughtered" and whether those trees would be replaced with the same species. Commissioner Lubitz then noted that given the presence of the utility lines, it would not be sensible to replace the trees that interfered with the lines with the same species, which would grow to the same height, and then presumably cause the same problems as the present trees. He noted that the removed trees should be replaced with native species that would grow to a shorter height, and noted the red dogwood, redbud and witch hazel as examples of appropriate species that would create a pleasing aesthetic effect when they flower.

The Superintendent then attempted to clarify that there were a number of standing dead tree species being removed along Route 29, and that these were primarily -- but not exclusively -- Ash trees that have succumbed to EAB. Mrs. Barth commented that the trees being removed were identical, so they must therefore be the same species.

After an extended dialogue between Mrs. Barth and the Superintendent, Director Hutchison requested to speak. He noted that there were multiple tree removal projects currently being undertaken, and that they were being done so with Commission approval. With respect to Route 29, he noted two projects. The first was the removal of dead and dying Ash trees from Church Street in Titusville south to Washington Crossing-Pennington Road for which the DEP was the applicant. The Director noted that the replanting plan primarily involved replacing the removed trees at the Knox Grove day use area at Washington Crossing State Park. The second project, for which the NJDOT was the applicant, involved the removal of multiple species at four defined sites from Titusville north to Stockton Borough. He offered to furnish copies of the staff reports which specify the species, location and size of the removed trees to Mrs. Barth, and that they could compare those documents with her photographs.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported on the status of the canal dredging project, including the trucking of 1,500 to 1,700 tons of dried dredge material per day. He noted tree work would begin for the next two reaches to be dredged this year. The contractor requested to begin dredging on May 1, 2019 and had received permission from the Army Corp of Engineers. The contractor was in the process of notifying DEP.

Mr. Sellar and Commissioner Stout discussed proposed repairs to the western canal embankment in Stockton Borough, including removing the gates at Bridge Street and canal bank restoration in the area with plastic tarps.

Mr. Sellar reported on the Hydrilla treatment plan for the year, which would start in the spring, using the same concentration of herbicide in previous years that was approved by the Commission.

Mr. Sellar reported that a temporary repair at the Six Mile Run culvert would commence in April.

Old Business

Commissioner Lubitz reported that he had spoken with Sierra Club New Jersey Chapter Director Jeff Tittel about a proposal for legislation to create a Delaware and Raritan Canal State Park license plate and that Mr. Tittel would be in support of such a project for which the revenue would be dedicated to

Parks.

Vice-Chairman Loos briefed Commissioners on the status of the proposed Easton Avenue Pedestrian Bridge project. For the benefit of those Commissioners who were not serving at the time, he then related history of the project. He noted that the proposal to construct a pedestrian bridge over the Delaware and Raritan Canal near the intersection of Easton Avenue and John F. Kennedy Boulevard in Franklin Township was the result of mitigation related to the visual impact of a 2005 PSE&G project to construct a transmission pole in the canal State Park in Franklin Township. Among the conditions of the certificate of approval, which was modified by a subsequent stipulation of settlement in 2008, was that PSE&G would deposit \$275,000 in a dedicated account for the Division of Parks and Forestry to construct a new pedestrian access to the park towpath in Franklin Township, Somerset County, or a project of similar scope in the Commission's sole discretion. Those monies were used by DEP for the design work relating to a proposed pedestrian bridge to be located near the Somerset Diner in Franklin Township. The site of the bridge would be on land placed in an easement with the Commission as a result of a subdivision of the Somerset Diner property on Easton Avenue.

The Vice-Chairman informed Commissioners that he had requested an updated estimate for the construction of the bridge, which, according to the engineer retained by the DEP, was now estimated at \$876,000 with a 10% contingency. This was higher than the original estimate completed in 2013 of approximately \$600,000. He also noted that approximately \$100,700 remains in the account. Commissioners then agreed that in light of the revised cost estimate, that it would be appropriate to suspend consideration of the bridge, and instead direct that the remaining monies dedicated to the project be used to improve pedestrian and cycling access to the canal in Franklin Township, and for potential parking improvements to the existing park access point and pedestrian bridge located at Demott Lane.

Vice-Chairman Loos requested that Director Hutchison report to the Commission on a recent incident involving tree removal in the Delaware and Raritan Canal in Franklin Township, in an area of the park south of Amwell Road.

Commissioner Lubitz noted for the record that before Director Hutchison began his report that he would recuse himself from the discussion of this topic as he is a shareholder of PSE&G. Commissioner Lubitz did not participate in the ensuing discussion.

The Director noted that Public Service Electric and Gas (PSE&G) has conducted tree removal south of Amwell Road in Franklin Township, which they contend is required by the Federal Energy Regulatory Commission (FERC) and U.S. Department of Homeland Security (DHS). The Director noted that this work was conducted without Commission approval and apparently without any authorization from a lease with the DEP or the NJWSA. PSE&G had promised to apply for a retroactive permit, and to undertake a replanting plan. However, they subsequently notified the Superintendent of the Park that they were "standing behind" their position that they want to see what grows back before "agreeing" to any revegetation plan. Director Hutchison informed PSE&G to reconsider their position and noted that they have conducted what appears to be a Zone A "Minor" project in the park without the Commission's approval and without the benefit of a lease agreement that authorizes such work. The Director noted FERC, DHS and New Jersey Board of Public Utilities regulations do not necessarily preclude compliance with the Commission's regulations, and suggested that it was possible for PSE&G to submit

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a replanting plan without running afoul of federal and State electric grid reliability and homeland security mandates.

Vice-Chairman Loos described the tree removal area to be approximately 150 yards wide and that the trees stumps, in what might be a freshwater wetlands area, were left in place. He noted that, while PSE&G would need to keep vegetation from interfering with the transmission lines, the tree clearing was extensive and has imposed a significant negative visual impact upon the park.

Public Forum

Mrs. Barth expressed her concern about boat launching fees that are charged by the State Park Service for launching watercraft into the Delaware River. Superintendent Kalleser reported that the fees charged at the boat launches are imposed pursuant to a fee schedule incorporated in the Department's State Park Service Code at N.J.A.C. 7:2 and was last adopted in 2014. Mrs. Barth asked how the fee schedule was devised and why there was not a public process associated to discuss its usefulness and comment on its adoption. Superintendent Kalleser noted that there was a public process in 2014. Director Hutchison observed that any administrative regulation adopted by any State Government agency must comply with the public comment process set forth in the "Administrative Procedure Act."

Executive Session

At 11:30 a.m., Vice-Chairman Loos requested a motion to enter executive session for the purpose of discussing litigation matters. Commissioner Stout moved to approve entering executive session for such purpose, and Commissioner Loos seconded the motion. The motion was approved unanimously.

Public Session

The Commission returned to public session at 11:50 a.m.

Commissioner Stout expressed the concern that NJDOT had displayed a pattern of repeated and flagrant violations of the Commission's regulatory authority, and that its attitude was most recently demonstrated with tree cutting project in Hopewell Township and Stockton Borough which was undertaken without complying with the conditions of the relevant certificate of approval. He requested that the Commission issue a strongly worded letter to the NJDOT. There was discussion of initiating legal action against NJDOT if they refused to comply, including Commission Lubitz and Vice-Chairman Loos discussing possibility of engaging an outside attorney to represent the Commission. Mr. von Zumbusch endorsed sending a strongly worded letter and copying the Governor's office.

Vice-Chairman Loos asked Director Hutchison to draft a letter and share it with Commissioner Stout for comment.

Executive Session

At 11:55 a.m., Vice-Chairman Loos noted the Commission would need to enter a second executive session for the purpose of discussing personnel matters. Commissioner Stout moved to approve entering executive session for such purpose, and Commissioner Lubitz seconded the motion. The motion was approved unanimously.

Public Session

The Commission returned to public session at 12:05 p.m.

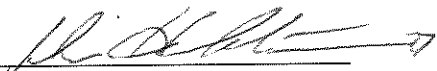
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Adjournment

There being no other business, Vice-Chairman Loos entertained a motion to adjourn. Commissioner Lubitz moved to adjourn, which motion was seconded by Commissioner Stout. The motion was approved unanimously.

The meeting adjourned at 12:05 p.m.

Respectfully submitted,



John Hutchison, Secretary