

MINUTES OF THE MEETING TO BE REVIEWED

May 22, 2012

Delaware and Raritan Canal Commission

TIME: 10:20 a.m. – 12:40 p.m.
DATE: April 18, 2012
PLACE: Canal Commission Office
Stockton, New Jersey

ATTENDING:

COMMISSIONERS: Mr. David Knights, Mr. John Loos, Mayor Phyllis Marchand, Ms. Alison Mitchell; and Mr. Edward Mulvan by conference call.

STAFF: Ms. Marlene Dooley, Ms. Colleen Christie Maloney, Deputy Attorney General Lewin Weyl; Deputy Attorney General Dean Jablonski.

GUESTS: Mr. Bill Bogosian, NJWSA; Mr. Joseph Shepherd, NJWSA; Ms. Patricia Kalleser, D&R Canal State Park; Mr. Robert Barth, D & R Canal Watch; Craig Gianneti, EffiSolar; Adam Slutsky, Somerset County; Bill Wolfe, NJ PEER; John Ryder, Van Note-Harvey Associates; Tom O'Shea, Van Note-Harvey Associates; Kristin Appelget, Princeton University.

The meeting opened at 10:20 a.m. Mr. Loos 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 March 21, 2012

Ms. Mitchell moved to approve the minutes and Mr. Knights seconded the motion. Mr. Mulvan abstained. The minutes were approved, four voting to approve and one vote abstaining.

REVIEW ZONE ACTIONS

Ms. Dooley noted that one project, 11-1570 935 Easton Avenue Subdivision, was taken off the agenda as the applicant requested that its presentation be postponed.

Review Zone A Projects

The following Review Zone A projects were approved unanimously after Ms. Mitchell motioned for approval and Mr. Knights seconded the motion.

12-4283 59 North Union Sign
12-4240A Nemeth House

Review Zone B Projects

EffiSolar 11-3712A - 796 Route 519

EffiSolar 12-4237 - 259 Route 519

There was substantial discussion regarding the two EffiSolar projects.

Mayor Marchand asked about the temporary gravel road the applicant will build for each. Ms. Dooley noted that both EffiSolar projects included temporary roads for construction which will be returned to grass when completed.

Mr. Wolfe asked for details of one of the streams involved. Ms. Mitchell indicated that the Lockatong Creek is a C-1 stream.

There was discussion regarding waivers. Ms. Mitchell asked for confirmation that both projects sought waivers to place panels in the 100-foot stream corridor buffer. Ms. Dooley confirmed this. Mr. Wolfe asked about waivers in the buffer for these projects. Ms. Dooley stated that the Commission requires a stream corridor if a stream on site drains 50 acres or more and goes into or under the canal; in this case, each site had a stream corridor. The applicant requested a waiver and mitigated for impact to the 100-foot buffer area by increasing in other areas at the same rate – a one-to-one averaging of the buffer.

Mr. Wolfe asked the applicant's representative about the Department of Environmental Protection approvals and use of a waiver. Ms. Dooley noted that DRCC rules allow a number of waivers; this waiver is under specific stream corridor impact standards. Mr. Wolfe expressed a concern of the accelerating and expanding use of waivers and suggested that the DRCC tighten its waiver standards to restrict incursions into the buffer. DAG Weyl noted that the DRCC has authorized stream waivers for well over 20 years and these waivers are wholly consistent with practice and rules.

Ms. Mitchell noted that for 12-4237 EffiSolar, the mitigation area is larger than the intrusion and of better ecological quality. She noted that when land is in active agricultural use, the creation of a meadow, preserving of wooded areas in the stream corridor and/or mitigation to obtain larger areas in the corridor, can be more beneficial.

There was discussion regarding any plan in place to address the removal of the solar should it be discontinued. Ms. Mitchell asked if the township required a provision or bond for removal of the solar structures. Mr. Gianetti explained that the town required a decommissioning plan as part of the approval. Mr. Barth asked for more information. Mr. Giannetti explained that the decommissioning plan was a deconstruction plan and exit plan for the solar installation. It was noted the County was requiring a bond. Mr. Knights and Mayor Marchand noted that decommissioning of the project would be a township matter.

Ms. Dooley noted she received verbal approval of the project from the County; DRCC will require a written county approval before issuing a COA in addition to the signed and recorded conservation easements. The County will issue its written approval when the bond is received. The County's approval is conditioned on verifying the successful creation of meadow under the

array.

The following Review Zone B projects were moved for approval by Mr. Knights; Ms. Marchand seconded the motion. They were approved unanimously:

12-4184A St. Peter's Hospital Transformer
 12-4265 Howe All Purpose Fields
 12-4250 Ewing Senior and Community Center
 11-3712A EffiSolar Energy Corporation W2-083
 12-4237 EffiSolar Energy Corporation W3-149
 11-4185 Monroe Twp Wells 20 & 23 Iron Removal System

Mr. Knights recused himself from 12-2441K Princeton University Graduate Student Housing. He left the room at 10:40 am.

12-2441K Princeton University Graduate Student Housing

Ms. Dooley noted that representatives for project 12-2441K, Princeton University Graduate Student Housing, were in attendance at the meeting. Mr. O'Shea of Van-Note Harvey gave an overview of the project. Ms. Dooley noted that applicant's proposal includes a 1.7-acre area within the DRCC stream corridor which the applicant wishes to continue to mow and keep as a lawn area. Mr. O'Shea noted that the 1.7-acre area is currently trees and lawn with vistas of Carnegie Lake.

Mr. Loos asked about the rate of mowing. Mr. O'Shea explained that, if approved, the lawn would be mowed once a week and that no pesticides would be used. Mr. Loos asked about the project site and the paths in the area to be landscaped. The paths will be natural. Mr. Loos noted the net environmental benefit of the project, such as restricting vehicles on the premises, adding rain gardens and the meadow.

Mr. Mulvan noted that he needed to leave the meeting at that time, 11:15 a.m. Mr. Loos reported that there would not be a quorum for vote when Mr. Mulvan left. The Commission agreed to further discuss the project and place the project on the agenda for the May meeting. Mr. Mulvan left the meeting.

Mr. O'Shea described the applicant's need to meet demolition and building deadlines. He noted that Princeton University has gone to great lengths to address environmental issues. He also described a stream restoration project which illustrates the University's general commitment to stewardship of the land.

There was a discussion of the rules and the history related to mowing in the corridor. Ms. Dooley noted that the standard DRCC conservation easement prohibits activity in the stream corridor; preserving it in its natural state provides the environmental benefit. Mr. Loos discussed the list of prohibited activities in the stream corridor. Mr. O'Shea noted one project of which he was aware in which a school was allowed to mow the lawns of a pre-existing golf course located in the stream corridor. Ms. Dooley said she was aware of that case and one other exception. She noted, however, that the DRCC does routinely require the stream corridors to go back to their natural state and not be mowed. She noted that homeowners and developments frequently request to

mow in the stream corridor. There is presently a township that has issued letters to 5 homeowners for mowing in the DRCC corridor. Mr. Loos asked Mr. O'Shea why the applicant wanted to maintain the lawn; Mr. O'Shea explained that his client hoped to maintain the park-like setting. He said the current expectation is that the applicant would be able to use the 1.7-acre lawn as it is currently used. Mr. O'Shea noted the university does not restrict the public from using the area. There was discussion whether the mowing of the 1.7 acres would have an adverse impact on the corridor.

Mayor Marchand asked that the applicant consider mitigation or other action which would be beneficial to the DRCC mission in this case. Mr. Loos asked the applicant to consider allowing only a portion of the lawn to be mowed. Mr. Loos also suggested that a portion of the lake's edge be planted with a meadow mix as mitigation for maintaining a portion of lawn and this would preserve the viewshed. Mr. O'Shea noted they will have DEP approvals on April 23. He noted that the DEP may not allow a disturbance within the wetland areas, such as planting meadow mix along the water's edge. Ms. Mitchell noted that this application and the issue of mowing up to the edge of the lake will illustrate how the Commission addresses natural areas. Mr. O'Shea noted that the applicant is going one to one mitigation for the project's intrusion into the corridor. He said he would look at other options for possible mitigation for the mowing in the corridor

Mr. Wolfe complimented the university on its environmental foresight and design work. He suggested that off-site mitigation might give the applicant flexibility.

Because of the need to move on with other Commission matters, discussion on this project was ended until the May meeting. Mr. Knights returned to the meeting at 11:45 am.

Review Zone A Project

Zone A Project 12-4289 Bakers Basin Debris Removal

Mr. Knights moved to approve 12-4289 Bakers Basin Debris Removal; Ms. Mitchell seconded the motion. It was approved unanimously.

Mr. Weyl announced that he would no longer be serving as the Deputy Attorney General representing the DRCC. He introduced Mr. Jablonski as the new DAG representing the Commission. The Commission thanked Mr. Weyl for his many years of advising the Commission.

Mr. Weyl noted that the DRCC Executive Director, D&R Canal State Park Superintendent and the NJ Water Supply Authority would all have reports on Bulls Island. It is also an issue for which comment from members of the public was expected. Therefore, he suggested that the discussion of Bulls Island be consolidated and discussed in the public forum.

EXECUTIVE DIRECTOR'S REPORT

Ms. Dooley reported on the staff's monthly workload. She noted that staff processed nine Deficiency Letters, three Jurisdictional Determinations, one General Permit 1, three General Permits 2, ten projects for presentation, and one OPRA request. She gave an overview of the office staffing. There was discussion regarding hiring of staff.

D & R CANAL PARK REPORT

Ms. Kalleser noted that she met with representatives from Trap Rock Industries regarding their planning of a solar project near Rockingham. She noted that one field of the arrays will be visible from the Rockingham museum. It was noted that the issue of the application of the DRCC rules to Rockingham is still being reviewed. Ms. Kalleser noted there was to be a ribbon cutting at the friends of Princeton Nurseries. The Park historian will be busy preparing for the May 12 history fair. Ms. Kalleser had met with the fire warden of Franklin Township regarding a burning plan for Six Mile Run.

NEW JERSEY WATER SUPPLY AUTHORITY REPORT

Mr. Bogosian reported that the NJWSA is conducting structure inspections along the whole canal and working on the capital budget for future repairs.

NEW BUSINESS

No new business was discussed.

PUBLIC FORUM

Mr. Wolfe noted that there had been an extensive discussion regarding Rockingham and the visual impact from the building at the previous month's DRCC meeting. He understood from that meeting that there was no visual impact from the building, which is in conflict with the Park superintendent's report of her meeting with Trap Rock. He asked for clarification. It was stated that the site visit conducted examined the view from the canal path. Mayor Marchand noted that, based on her site visit, there would be no impact related to the panels from the canal path. Ms. Kalleser reported that when standing at the museum store, one would see the panels. One might also be able to see the panels from the second floor of the building. Ms. Dooley noted that at the time the application is submitted, the DRCC would review all these issues. Also, she will clarify DRCC jurisdiction with reference to Rockingham.

Ms. Dooley commented on Bulls Island. She noted that, since the previous meeting, she had visited Bulls Island several times and examined the canal and maintenance road up to the northern point of the island, the filled area along the river, and the tagged trees. She reported that the dredging in the canal had stopped. She distinguished the maintenance road from the D&R Canal Path; the former is a wide dirt road. The embankment adjacent to the maintenance road is being seeded. She reported that the Army Corp had attended the Canal Quarterly meeting and requested the removal of the material from along the river to the high-water line plus an additional 10 feet. Hunterdon Soil Conservation and NJDEP were contacted and agreed with this approach. A 4:1 slope was requested and the slope is being reinforced.

Mr. Bogosian reported that the work along the river was underway and labor intensive. Mr. Knights asked about the process; Mr. Bogosian noted that there are inspectors out at the site from the Army Corp, Hunterdon Soil Conservation, and DEP. Mr. Knights asked about any tires near the river; Mr. Bogosian reported that, when encountered, they are removed and properly handled. Mr. Knights noted that he was pleased to see this positive action taken to correct the situation. Mr. Knights thanked Mr. Wolfe for bringing the issues at Bulls Island to light. Mr. Wolfe agreed with Mr. Knights that the corrective measures at Bulls Island were good and noted that a problem had been identified and it was getting corrected. Mr. Knights noted that the tree issue was yet to be addressed.

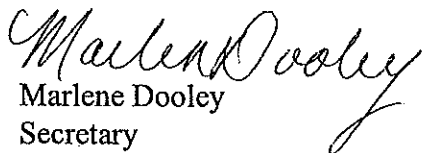
Mr. Weyl noted that, since the tree removal application had yet to be submitted to the Commission and was sensitive in nature, that the Commission listen to comment but not make comment.

Ms. Dooley noted she obtained a copy of the tree report prepared for the NJDEP.

Mr. Wolfe noted his continued concern with the issue of the tree inventory and the apparent plan by the DEP to remove many trees from the north half of Bulls Island. He noted that the DEP's tree consultant had recommended restricting people from that end of the island and had not recommended clear cutting. He noted that the plan to take down trees may lead to erosion of the top of the island and could affect the flow of water into the canal. He voiced his concern that DEP might attempt to use emergency and hardship waivers to start work and go around such permitting as the DRCC. He noted the importance of the large, old trees on the northern tip of the island as a habitat for the cerulean warbler.

Mayor Marchand moved to go into executive discussion to discuss personnel and Ms. Mitchell seconded the motion. It was improved unanimously. The meeting moved into executive session at 12:30 pm.

Respectfully submitted,


Marlene Dooley
Secretary