

**NOVEMBER 20, 2013 MINUTES OF THE MEETING
TO BE REVIEWED DECEMBER 18, 2013**

Delaware and Raritan Canal Commission

TIME: 10 a.m.

DATE: November 20, 2013

PLACE: D&R Canal Commission Office
Stockton, New Jersey

ATTENDING:

COMMISSIONERS: Chairman Robert Bostock and Commissioners Julie Cobb Allen, Mary Alessio Leck, Phillip Lubitz, Bruce Stout, Ed Trzaska, and Director Mark Texel

STAFF: Ms. Marlene Dooley, Ms. Colleen Christie Maloney, Mr. Vince Mazzei, Deputy Attorney General Lisa Daglis

GUESTS: Patricia Kalleser, D&R Canal State Park; Mr. Joe Shepherd, NJ Water Supply Authority (NJWSA); Dr. Theodore Chase, Jr., Franklin Township and D&R Canal Commission Advisory Council; Mr. Robert Barth, D&R Canal Watch and D&R Canal Commission Advisory Council; Mrs. Linda Barth, D&R Canal Watch; Mr. Joel Greenberg, Schwiebert Chapter of Trout Unlimited; Mr. Bill McKelvey and Mr. Martin Robins, Liberty Historic Railway; Mr. Herb Spiegel, D&R Canal Commission Advisory Council; Paul Schneider, Giordano Halleren; Chris Stevenson, Norris MM; Richard Moralle, T&M Associates; Jennifer Smith, Gibbons; Alyce Hreha, Sovereign Consulting, Inc.; Mr. Charles Waaben; Mr. Drew French, French and Parrello; Victor Melgar, Langan Engineering; Mr. Mark Solomon, Pepper Hamilton.

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 in the scheduling of the meeting.

In attendance at 10 a.m.: Chairman Bostock and Commissioners Allen, Leck, Lubitz, Stout, and Trzaska, and Director Texel.

Administrative Items

A. Chairman Bostock confirmed the next month's meeting date with the commissioners as December 18, 2013. He asked that the public check the location of the meeting for the next month as it may change.

B. 2014 Commission Meeting Schedule: Chairman Bostock stated he would entertain a motion to approve the meeting schedule; Director Texel moved to approve the schedule

and Commissioner Leck seconded. The motion was approved unanimously.

Minutes of the Meeting

Minutes of the Meeting of October 16, 2013

Chairman Bostock asked for a motion on the previous meeting's minutes.

Commissioner Stout moved approval, and Commissioner Lubitz seconded the motion; the minutes were approved unanimously.

Review Zone Projects

Review Zone A Projects

Chairman Bostock asked Ms. Dooley to provide an overview of each project.

13-2169A Wallach Fence (Hopewell Township)

Ms. Dooley outlined the project including that it was located in the Titusville area of Hopewell Township and was not visible from the canal path. Chairman Bostock asked for comments from the Commissioners and then the public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Director Texel moved to approve the project and Commissioner Lubitz seconded; the motion was approved unanimously.

13-2145D Lambertville Railroad Fence (Lambertville)

Ms. Dooley outlined the project including that it was located in Lambertville on D&R Canal State Park land on which the applicant has an easement. The property is adjacent to the canal and near the sewage treatment plant. Chairman Bostock asked for comments from the Commissioners and then the public. Mr. von Zumbusch and Mr. and Mrs. Barth asked for clarification of the location. Ms. Dooley described it with more detail. Mr. von Zumbusch noted that it was unfortunate that this area would be fenced off from people wanting to see the lock from that side of the canal.

Chairman Bostock stated he would entertain a motion on the project. Director Texel moved to approve the project and Commissioner Stout seconded; the motion was approved unanimously.

13-1647C Colonial Park Water Improvement (Franklin)

Ms. Dooley outlined the project including that it was located in a county park in Franklin Township. The applicant wishes to connect to the water system and construction will be outside the stream corridor.

Chairman Bostock asked for comments from the Commissioners and then public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commissioner Stout moved to approve the project and Director Texel seconded; the motion was approved unanimously.

Review Zone B Projects

Chairman Bostock stated that Review Zone B projects would be considered individually and asked Ms. Dooley to give an overview of all the projects.

12-4260 Americana Center (E. Windsor/Hightstown)

Ms. Dooley outlined the project including that it was located in both East Windsor Township and Hightstown. It is a 6-acre site which will be redeveloped with an office building and daycare, and the project meets Commission stormwater requirements.

Chairman Bostock asked for comments from the Commissioners and then public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commissioner Trzaska moved to approve the project and Commissioner Stout seconded; the motion was approved unanimously.

13-3341D Skilled Nursing Facility (Plainsboro)

Ms. Dooley outlined the project including that it was located in Plainsboro on the Princeton Healthcare campus which was previously approved by the Commission. The Millstone River is on the project site, and a stream corridor easement was previously established. A 32-acre park was established after buildings were demolished and the site along the Millstone was cleaned up and replanted. The Skilled Nursing Facility was previously approved by the Commission; the current project involves the applicant seeking to expand parking for the facility on to a piece of the 32-acre park, which would reduce the park by 1.5 acres. The project is required to resolve a parking shortage at the facility.

Mr. Solomon, Pepper Hamilton, described how, as part of the Princeton Healthcare project, the 32-acre park had been built, including that the applicant had removed contaminated soil from the former FMC site, revegetated the park area and spent \$7.3 million on the park. He stated that the parking for the Skilled Nursing Facility had been miscalculated and, for the facility to function properly, more parking spaces were needed. The dialysis center was not yet installed at the project site because of the lack of parking. He explained the applicant's need to append 1.5 acres of the previously donated 32-acre park for parking.

Commissioner Lubitz inquired about the possibility of installing a parking deck at the site. Mr. Solomon noted that parking decks are expensive and that the Skilled Nursing site had constraints such that a deck could not be designed on it. Mr. Mazzei noted that the applicant had been asked about a deck when the application was reviewed by Commission staff and that, logistically, the site was not big enough to accommodate a deck. Mr. French, the applicant's engineer, noted the Skilled Nursing Facility was designed in a pod fashion, with gardens and landscaped areas for patients. The perimeter was constrained.

Commissioner Leck asked about parking on adjacent hospital property. Mr. Solomon noted there had been discussion with the hospital, and there was not additional parking available. Commissioner Trzaska noted that the community would still have 30 acres of

park with returning 1.5 acres to the parking. Chairman Bostock asked if this 1.5-acre parcel would take care of the parking issue; Mr. Solomon responded that it would. Mrs. Barth stated that the parking deck would be unattractive next to a park and less appropriate visually. Mr. von Zumbusch noted it was regrettable that parkland would be given up, there was no mitigation offered, and that the parking next to the park would have a negative impact. He noted the importance of the Millstone River as a corridor for wildlife. He asked the commission to ask for other solutions from the applicant.

Mr. Solomon asked the commission to consider the importance of the redevelopment of the entire site and the importance that each component succeed. He asked the commission to consider that the hospital, the planned assisted living facility, the medical offices, the fitness center, and the skilled nursing facility all make up an integrated development. He noted that there is an adjustment necessary to make the Skilled Nursing Facility succeed and there would be 30 acres of park. He said there are later plans for a deck at the hospital, but that would be constructed in the future, after certain goals were met.

Ms. Dooley noted that the project as proposed would reduce the park to 30 acres, that there is a commission easement area on the park, and the project would clearly reduce the commission stream corridor by 1.5 acres. She noted that she considered the entire Princeton Healthcare site in her review of the current application, including the removal of 11 acres of buildings on the old FMC site, the revegetation plan, and the applicant's attempt to explore alternatives to resolve the parking issue differently. Director Texel asked if giving up easement area would be precedent setting for the Commission. Ms. Dooley noted that decisions made should be followed in the future but the facts of this situation were very unique. Commissioner Lubitz noted his concern that approval could open the door to any applicant who gave more in an easement to ask for an area to be returned.

Commissioner Trzaska noted that the applicant gave 32 acres for the park which was more than required and, with this project, there are still over 30 acres committed to parkland on the Princeton Healthcare site.

Mr. Solomon reminded the commission of the benefits of the total project, including the clean up and removal of char, a buried residue, and asbestos. He noted that the whole of the development of the park and the healthcare facilities were entered in good faith, that the request for the parking project was because of a miscalculation, and that the goals of the commission had been well served by the extent to which the park had been created.

Mr. von Zumbusch noted that the need for parking should be integrated with the hospital and this facility. He noted that returning parkland was setting a bad precedent.

Chairman Bostock asked for further comment, and hearing none, asked for a motion on the project. Commissioner Trzaska motioned to approve the project. Commissioner Stout seconded the motion.

Director Texel asked if there could be mitigation elsewhere on the property, which had not been considered before. Mr. Solomon responded that the redevelopment plan included the hospital, the skilled nursing facility, a Children's Hospital of Philadelphia facility, the adult housing site, and there would be applications for a future projects on the overall site.

Ms. Dooley noted that a stream corridor easement had been recorded and regulations only require that land within the corridor return to its natural state; the applicant had removed 11 acres of buildings and installed a planting plan, all of which could be considered mitigation. Director Texel noted that it appeared the applicant had contributed far beyond that which would have been required for mitigation for the Princeton Healthcare site.

Commissioner Leck asked about temporary parking options until such time that a parking deck could be built. Mr. Solomon explained that the applicant had rented space at a hotel and had shuttled people. The hospital does not have adequate parking to offer and the deck is in the future plans for the hospital. Mr. Solomon noted that a deck at the hospital would be a distance from the Skilled Nursing facility.

Commissioner Allen noted her concern that the applicant might ask to intrude further into the park for future projects. Mr. Solomon anticipated no such requests, based on future development plans.

Commissioner Lubitz stated that a deck would be practical and it might be better for the commission to act in a way that encourages a long-term solution. Commissioner Trzaska noted that the originally proposed 30-acre park obligation had been met, a dialysis facility is important to the community, and a deck at the hospital would be very far from the facility and require shuttles. He noted that the applicant was making a reasonable request and asked the commission to consider the benefits of the massive initiative and total Princeton Healthcare project.

Chairman Bostock called for a vote on the motion submitted. Commissioners Allen, Stout, Bostock and Trzaska voted in favor of the project; Commissioners Lubitz and Leck, and Director Texel voted against the project. There were no abstentions. The project was approved. Mr. Solomon thanked the commissioners for working with the applicant.

13-2445B Heritage Shopping Center (So. Brunswick)

Ms. Dooley updated the commission on this project which was carried over from the previous month's commission meeting; she outlined the project including that it was located in South Brunswick, there is an objector, and the issue of whether the easement was valid, if the project approval for which it was recorded, had expired.

Chairman Bostock thanked Mr. Schneider for the applicant and Ms. Smith for the objector for submitting comments by November 1, 2013, as requested. He asked if Mr. Schneider had further comment.

Mr. Schneider reminded the commission that this was Phase II of an existing shopping center on Route 1 in South Brunswick and used a map to describe the project site. He discussed the previous project in which the applicant had planned for Phase I and Phase II on the site. The approval included entering into an agreement which allowed the applicant to put a stormwater basin in an area in which there is a stream corridor, as noted on a hatched area of the map. He noted that the proposed encroachment was 700 square feet, far less than the area originally approved and noted on the easement map. He noted that any challenge to the agreement should have been made in 2002.

Mr. Schneider raised an issue related to his client's reliance and claims for monetary compensation. He also noted that his client was willing to revise the easement to preclude any future development in the hatched area outside the 700 square feet currently proposed for encroachment. He noted that 19 trees would be removed from the stream corridor but that 33 trees would be planted. He noted that all facilities meet current stormwater standards.

Chairman Bostock asked Ms. Smith if she had further comment.

Ms. Smith noted that the objector took issue with the stream corridor impact analysis. She noted that there was a blanket statement that the basin has to encroach into the stream corridor protection area to fulfill flood hazard regulations and stormwater regulations. She noted there was no support in the document for that statement. The applicant has not established that the applicant has to build 83,000 additional square feet of retail on the site, on top of the 210,000 square feet that was previously approved. She asked why the applicant could not reconfigure the site to move the stormwater facility out of the stream encroachment area.

Ms. Smith took issue with the applicant stating that minimal vegetation will be removed. Nineteen trees will be removed, one of which is 48" caliper, and several are of 22" to 25" caliper. Regulations state that vegetation cannot be removed from the buffer area. These trees will be replaced by 2" to 2-1/2" caliper trees. She noted that this mitigation is not in the spirit of current commission regulations.

Ms. Smith disagrees with the legal rationale. She referred to a recent decision of the Supreme Court. Stream corridors are protected and the applicant is not permitted to encroach in that area. She noted the original easement agreement for this project is from 2002, and the applicant received an approval for 210,000 square feet of retail and that the easement expired with that approval. The developer should meet current regulations. Ms. Smith noted that the commission should be looking at the current application and if there is good reason to encroach upon the stream corridor, or why a 45" caliper tree needs to be removed.

Commissioner Stout referred to page 3 of the November 19 staff report, regarding the easement and the approval. Ms. Dooley noted that the approval for the project is expired but staff found the easement to be perpetual.

Commissioner Trzaska asked for confirmation of encroachment size and asked if the plan can be amended. The size of the area was confirmed at 700 square feet and Mr. Morrale, the applicant's engineer, noted that to eliminate the encroachment in the preservation area, one would need to do an underground detention system and add mechanical treatment devices. He noted the benefit of a wetland basin over mechanical devices. The applicant's representatives further stated that the applicant entered an agreement with the Commission in good faith, has reduced the encroachment, added no new outfalls, and brought the project into compliance with current standards.

Chairman Bostock asked Mr. Schneider if the applicant would be agreeable to vacate the rest of the easement, but for the 700 square feet, and the commission would impose that as a condition of approval. Mr. Schneider responded that his client would do so and change the hatched area to the 700 square feet. Commissioner Trzaska asked the size of the original hatched area; Mr. Morrale stated that it is a little over an acre.

Ms. Smith noted that the approval had expired, and that their contention is that the approval and easement go together. Director Texel noted that, in his experience with parks, easements do not have a time limit and go forward.

Chairman Bostock asked for clarification about the project's easement, and Ms. Dooley noted that it was entered and recorded with the county. Ms. Smith noted that it was not a boiler plate easement and that a special provision was added carving out special uses. Ms. Dooley noted that the easement that was entered had language and permitted uses included.

Chairman Bostock stated he would entertain a motion on the project. Commissioner Stout moved to approve the project with the permitted encroachment in the easement limited to 700 square feet per the current project plan and as described by Mr. Schneider, and Commissioner Lubitz seconded; the motion was approved unanimously.

Chairman Bostock thanked the applicant and objector for their participation.

13-4490 DeRochi Major Subdivision (Montgomery)

Commissioner Trzaska recused himself from the matter as he is mayor of Montgomery Township.

Ms. Dooley outlined the project including that it was located in Montgomery Township, has an existing single-family home with a stream corridor along Bedens Brook, and that the applicant proposed to subdivide and build two additional homes, and enter into a stream corridor agreement with the commission. The project meets stormwater requirements.

Chairman Bostock asked for comments from the commissioners and then the public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Director Texel moved to approve the project and Commissioner Stout seconded; Chairman Bostock, Director Texel, and Commissioners Stout, Allen, Leck, and Lubitz

voted to approve the project; Commissioner Trzaska abstained from voting; the motion was approved.

13-2706A Villagio (So. Brunswick)

Ms. Dooley outlined the project including that it was located in both South Brunswick Township, and the development had a previous commission approval, that it had been substantially built and some stormwater facilities were in place. This project is a modification of a previously approved project resulting in less impervious surface, reduced the number of homes by five, involved a minor foot print relocation and met stormwater requirements.

Chairman Bostock asked for comments from the commissioners and then the public. Hearing none, Chairman Bostock stated he would entertain a motion on the project. Commission Stout moved to approve the project and Commissioner Lubitz seconded; the motion was approved unanimously.

13-3031A Point of Woods Conservation Easement Amendment (So. Brunswick)

Ms. Dooley outlined the project including that it was located in South Brunswick Township, and the commission had approved a development of 73 homes, a conservation easement, and that the project site is adjacent to the South Brunswick Landfill. The USEPA was requiring a monitoring well for the South Brunswick landfill to be installed within the Commission's easement on the Point of Woods site. She noted it would be a first amendment to the conservation easement, which would allow installation of a monitoring well in the easement area, as required by USEPA. The applicant illustrated that it will have little impact on the site.

Chairman Bostock asked for comments from the commissioners and then the public. Mr. von Zumbusch asked if the well would be permanent; Ms. Dooley noted that there was not an end date for the well but if removed at some point in the future the area would be restored to its natural condition.

Chairman Bostock stated he would entertain a motion on the project. Commissioner Lubitz moved to approve the project and Commissioner Trzaska seconded; the motion was approved unanimously.

10-3943 Cranbury Brick Yard Agreements (Cranbury)

Ms. Dooley outlined the project including that it is located in Cranbury Township, and the 395-acre site is a former manufacturing site, specifically a munitions facility, and is the subject of a remedial action workplan from the NJDEP. The project involves the clean up of the site, installing a barrier, and then building warehouses on the site. There would be temporary disturbances due to the remediation and permanent disturbance due to the warehouse construction. There are substantial wetlands on the site, and the cleanup will have some encroachment on the stream corridor. Mr. Mazzei and Ms. Dooley described the project site and stream corridor area using a map.

Mr. Stevenson, a representative of the applicant, noted the unique nature of the site

remediation with munitions and extensive wetland remediation, and the goal of restoring the site to a productive use. Chairman Bostock asked about the clean up process and safety considerations for those involved in the clean up and redevelopment. Mr. Melgar, Langan Engineering, spoke about the collection of metals, debris and unexploded ordinance, and their disposal. He described the manual approach to be used in the more environmentally sensitive areas of the site and that the area would be permanently fenced and signs posted. Director Texel and Commissioner Leck noted safety concerns during remediation, during construction on the site, and after.

Chairman Bostock stated he would entertain a motion on the project. Commissioner Trzaska moved to approve the project and Commissioner Stout seconded; the motion was approved unanimously.

13-2615A 73 Claremont Road Request for Vacating Agreements (Franklin)

Ms. Dooley outlined the project including that it was located in Franklin Township, construction of a church and associated improvements had been previously approved in 2002 by the commission, and that the project was never built. The new owner was requesting that the agreements be vacated, as there is no intention to construct the project and the owner will keep the property as a private home.

Chairman Bostock asked for clarification that the applicant would know to return to the commission for project review should there be plans to build in the future. Ms. Dooley noted that the applicant's attorney was informed of possible need for review in the future.

Chairman Bostock stated he would entertain a motion on the project. Director Texel moved to approve the project and Commissioner Stout seconded; the motion was approved unanimously.

Other

NJ Water Supply Authority (NJWSA) Report

Mr. Shepherd noted that sediment removal at the inlet was complete and that permitting for the activity runs until next year. He reported a water leak in the Transco gas line in Ewing and, as an interim measure, the NJWSA installed a port-o-dam; Transco is designing the repair and paying for it. Permits will be required from Army Corp, the commission, and SHPO.

Executive Director's Report

Ms. Dooley reported on the staff's workload and fees for the preceding month and distributed a report (see attached report). Ms. Dooley noted that Mr. Bill White, DEP, contacted her regarding reporting on a swing bridge design estimate for the proposed bridge behind Easton Avenue; he would report at the December meeting.

Ms. Dooley noted that an application for a Bulls Island Safety Project was submitted the day before. Commissioner Lubitz asked about the review process for such a project and when her report would be made public. Ms. Dooley stated that the project is in for a 30-

day review, and if determined to be complete, may be on the December meeting agenda. Ms. Dooley noted that her staff report is a public document and the permit application is a public document.

Commissioner Stout inquired about personnel matters and asked what the commission might do to advance the process; Ms. Dooley stated she had recently been asked to submit additional information to Chief of Staff Padilla and had asked to discuss the issue further with Chairman Bostock. There was further discussion about the personnel process and flow of work in the office.

D and R Canal State Park Superintendent's Report

Chairman Bostock noted that Superintendent Kalleser had to leave the meeting early and asked Ms. Dooley to read her report into the record. Ms. Dooley noted that park staff continue to work in the Abbott Marshlands, progress has been made regarding parking along Stanton Avenue, and DOT-created signs will be placed at three locations managed by DEP. The Images of America (Acadia) book about the Delaware River Scenic Byway is presently being reviewed by Acadia. Authors include Stephanie Fox, Edie Sharp, Keith Strunk, and Marion Kyde. The Griggstown Bridgetenders House restoration nears completion, hopefully for early December. There was a suicide on the towpath in Kingwood Township on Monday, November 4.

Commissioner Stout asked Ms. Dooley if any progress had been made regarding a dip in the path as discussed by a cyclist at a previous commission meeting. Ms. Dooley noted she attended a site visit with SHPO, NJWSA, Mr. White and the park historian and options were being considered. Director Texel noted that the issue was an important safety concern, and he would have the park superintendent report on this at the next meeting.

Old Business

There was no old business.

New Business

Chairman Bostock thanked commission staff for their work in meeting deadlines and schedules and the careful review of projects. He also thanked the commissioners for their participation and noted that their comments had been on point and illuminating.

Public Forum

Chairman Bostock opened the floor to public comment.

Mr. McKelvey, Liberty Historic Railway, introduced Mr. Robins, treasurer of the group. Mr. McKelvey informed the commission of initiatives between his group and the Black River and Western Railroad in Lambertville. Initiatives include a three-phase plan in the Lambertville area to house two trolley cars, a 1906 New Jersey built trolley which served in Portugal for years, and another car from public service. The plan would be to house the cars near the Holcombe Farm in Lambertville, install tracks, and maintain tracks, so as to run a rail/trolley shuttle to downtown Lambertville. The track in Lambertville has

not been used in 18 years. Mr. McKelvey will keep the Commission informed as things progress. Chairman Bostock thanked Mr. McKelvey for the information.

Mr. Barth noted a January 18th walk in Trenton along the canal hosted by the Archeological Society of New Jersey the group will meet at 11 a.m. in front of the auditorium near the New Jersey State Museum. Mr. Barth asked about a building demolition in Bakers Basin; Ms. Dooley stated that the final plan for demolition has not been determined and Director Texel noted that the project was moving ahead. Mr. Barth asked if the Bull's Island application was complete and asked for further explanation of 30-day review and completeness; Ms. Dooley noted that completeness has not been determined on the Bull's Island project. There was discussion on review periods.

Commissioner Leck reported a hike at the Bordentown Bluffs on December 8 from 1-3 p.m. which would meet at Stanton Avenue.

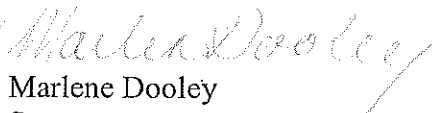
Executive Session

Chairman Bostock stated that an executive session was not needed.

Adjournment

Commissioner Trzaska moved to adjourn the meeting; Commissioner Lubitz seconded; the motion was approved unanimously and the meeting adjourned at 12.10 p.m.

Respectfully submitted,


Marlene Dooley
Secretary