

**MINUTES OF THE MEETING TO BE REVIEWED**

**OCTOBER 15, 2012**

**Delaware and Raritan Canal Commission**

TIME: 10:10 a.m. – 11:40 a.m.  
DATE: September 19, 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.

**STAFF:** Ms. Marlene Dooley, Ms. Colleen Christie Maloney, Mr. Vince Mazzei and Deputy Attorney General Dean Jablonski

**GUESTS:** Ms. Patricia Kalleser, Superintendent, Delaware and Raritan Canal State Park; Mr. Bill Bogosian, NJWSA; Mr. Bill McKelvey, Canal Society of NJ; Mr. Bill Wolfe, NJPEER; Mr. John Sieman, Express Times; Mr. James Maxwell, JR Maxwell Builder; Mr. John Miller, Princeton Hydro; Ms. Elaine Neiman, Mayor Kingwood Township.

The meeting opened at 10:10 a.m. Vice Chairman Loos announced that this was a regularly scheduled meeting of the Delaware and Raritan Canal Commission and that all provisions of the Open Public Meeting Law of 1976 had been met.

**MINUTES OF MEETING**

**Minutes of the Meeting of August 15, 2012**

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

**REVIEW ZONE PROJECTS**

**REVIEW ZONE A**

Vice Chairman Loos asked and Ms. Dooley clarified that the Laurie Rubber sampling was related to DEP action not the sale of the property.

Mr. Knights moved to approve the following Review Zone A projects:

07-3519 Ely Creek Flood Control Project (Lambertville)  
12-4306 Lambertville Hall Stairs (Lambertville)  
12-1768A Potential Sampling at Laurie Rubber (Franklin)

12-4309 Ulfat Sign and Canopy (Franklin)

Mayor Marchand seconded the motion. The projects were approved unanimously.

REVIEW ZONE B

Mayor Marchand moved to approve the following Review Zone B projects:

10-3946 Bucci Residential Subdivision (Lawrence)  
 11-4193 Voorhees III (formerly Marconi Place III) (Franklin)  
 11-4194 Voorhees I (formerly Marconi Place I) (Franklin)  
 12-4258 Franklin Nursing (Franklin)  
 11-936E Digital 650 Randolph Proposed Data Center (Franklin)  
 12-3154B Shiseido Warehouse (E. Windsor)  
 12-3548A NJ Turnpike Authority-Brookland Mitigation Site (Monroe)

Mr. Mulvan seconded the motion. The projects were approved unanimously.

Projects subject to 45-Day Rule:

12-4341 West Windsor Lightning Shelter (West Windsor)

Mr. Knights recused himself from voting on this project due to his work association with Princeton University. Vice Chairman Loos noted that, with Mr. Knight's recusal, the Commission did not have quorum and could not take action on the project. He noted that the application, as submitted, will be automatically approved 45 days from the date it was deemed complete. It was deemed complete on September 12, 2012 and therefore would be automatically approved on October 26, 2012.

Carry Over Item from Previously Approved Projects:

11-4101 Terhune Barns

Ms. Dooley described the previously approved project and the status of the easement discussions. Ms. Dooley noted that the applicant raised a new issue related to the septic which required Commission action because it was a permitting issue. The Commission did not have quorum for this issue. Ms. Dooley noted that she was working with the applicant to clarify the concern and will work with Deputy Attorney General Jablonski to determine if the issue could be appropriately addressed outside the Commission meeting. Mr. Knights asked for clarification as to the facts and the quorum issues.

12-4319 Ukarish Subdivision

Vice Chairman Loos noted that the only issue carried forward on this project was the applicant's request for a waiver of the fee. There was substantial discussion regarding the fee by all members included the following: Vice Chairman Loos stated he was sympathetic but the threshold question was whether we had authority in the regulations to lower the fee. He did not believe the Commission had that authority. The DAG discussed that the waiver provisions are for the review standards. Review is for the substantive provisions not fees. He also discussed the legislative grant of authority for fees. Ms. Mitchell stated she was sympathetic to the Township but agreed the rules did not allow waiver of fees. Mayor Marchand noted her concern regarding the prospective effect of waiving fees. Kingwood Mayor Elaine Neimann addressed the Commission and the basis for their position that the fee could be waived. Mr. Knights stated he believed the

rule could be interpreted to include a waiver of fees.

Mr. Knights motioned that the Commission cut the fees in half for the project. The motion was not seconded. The motion failed for lack of action.

Mayor Marchand motioned to maintain the fee as originally calculated. Ms. Mitchell seconded. Vice Chairman Loos later noted that it was not necessary to affirm a decision already made by the Commission. The proper handling was discussed and he ruled the motion out of order.

There was further discussion regarding the stormwater base fee with three additional sub-fees that were calculated by the size by acre of the project and other specific fee provisions. There was discussion regarding fees being commensurate with the work done within those provisions and the historical handling of fees. Vice Chairman Loos, Commissioners Knights and Mitchell, staff Mr. Mazzei and Ms. Dooley and Mr. Wolfe, a member of the public, commented. The discussion included: Mr. Mazzei stating that there were earlier projects where only the stormwater base fee was charged. Vice Chairman Loos asked for additional information on the handling of the Ukarish project and Mr. Mazzei noted the level of review he did for this project. Mr. Wolfe noted the distinction between having authority to assess a fee and having the basis for which the fee was originally justified. Mr. Wolfe also asked whether the Commission had standards for granting waivers in the rules. Ms. Dooley and Ms. Mitchell noted that there were waiver standards for the substantive provisions in the rules. Vice Chairman Loos noted that the regulations identify the fee categories and amounts but staff determines the appropriate category in particular projects. There was discussion that it would be appropriate for staff in assessing fees to determine whether to assess the additional subparts based on the level of review and whether it is justified. In the Ukarish project, the assessment should be reviewed with the engineer and DAG. Mr. Knights raised concerns that this discussion should be limited to municipalities and COAH situations. There was further discussion regarding the distinction between a waiver of fees which the Commission can not do because there is no authority under the rules and staff ensuring that fees are properly assessed and justified. Ms. Dooley and Ms. Mitchell stated the assessment of fees should be handled the same way for every project.

Mr. Knights motioned that staff conduct a thorough review of the fees calculated for the Ukarish project and make the decision on the fees; staff should report to the Commission on the final decision; Ms. Mitchell seconded the motion; the motion was approved unanimously.

#### EXECUTIVE DIRECTOR'S REPORT

Ms. Dooley reported on the staff's monthly workload and fees (see attached report).

Ms. Dooley noted that the Commission received a complaint about trash cans and trash placed along the Canal and Path in Lambertville near Carvallo Park. Photographs of the trash and location were distributed. Vice Chairman Loos and Ms. Mitchell commented and raised concerns and questions. Vice Chairman Loos stated that if the Commission had authority to oppose, we should oppose because it is unsightly. Ms. Dooley should determine if the garbage cans are on State land.

There was discussion regarding the handling of the minutes, level of detail required and needed and whether the audio should be placed on the web site. Vice Chairman Loos, Commissioners

Marchand and Mitchell, DRCC staff Ms. Dooley, Mr. Mazzei, and Ms. Maloney, Superintendent Kalleser, Mr. Wolfe and DAG Jablonski all spoke. DAG Jablonski stated that there was no legal obligation to provide written minutes; the legal obligation under the Open Public Record Act was for reasonably comprehensive minutes. He later noted the balancing of the legal requirements with policy considerations. The comments included concerns regarding the present minutes being too detailed with examples given, that only the motions and votes and listing of commenters need to be included, the value of having the written minutes available so the public did not have to listen to the entire recording, that written minutes are helpful to those who cannot attend, those who do not have computers and those who forward the minutes to other members of the public, and the technical capabilities of the web site and of the recording equipment. Vice Chairman Loos directed Ms. Dooley to continue to provide the written minutes but greatly streamline their content.

#### D & R CANAL PARK REPORT

Superintendent Kalleser noted that there is a new Director of Parks, Mark Texel; Ms. Kalleser also noted that the path collapse at Alexandria Township is repaired; a final design meeting for the swing bridge in Mercer County will be held in October; hunting and bow season are in affect; the design phase of the DeMott Lane Bridge is awarded; there was a prebid meeting regarding the Dewalt Superfund Site in Kingwood for demolition; boat launch fees ended Labor Day; special use permits issued for several groups; and PSE&G is correcting lawn damage related to pole installation in the Rockingham area.

#### NEW JERSEY WATER SUPPLY AUTHORITY

Mr. Bogosian noted that the Authority is moving the last pile of stored debris from Hurricane Irene from the Landing Lane site; they are continuing to address the clean up of trees along the canal; booms are in place related to falling leaves; the Colonial Spillway rehabilitation project is out to bid; and the NJWSA is involved in the process of repairing the embankment in Lambertville.

#### OLD BUSINESS

Vice Chairman Loos asked the status of a donation of land for an intrusion of a stream corridor buffer from a 2010 project on Rte 206; he asked Ms. Dooley to report at the next meeting.

#### NEW BUSINESS

There was no new business.

#### SCHEDULING OF NEXT MEETING

Due to a conflict in schedules, the October Commission meeting was rescheduled to Monday, October 15, 2012.

#### PUBLIC FORUM

Mr. Wolfe discussed his concerns and information he has collected related to the potential tree cutting at Bulls Island and the methodology of the tree assessment; he further discussed a petition objecting to the removal of trees on Bulls Island and noted and discussed a September 2<sup>nd</sup> article in the Philadelphia Inquirer; Mr. Wolfe also stated that there had been a Sierra Club walk at Bulls Island. Mr. Wolfe raised a concern as to whether the DEP is reconsidering cutting trees, expanding the cutting of trees, the natural area, or reopening the campsite. Mr. Mulvan noted that

the DEP is accessing every possible scenario for Bulls Island and no final determination has been made. Vice Chairman Loos noted that it is appropriate and positive for the Department to conduct a thorough review prior to an application being submitted; the Commission will act on the facts once a submission is made to the Commission.

Mr. Wolfe stated the Commission should look at the future of Bulls Island and noted previous commenters had raised this also. Mr. Knights stated it was not the role of the Commission. Mayor Marchand stated that Commissioners should not pre-judge a matter that would eventually come before the Commission. Ms. Mitchell agreed that for the Commission's role as regulator, the issue was not ripe. But Ms. Mitchell asked what the Commission's role is in overseeing implementation of the Master Plan. Mayor Marchand stated she did not think it was the time to discuss the Master Plan when an application was about to come in. Mr. Knights stated that the Commission should wait for DEP's application and have the discussion at that time.

There was discussion of the Master Plan in general, its content regarding Bulls Island, and the Commission's role. Vice Chairman Loos directed Ms. Dooley to place the procedure for amending the Master Plan generally, not as it relates to Bulls Island, on the October agenda including when the Master Plan was last amended and the frequency of amendment.

Superintendent Kalleser noted her effort to facilitate the special use permit for the Sierra Club walk at Bulls Island.

Ms. Dooley noted that Intern Irene Donne was concluding her internship with the Commission and had been a valuable resource to the office. Ms. Dooley gave a personnel update.

Mr. Knights moved to adjourn the meeting; Ms. Mitchell seconded the motion. It was approved unanimously. The meeting adjourned at 11:40pm.

Respectfully submitted,



Marlene Dooley  
Secretary