

**MARCH 21, 2012 MINUTES OF THE MEETING
TO BE REVIEWED APRIL 18, 2012**

Delaware and Raritan Canal Commission

TIME: 10:05 a.m. – 11:40 a.m.
DATE: March 21, 2012
PLACE: Canal Commission Office
Stockton, New Jersey

ATTENDING:

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

STAFF: Ms. Marlene Dooley, Ms. Colleen Christie Maloney, Mr. Lewin Weyl, Deputy Attorney General.

GUESTS: Mr. Bill Bogosian, NJWSA; Mr. Joseph Shepherd, NJWSA; Mr. Robert Barth and Mrs. Linda Barth, D & R Canal Watch; Mr. Walter Bronson, ACT Engineers; Mr. Bill Wolfe; Mr. Michael J. Crowley, Trap Rock; Mr. George M. Conway, Jr., Trap Rock; Mr. Mitchell Ardman, Reynolds Group.

The meeting opened at 10:05 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

Minutes of the Meeting of February 15, 2012

Mayor Marchand moved to approve the minutes and Mr. Knights seconded the motion. The minutes were approved unanimously.

REVIEW ZONE ACTIONS

Review Zone A Projects

12-3406 Pillar of Fire Lights

Ms. Mitchell asked for an overview of 12-3406 Pillar of Fire Lights. The applicant is seeking to place six 70-foot lights at existing athletic Field 1. There are presently six eighty-foot lights on adjacent fields.

Ms. Dooley stated that the site is partially in DRCC Review Zone A and partially in Review Zone B. Ms. Dooley stated that the applicant had previously appeared before the Commission to place the existing athletic field lights in Review Zone A and that the application was rejected by

the Commission. The applicant moved the athletic fields to the Zone B portion of the property and subsequently installed the fields and six 80-foot lights on the athletic fields in the Zone B portion of the property.

In 2009, the DRCC rules were changed to state that if any portion of a project is within Review Zone A, the entire site shall be considered within Review Zone A. Ms. Dooley was recommending approval of the new 70-foot high lights over Field 1, in part, because of the existing lights' location in Zone B and the increased set back of over 1,200 feet from the Canal Park.

Mr. Knights moved approval of the following Zone A projects; Mayor Marchand seconded the motion.

12-4870 7 North Union Street Sign
 12-4219B Large Format Digital Sign
 12-4267 Slack Air Conditioning Unit
 12-3406 Pillar of Fire Lights (Field 1)
 11-4246 Jakacki Duplex

The Zone A projects were approved unanimously.

Review Zone B Projects

The following Zone B projects were moved for approval by Mr. Knights and seconded by Ms. Mitchell:

12-2197B Education Testing Service Substation
 10-3998A Vanard Realty Single-Family Dwelling

These Zone B projects were approved unanimously.

12-2098A New South Lot

Mr. Walter Bronson, ACT Engineers, explained details of 12-2098A New South Lot to the Commission. Mr. Bronson stated that the site was owned by West Windsor and had been a landfill and then a recycling facility. The landfill was never properly closed; the municipality and West Windsor Parking Authority plan to properly close the landfill and subsequently create a parking lot for the Princeton Junction Train Station on the site.

Ms. Dooley stated that the project is located in DRCC Review Zone B. A DRCC engineer conducted a site visit and determined that no stream corridors exist on the site. Ms. Dooley further stated that the applicant is presently before the Commission for Phase I of the project which is to clear trees from the property; the applicant is seeking to do this work first in order to complete the work prior to Indiana Bat season. The DRCC approval is conditioned on the capping, parking, and associated stormwater management plans for the project being submitted within 45-days of the approval.

Ms. Mitchell asked about the time between clearing the trees and construction; Mr. Bronson responded that he anticipated construction starting in June or July of this year. Mr. Knights asked about permits needed. Mr. Bronson gave details of the permits needed for the project from

the Department of Environmental Protection. Mr. Jessen asked about the surface for the parking lot. Mr. Bronson responded that it will be blacktop. Ms. Mitchell asked about the area of the trees to be cleared. Mr. Bronson responded that they will be taking the trees down on the top of the landfill and that the DEP is requiring the cap to go to the toe of slope. Mr. Bronson noted that no trees over 6 inches in diameter can be cut between April 1 and September 1 because of the Indiana Bat season; the project is just within the habitat boundary of the habitat area. Mayor Marchand commented that the project solves the problem of capping the landfill and also provides parking. Mr. Jessen commented that the project was a good use of the site.

Mr. Knights motioned for conditional approval of 12-2098A New South Lot as noted in the staff report; Mayor Marchand seconded the motion. The first phase of the project, 12-2098A New South Lot, was unanimously approved with the listed conditions.

PRE-APPLICATION PRESENTATION

Mr. Mitchell Ardman, Reynolds Group, addressed the Commission regarding a solar project for Keystone Trap Rock, Inc. The solar array would be approximately 4 acres of panels along Kingston Road in Kingston at the Trap Rock Quarry. The project is located in Zone A and is approximately 425 feet from the Canal. However, the project is located less than 250 feet from the D&R Canal State Park. Mr. Ardman noted that the DRCC setback requirement for projects in a rural zone of Zone A is 250 feet from the park. Mr. Weyl asked about the height of the panels; Mr. Ardman stated the panels would be approximately 10 feet in height. There would also be a buffer of evergreens. Mr. Knights noted that he had been part of a group that conducted a field visit and that the arrays would not be seen from the Canal Path.

Ms. Dooley noted that she and staff had met with Keystone Trap Rock and their representatives for a pre-application meeting. Ms. Dooley stated that the original proposal had located panels further from the property line but in the DRCC stream corridor buffer area; the applicant redesigned the project to remove the panels from the stream corridor. Staff was also concerned regarding visibility of the panels from the Canal Path. Ms. Dooley and two Commissioners conducted a site visit and confirmed that the solar panels will not be visible from the Canal Path.

There was substantial discussion regarding the array's proximity to Rockingham which is located across the street from the proposed project site. Ms. Kalleser raised concern as to whether the project needed to meet the set back requirement from Rockingham, a historic building adjacent to Canal Park. She also noted that this portion of the property is a Federal and State historic district and designated Scenic Byway. Mr. Barth noted that he considered Rockingham part of the D&R Canal State Park. He noted the importance of the site; George Washington stayed at this house. He raised concern that the historic site of Rockingham would be degraded by the visual impact of the array; he would not want to see solar panels from the historic house. Mr. Knights noted that he believed the proposed array would not be seen from any area of the historic building; however, it would be seen from Rockingham's parking lot. Mr. Knights agreed with the importance of Rockingham. He also noted that Rockingham and the Quarry are separated by a wide, heavily travelled road. There was a discussion regarding whether there was a distinction for setback between the historic home and the Rockingham parking lot. Ms. Kalleser noted that she felt the Rockingham parking lot is different than the historic site of Rockingham. Mr. Weyl asked about existing landscaping on the Rockingham property; Mr. Ardman noted that it would not be affected by the project. Ms. Mitchell inquired about the purpose of the DRCC setback in

Zone A; how does it differ from the visual assessment?

There was discussion as to whether a historic review was required. Ms. Mahon noted that if such a project goes to Historic Preservation, it may be regulated for historic impact. Mr. Ardman stated he believed that they needed DEP Land Use permits only, which do not trigger state historic review; however, Franklin Township would require historic review. Ms. Mitchell asked what triggers state review of historic sites if no Land Use permit is required. Ms. Mahon noted that the applicant may need to make an application to the state historic office and might be required to go before the state review board or historic sites council. Mr. Barth noted his concern that if the project is not required to get Land Use permits, it could well fall through the cracks and not get a historic review. He wondered if the DRCC can insert itself to be sure it gets a review. Mr. Wolfe asked if the applicant would agree to do a historic review even if it is not required by regulations. Mr. Ardman noted that he would take that under advisement. Mayor Marchand noted that the municipality would be aware of the project and review it. Ms. Mahon stated that she thinks DEP should consider whether the project needs historic review. Mr. Jessen reminded everyone that this is not an application currently before the Commission, but a pre-application presentation. Ms. Dooley stated that the DRCC will review the application when it is submitted with the D&R Canal Park superintendent's office and the state historic office as required. Mr. Barth asked for clarification as to whether the Rockingham is considered to be part of the D&R Canal State Park and therefore part of the visual review.

Mr. Wolfe asked about the stream corridor setback and stream classification for the stream on the site; Mr. Ardman noted that the stream is not a C-1 and the plan meets the 300-foot setback from the top bank and the 100-foot setback from the 100-year floodplain. Ms. Mitchell asked if the applicant could move the array to avoid cutting trees; Mr. Ardman explained that this was difficult because they need to meet residential setbacks in other areas of the site. Ms. Mitchell asked for clarification as to who would receive the energy generated. Mr. Ardman stated that all energy generated from the array would go to Trap Rock, Inc. use only. Mayor Marchand noted that she visited the site the previous day. From the information she gathered on the site visit, she concluded that there would be no impact to the Canal Path and no impact on Canal water quality. Mr. Ardman noted that the applicant would get a Letter of Interpretation (LOI) that sets a wetlands boundary and buffer.

Mr. Ardman thanked the Commission and meeting attendees for their feedback.

Mr. Weyl left the meeting at 10:50 a.m.

Ms. Mitchell noted that she believed the Commission should act more formally to ensure they were allowing for public comment.

EXECUTIVE DIRECTOR'S REPORT

Ms. Dooley reported on the staff's monthly workload and incoming revenue. She noted that staff processed 8 Deficiency Letters, 7 Jurisdictional Determinations; and 14 Certificates of Approval. There were no OPRA requests this month. She stated that application fees brought in \$30,500 in revenue last month.

Ms. Dooley noted new legislation which will take effect February 1, 2013 to which the DRCC is

subject. It involves, in part, posting information on the DRCC website.

Mr. Dooley noted the new waiver rule which the DEP adopted. In response to a question, Ms. Dooley noted that the Commission is not subject to the waiver rule.

Mr. Jessen spoke of a situation where he felt regulations can be inflexible or at odds and lead to an improper conclusion. Mr. Jessen noted his thought that people should be able to use their judgment and regulations can sometimes not support that.

Mr. Wolfe addressed the issues of regulation, flexibility, and implications of waivers. He noted it was the Commission's job to administer and support regulations.

D & R CANAL PARK REPORT

Ms. Kalleser noted that Assistant Commission Amy Cradic was leaving and that the new Assistant Commissioner would be Mr. Richard Boornazian. Ms. Kalleser also noted that the resurfacing project was underway from Landing Lane to Griggstown. The capping of the landfill by GAF in South Bound Brook is in process and involves a detour for park users; the work will stop next week and resume approximately July 9. A pre-bid meeting to discuss the DeMott Lane Bridge will occur shortly. The Kingston Locktenders House has undergone repairs and is 90% complete. Ms. Kalleser conducted a field visit with a demolition contractor for the Bakers Basin area of Lawrenceville to review flood debris on 1.1 acres of area. She also noted that new fees will be imposed at the boat launches along the Delaware River; fees will be required Memorial Day through Labor Day. There are daily rates and seasonal annual rates for residents and nonresidents. The Griggstown Bridgetenders House rehabilitation will be funded by Scenic Byway funding for Phase 1 and DEP funding for Phase 2. Ms. Kalleser noted that the DOT hoped to open the path at Bernards Lane in May or sooner.

NEW JERSEY WATER SUPPLY AUTHORITY REPORT

Mr. Shepherd reported that the NJWSA was removing debris and trees from Route 518 to Griggstown. The Workhouse Spillway repair is complete and is open to park users. At the Mile Run culvert, the embankment is being repaired because of scour. There is inlet maintenance dredging. Mr. Knights noted that someone had put a wooden picnic table in the Canal near Trap Rock; he informed NJWSA of its location.

PUBLIC FORUM

Mr. Wolfe noted that he had visited Bulls Island the previous week and had concerns about the dredging operation, an area that had been bulldozed with what appeared to be a lot of litter and debris along the river. There was also an inventory of trees; he expressed concern about a potential tree removal operation. He noted he had also raised these concerns with the DEP Commissioner. Mr. Wolfe stated that he will make OPRA requests for information related to this work. He asked whether DRCC had concerns and jurisdiction over these activities.

Mr. Wolfe asked what Parks and Forestry were doing regarding the trees. Ms. Mahon noted that the area with the inventoried trees has been closed for safety issues. A contracted certified tree expert had inspected the trees. The trees were inventoried; some were identified and marked with the hazard markers. Mr. Wolfe asked for a description of the criterion, standards and methodology for the tree hazard evaluation. He stated that the hazard is associated with the

human occupancy and that there are ways to keep people away from the hazard. Ms. Mahon responded that she did not have that information regarding the methodology for the tree evaluation. Mr. Wolfe asked the Commission if the DRCC has the review authority for the cutting of trees. Ms. Dooley responded that the DRCC would have review authority. Ms. Mahon said that the DEP would certainly go through the appropriate permit process should they need to remove trees. Ms. Mitchell asked for clarification of where trees were to be removed from Bulls Island. Ms. Mahon responded that it was the upper campground area of the park. She noted that the repeated flooding affects the trees in the upper campground more than the lower.

Mr. Wolfe noted that a portion of the northern end of the island had been leveled by a bulldozer for a distance of six to eight hundred feet and that he believed could create erosion and could affect the Canal. He also raised concerns regarding the construction equipment stored on the tip of the island. Mr. Wolfe further stated that he did not observe drainage, soil erosion and sediment control measures at the Canal site. Mr. Wolfe asked about the construction project in the northern tip of the park. Mr. Shepherd said it was a maintenance dredging operation from the inlet to the lock; debris from the dredging is separated out and recycled. The dredging sediment is removed from the site. Ms. Dooley asked Mr. Shepherd if he could provide more detail regarding the handling of the canal dredging piles. Mr. Shepherd noted that any soils dredged from the Canal were placed in piles and removed daily. He noted that the lower path, opposite the Canal Path, is leveled to make it passable for their equipment. Ms. Dooley asked if Mr. Shepherd knew about any piles along the river. Mr. Shepherd responded that any piles there were sediment from the hurricanes and storms this fall.

Mr. Wolfe stated that south of the point, along the river, a 300 to 400-foot section of soil had been bulldozed and trash and tires are in the soil, which has been compacted. He noted his concern that the soil did not appear to be screened. He noted that some sediment was plowed to the base of trees. Mr. Wolfe asked if WSA was putting dredged soil along the river. Mr. Shepherd said "no." The soil along the river was from Hurricane Irene. Mr. Wolfe questioned whether work is being done informally at Bulls Island without permits and urged the DRCC to inspect the site. He stated that these are issues requiring a DEP stream encroachment permit. He also stated that these are issues that should involve the Hunterdon County Soil Conservation District. He noted that the DRCC should check the Bulls Island site and do an inspection. He noted that he had photos of this situation on his blog. Ms. Mitchell recommended that the Commission to visit the site. Ms. Dooley said she could visit the site on Friday with the DRCC engineers and with the WSA.

Mr. Jessen noted that work on the Canal is always on going. Mr. Bogosian noted that the dredging work was on-going maintenance work. Ms. Dooley noted that the WSA reports to the DRCC regarding maintenance work and their activities in general at each Commission meeting.

Mr. Barth thanked the D&R Canal Park for repairing flood damage and resurfacing the path which makes the trail safe for park users. He thanked the DEP Park service for restoring the Kingston Locktenders House from flood damage. He noted that the work by the Canal Path at the GAF site, of which Ms. Kallesser had spoken, has a dramatic impact but understands the work must be done. Mr. Barth noted his interest in developing an event to mark the 180th anniversary of the Canal and 40th anniversary of the Commission, which might include a symposium. Ms. Mahon commented that a 180/40 anniversary is a less common milestone than,

for instance, a 50 or 200 year milestone. Mr. Barth agreed but noted that it is an opportunity to engage the New Jersey residents, including children, in the rich history of the canal.

Mrs. Barth invited the Commission to attend the Heritage Trail Bus Tour in Somerset County on the May 5, 2012. It will go along the Canal. Mr. Knights noted that the following Saturday is the state history fair at Washington's Crossing.

Ms. Mahon informed the Commission that she was leaving her position for a new position in Permit Coordination at the DEP and, thus, this was her last DRCC meeting. The Commission wished her well and thanked her.

Mr. Knights moved to adjourn the meeting and Mayor Marchand seconded the motion. It was approved unanimously. The meeting ended at 11:40 a.m.

Respectfully submitted,

Marlene Dooley
Marlene Dooley
Secretary

