

MINUTES OF THE MEETING OF SEPTEMBER 22, 1993

TIME: 12:00 PM to 4:00 PM
DATE: Wednesday, September 22, 1993
PLACE: Canal Commission Office
Prallsville Mills, Stockton, NJ



DELAWARE AND RARITAN
CANAL COMMISSION

ATTENDING:

COMMISSIONERS: Messrs. Jessen, Jones, Kirkland, Marshall,
Pauley, Torpey, Zaikov; Mrs. Nash

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

GUESTS: Raymond C. Liotta, Berson, Ackermann
Joe Bird
Paul Stern, D&R Canal State Park
Kay & Larry Pitt, Canal Society of NJ
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
Gary Dahms, T&M Associates
Fred Brown, D&R Canal Watch
Leo Laaksonen, Mercer County
Gordon Keith, Port Mercer Civic Association
A. Gregory Chase, NJ Water Supply Authority
Bill Moss, Canal Society of NJ
Jeanne Donlon, NJ DEPE Green Acres
Robert von Zumbusch
Abe Shaikh, NJ Water Supply Authority

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

Mrs. Nash moved the approval of the minutes of August 18;
Mr. Jessen seconded the motion and it passed unanimously.

LEASES AND PERMITS

Mr. Amon spoke about a strip of land downstream of Kingston that was donated to the Natural Lands Trust by the Flemer family. Franklin Township is responsible for providing access to the

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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
James J. Florio, Governor Scott A. Weiner, Commissioner

property and developing it as a natural preserve. The township is requesting a response from the Commission in regard to their plan. Although Mr. Amon agrees with the amount of parking spaces (24), he disapproved of the location of the parking lot and configuration of the drive, and expressed concern that no trees or shrubs are being planted to buffer the parking lot. Mr. Amon said the Commission cannot take formal action because the Natural Lands Trust has not yet approved the plan. After some discussion, Mr. Amon said he would relay the Commissioners' concern that the parking lot blend better with the site.

REVIEW ZONE ACTIONS

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

93-2122 - Niagara Alley Realignment - Trenton

Mr. Amon stated that the city of Trenton proposes to realign and improve an alley that runs between several houses and the Canal Park. The existing alley's width varies between 12 and 16 feet; the city proposes to expand the width to 20 feet, which would require removing many trees that are presently growing between the alley and the Canal Park. In order to preserve as many trees between the park and road as possible, Mr. Amon recommended approval with two conditions: 1) the alley be located in the southern portion of the right-of-way, and 2) the alley's maximum width should be 18 feet. Mr. Jessen moved approval of the project with the two conditions, with the proviso that if necessary, Mr. Amon could authorize the maximum width be changed back to 20 feet. Mrs. Nash seconded the motion and it passed unanimously.

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

- 93-2115 - Forsgate Industrial Complex S-152A;
South Brunswick Township - 1-story office/warehouse
plus parking on 33 acres with 48% impervious
surface.
- 88-1218E - Town & Country Estates Phase 5, Section 2;
Franklin Township, Somerset County
25 single family houses on 110+ acres; 62+ acres
(56%) open space.
- 93-2097 - Reed Road Industrial Park Section I; Hopewell Twp.
4 buildings on 67+ acres with a maximum of 50%
impervious surface; a stream corridor within
wetlands will be protected with a conservation
easement.

Mr. Dobbs stated that Commission requirements for stormwater management and water quality had been met for the three projects and recommended approval. Mr. Jessen moved approval of the three "B" Zone projects; Mr. Pauley seconded the motion, and it passed unanimously.

WAL-MART RESOLUTION OF APPROVAL

Mr. Amon reviewed the discussion about Wal-Mart's approval at August's meeting--he said that the Approval Conditions were devised to guarantee that the construction of the road and bridge would occur as close as possible to the same time as the construction of the buildings. The Commission proposed that the construction of the road and bridge cannot begin until the right-of-way was available. The Commission also proposed that the construction of the buildings not occur until the road and bridge design be approved by the Commission. The Conditions further stipulate that a schedule for obtaining necessary permits be tied into the Commission's approval. Mr. Amon explained, however, that the attempt by Wal-Mart to obtain these permits has been met with obstacles.

Mr. Amon said the proposed conditions also require that Commission approval be tied in with County approval. The buildings require approval from the County planning board, while the road and bridge require approval from the County engineer. The proposed condition, therefore, stipulates that prior to the construction of infrastructure, these County approvals be obtained.

Ms. Donlon answered questions regarding Green Acres' role in this project. She said that the applicant could probably obtain Statehouse Commission approval within nine months to one year.

Ms. Poritz expressed concern about obtaining Canal Commission approval for the road and bridge before beginning construction of the buildings, because wetlands determinations may alter the final road and bridge plans.

Mr. Amon responded that he recommended Commission approval now and reconsideration if other approvals changed the design.

Mr. Zaikov moved approval of the Schedule of Conditions for Approval of the Wal-Mart application dated September 22, 1993. Mr. Torpey seconded the motion.

Ms. Blasi expressed concern that the July 1, 1995 deadline for completion of the road and bridge would not be possible. After further discussion of when the bridge could be completed, Ms. Poritz said that Wal-Mart intends to meet that deadline. A vote was called, and the motion passed unanimously.

YORKSHIRE VILLAGE REQUEST FOR ACTION AND CONCEPT REVIEW OF NEW ROAD AND BRIDGE

Mr. Amon recommended that prior to any discussion about Yorkshire Village the Commission meet in closed session to discuss legal issues concerning this project. Mr. Jessen moved the following resolution:

Whereas the Open Public Meeting Act provides that a public body such as the Delaware and Raritan Canal Commission may meet in closed session to discuss legal advice with counsel;

Whereas the Commission desires to retire to closed session to discuss these matters with regard to an application made by Yorkshire Village;

Now therefore, be it resolved that the Commission shall at this time meet in closed session to discuss these matters. The substance of the closed session will be disclosed publicly only when it will no longer breach attorney-client privilege.

Ms. Nash seconded the motion and it passed unanimously. The Commission entered Executive Session at 1:10 PM.

The public session resumed at 2:10 PM.

Mr. Petrino stated that two developers as well as representatives from Mercer County and Lawrence Township were present in order to move this project forward. He said that he was making a request in order for Wal-Mart to meet the timetable for building the road and bridge. He said that if the Commission gives binding approval to certain aspects of the project, then Wyndmoor will voluntarily give title to the land over to Wal-Mart for the building of the road and bridge but if the Commission did not give their formal approval to these aspects, it would delay the construction of the road and bridge. He then presented the differences in the revised schematic plan from the plan that was presented at August's meeting.

Mr. McMurrain supported Mr. Petrino's request that the Commission take formal action on the setback and detention basin aspects of the project, so that Wal-Mart can continue its schedule toward completion of the road and bridge construction.

Mr. Guhl of Lawrence Township supported the proposed development, but said that Lawrence Township Committee members would have preferred more vistas of the Canal Park from the residences. He said that the township preferred that the buffer be less complete.

Mr. Amon disagreed with Mr. Guhl, saying that the record with Canal Pointe is such that the people who use the Canal Park are uniformly unhappy with the intrusive nature of Canal Pointe's relationship to the canal. Mr. Amon felt that Mr. Guhl was not representing the true interest of most of the people in Lawrence Township, because there are more Lawrence residents who will be using the park than the handful of people who would be viewing the park from Yorkshire Village.

Mr. Amon said that the design changes implemented since August's meeting are satisfactory, as a concept plan. He said that the 51% of open space was a significant amount, and would help in buffering the Canal Park from the development.

Mr. Jessen moved that, on the advice of counsel, the Commission grant non-binding conceptual approval to the revised plans. Mr. Zaikov seconded the motion, and it passed unanimously.

REVIEW ZONE REGULATIONS

Mr. Amon asked the Commission to authorize publication of the proposed regulations for public comment. He said that the Regulations were essentially the same as those adopted in 1990. One substantive change is an addition of a rule that gives guidelines for submitting an application for a General Development Plan. He said that the Approval for a General Development Plan would extend for 10 years. Mr. Jessen suggested that the extension of the Approval be allowed for up to 10 years, at the Commission's discretion. Mr. Jessen moved the approval of publishing the proposed readoption of the regulations for public comment. Mr. Zaikov seconded the motion, and it passed unanimously.

Mr. Petrino asked for an explanation of the legal opinion that was given regarding Yorkshire's request for binding action. Mr. Torpey said that a summary would be forthcoming.

CONCEPT REVIEW OF THE NEW ROAD AND BRIDGE

Mr. Dahms presented plans of the road alignment and bridge design. He said that the roadway would be 24 feet wide with two six-foot reinforced turf shoulders. The bridge would be 36 feet wide with sidewalks that would tie into the towpath. The shoulders on the bridge and sidewalks would be stenciled concrete--"simulated timber". In order to reduce the bridge span, thereby reducing the depth, the canal will be necked down to a 56 foot channel width.

Mr. Amon stated that his main objection to the design is the 36-foot bridge width. He contended that the Harrison Street bridge was 30 feet, and that standards promulgated by AASHTO show that the width for this type of bridge is determined by the travel way of the road plus three feet on each side, making a total of 30 feet.

Mr. Jessen stated that he supported the 36-foot width because it could possibly be changed to a 3- or 4-lane bridge in the future.

Mr. Dahms said that the County Engineer directed that the bridge be 36 feet wide.

Mrs. Nash suggested going back to the County Engineer with the recommendation that the Commission would prefer a 30-foot wide bridge, with a request that the Engineer explain why this may not be feasible.

Mr. Dahms reminded the Commission that he could not go ahead with final plans to be completed by December 1st until the design has been approved.

Mr. Pauley supported the 30-foot width, referring to a document about bridge safety that stated that 28 feet would be adequate for this type of bridge.

Mr. Marshall moved concept approval of the 36-foot bridge with the design criteria that had been presented. Mr. Torpey seconded the motion. Mr. Jessen, Kirkland, Marshall, Torpey, Zaikov, and Mrs. Nash voted in favor of the motion; Mr. Pauley voted against. The motion passed.

WSA PROJECTS: SULLIVAN WAY AQUEDUCT AND PARKSIDE AVENUE AQUEDUCT

The New Jersey Water Supply Authority requested the Commission to conceptually review and approve the repairs to two aqueducts on the feeder canal. Water is presently leaking onto the streets below the aqueducts and causing damage to the structures themselves. The Water Supply Authority proposes to install a vinyl sheet from upstream to downstream of the concrete aqueducts. Mr. Jessen moved concept approval of the repair of the two aqueducts; Mrs. Nash seconded the motion and it passed unanimously.

PUBLIC FORUM

Mrs. Poritz asked why the Commissioners did not take binding action on Yorkshire's request. A lengthy discussion followed as to whether the Commission's decision was correct or not.

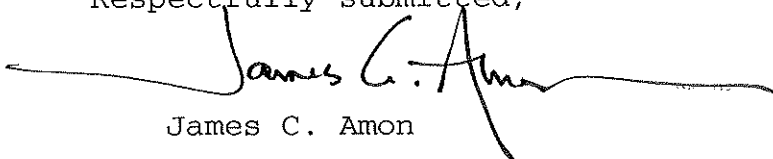
Mr. Amon left at 3:30 PM.

Mr. Petrino asked the Commission to reconsider their decision. Mr. Marshall moved releasing the Commission's decision with a summary of the underlying legal reasons for that decision. Mr. Jessen seconded the motion and it passed unanimously.

Mrs. Poritz then asked the Commission to delete the condition in Wal-Mart's approval that stipulates Wal-Mart to acquire the right-of-way before building the road and bridge. Mr. Marshall suggested the Commission not take action without Mr. Amon's recommendation.

The meeting adjourned at 4:00 PM.

Respectfully submitted,

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

James C. Amon