

MINUTES OF THE MEETING OF AUGUST 18, 1993

TIME: 12:05 PM to 3:20 PM  
DATE: Wednesday, August 18, 1993  
PLACE: Canal Commission Office  
Prallsville Mills, Stockton, NJ



DELAWARE AND RARITAN  
CANAL COMMISSION

ATTENDING:

COMMISSIONERS: Messrs. Jessen, Jones, Kirkland, Marshall, Zaikov; Mrs. Nash, Ms. Shaddow (representative for Mayor Palmer)

STAFF: Mr. Amon, Mr. Dobbs, Ms. Holms  
Ms. Carol Blasi, Deputy Attorney General

GUESTS: Paul Stern, D&R Canal State Park  
A. Gregory Chase, NJ Water Supply Authority  
Kay & Larry Pitt, Canal Society of New Jersey  
Joe Bird  
Sam Herzog, Wyndmoor Associates  
Deborah Herzog, Wyndmoor Associates  
Frank Petrino, Petrino, Skey, Dumont, Matejek & Roskos  
Doug McMurrain, Hendon Prop. Assoc.  
Deborah Poritz, Jamieson, Moore, Peskin & Spicer  
Raymond Liotta, Berson Ackermann and Associates, Inc.  
Gary Dahms, T&M Associates  
Fred Brown, D&R Canal Watch  
Leo Laaksonen, Mercer County  
Gordon Keith, Port Mercer Civic Association  
Patrick McAuley, Connell, Foley & Geiser

Mr. Kirkland opened the meeting and announced that this was a regular meeting of the D&R Canal Commission and that all provisions of the Open Public Meeting Law of 1976 had been met.

MINUTES

Mr. Jessen moved the approval of the minutes of July 21; Mrs. Nash seconded the motion and it passed unanimously.

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  
Chairman

Martin D. Jessen  
Vice-Chairman

Donald B. Jones  
Treasurer

Stuart R. Zaikov  
R. William Pauley

Scott A. Weiner  
Frank J. Torpey

Winona D. Nash  
Douglas H. Palmer

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY  
James J. Florio, Governor Scott A. Weiner, Commissioner

## REVIEW ZONE ACTIONS

Mr. Amon presented two "A" Zone project applications for waiver from review:

1. Streilein House Addition - Delaware Township; addition on rear of house.
2. Louise Minervino Property - Lambertville; proposal to enclose a deck in the rear of the property.

Mr. Amon stated that neither project would have an impact on the Canal Park. Mr. Jessen moved waiving review requirements from the two projects; Mr. Jones seconded the motion and it passed unanimously.

Mr. Amon then presented one "A" Zone project application for approval:

- 93-2120 - McGruther Residence Addition - Hopewell Twp.;  
addition on rear of house, facing the Canal Park.

Mr. Amon said that the addition will not be closer to the park than existing portions of the house, that vegetation and a five-foot fence currently buffer the house from the park, and that the architectural style of the addition is in harmony with the style of the existing 19th century house. Mr. Jessen moved approval of the McGruther addition; Mrs. Nash seconded the motion and it passed unanimously.

Mr. Dobbs presented two "B" Zone projects for approval:

- 93-2118 - Municipal Complex - Hopewell Township;  
municipal buildings and parking on 15 acres with 21%  
impervious surface.
- 90-1949 - Exxon Service Station - South Brunswick Township;  
service station on 2 acres with 36% impervious  
coverage.

Mr. Dobbs stated that Commission requirements for stormwater management and water quality had been met for both projects and recommended approval. Mr. Jessen moved approval of Hopewell Township Municipal Complex; Mrs. Nash seconded the motion and it passed unanimously. Mr. Jessen then moved approval of the Exxon Service Station; Mrs. Nash seconded the motion and it passed without dissent, with Mr. Zaikov abstaining.

## REQUEST FOR CHANGE TO WAL-MART RESOLUTION OF APPROVAL

Mr. Amon presented several changes requested by the applicant to the resolution approving the Wal-Mart application. Representatives for Wal-Mart have requested to assume the responsibility of building the new road and bridge across the canal, instead of

Mercer County as originally agreed upon. As a result, several sections of the Commission's June 23rd resolution of approval for this project are not applicable. This change also affects language in the Developers' Agreement. Additionally, Commission staff insisted on an outside limit as to when the road and bridge be built; Wal-Mart agreed to this condition with an escape clause that would allow for events that could occur which were recognizably out of their control that would prevent them from completing the schedule as stated. This would include "permit delays beyond Wal-Mart's control."

In order to guarantee that the road and bridge be built, the staff has recommended a condition that Wal-Mart not be allowed to begin construction of the project until the right-of-way for the road and bridge has been obtained. Wal-Mart requested a modification: that they be permitted to undertake infrastructure work upon the signing of an agreement that stipulates that all parties will work toward acquiring a right-of-way or any necessary easements, and that construction on the buildings in the Wal-Mart project cannot begin until Wal-Mart has a legal right to begin the road and bridge construction, excluding legal rights that come from permits. Mr. Amon felt that the modification would still fulfill the principal goal--that the road and bridge would be built.

Mr. Kirkland asked Ms. Blasi whether the County's action or inaction could become a force majeure. After some discussion, it was agreed that the condition as written would be duly protective against any unforeseen action by the County.

Mr. Jones commented on the ninth paragraph of the revised resolution, suggesting that "to enforce" be changed to "who will enforce."

Mr. Petrino asked for a re-reading of paragraph #7. Ms. Blasi replied that it would be difficult to put together exact language at this time. Mr. Amon summarized that infrastructure work could begin once an agreement was signed, and that building construction could begin once the legal right to build on the right-of-way was obtained. Mr. Jones moved approval of the revised draft resolution with the exception of paragraphs 7, 7b, and 9, which shall be amended to reflect the discussion of today's meeting. Ms. Blasi asked whether the Commission and County approvals are tied into the infrastructure or building construction. Ms. Poritz replied that County approval was required before anything could begin.

Mr. Jessen stated that once infrastructure work began, the applicant would be more obliged to complete the project, and that requiring Commission approval (of the site plan) before infrastructure construction could further slow the process.

Mr. Zaikov seconded the motion and it passed unanimously.

#### REQUEST FOR REVIEW OF YORKSHIRE VILLAGE CONCEPT PLAN

Mr. Amon stated that representatives for Wyndmoor Associates (Yorkshire Village) would like a non-binding response from the

Commission regarding the buffer between the Canal Park and their buildings. Mr. Petrino reviewed the history of the project application. The latest plan calls for 490 units, including 112 units in two four-story senior citizen buildings. The plan showed a 250-foot buffer between the park and the houses. He said that he was asking the Commission for a formal binding decision on two aspects; 1) the appropriateness of the buffer that is being proposed, and 2) what may be constructed within the 250-foot buffer. He said if the decision was not forthcoming today, then he would request that the decision be made at September's meeting. He said that the applicant would like the Commission's decision about the buffer before signing the Developers' Agreement on the road and bridge. Mr. Petrino reiterated that the plan presented today could be given a formal decision, as to whether the buffer was acceptable, and whether detention and recreation facilities could be built within the setback. He said that although Commission staff had decided to allow an informal hearing, the applicant would still like, today, a binding formal decision on certain aspects of the plan so that Wyndmoor could dedicate land for the road to the County.

Mr. Jessen asked what type of recreational activities were proposed for the buffer. Mr. Petrino replied that there was a good chance that there would not be any structures within the buffer, but that it would be available for people to jog, play softball, football, and throw frisbees. Ms. Herzog said that a backstop for softball could be erected, but that there would be no permanent structure. She also said that portions of the detention basins could be used for recreation as well.

Mr. Liotta said that there was an average building setback of 670 feet from the center line of the canal. Mr. Amon stated that the center line of the canal is not the regulatory unit with which to determine setbacks; rather, it is the park border. Mr. Liotta then stated that the average building setback from the park border was 552 feet. He said that the building locations are in excess of 250 feet from the property line. He said that common open space included wetlands, uplands within the Canal Park buffer, undeveloped uplands outside of the buffer, and recreation spaces, totalling 51% of the total site.

Mrs. Nash said she was concerned about allowing active recreation in the buffer. Mr. Amon said he would address that after the applicant's presentation.

Mr. Liotta presented a cross-section of the park and adjacent site which showed a person in a boat in the canal looking toward the buildings, the result being that the person would only be able to see the peaks of the houses, and with vegetation, would not be able to see the peaks. Mr. Liotta then presented a plan showing which major trees would be removed and which ones would remain.

Ms. Poritz pointed out that the detention basins for the road and bridge would be installed by Wal-Mart.

Mr. Amon reminded the Commissioners that the Regulations stipulate that major projects are discouraged from being built within 1,000 feet of the canal. The 250-foot buffer from the park property line is applicable to minor projects (fewer than 3 houses). Although major projects are discouraged from locations such as Port Mercer, the Commission could consider applications if certain site plan techniques were used which would mitigate the impact of the project on the Canal Park. Examples are: greater than 250-foot setbacks, 40% of the total site to be kept in public open space and that the open space relate to the Canal Park. Additionally, the Commission would consider the preservation or installation of trees and shrubs as a buffer. Mr. Amon pointed out that even with the existing hedgerow, Mercer Mall could be seen in winter, and that the Regulations specifically cite winter conditions of trees as the guiding principle in considering trees as buffering elements. He also stated that the road as well as the buildings should be considered for their proximity to the park. He said that the Regulations do not consider average setbacks, rather, they specify minimum setbacks.

Mr. Amon also pointed out that the cross-section of the person in the boat viewing the buildings did not take into consideration that the line of site of a person standing on the towpath would be at least ten feet higher than the line of sight of that which the applicant presented. With the new, higher line of sight, almost the entire building could be seen from the Canal Park.

Mr. Amon showed that the size of the trees on the plan represented what they would look like in 2035, not in the immediate future. Mr. Jessen asked whether the visual impact could be mitigated by a berm; Mr. Amon said it was possible. He also pointed out that an existing dense hedgerow is proposed to be included in the middle of backyards of houses. Although the applicant has offered to put a conservation easement on the hedgerow, Mr. Amon felt that would not be adequate protection. He recommended that those houses adjacent to the hedgerow should have property lines delineated on their side of the hedgerow, and that a fence should be installed.

Mr. Amon said that rather than considering whether the houses are ugly or not, he said the Commission should consider whether it is desirable for persons using the Canal Park in this area to have as their viewshed, a housing development of this density. He showed the Commissioners photographs of the development called Canal Pointe. He pointed out that although an extensive landscape buffer was required, the landscape is still dominated by the structures and not the vegetation. Mr. Amon said he would strongly argue against using the buffer for field games. He also felt that the row of houses facing the park was too dense.

Mr. Zaikov said he did not understand why the people using the Canal Park have any more rights than the people looking at it from outside. He said that he took offense at Mr. Amon's editorial comments, and did not feel they were appropriate for a public forum.

Mr. Amon replied that according to the statute that created the park, public enjoyment of the park is vulnerable if the park is disrupted in too many places from encroaching development. He said that the Canal Commission is instructed in its enabling statute to ensure that the park is protected from encroaching development, from the standpoint of drainage, ecological and aesthetic purposes.

Mr. Zaikov said he can understand encroaching development as far as drainage--that is a given, but visual encroachment is not a given, but a judgement call. Mr. Amon agreed that it was the Commissioners' duty to make a judgement, as it was his job to make recommendations.

Mr. Jessen asked Mr. Zaikov what is the distance of visual impact; Mr. Zaikov said he didn't think it was defined in the statute. Mr. Amon replied that anything within 1,000 feet of the Canal Park is reviewed for its visual impact on the park--but that this did not prohibit everything within 1,000 feet of the park. He also said that the regulations were created to allow flexibility for specific projects and specific project site conditions.

Mr. Herzog said that no structures will be seen when walking along the towpath. He also said that he could open up side yards on those houses facing the Canal Park. He pointed out that there was a sizable difference in setbacks and building heights between Canal Pointe and the proposed Yorkshire Village. He said they would be willing to sacrifice some units to make some yards wider, so that park users could see more greenery. He said that Lawrence Township requested that the vistas of the Canal Park be present, and he was trying to accommodate both boards.

Mr. Petrino pointed out that the density of Canal Pointe is much higher than this development. He also asked whether the 1990 version of the regulations stipulating a 250-foot setback even applied to this application. Mr. Amon replied that there was no question about the applicability of the 1989 regulations since the project was given preliminary site plan approval by Lawrence after those Commission's regulations were adopted. The 1989 regulations, not the 1990 regulations, establish standards for visual impact that have been discussed.

Mr. Jessen pointed out that the difference between the two plans was a lower density in the present plan. Mr. Zaikov felt that the new plan was, from the Commission's perspective, a better project, and therefore should not be subject to the new regulations. He said he still did not understand why a person willing to invest money to have a view of the canal is any less entitled than a person jogging on the canal itself. Mr. Amon replied again that the statute required protection of the park--Mr. Zaikov said that was a matter of interpretation.

Mr. Herzog said that although improvements such as the road and right-of-way were 250 feet away from the Canal Park, what could be seen was actually much farther way. He also emphasized the fact

that the current plan was much better than the previous plan from the Commission's standpoint.

Mr. Petrino said that the plan presented today could be defined as an approved project from Lawrence Township, subject to some variations. He said that this was the amended preliminary site plan--it just wasn't fully engineered. He said this was a plan the Commission must take action on, since it has municipal approval.

Mr. Amon said that if Mr. Petrino is right that the Commission has to take action on it, they do not have to take action today. Mr. Petrino said he was not suggesting that. He said that he would like the Commissioners to take formal action on certain aspects of the project on September 22nd.

Mr. Amon reviewed his objections to the plan; he felt the conservation easement on the hedgerow was not enough protection, he felt the first row of houses were too close to each other, and the houses themselves could be objectionable unless the dike was raised and more vegetation installed.

Ms. Shaddow said that it was her opinion that the Canal Commission protects developers more than it protects the canal. She said the Commission should make the applicants do everything they can to make the development visually attractive from the canal. Mr. Jessen said that if the Commission did not take fast action, the bridge will never be built.

Mr. Herzog agreed to put the hedgerow outside the house owners' property lines, to make the first row of houses single story ranch houses, and to widen the lots to create more open spaces. Mr. Liotta suggested raising the berm approximately three feet and planting evergreens to buffer the buildings from the Canal Park. Mr. Amon maintained that extensive landscaping be required to prevent multi-flora rose from taking over. Mrs. Nash emphasized prohibiting active recreation including football, softball, etc., in the buffer area. Mr. Herzog acquiesced.

Ms. Blasi reminded the Commission that regardless whether this plan could be considered the function equivalent of an approved plan, the Commission needs to have adequate information regarding all aspects of the plan, which it currently does not, before acting.

Mr. Jones suggested meeting at the site before making a decision.

Mr. Petrino said he was just looking for what could be done in the setback area. Mr. Amon said that in order to determine whether the detention basins in the buffer area were acceptable, the Commission would need final design of the basins. Mr. Petrino said the applicant wanted to know whether basins could be built in the setback. Mr. Amon recommended that the Commission not respond to that request because a basin could have one of many various designs, and the design was needed before evaluating whether or not to put it in the buffer. The Commissioners agreed that

conceptually a basin could go in the setback if its design was deemed satisfactory to the Commission.

Mr. Stern reminded everyone that it would take about one and one half years to acquire easements from the State for the detention basin outfall pipes.

#### EXECUTIVE DIRECTOR'S REPORT

Mr. Amon asked the Commission to change September's meeting from the 15th to the 22nd, in order to ensure Ms. Blasi's attendance. He also suggested meeting at the Port Mercer Canal House at 1:30 PM on September 15th to visit the site. The Commissioners agreed to the meeting times.

A discussion ensued about the Commissioners' terms, specifically those of Mr. Torpey and Mrs. Nash. Mr. Kirkland agreed to write a letter to Governor Florio recommending that Mr. Torpey and Mrs. Nash be re-appointed.

#### CANAL PARK SUPERINTENDENT'S REPORT

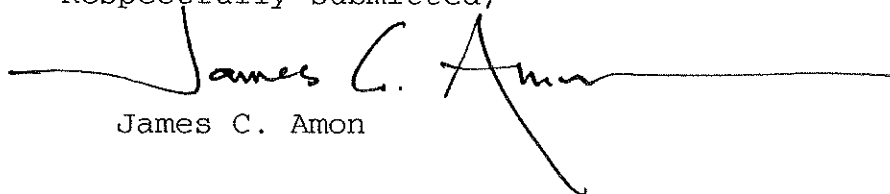
Mr. Stern spoke of the Clean Communities volunteer litter pickup which took place all summer. He said that the Canal Park will be enlisting the help of the New Jersey Youth Corps to repair the Kingston Locktender's Station and hopefully the Kingston Locktender's Residence. He said they were interested in working on additional projects as well. Mr. Stern said that parking spaces for handicapped people will be installed. The Griggstown Historical Society is helping to fund the building of a model of a lock. A lawsuit regarding damages from the fire caused by the Sun Oil pipeline near Canal Pointe will be settled soon.

#### PUBLIC FORUM

Mr. Brown said that he endorsed the litter pickup, and agreed with Mrs. Nash's opinion that no organized game areas should be allowed in the buffer area of the Yorkshire Village development. He also said that Canal Watch bought the Canal Park a power washer.

The meeting ended at 3:20 PM.

Respectfully submitted,

A handwritten signature in black ink that reads "James C. Amon". The signature is written in a cursive style with a long horizontal line extending to the right.

James C. Amon