

# MINUTES FOR REVIEW AND APPROVAL AT AUGUST 24, 2011 MEETING

## MINUTES OF THE MEETING OF JULY 13, 2011 Delaware and Raritan Canal Commission

TIME: 10:00 a.m. – 12.15 p.m.  
DATE: July 13, 2011  
PLACE: Canal Commission Office  
Stockton, New Jersey

### ATTENDING:

COMMISSIONERS: Vice Chairman Martin Jessen, Mr. David Knights, Mr. John Loos, Mayor Phyllis Marchand, Ms. Alison Mitchell and Ms. Donna Mahon

STAFF: Ms. Marlene Dooley, Deputy Attorney General Lewin Weyl, Ms. Colleen Christie Maloney, and Intern Rachel Parsons

GUESTS: Mr. Bill Bogosian, NJWSA, Patricia Kalleser, D & R Canal Park Superintendent, Vicki Chirco, D & R Canal Park Historian, Mr. Robert Barth and Ms. Linda Barth, D & R Canal Watch, Chris Fernandez, NJ Conservation Foundation, Mr. Matt Curran, Mr. Jamie Herring, Mr. John Ashcroft, Mr. Alex Sarly, Mr. Richard Schatzman

The meeting opened at 10:00 a.m. Vice Chairman Jessen 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 OF MEETINGS

Revised minutes of the May 18, 2011 meeting were approved.

#### Minutes of the Meeting of June 15, 2011

Mr. Barth requested that the minutes reflect that he recommended discussion on future projects and their relationship to the history of the canal. Mr. Loos moved to approve the minutes with this change and Ms. Mitchell seconded the motion. The minutes were approved unanimously with the change.

### REVIEW ZONE ACTIONS

#### Zone A

11-4111B Princeton University Maintenance Yard

Ms. Dooley pointed out a typographical error on the staff report for 11-4111B Princeton University Maintenance Yard which had been corrected; the correct square footage for the

project is 10,000 square feet for the storage building.

Mr. Knights recused himself from the vote regarding 11-4111B Princeton University Maintenance Yard. Ms. Mitchell moved for a vote and Ms. Mahon seconded the motion. It was approved unanimously.

The following Zone A applications were approved unanimously with Mr. Loos moving to vote and Ms. Mitchell seconding the motion.

11-4160 Palaschak Addition  
11-4165 20 Elm Street Demolition

### **Zone B**

The following Zone B applications were approved unanimously, with Ms. Mitchell motioning for the vote and Mayor Marchand seconding the motion:

11-3582D Rider University Solar  
10-2391J BMS Bike Trail  
09-3770 Triple Net Warehouse and Office

There was discussion regarding the following Zone B application:

10-3758A JER/Herring Orchard Solar Array

There was a lengthy discussion regarding the proposed project.

Commissioner Mitchell asked Executive Director Dooley to outline the proposed solar array project in detail. Ms. Dooley outlined the changes in the project since it was presented in concept at the December 2010 Commission meeting. She outlined that the array was proposed in the Delaware and Raritan Canal Commission (Commission) stream buffer and floodplain and included the cutting of trees. She informed the Commission of the applicant's request for a waiver based on compelling public need and a waiver based on economic hardship. Ms. Dooley outlined the applicant's alternatives analysis for placement of the array. She also discussed the applicant's proposed mitigation plan including water quality improvements, planting of trees and enhancements of the buffer. Ms. Dooley noted that the present plan requested to cut .5 acres of trees which was a change from the 1.5 acres in the December presentation. Ms. Dooley noted that Commissioner Loos, Commissioner Mitchell and she had conducted a site visit.

There was a substantial discussion regarding the waivers of Compelling Public Need and Substantial Economic Hardship. The discussion included information regarding brown outs at the site, the inability of PSEG to provide energy to the site and that a new substation would not be completed for several years. Mr. Jessen asked about the specific voltage drops being experienced and how the solar array will work to relieve the hardship. Mr. Sarly, the applicant's solar expert, responded, in part, that the solar array can supply 80% of the office complex's need in the summer and 50% over the course of a year. There was also discussion regarding the financing of the project, extensions and deadlines.

Mr. Loos said that he needed to be certain that the applicant had not created the hardship. He asked why the applicant had not included 5 more acres for solar use on the neighboring Council on Affordable Housing (COAH) site when it was subdivided. Mr. Herring responded that the subdivision was made years before the energy and brown out issues occurred at the office complex.

There were questions regarding the Alternatives Analysis submitted by the applicant, specifically, whether the array could in whole or part be placed outside the stream corridor.

Mr. Loos asked the applicant to comment on how the property was subdivided and why the placing of some of the solar panels on the adjacent 27-acre parcel was not possible at this time. Mr. Schatzman, the attorney for the applicant, explained that the land was subdivided by his client and the COAH agreement was made with Montgomery Township several years before there were energy issues or brown outs at the office complex. Discussion followed during which Mr. Knights pointed out that a developer's agreement with a municipality would greatly limit any flexibility the developer might have to change such a plan. Mr. Weyl asked if there is anyway to retrofit the COAH parcel. Mr. Schatzman explained that the situation was complex and that, in addition to the COAH issues, the Township of Montgomery had raised concerns regarding the project's impact on a development abutting the property to the south. The applicant was asked to explain why the panels could not be placed over the parking lot of the undeveloped COAH parcel. It was explained that the COAH parcel was not designed yet and may not be designed and built by the applicant.

Ms. Mitchell asked the applicant if he would consider putting the .5 acre of the solar array on the COAH property, so trees would not have to be cut down. Mr. Herring again responded that the site plan is conceptual at this time and he may not be the developer building on the site in the future.

Mr. Knights asked the applicant to clarify the tenants' use of the office complex and use of the existing parking lots. The applicant outlined use of the existing parking. Mr. Knights then asked for an explanation of how the panels are mounted. Mr. Sarly explained in detail the mounting procedure, including that the piles were "H" shaped, there would be approximately 500 piles, that the total amount of impervious surface from the piles themselves would be 13 square feet, that the height of the lower end of the panel would be one foot above the 100-year flood plain, and that the piles would be screwed in with no pads or concrete.

Ms. Mitchell asked for specifics regarding the mitigation plan particularly for the cutting of trees on the site.

Mr. Herring outlined the mitigation offered including 1.07 acres are to be reforested for the .5 acres of trees cut, an approximately .5 acre portion to be added to the corridor, an approximately 1.17 acre area to be enhanced, the meadow under the array and the spreaders with improved trenches and an infiltration basin.

Mr. Loos explained that the Commission does not want to set a precedent for approving development in the flood plain. Also, he did not think the current mitigation for placing



structures in 5 acres of the stream corridor including the flood plain was compensated for sufficiently; he felt more mitigation needed to be done. He asked the applicant to consider making a monetary contribution for the purchase of equivalent land within the flood plain or for a conservation easement off-site as part of the mitigation. Mr. Loos estimated the cost at \$10,000 per acre for the land. He then estimated the amount of land as the five acre parcel for the array for a total of \$50,000. Mr. Loos also suggested the concept of "banking" the .5 acre forested parcel proposed to be cut. Specifically, the applicant would not cut the trees or place arrays on the .5 forested acre but only develop the remaining area of the project. Mr. Herring would then operate the reduced area of array and see if he could still meet the energy needs of the office complex.

Mr. Herring asked Mr. Loos to clarify that he was suggesting the applicant pay \$50,000 for additional mitigation. Mr. Knights asked Mr. Herring to comment on the proposal for additional mitigation. Mr. Herring pointed out that he was already reforesting one acre at 2:1 mitigation. Mr. Herring thanked Mr. Loos for his effort to move the project forward but pointed out that the additional mitigation Mr. Loos was suggesting seemed to not take into consideration the mitigation already proposed.

Mr. Weyl noted that the Commission could continue working on the project further to present again at the August 2011 meeting. The Commission determined that the project was ready for review and continued discussion on the application.

Ms. Mitchell acknowledged the applicant's difficulty with energy supply at the site, the improved water quality plan and the planting of trees as mitigation. However, Ms. Mitchell expressed concern with the removal of the .5 acre of trees and to do so in order to place solar arrays. The proposal to hold off on cutting these trees to see if the energy demand could be met and to "bank" this portion of land for potential future use only if absolutely needed, as proposed by Mr. Loos, appealed to her as a way to potentially preserve the trees and help the applicant with his energy needs.

Mr. Knights asked the applicant to comment on Ms. Mitchell's point, asking if there is any way to bank the .5 acres of trees. Also, the question was raised as to whether an additional margin for the energy needs had been calculated into the design of the array so that this approach to wait and see the actual demand might be possible.

Mr. Herring responded that the solar array was planned to address a range in voltage drop and that a margin had been built into the design. He reminded the Commission that the goal of the project is to preserve power and keep his tenant. Mr. Herring stated he would consider banking the .5 forested acres currently slated for tree removal. But he noted that he was already compensating for the tree removal with 2:1 reforesting and enhancing other land. Mr. Herring said he would agree to banking for the .5 acre provided the details were clear as to how he could proceed with the Commission with developing the .5 acre parcel as an array, if it is needed to supply further energy to the office complex.

There was discussion regarding the end of the year financing for solar projects. Ms. Mitchell stated that she would like to see the applicant wait for actual results on the efficiency of the array before cutting down the .5 acre parcel. She asked Mr. Herring if he would wait for such actual results. Mr. Herring replied that he would wait provided that there is a clear procedure to follow

with the Commission should he need to develop that parcel.

Mr. Loos agreed that if the applicant showed the need for increased energy in the future, he would be approved to add to the array on the .5 acre forested parcel. However, Mr. Loos strongly discouraged him from doing so. In the event that the applicant finds the need to build in the .5 acres to add increased energy, Mr. Loos stated that the compensation should be for the .5 acres but at a 2:1 ratio for mitigation. Therefore it would be 1 acre of land purchased in a flood plain or in easements off-site and that the applicant would be required to contribute \$10,000 toward the purchase of such land or easements.

Mr. Weyl suggested that written advanced notice of such action by the applicant be forwarded to the Commission if the applicant requests to intrude into the .5 acre forested parcel.

Ms. Dooley asked that, at such time that the applicant may request to build on the .5 acre parcel, documentation be provided regarding the brown outs on site.

Mr. Knights pointed out the advantages of getting an easement.

It was agreed between the Commissioners, the applicant and his attorney that the agreement would last for 5 years from the date of approval.

Questions arose as to the effective date of the Commission approval. Mr. Weyl specified that the date in the Certificate of Approval would be today (July 13, 2011) but the conditions would need to be drafted. Ms. Dooley asked that the minutes show that the Certificate of Approval would not be released until the easements were recorded.

Mr. Knights stated the need for a document to be very clear on all the aspects of the agreement. The document for the resolution needs to clear that hardship was met and the mitigation for the .5 acre forested parcel. Mr. Loos also stated this. Mr. Knights suggested that a table of contents is needed for the resolution. Ms. Dooley stated that there would be a Schedule A with conditions attached to the resolution.

Ms. Marchand stated that the agreement should continue even if things change with the COAH site.

Ms. Mahon then asked if all other approvals had been received. It was stated that all local approvals were received.

Mayor Marchand then asked for an explanation about water quality on the site and specifically the utility of the level spreaders. Mr. Herring used the site plan map to illustrate the drainage treatment plan. He pointed out that his engineer and the Commission engineer had concluded that there was now significant water quality improvement on site. Discussion ensued with Mr. Weyl asking about the proximity of the basin to wetlands. Ms. Mahon asked for clarification on the different filtering systems. Ms. Dooley pointed out the two existing discharge points and what each presently filters. She explained the Commission's engineering report regarding the limits related to the topography of the site, the limited benefit of the spreaders and removal of rip rap

and the much greater benefit of the creation of the infiltration basin.

Mr. Weyl left the meeting at 11:40 a.m. to attend an emergency meeting.

Mr. Knights motioned for approval of the project which will include: the agreed upon additional mitigation and details and conditions to be spelled out in Schedule A as discussed at the July 13, 2011 meeting; that the approval of the use of the .5 acre forested parcel specified in the resolution will expire 5 years from July 13, 2011; and that \$10,000 will be provided to the Executive Director of the Commission in the future, should the applicant need to develop the .5 acre forested parcel, for use as the Commission sees fit in appropriate mitigation at a 2:1 ratio for the .5 acres.

Mr. Loos seconded the motion.

The project was approved unanimously.

Mr. Loos commended Executive Director Dooley for her effort and hard work she put in on this project, pointing out that it was one of the most difficult projects ever presented to the Commission.

#### EXECUTIVE DIRECTOR'S REPORT

Ms. Dooley reported on the staff's monthly workload and incoming revenue. She noted that staff processed 3 deficiencies, 5 jurisdictional approvals, 2 General Permits 1, and 1 Certificate of Approval. She stated that application fees brought in \$21,000 in income.

Ms. Dooley was asked to comment generally on personnel issues and office support. She also reported on a phone call that she had with DEP Chief of Staff Padilla, Deputy Commissioner Kropp and Director Ewalt regarding the Department's Full Time Equivalent (FTE) cap.

#### D & R CANAL PARK REPORT

Ms. Kalleser reported that the final walk through of the Lock 1 Bridge would happen the next day. She also reported on the acquisition of the Kingwood Horseshoe Bend Road Property which connects to the Frenchtown Preserve. Ms. Kalleser just attended a pre-bid meeting with architects for the Prallsville Mills Restroom project. She also thanked everyone for their support regarding the tragic event at the Bulls Island Campground.

#### NEW JERSEY WATER SUPPLY AUTHORITY REPORT

Mr. Bill Bogosian of the New Jersey Water Supply Authority reported that staff is busy with tree and debris removal from Zaraphath to Griggstown. They will be moving on to the Whitehead/Cherry Street Spillway for dredging maintenance. They will be working on Bulls Island tree removal across the canal.

Mr. Loos asked about the "dredge project" timeline. Mr. Bognasian said that dredging methods were being explored for this Kingston to Amwell Road 10-mile stretch of the canal.



## NEW BUSINESS

Ms. Dooley noted that she received email communication from a concerned citizen regarding the Scudders Falls-Bernard Bridge which is scheduled for repair. The citizen is concerned about the length of time it is taking to repair the bridge, the fact that citizens do not have access to the area for recreation, and the importance of the bridge for public safety. The Commission issued approval of the project in April 2011. Ms. Dooley followed up and found that the project had received State Historic approval but still needed approvals from the Department's Land Use program. Ms. Dooley will provide ongoing reports on this issue at the Commission meeting.

Ms. Dooley introduced Commission Intern Rachel Parsons to the Commissioners and audience.

## PUBLIC COMMENT

Mr. Robert Barth, D & R Canal Watch, reported that the D & R Canal Watch hikes have been very successful. He asked about the swing bridge design of the feeder and Ms. Kalleser responded that the contract had been awarded. Mr. Barth expressed interest in being closely involved before the project is built as he has supplied materials to Mr. Hahn and Ms. Kalleser in the recent past. Mr. Barth would like to know the status of the bridge behind the Somerset Diner in Franklin Township. Ms. Kalleser met with potential bidders and believes applications have come back and thinks the contract may have been awarded; Ms. Mahon had no further information.

Mr. Loos would like to continue to discuss how Mr. Barth and he can be involved in the process. Ms. Kalleser noted that she would follow up on the award of the contract. Mr. Barth would like to continue the open lines of communication.

## EXECUTIVE SESSION

Mr. Loos motioned to move into Executive Session to discuss personnel issues. Mr. Knights seconded the motion. It was approved unanimously. At 12:00 pm, the Commission went into Executive Session.

## OPEN SESSION

The Commission entered into open session at 12:15 p.m. Mr. Loos moved to adjourn the meeting and Ms. Mitchell seconded the motion. It was approved unanimously. The meeting adjourned.

Respectfully submitted,

  
Marlene Dooley  
Secretary