

MINUTES OF THE MEETING OF 6 JUNE 1990

TIME: 9:50 AM - 12:00 PM
DATE: Wednesday, 6 June 1990
PLACE: Mercer County Improvement Authority
Trenton, NJ



DELAWARE AND RARITAN
CANAL COMMISSION

ATTENDING:

COMMISSIONERS: Messrs. Guidotti, Jessen, Jones,
Pauley, Zaikov; Mrs. Nash

STAFF: Mr. Amon; Ms. Holms
Deputy Attorney General Stephen Brower

GUESTS: Bill Moss, Canal Society of New Jersey
Barbara Thomsen, D & R Canal Watch
Bill McKelvey, Friends of the NJRR &
Transportation Museum
Bruce Herrich, Isles, Inc.
Richard Walling, Preservation Coalition
of New Jersey
Tom Sadlowski, Preservation Coalition of
New Jersey
Mike Martynenko, NJ DOT (Reg. Des. 3)
Peter Therkelsen, NJ DOT (Reg. Des. 3)
Gregory Lago, NJ DOT (Bureau of
Environmental Analysis)
Miriam Crum, NJ DOT (Bureau of
Environmental Analysis)
Janet Fittipaldi, NJ DOT (BEA)
Lauralee Rappleye-Marsett, NJ DOT (BEA)
Pam Stephenson, Office of New Jersey
Heritage
John Kraml, Division of Parks & Forestry
Jim Wiles, Division of Parks & Forestry
Mary Jane Post, Preservation Coalition of
New Jersey
John R. Cipriano, City Councilman -
Trenton
Neylane Rizzuto, S.T.A.R.S.
Gary Toth, NJ DOT
Arlene Weiss, NJ Division of Law
John Maiorana, NJ Division of Law
Frederick T. Bogdan, NJ DOT, Region 3
Robert von Zumbusch

Mr. Jessen opened the meeting by stating that all applicable provisions of the Open Public Meeting Law of 1976 had been

PRALLSVILLE MILLS P.O. BOX 539 STOCKTON, NJ 08559-0539 609-397-2000 FAX: 609-397-1081

**EXECUTIVE
DIRECTOR**
James C. Amon

COMMISSIONERS
Benjamin B. Kirkland
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Martin D. Jessen
Vice-Chairman

Donald B. Jones
Treasurer

Stuart R. Zaikov
R. William Pauley

Judith A. Yaskin
Frank J. Torpey

Winona D. Nash

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
James J. Florio, *Governor* Judith A. Yaskin, *Commissioner*

met. He thanked Steve Golebuski of the Mercer County Improvement Authority for the use of their conference room.

PRESENTATION BY STEPHEN BROWER, DAG, OF THE LEGAL ISSUES AFFECTING THE COMMISSION'S ACTION ON THE DOT'S PROPOSED ROUTE 129 AND LAMBERTON ROAD CONNECTOR

Mr. Brower stated that the question that was raised for legal review was where the boundary line for the D & R Canal State Park was, in the vicinity of the proposed new roads. He stated that the statute was unclear, and research showed that the exact boundary was not determined at the time that the legislation went into effect. The law states that the boundary in this area would be determined by the Department of Environmental Protection by making a survey. Mr. Brower obtained the work file of this survey from Parks & Forestry which resulted in the study that determined where the boundary was. The survey encompasses that part of the canal from Crosswicks Creek to Laylor Street.

From the report, Mr. Brower concluded that the northernmost boundary of the Canal Park (in this area) is situated mid-point of Lock #2. The determination was based on surveys, aerial photographs, and the abstract of all the deeds of the property that were effective.

The confusion arises from that part of the statute which states that the boundaries need to be determined in the "abandoned portion of the canal in Hamilton Township". The municipal boundaries are somewhat unclear, but according to Mr. Brower, it appears that the boundary between Hamilton Township and Trenton runs east and west in the middle of Laylor Street, and then southward in an irregular pattern that first puts all of the canal in the City of Trenton, then runs on the center line of the canal, then--about 2400 feet north of Lock #2--puts all of the canal in the Township of Hamilton. By just using that description, it might appear that part of the canal above Lock #2 is part of the Canal Park. However, according to Mr. Brower, the history of the deeds counters this theory--the Canal Company gave the canal to the Board of Conservation (now DEP), which in turn sold all of the canal between Laylor Street and the middle of Lock #2 to the City of Trenton. Therefore, according to Mr. Brower, the DEP survey concludes that the land from the center of Lock #2 southward is in the park, and the center of Lock #2 northward is not.

When plans were being made to construct a road in this area, the City of Trenton sold the old canal right-of-way to the DOT for a highway right-of-way.

Mr. Brower stated that since the area of the proposed Route 129 and Lamberton Road connector was not in the Canal Park, the Commission could not disapprove this project.

Mr. Zaikov asked Mr. Brower to clarify that point.

Mr. Brower said that State projects within the park can be disapproved. State projects not within the park can only be approved.

Mrs. Nash asked why did they (DOT) come to us for approval if the Commission can't approve?

Mr. Brower stated that they have to let the Commission know what their plans are.

Mr. Zaikov asked that if the Commission didn't act upon it, could they (DOT) go ahead without the Commission's sanction. Mr. Brower answered "yes".

Mr. Amon stated that he did not agree with Mr. Brower. In the past, with all of the previous deputy attorney generals, the Commission has taken action--approval, disapproval, approval with conditions, on State projects in the Review Zone. Mr. Amon felt that the statute's requirement that a full-scale application be made to the Commission, to which the Commission only has the opportunity to approve, and if it doesn't approve it doesn't matter--seemed very strange.

Mr. Zaikov asked whether this could be an error. Mr. Brower said no.

Mr. Amon summarized Mr. Brower's findings regarding the boundary of the park, but expressed uncertainty regarding the DEP's 1978 survey report. Mr. Brower said that the critical issue was that when the State transferred some of the canal to the City of Trenton in 1937, they expressly determined that it was not needed for canal purposes and that the City would use it for highway purposes.

Mr. Von Zumbusch stated that this report (the survey) should have come before the Canal Commission and the Office of New Jersey Heritage, and since it did not, it is not complete and not proper. He went on to say that when he was working on the Development Plan, he made inquiries and was told that the boundaries were not determined. He also stated that the Vegetation Survey delineated the boundaries through Sturgeon Pond.

Mr. Brower responded that the Statute did not require how the report should be done, only that it should be done.

Mr. Von Zumbusch replied that since the report did not come before the Commission, the Commission should take the position that the report was never approved.

Mr. Brower stated that the report was completed, and the boundaries were determined.

Mr. Jessen spoke of the original plans of DOT's Lambertton Road connector--that the road originally went over Lock #2, and that the revised plans show that the road misses the lock by 48 feet. The new plan preserved 400 feet of area between the road and the railroad track. The amount of area in question (as to ownership) is approximately another 400 feet, according to Mr. Jessen. He reminded the Commissioners that NJDOT agreed to give the Canal Park an access road to Lock #1. He felt that the Commission should be realistic from an economic standpoint in setting its future plans and goals for the Canal Park.

PRESENTATION BY COMMISSION STAFF AND DOT OF ISSUES RELATING TO ROUTE 129

Mr. Amon reviewed the six maps given to the Commissioners. He summarized the plans of the "Trenton Complex," as well as several alternatives for the Lambertton Road connector. He stated that the road would be 44 feet wide--two 12-foot lanes and two 10-foot shoulders. He stated that in March of 1986 he wrote to Mr. Fred Bogden about this proposed road; after not getting a response, he wrote to DOT Commissioner Gluck.

He summarized the issues--if the Canal Park ends at the middle of Lock #2, then the proposed construction is outside the park, but within the "A" Review Zone. Another issue was an alternate area that Mr. Amon suggested to NJDOT as a possible place for the connector--an area upstream from the one in question, near where Route 29 would be coming into the Interchange. He said that NJDOT representatives determined that this could not be done.

He stated that according to the Development Plan the eventual goal for this area is for Lock #2 (plus water above it) to be the northern terminus for the abandoned portion of the canal. The issue, therefore, is whether this proposed road gives the park enough canal above the lock to fulfill the objectives of the Development Plan.

Mr. Zaikov asked what were the legal ramifications of disagreeing with the Deputy Attorney General's counsel. He stated that he did not agree with Mr. Brower's interpretation that the Commission does not have the right to disapprove State actions in the Review Zone.

Mr. Jessen stated that the Commission has the right to approve and "influence".

Mr. Pauley asked whether the Commission could withhold approval. Mr. Brower said it did not have that option. Mr. Pauley asked whether there was a deadline for approval. Mr. Brower replied "no".

Mr. Amon suggested the Commission go ahead and consider the proposal, whether the Commission agrees with the approval/disapproval issue or not. He went on to say that NJDOT spoke of the long time involved to obtain permits--he reiterated that he wrote to NJDOT in 1986, and that if they had responded to him at that time, they would have had their permits by now. He stated that there now is a deadline--that if the road doesn't go in, the access to the recovery plant will be through residential neighborhoods. He stated that while the proposed alignment takes up a good portion of the canal, it also gives the Commission most of what the Development Plan calls for, for the abandoned section of the canal.

Mrs. Nash asked why would the Review Zone be applicable to the private sector, when the public sector has free rein to do what they please.

Mr. Jones suggested proceeding as though the Commission did have review authority for State actions.

Mr. Amon recommended proceeding with the opinion that the area in question is not in the park, but that the Commission has review zone authority over it.

Mr. Sadlowski disagreed with Mr. Brower's opinion that the area was not parkland, because it is state-owned property contiguous to the canal in part of the park. The boundaries were never officially completed.

Mr. Jones stated that he agreed with the DAG's interpretation of the boundaries.

Ms. Janine Bauer felt that the Commission would be in a weak position if they considered the proposal as though it were in the Review Zone, and that they should wait for a formal Attorney General's opinion. She stated that the Commission shouldn't feel pressure from potential deadlines--that there was currently a moratorium on construction of incinerators. A NJDOT representative stated that the Trenton Complex was not being built solely for the recovery plant--that if postponed, the state would lose Federal funds.

At this time there was discussion between representatives of NJDOT and Preservation Coalition about the EIS process being flawed. Mr. Walling stated that the canal should be left intact as a historic artifact, and when public monies come available, the canal should then be rehabilitated.

Mr. Toth of NJDOT stated that there was a Memorandum of Agreement with the Office of New Jersey Heritage stating that the road plans could go ahead, with the recommendation that archaeological monitoring be done. He said that \$5 million was spent on historical studies and mitigation.

Mr. Bogden stated that the reason DOT did not respond to Mr. Amon's memo in 1986 was because they were working on Interchanges 195 and 295; the culmination of their research was submitted to the Commission informally last year, formally in June of 1989.

Mr. Guidotti reiterated that the issue now was not whether the area of the proposed roads was in the park. He stated that the survey conducted by the DEP in 1978 was not required to go through public hearing/public review processes--that it was simply mandated by legislation to be done.

Mr. Zaikov moved that the Commission take no action on the Department of Transportation's application, pending a formal opinion by the Attorney General on the extent of the abandoned portion of the Delaware and Raritan Canal and on the Commission's authority to approve, disapprove, or modify any State actions in the review zone. Mrs. Nash seconded the motion. Mrs. Nash, Messrs. Guidotti and Zaikov voted in favor of the resolution, Messrs. Jones and Pauley dissented, and the motion passed.

Mr. Von Zumbusch stated that he hoped the Commission would continue to discuss the issue with NJDOT.

Mr. Moss raised several issues, one of them being that the proposed Route 129 would go over the only original locks left that were not altered for control of water flow.

A discussion of the double outlet lock and NJDOT's involvement with it ensued.

Ms. Crum discussed which areas of the proposed roads would be constructed at grade (capped) and where the road would be depressed. Mr. McKelvey asked whether the timber remains would be excavated. Mr. Bogden stated that in the area north of Laylor street, the only excavating would be that which is necessary to meet grade.

Mr. Pauley stated that he would not support a 60-foot buffer between the road and Lock #2, but that he would prefer the alternate 200-foot buffer (Alternate A).

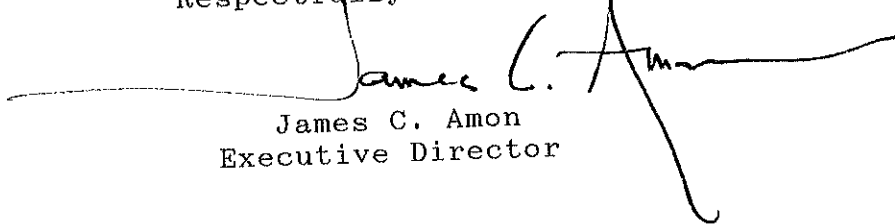
Mr. Von Zumbusch asked whether DOT plans to go ahead with the proposed Route 29 extension. Mr. Bogden said yes.

Ms. Bauer asked whether any locks would be destroyed. Ms. Crum replied that the only lock in jeopardy would be Lock #6. Ms. Bauer suggested that DOT hold a public meeting to answer questions about the locks. Ms. Crum replied that research on the locks had been reviewed and approved through the Federal 106 review process.

Mrs. Nash stated that she visited the site, and felt that the maps drawn by NJDOT were incorrect, and that therefore Alternate B was a viable alternative.

Mr. Zaikov moved adjournment, Mr. Guidotti seconded the motion, and the meeting adjourned at 12:00 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James C. Amon", with a long horizontal stroke extending to the left and a vertical stroke extending downwards to the right.

James C. Amon
Executive Director