

MINUTES OF THE MEETING TO BE REVIEWED

June 20, 2012

Delaware and Raritan Canal Commission

TIME: 10:05 a.m. – 12:40 p.m.
DATE: May 22, 2012
PLACE: Canal Commission Office
Stockton, New Jersey

ATTENDING:

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

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

GUESTS: Mr. Bill Bogosian, NJWSA; Mr. Joseph Shepherd, NJWSA; Mr. Robert Barth, D & R Canal Watch; Bill Wolfe, NJ PEER; John Ryder, Van Note-Harvey Associates; Tom O'Shea, Van Note-Harvey Associates; Karen Jezierny, Princeton University; Rich Goldman, DBR; Eric Rosina, ACT Engineers; Sara Spengler-Campanella; Peter Lanfrit, Lanfrit and Tullio, LLC; Richard McClellan, Delaware River Joint Toll Bridge Commission; Stephen Fisk, Fisk Associates; Patrick Boyle, David Aderhold, Kevin Sheehan, Artie Bifulco, West Windsor-Plainsboro Board of Education; Robert VonZumbusch, D&R Canal Coalition.

The meeting opened at 10:05 a.m. Mr. 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 April 18, 2012

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

REVIEW ZONE ACTIONS

Review Zone A Projects

12-4294 Steffanelli Deck

Ms. Mitchell inquired about the project. Ms. Dooley noted that Mr. Steffanelli had a property directly adjacent to the Canal Path in Stockton; he had previously been before the Commission with a fence application for which the Commission required him to install trees between the

fence and the path. In this case, the deck is a pre-existing nonconforming use.

Mayor Marchand entered the meeting at 10:15 am.

Mr. Loos motioned to approve the Steffanelli Deck; Mr. Knights seconded the motion; the project was approved unanimously.

12-4287 Lumberville-Raven Rock Pedestrian Bridge

Ms. Mitchell asked for details on the staging and parking areas for the project. Mr. Rosina, ACT Engineers, explained the project including options for storage of construction materials and parking for personnel. He noted that the Pennsylvania side of the bridge offered no options for storage of materials. Ms. Mitchell stated that if staging areas are required, she recommended that it not disturb the grassed area even if subsequently reseeded. Ms. Dooley noted that the storage areas would also require a Special Use permit from the Park Superintendent. Mr. Rosina noted that the applicant would be applying to D & R Canal State Park for that permit. The project is scheduled to begin in Spring 2013, with some activity, such as netting the bridge, expected to start as early as February 2013. There were questions from the public regarding the chain link fence. Mr. Rosina noted that there was a substantial public outreach which included options for upgrading the fencing; the public did not want changes to the look of the bridge. The outreach effort and history of the bridge were briefly discussed.

Mr. Knights moved for approval of the project; Mr. Loos seconded the motion. The project was approved unanimously.

11-1570D 935 and 1045 Easton Avenue Subdivision

Ms. Dooley outlined the details of the subdivision and stream corridor to be preserved; she noted that the applicant, separately, had intruded into the stream corridor and was offering mitigation. The mitigation, in part, was for land in fee simple for the future path to the Canal Park Pedestrian bridge. There was discussion regarding the value of the property offered. Ms. Mitchell asked for clarification regarding the dog compound. Mr. Jessen noted the benefits of the project. Mayor Marchand noted the longstanding interest in a bridge and increased access.

Mr. Knights moved for approval of the project; Mayor Marchand seconded the motion. Mr. Mulvan and Mr. Loos abstained. The project was approved with four Commissioners voting to approve and two Commissioners abstaining.

12-3512A Quaker Road Emergency Repair

12-4269 Canal Road Emergency Repair

Mr. Knights moved approval of these projects; Ms. Mitchell seconded the motion. The projects were approved unanimously.

Review Zone B Project: 12-2441K Graduate Student Housing—Princeton University

Mr. Knights recused himself and left the meeting at 10:35am.

This project was carried over from the April meeting. Ms. Dooley gave an overview and update. The applicant was requesting to continue to mow a 1.7-acre lawn within the stream corridor.

Since the April meeting, the applicant proposed five options for mitigating the 1.7 acres of lawn along Lake Carnegie. The options were outlined. Ms. Dooley recommended the option which included a new 50-foot planted buffer along Lake Carnegie, a new 100-foot buffer along the tributary and a lawn area reduced to approximately 1 acre. Issues discussed included that, overall, 8.1 acres of stream corridor will be preserved, the original lawn was in existence since before 1980, the lawn was 5 acres, 4 of the 5 acres is being returned to meadow, there will be a buffer along the edge of the stream and lake, the size of the facility housing people who would utilize the area is 715 beds, and the area is open to the public. The areas in which the project was going beyond required levels of stormwater regulation was also discussed. Mr. O'Shea offered more details on the project; he noted that, to meet schedules, demolition of the old buildings would begin as early as July 2012.

Mr. Loos noted that the project, with the 50 and 100-foot buffers, resulted in better water quality.

Mr. Loos motioned to approve the project and Mayor Marchand seconded the motion. The project was approved by the five sitting Commissioners.

At 10:45am, Mr. Knights returned to the meeting.

11-4101 Terhune Barn Easement

Mr. Loos recused himself from discussion and vote on this project.

Ms. Dooley noted that this project was previously approved; the Conservation Easement was being finalized and the applicant raised two issues not previously before the Commission that required Commissioner approval. Ms. Dooley noted that Mr. Terhune was retaining a 2-acre parcel for his home and another 2-acre parcel for a pre-1980 cabin. The latter parcel was in the flood plain and there was concern that the septic might fail. Mr. Terhune would like upfront approval from the Commission to fix the septic. Approval of the septic would require a waiver. The township had provided potential land for the septic. There was discussion about whether sewer hookup is available. There was discussion regarding pre-existing homes in the floodplain and that this might be approvable but require approval. There was discussion that capacity should not increase.

Mr. Knights moved to approve the request to repair the system for the pre-1980 structure on Lot 18.01 provided capacity is not increased and all other required State and local approvals are received. Ms. Mitchell seconded the motion; the project was approved by the five sitting Commissioners.

The Commission noted that on the second issue of pre-existing uses by Mr. Terhune on his home parcel (Lot 36.01), the DAG and Ms. Dooley may develop language limited to Mr. Terhune.

Mr. VonZumbusch, D&R Canal Coalition, noted that farming in this area is consistent with the history of the Canal. Ms. Dooley noted that the Commission agreed regarding this area of the Canal and had previously approved the continued hay farming.

12-4307 Stony Brook Flood Debris Cleanup

Mr. Knights noted that three areas of flood debris had created dams and that Ms. Dooley was to be credited for pursuing the issue vigorously. Mr. Knights motioned for approval and Mayor Marchand seconded the motion; Mr. Mulvan abstained. The project was approved with five Commissioners voting in favor and one Commissioner abstaining.

Review Zone B Projects**12-3758A JER/Herring Orchard Solar Array Modification**

Mayor Marchand inquired about the modification. Ms. Dooley noted that the actions taken by the applicant were to address a notice of violation issued by the DEP; the applicant contacted the DRCC to obtain verbal approval to address the immediate environmental concern; DRCC staff required formal submission retroactively; that is the present application. Staff also noted that the Conservation Easement was not yet signed. Specifically, the applicant wanted language regarding connecting to sewers. Since the connection would be in the easement and the location may differ and have other impacts, it would require review of the Commission. Commissioners agreed. Language to address this action was developed and ready for inclusion in the easement.

06-3429A West Windsor High School Synthetic Turf Field & Lights

Ms. Dooley noted that representatives from the public were here to speak regarding the project. Ms. Spengler-Campanella, a resident of West Windsor, addressed the Commission regarding the project. She noted that the applicant built the synthetic turf project without Commission approval. She believed they were only before the Commission now because they needed approval for the field lights. Ms. Spengler-Campanella noted that the West Windsor Board of Education is a public entity that did not comply with the Commission's regulations. She noted that the project site is environmentally sensitive and that, while she understands the proposed mitigation, it does not necessarily replace the valuable environmental attributes that are lost. She noted that swapping out one area for another in mitigation, even at 2:1, may not be the best practice.

Mr. Loos asked if the West Windsor Board of Education (BOE) had approved the project. Ms. Spengler-Campanella noted that the BOE was in favor of the lights; Mr. Loos asked if Ms. Spengler-Campanella had presented her concerns to the West Windsor Board of Education. She explained that the board saw the lights as a community benefit which outweighed other's concerns and she was told they were perfecting their application to the DRCC.

Mr. Loos asked about the corridor at the time of the application for the addition and the field. Ms. Dooley noted that in 2006, the applicant submitted applications to the DRCC for the turf field and an addition. The staff reviewed the application and approved it substantively. The applicant noted that a regulated stream was on-site and delineated the 100-year floodplain and 100-foot buffer. The applicant also submitted pre-1980 aerials to show the structures that were placed before 1980. All this was approved by staff but the project never went before the Commission and the stream corridor was never put under easement. In 2011, the DRCC received inquiries as to whether lights required approvals from the DRCC and an OPRA request for past records. During these discussions it became clear that the turf field and addition had not received final approvals and staff contacted the school administration. The present submission was for the lights, and retroactive permits. The present application was re-reviewed for stormwater pursuant to the existing rules which were amended in 2009; these have higher standards. In addition, the stream corridor was required to be redrawn using current FEMA maps which made the corridor

wider. Lastly, the DRCC required 2:1 mitigation off-site for impacts after 1980 to the stream corridor; this was not required in 2006. The lights are outside the stream corridor.

There was discussion as to how often the Commission is able to monitor its easements and if closer monitoring would have prevented the school from proceeding with building the turf field without Commission approval.

Mayor Marchand asked if the project had full planning board review and process. Ms. Spengler-Campanella said that in 2006 it did not have a full review; in October 2011, it did have review but the synthetic fields had been built and only the lights were discussed. Mr. Sheehan, attorney for the West Windsor BOE, explained that the project had been reviewed by the Board of Education and the Planning Board and was fully vetted. He noted that, had the final easement been completed in 2006 under the then-current regulation, it would have been smaller than the easement currently proposed and there would have been no mitigation required by the DRCC. At this time, the mitigation off site at 2:1 and a larger corridor will result in a greater environmental benefit; also, he noted that the turf field is placed outside the stream corridor so there was no direct impact on the corridor.

Mr. Loos noted that, from an environmental viewpoint, the corridor was not harmed. He noted the additional requirements added today. However, he also noted his concerned that parties respect the DRCC regulations and asked Mr. Sheehan to reiterate those concerns to the Board of Education. Ms. Mitchell noted that there are actions the DRCC can and does take for violations.

Mr. Wolfe, NJ PEER, noted that the benefits accrued on this project.

Mr. Knights moved for approval of all of the remaining Review Zone B projects as listed below:

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| 12-2294H | Lawrenceville Steam and Sewer Infrastructure |
| 11-4252 | 5 Belmont Associates |
| 10-4090 | St. Thomas Malabar Church |
| 09-3917 | West Windsor Gardens II |
| 12-3758A | JER/Herring Orchard Solar Array Modification |
| 12-2251J | Hopewell Valley Central High School Turf Field |
| 12-2632C | Princeton Day School Bakers Field Turf Field |
| 06-3429A | West Windsor High School Synthetic Turf Field & Lights |
| 06-3429 | West Windsor High School Addition |

Mr. Loos seconded the approval; they were approved unanimously.

EXECUTIVE DIRECTOR'S REPORT

Ms. Dooley reported on the staff's monthly workload. She noted that staff processed nine Deficiency Letters, nine Jurisdictional Determinations, one General Permit 1, two General Permits 2, 17 projects for presentation, and one OPRA request. Fees resulted in \$33,750 for the month. She also noted the office had received several calls of public concern related to the solar project near Rockingham and the office continued to get questions about Bulls Island.

Ms. Dooley noted that the municipality of Hillsborough had issued letters to five homeowners who were encroaching upon the DRCC easement. The municipality had issued letters informing the homeowners to stop mowing in the easement and requested that they remove recreational and other equipment out of the easement. There was discussion about the importance of monitoring and enforcing DRCC easements. Commissioners noted that there is a distinct difference with developers who are given approvals provided a stream corridor is preserved and homeowners subsequently buying subject to that easement. Those situations should be held firm. Mayor Marchand noted that real estate sales people should bring the easement to the homeowners' attention before purchase.

There was discussion about staffing and its relationship to the ability of the Commission to monitor easements.

Ms. Dooley gave an overview of the hiring of staff. There were concerns raised regarding the amount of time it was taking to process the paperwork for the administrative position. Mr. Loos offered to assist in the matter. There was also discussion regarding places to search for candidates for the engineering position.

D & R CANAL PARK REPORT

The Superintendent did not attend the meeting. There was no report.

NEW JERSEY WATER SUPPLY AUTHORITY REPORT

Mr. Bogosian reported that the NJWSA is replacing gates damaged by Hurricane Irene; mowing; and repairing path surfaces near Lower Ferry Road and Hermitage Avenue.

OLD/NEW BUSINESS

No old or new business was discussed.

PUBLIC FORUM

Mr. Wolfe discussed linear easements within the Park, such as those from gas, power, and oil companies and related revenue. Ms. Dooley distinguished that, when referring to easements, Mr. Wolfe was not referring to the DRCC stream corridor easements. He noted that some of the agreements may be 80 or 90 years old. He noted that there could be some value to renegotiating the easements at current market value and it can be a potential revenue or leverage source for DEP Parks.

Mr. Wolfe noted that he had seen much public interest when visiting Bulls Island and in the information he was able to share on his website with respect to tree removal at Bulls Island. He noted that he sees the DRCC as the only public entity where the public can voice its concern over the plan for tree removal. He noted that he is submitting OPRA requests and making his own visual observations at the park to learn about the plans for the trees and he then disseminates the information to the public. He noted that there is a lack of information. He asked for a statement from the DEP Parks and NJWSA that would clarify what happened at Bulls Island. He suggested that, similar to the Delaware River Joint Toll Bridge Commission public information session, that the DEP should offer information and have a forum for public engagement on the issue.

DAG Jablonski noted to the Commission that there is no application presently pending before the

Commission and it was premature to speak on behalf of the DRCC regarding the Bulls Island tree issue.

Mr. Wolfe noted he might want a print out of the Commission's review authority over a project such as the one that might occur on Bulls Island. For example, does the Commission look at erosion issues and does the Commission consult with US Fish and Wildlife or the National Park Service?

Mr. Wolfe reviewed the information he had from the Bartlett Tree Service report and noted that there is a methodology of reviewing which trees would fall and where they would fall and it reviewed the concentrated human use of the park at the playground, camp sites, and bathroom in the upper section of the park. By closing the upper portion of the park, he argued, the risk to humans is eliminated. He noted that his OPRA request revealed a report which discussed the type and quality of wood and bidding information for the removal operation and issues of moving the logs and wood off the island. He noted that the report indicated that any revenue potential for the wood operation was compromised by the limitations of the bridge on to the island; smaller trucks would need to be used.

Mr. Loos asked about bird habitat. Mr. Wolfe noted that US Fish & Wildlife recognized the area as bat habitat, as well as cerulean and yellow warbler habitat; there is also wood turtle and yellow lamp mussel habitat. He believes a regulatory review by the National Park Service, US Fish & Wildlife, Army Corp, and the EPA would be necessary.

Mr. Wolfe noted he was concerned that DEP Land Use permits for the tree removal operation may be issued as emergency permits and existing exemptions.

Ms. Mitchell noted a concern that the DRCC application for tree removal at Bulls Island from the DEP could be very involved and that it needed to be received sufficiently early so the decision is timely and not rushed. She noted it would be helpful to all interested parties for the DEP to talk with the Commission perhaps in a pre-application meeting. There was discussion related to having the DEP present public information at a DRCC meeting. Mayor Marchand noted that she would like to be informed of the plan for Bulls Island; she suggested that the DEP present official information during a session. Mr. Loos stated a presentation by the DEP and then allowing for public comment would be appropriate. Mr. Jablonski suggested that the provisions in the DRCC's rules for a pre-application presentation might be the appropriate way to proceed. Mr. Knights noted that the DEP could clarify what reviews are required; Ms. Marchand noted the consensus of the Commission that the DEP be asked to make a pre-application presentation. Mr. Jessen suggested it might even be a separate meeting. Mr. Jablonski agreed to work with Ms. Dooley to review the rules and to schedule the meeting.

Mr. Barth, D&R Canal Watch, distributed a hike schedule. He noted that canal historian Ted Settle would speak at the Canal Watch meeting at the Lawrence Township Municipal Building on June 10th. He offered literature on a canal regeneration program in England which has helped spur economic development in its region.

Mr. Barth noted that NJWSA had done a good job clearing trees and branches from Griggstown to Rocky Hill and commended the NJWSA for its effort.

Mr. Barth noted his interest in the Trap Rock solar array plan in Franklin Township near historic Rockingham and its approval by the Franklin Township Planning Board. Mr. Barth noted that the applicant's presentation at that meeting seemed to have taken into consideration the comments heard at the DRCC pre-application meeting. The solar array is still visible from Rockingham, however. He hopes there was a way to encourage the solar group to move a section of the array.

Mr. VonZumbusch noted his interest in preserving Rockingham and the National Scenic Byway. He reminded the Commission that the DRCC staff had been involved in the Scenic Byway corridor planning and also noted that Rockingham is one of twenty-some essential sites of the Crossroads of the American Revolution. He is concerned about the solar panels across from the parking lot at Rockingham related to the state's designation of the Historic and Cultural Site/Critical Environmental Site of the Environs of the Village of Kingston. Mr. VonZumbusch, vice chair of the Kingston Greenbelt advisory committee, noted that the project site is within the Kingston Greenbelt. He presented an alternative location plan for the solar project; trees would have to be removed for the alternative plan. Mr. VonZumbusch noted that the context of Rockingham should be an agricultural field and as part of a scenic byway. He urged the DRCC to consider the alternative solar plan he presented. He noted the D&R Canal Coalition has primarily been concerned about the viewshed of the Canal Road and River Road and what is in between; he sees this area as a natural refuge in a highly developed area. He noted the Commission's value of allowing a forum of differing viewpoints at its meetings. He is hoping for a win-win solution; Trap Rock has been helpful with providing a private road around Kingston for its trucks which helped Kingston enormously and Trap Rock benefited as well. He hopes Trap Rock will reconsider the location of the project.

It was noted that the Commission must reorganize for the year at the next meeting.

Mr. Knights motioned to adjourn; Mr. Mulvan seconded the motion; the meeting was adjourned at 12:30 pm.

Respectfully submitted,


Marlene Dooley
Secretary

