

**August 21, 2013 MINUTES OF THE MEETING  
TO BE REVIEWED September 18, 2013**

**Delaware and Raritan Canal Commission**

TIME: 10:05 a.m. – 12:15 p.m.  
DATE: August 21, 2013  
PLACE: Canal Commission Office  
Stockton, New Jersey

**ATTENDING:**

**COMMISSIONERS:** Chairman Robert Bostock, Vice Chairman John Loos, Julia Cobb Allen, Mary Alessio Leck, Phillip Lubitz, Bruce Stout, and Mark Texel

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

**GUESTS:** Mr. Bill Bogosian and Mr. Joe Shepherd, NJ Water Supply Authority; Mr. Robert von Zumbusch, Dr. Theodore Chase, and Mr. Herbert Spiegel, D&R Canal Commission Advisory Committee; Mr. Robert Barth and Mrs. Linda Barth, D&R Canal Watch; Mr. Bill White, NJDEP; Mr. Greg Sandusky, Mercer County Engineer.

Chairman Bostock announced that this was a regularly scheduled meeting of the D&R Canal Commission and that all provisions of the Open Public Meeting Law of 1976 had been met.

**Administrative Items**

There were no administrative items for discussion.

**Minutes of the Meeting**

**Minutes of the Meeting of July 15, 2013**

A motion was made by Dr. Leck and seconded by Dr. Stout to approve the minutes; Dr. Leck, Dr. Stout, Mr. Loos, Ms. Allen, Mr. Texel, and Chairman Bostock voted to approve the minutes; Mr. Lubitz abstained. The motion was approved.

**Executive Session Minutes of the Meeting of July 15, 2013**

A motion was made by Dr. Stout and seconded by Dr. Leck to approve the executive session minutes. Dr. Stout, Dr. Leck, Mr. Loos, Ms. Allen, Mr. Texel, and Chairman Bostock voted to approve the minutes; Mr. Lubitz abstained. The motion was approved.

## Review Zone Projects

### Review Zone A Projects

#### 06-3406 Zarephath Community Center (Franklin)

Chairman Bostock asked Ms. Dooley to give an overview of the project. Ms. Dooley described the project and used a map to explain the location of the building, stream corridor and conservation easement areas. Dr. Leck asked about the potential wetland area; Ms. Dooley explained the potential use of the area as a mitigation bank and there was discussion regarding the historic use of the site and wetland mitigation.

Mr. von Zumbusch objected to the landscape plan, specifically stating that the screening should be moved next to the parking and building in order to retain the view of the farm field. Mr. Loos agreed that the farming viewshed has been lost in some areas along the road. Mr. Mazzei noted that, if the trees are moved, they should not be planted near a detention basin. Mr. Loos questioned whether a change to require trees closer to the building would require municipal approval. Ms. Dooley noted that the project had been approved by staff in 2010 but did not come before the commission because it did not have municipal approval; the dense plantings in the buffer had been recommended by commission staff. Mr. Lubitz asked for clarification regarding the history of the project and Ms. Dooley outlined the staff report from 2010 and flooding that had affected the property since 2010. Ms. Allen discussed the importance of planting species that might survive flooding. Dr. Chase noted that some area proposed for the easement along the river is currently being farmed as corn; he concurred with Mr. von Zumbusch that the farmland viewshed is important.

A motion was made by Mr. Loos and seconded by Dr. Leck to approve the project with the tree buffer moved closer to the building, but still within the 250 setback area.

Dr. Stout noted that the applicant had been asked to prepare the screening plan and did so, at the request of staff; he raised a concern that it could be a burden to the applicant to change the plans. Mr. Lubitz concurred and was concerned that the amended plan may change the applicant's ability to develop the land. Mr. Texel suggested minimizing the number of trees planted for screening along the road and that might result in savings for the applicant. Ms. Allen noted that such a change may require the applicant to obtain additional municipal approvals.

Chairman Bostock asked Mr. Loos to restate the motion. A motion was made by Mr. Loos and seconded by Dr. Leck to approve the project with the tree buffer moved closer to the building, but still within the 250 setback area. Ms. Allen, Mr. Loos, and Dr. Leck voted to approve the motion. Chairman Bostock, Dr. Stout, Mr. Texel and Mr. Lubitz voted to reject the motion; the motion was defeated.

A motion was made by Mr. Texel to require the applicant to minimize the number of trees planted, therefore reducing the buffer and retaining some historic view; no one seconded the motion. The motion died.

A motion was made by Dr. Stout and seconded by Mr. Lubitz to approve the project as recommended in the staff report.

Mr. Loos sought to amend the motion to approve the project as recommended but requesting that the applicant investigate eliminating the current buffer and replacing it with a smaller buffer closer to the building.

Mr. Lubitz stated that he did not support the proposed amendment; he noted that, in his experience with solar projects in Kingwood Township, the township found that changing the location of the buffer may result in reducing the effectiveness of the screening. A buffer closer to the building may not provide an adequate screen from the park.

An amendment to the motion was not accepted.

Chairman Bostock called the vote on the motion. Mr. Lubitz, Dr. Stout, Mr. Texel, Ms. Allen, and Chairman Bostock voted to approve the motion to approve the project as recommended in the staff report; Mr. Loos and Dr. Leck opposed the motion. The motion was approved.

13-4032A 3 Risler Street (Stockton)

Ms. Dooley described the project including that it was a privacy fence at a private home in a suburban environment as described in the Master Plan and recommended approval. Dr. Leck noted her concern that the applicant could be using treated wood.

A motion was made by Ms. Allen and seconded by Dr. Stout to approve the project with the stipulation that the applicant not use treated posts for the fence. The motion was approved unanimously.

Zone B Projects:

- 12-4376 Alexander Road and Old Bear Brook Road (West Windsor)
- 13-4268A Valero Gas (West Windsor)
- 13-2308B Trenton-Mercer Airport Parking (Ewing)
- 13-2308C Trenton-Mercer Airport EMAS Runway 6/24 (Ewing)
- 13-4459 Bear Tavern Road & Jacobs Creek Road (Ewing)
- 13-2789G Campus Town Development (Ewing)
- 13-4416 Chabad House Synagogue (Hillsborough)
- 12-1674B Village Shopper III-Bank Pad (Montgomery)

Dr. Stout recused himself from the discussion and vote of the Campus Town Development stating he is employed by the College of New Jersey (TCNJ), which owns the property on which the project is being developed. Mr. Lubitz noted for the record that his daughter attends TCNJ, but that it did not require recusal.

A motion was made by Mr. Loos and seconded by Mr. Texel to approve all Zone B projects, with the exception of Campus Town Development.

Dr. Leck asked for details on the seeding and grass to be planted at the Mountain View Golf Course as mitigation for the Bear Tavern Road & Jacobs Creek Road project; she requested that native grass be planted; Mr. Sandusky, a representative of Mercer County, stated the County agreed that the grass to be planted would be native grass.

Chairman Bostock called for a vote on the motion. Mr. Loos asked for clarification that the motion included the requirement for native grasses to be planted at the Mountain View Golf Club as just discussed. Chairman Bostock confirmed that the motion was to approve all Zone B projects, and included the requirement that native grasses be planted at the Mountain View Golf Course for the Bear Tavern Road & Jacobs Creek Road project. The motion was approved unanimously.

13-2789G Campus Town Development (Ewing)

Chairman Bostock reiterated that Dr. Stout had recused himself on the matter and would not participate in discussion or vote on the project. Ms. Dooley gave an overview of the project. Ms. Dooley noted that she recommended a conditional approval. An Arts building had been allowed to be constructed on the campus conditioned on TCNJ delineating the stream corridor and entering an easement. The stream corridor map was agreed to and approved by the commission staff in April 2011 but was never recorded by the TCNJ. Ms. Dooley contacted the applicant and they will record the easement. Mr. Barth asked if any of the buildings to be demolished were on the historic register or historic in any way; Ms. Dooley responded the buildings would not be in the canal historic district and therefore the commission would not have jurisdiction.

A motion was made by Mr. Texel and seconded by Dr. Leck that the project be approved, conditioned upon the conservation easement being recorded; Chairman Bostock, Mr. Loos, Ms. Allen, Mr. Lubitz, Dr. Leck, Mr. Texel voted to approve. The motion was approved unanimously.

Discussion: 13-1570E Easton Avenue Bridge Design (Franklin)

Chairman Bostock asked Mr. White, NJDEP, to briefly outline the project. Mr. White explained the history and basis for building a bridge to access the D&R Canal State Park near the intersection of Easton Avenue and JFK Avenue in Franklin Township. He noted that the D&R Canal Commission had obtained funds to design the pedestrian bridge and his office was overseeing the design work. He further noted that a previous NJDEP Assistant Commissioner had agreed that the next bridge design in the D & R Canal State Park would explore alternative designs and costs for those bridges. Designs were developed and Mr. White described three moveable structures and one fixed structure. At this time, NJDEP Parks has asked Mr. White's office to explore the fixed bridge and move forward with its design. He is seeking the commission's position on a recommended design. Mr. Loos explained that the design funding for the bridge had come from mitigation for a PSE&G project related to the Easton Avenue Corridor.

A motion was made by Mr. Loos and seconded by Dr. Leck to approve the fixed bridge design option.

Mr. Loos noted the importance of creating an access point in this densely populated area near the park. Dr. Stout asked about pedestrian safety in the proposed area of entry. Mr. Loos discussed the path to be made from the sidewalk to the bridge, work with a local business to assign several parking spots on its site for park users and engaging Somerset County to help at the signalized intersection and bike lane. Mr. Loos noted that Franklin Township was supportive of the project.

There was substantial discussion of the design options. Mr. Texel noted that the fixed bridge would preclude any broader plans for larger boats to travel this area of the canal; he further stated that the park must consider annual maintenance costs. Mrs. Barth noted that the goal of D&R Canal Watch is to make the D&R Canal regain its status as part of the intercoastal waterway. She suggested helping to get grants for a moveable bridge; Mrs. Barth noted this was an opportunity to change the policy on future bridges. There was discussion about boat traffic on the canal and the height of bridges.

Mr. Bogosian, NJWSA, noted that NJWSA would be concerned that any bridge design not impede the flow of water in the canal and allow NJWSA access along the path to perform maintenance of the canal. Some designs raised concerns in this regard. Chairman Bostock asked if the fixed bridge design shown in the report would meet the criteria; Mr. Bogosian noted that he had just received the designs and would need to study them.

Mr. Lubitz asked about NJWSA access areas along the path and canal. Mr. Loos noted that the NJWSA would not want any bridge footings blocking the access to the canal. Mr. Bogosian noted that the height of the bridge would need to allow for NJWSA work boats. Mr. White noted that ADA compliance across the bridge would need to be considered. Dr. Stout asked about placing a swing bridge at this location. Mr. White noted that the cost, site size and topography do not lend itself to a swing bridge.

Mr. Barth spoke about the importance of public access to the park, NJWSA accessing the path, and park maintenance concerns. He discussed the canal boating industry in Indiana, England, and Canada and asked the commission to consider making the canal accessible to through boating.

Mr. von Zumbusch noted that in 1984, he worked for a firm which did a comprehensive plan for the D&R Canal Historic and Recreation Plan. They researched the possibility of bringing boating to the canal and studied and visited several canals, including canals in Canada and Washington, DC. The study determined that there are so many roads and bridges that cross the D&R Canal, that it would be difficult for boating. The Lambertville area was considered an advantageous area for a boat ride, a working lock, a cable ferry across the river, and a swing bridge on the canal, to all be located on parks property in a location which would not interfere with roads. And it was determined that a project such as that would not be suitable for the Griggstown area for a number of reasons, including that local roads would be unable to support the traffic generated by such development, and residents did not want such development. There were also historic concerns related to boat ramps. Mr. von Zumbusch also stated that, currently,

funding for such a project and staffing are limited. Mr. von Zumbusch stated that opening the locks and changing to moving bridges along the canal to open the intercoastal waterway is not feasible economically.

Dr. Chase stated that he agreed that the vision to bring the intercoastal waterway through New Jersey is not realistic considering the size of such a project. Mr. Barth asked that a study such as that done in 1984 be updated with new information. Mrs. Barth noted the study was 30 years old and she believes that there is much support currently for a boat ride in the Griggstown area. She noted that D&R Canal Watch paid for a study to explore the cost of restoring a lock; it would cost approximately \$2 million to restore a lock to working order. She noted that canals in Europe were reopened. She noted the importance of having vision to make change.

Dr. Chase stated that he agreed with Mr. Loos that he would like to see the bridge at Easton Avenue built as quickly as possible for citizens to gain access to the park.

Mr. Loos restated the motion to support going forward with the design phase of the fixed bridge with the requirement that the NJDEP work with NJWSA and NJDEP Parks to investigate designing to the maximum height allowed within a realistic budget.

Mr. Texel asked the cost to explore designing a swing bridge at the Easton Avenue site. There was discussion about the cost of the current design study, and the additional cost of having a swing bridge design considered for the site. Mr. Lubitz asked about delaying the vote to explore the costs.

Mr. Loos withdrew his motion and Dr. Leck agreed with the withdrawal.

Chairman Bostock asked Mr. White to look at the cost of designing a swing bridge for the site and to report back to the commission.

Dr. Leck noted concern for the water quality if boats were allowed on the canal. Mr. Bogosian stated that NJWSA was concerned with the impact of boating on the structural integrity of the canal. The authority is concerned about anything that disturbs the side of the canal. The canal provides New Jersey residents with 100 million gallons of water per day. The structure is 180 years old with water flowing through it all year long. Boat speed and wakes will create scour holes along the sides of the canal and this creates the potential of failure.

#### **Executive Director's Report**

Ms. Dooley reported on the staff's monthly work and fees for the preceding month (see attached report). Ms. Dooley discussed the status of hiring office staff. Ms. Dooley noted that counsel for the Institute for Advanced Study had submitted a letter stating that they have chosen to give up their administrative approval under the 45-day rule and intend to seek a hearing before the commission on the project. Ms. Dooley noted that the NJWSA dredging project application had been submitted, the NJDOT indicated it would approve a mid-block crosswalk where the path crosses at Bridge Street in Lambertville,

the DeMott Lane Bridge project application was submitted, and that she anticipated that the Bulls Island application would be submitted some time in late fall or early winter.

Mr. Loos stated he would not be in attendance at the September commission meeting. He asked for the presentation on the dredging application to be placed on the October meeting as the project is in Franklin and he represents the area of Franklin. Chairman Bostock stated that he would want to ensure that a delay does not in any way cause hardship to the applicant. Ms. Dooley will contact the executive director of the NJWSA. Mr. Loos also noted he would like to attend a site inspection before NJWSA makes its presentation.

#### **D and R Canal State Park Superintendent's Report**

Superintendent Kalleser was absent from the meeting. There was no report.

#### **NJ Water Supply Authority (NJWSA) Report**

Mr. Shepherd noted that NJWSA staff was working on sediment removal at Ravens Rock upstream to the mouth of the inlet.

#### **Next Month Meeting Date**

Mr. Loos noted he could not attend the September 18, 2013 meeting. The balance of commissioners in attendance confirmed they could attend.

#### **Old Business**

There was no old business.

#### **New Business**

Chairman Bostock noted that he had been appointed the chairman of the commission by Governor Christie. He thanked Mr. Loos for serving as the vice chairman for such a long period of time, and for his continued service in the capacity of vice chairman.

#### **Public Forum**

Mr. Spiegel noted that Lambertville had been named as one of the 15<sup>th</sup> prettiest cities in America by *Forbes Magazine*, and the D&R Canal was mentioned in the article.

Mr. Barth welcomed Chairman Bostock in his new capacity. He asked for a report on the condition of the mile marker at Colonial Park. Mr. Bogosian noted that several of the markers are not in the correct place or orientation and that NJWSA has contacted SHPO for review and direction; also, the location of some markers may require the involvement of the Army Corp of Engineers. Mr. Barth noted D&R Canal Watch hikes, the East Millstone Canal Fest to be held October 19, and the plan for the opening of the Griggstown Bridgetenders House as a visitor center for the Millstone Scenic Byway on October 1.

Mr. Barth asked about the creation of wetlands as was discussed during the Zarephath project. Mr. Mazzei explained how wetlands are created and there was a discussion about creating wetlands for necessary off-site mitigation, the wetlands bank and that it

can be a source of revenue for those who allow their land to be used for this purpose.

Mr. von Zumbusch announced the Princeton Nursery 100-year Celebration on September 8 and invited all to attend. He briefly described the history and noted the relationship between the commission and the Princeton Nursery site.

Mr. Loos noted a "Bike without Fear" day in Franklin on September 8, 2013, where the road along the canal from Butler Road through the Village of East Millstone will be open to bike traffic only.

**Executive Session**

Chairman Bostock stated that an executive session was not needed.

A motion was made by Mr. Lubitz and seconded by Dr. Stout to adjourn the meeting; the motion was approved unanimously; the meeting was adjourned at 12:15 p.m.

Respectfully submitted,



Marlene Dooley  
Secretary