

**April 17, 2013 MINUTES OF THE MEETING  
TO BE REVIEWED May 15, 2013**

**Delaware and Raritan Canal Commission**

TIME: 10:05 a.m. – 12:15 p.m.  
DATE: April 17, 2013  
PLACE: Canal Commission Office  
Stockton, New Jersey

**ATTENDING:**

**COMMISSIONERS:** Mr. David Knights, Vice Chairman John Loos, Mayor Phyllis Marchand, Ms. Alison Mitchel, and Mr. Mark Texel

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

**GUESTS:** Mr. Bill Bogosian, NJWSA; Mr. Joseph Shepherd, NJWSA; Mr. Robert Barth, D & R Canal Watch; Mr. Dave Joss, Federal Reality; Mr. Cornelius Brown, Bohler Engineering; Superintendent Patricia Kalleser, D&R Canal State Park; Mr. Timothy Hand, AECOM; Mr. Richard Rash, AECOM; Mr. Robert Von Zumbusch, D&R Canal Coalition & Mapleton Preserve; Mr. Kevin Skeels, DRJTBC; Mr. Richard McClellan, DRJTBC; Ms. Ronica Bregenzer, Architect; Mr. Bill McKelvey, Liberty Historic Railway; Ms. Caroline Armstrong, Green Acres

The meeting opened at 10:05 a.m. Vice Chairman Loos announced that one member of the Commission would unexpectedly be late therefore the Commission did not have a quorum. So as not to keep applicants and the public waiting, informational items were discussed.

**Executive Director's Report**

Ms. Dooley reported on the staff's monthly work tally and fees for the preceding two months (see attached report).

Ms. Dooley noted three of the meetings from the work list and one issue:

**1. GAF Landfill in South Bound Brook:** Ms. Dooley stated that she and Superintendent Kalleser conducted a site visit at the GAF landfill to verify the location of fencing and trees on the boundary line between the landfill and path which was required as part of the final approval. Ms. Dooley noted that the path will reopen in May. Ms. Dooley further noted that due to the removal of the trees on the landfill for the capping of the site, the trees and fence not having been placed yet and, because the

immature plants had yet to grow and fill in, the landfill is more prominent; some members of the public have expressed concern regarding the view.

**2. Meeting with Members of "Light the Path" and Residents in Lambertville:** Ms. Dooley stated that Dan Saunders, NJDEP, State Historic Preservation Office and she attended a meeting held by the "Light the Path" group who had invited residents that live along the path between Clinton Street and Carvallo Park to a meeting regarding lighting and fencing the path from Clinton and York Streets to Carvallo Park. The "Light the Path" group was established to assist in the search for Ms. Sarah Majoras and then in response to her tragic drowning in the canal. Ms. Dooley outlined the discussion which included the majority of residents who spoke being opposed to lighting the path. There was also discussion of fencing with some disagreement as to whether change was needed and whether the State could maintain additional fencing; some residents raised the issue of fencing on the north side of Coryell Street. The State representatives noted that the Park is closed at night and that lighting the path could encourage use at night and be less safe. The City of Lambertville was not in attendance.

**3. Prall House Acquisition Meeting:** Ms. Dooley noted that there will be a meeting in April to discuss the New Jersey Conservation Foundation donating the Prall House to the NJDEP Division of Parks and the house becoming part of the Prallsville Mills Complex.

Vice Chairman Loos asked whether the New Jersey Conservation Foundation would continue to have an office in the building and it was confirmed it would.

**4. Bulls Island:** Ms. Dooley noted that she had received two inquiries as to whether the NJDEP had submitted an application to the Commission for Bulls Island and whether the Commission was aware that the NJDEP had submitted a permit application for a flood hazard permit related to Bulls Island. Ms. Dooley spoke with Assistant Commissioner Boornazian's office which stated that the Office of Resource Development has sought a flood hazard permit but no work was being done; the permits are for a 5-year period. The NJDEP will submit an application to the Commission for work on Bulls Island when the Commission has a quorum for Government projects, the supporting material for the application is complete, and the timing is appropriate given environmental seasonal restrictions (e.g. Indiana Bat season).

There was a brief discussion between Mr. Barth, Mr. Texel, Mr. Mazzei and Ms. Dooley explaining the flood hazard permit process and clarifying that when a division of the NJDEP does work, it must apply and obtain any environmental permits from other divisions within NJDEP for regulatory program areas impacted. There was also clarification regarding general and individual permits and that the Army Corp would not be involved in the floodplain permit process but could have jurisdiction in other areas.

**4. Wickecheokee Bridge Closure Meeting:** Ms. Dooley stated that Mr. Stieber and she attended a meeting with Ms. Kalleser, representatives of the Mill Society and representatives of NJDOT regarding the possible need to close the entrance to the Prallsville Mills during work on the Wickecheokee Bridge; the Wickecheokee Bridge

will be reduced to one lane during the period of work which is expected to span one year beginning in December 2013. Ms. Dooley stated that the State representatives expressed opposition and concern with closing the entrance; specifically they noted the inability of cars to exit and enter simultaneously at the existing exit which may lead to safety concerns at the blind curve both for cars and pedestrians at the cross walk. Staff explained the high usage of the site for events and parking and race events in the area and the potential for traffic and cyclists waiting to cross the bridge during construction to backup and create hazardous situations. Staff requested that, if closing the entrance was unavoidable, that the entrance be opened on weekends.

There was a brief discussion regarding the level of work on the bridge which included Ms. Mitchell asking for specifics regarding the need to close the entrance and whether a flag person would be present. Ms. Dooley stated NJDOT needed the area for both work equipment and space to conduct the work. A flag person would be in place during the week.

### **Superintendent's Report**

Superintendent Kalleser stated that, on April 7, the body of Mr. Christopher Franz was recovered in the canal by the Locketong Creek; Mr. Franz had been missing since January and there had been searches for him including within the park property. Ms. Kalleser also noted that the Lumberville-Raven Rock Pedestrian Bridge will remain closed until mid-May. Ms. Kalleser described a cleanup in Trenton and that Ms. Dooley, Mr. White, and representatives of Canal Watch met to discuss the draft engineering designs for the bridge behind the Somerset Diner at Easton Avenue and JFK Boulevard. Ms. Kalleser further stated that she is dealing with an encroachment in Ewing Township for a tree house on state park property south of Wilburtha Road. The Office of Resource Development will be working on resurfacing the towpath between Kingston and Millstone aqueduct, a distance of about 2.2 miles. She noted that the resurfacing near the Port Mercer Canal House cost sixty thousand dollars for one mile; NJDEP is attempting to find a funding source.

There were no questions on the Superintendent's report

At 10:20, Ms. Marchand joined the meeting. Vice Chairman Loos announced that the Commission had a quorum, that the meeting 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 the Meeting**

#### **Minutes of the Meeting of February 27, 2013**

Vice Chairman Loos asked for comments on the minutes. There were no comments. Mr. Texel motioned to approve. Ms. Mitchell seconded. The motion carried unanimously.

## Review Zone Projects

### Review Zone A Projects

- 13-1724C State Police Campus Upgrades (Ewing)
- 13-2353C 13 North Union Street Improvements (Lambertville)
- 13-4415 South Union Street Deck (Lambertville)
- 09-3212B Prallsville Restrooms/Storage Shed (Stockton)
- 13-2081A Birdhouse Art Center Ramp (Lambertville)

### 13-2353C 13 North Union Street Improvements (Lambertville)

Ms. Mitchell asked for clarification regarding the nature of the stream corridor including whether the corridor was in the backyard of the residence and, if so, if the area was lawn; she also asked if the neighboring yards were similar and if the homes and improvements pre-date our stream corridor regulations. Ms. Dooley stated that a substantial part of the applicant's backyard is in the flood plain, the yard is lawn and that there are driveways and sheds in the flood plain on the neighboring properties; she also noted that most of the houses and driveways pre-date Commission regulations and would be grandfathered. Ms. Mitchell questioned the impact of the fence on the park. Ms. Dooley discussed the different standards for urban areas. Vice Chairman Loos stated that the project was de minimus.

### 09-3212B Prallsville Restrooms/Storage Shed (Stockton)

There was discussion regarding whether Mr. Texel had to recuse himself on the project which would result in insufficient membership to meet quorum and vote on the project. There was discussion regarding the inability to approve government projects under the regulations.

Mr. Texel questioned whether he was required to recuse himself as he did not have substantial involvement in the project and it pre-dated his tenure at the Department. Mr. Knights agreed that Mr. Texel did not have to recuse himself. Vice Chairman Loos stated that he believed Mr. Texel would be required to recuse himself on any project for which the Division of Parks is the applicant or the project is in the Park. There was a broader discussion by all the Commissioners regarding recusals including Vice Chairman Loos citing other contexts such as mayors sitting on commissions who must recuse themselves for town projects even if they are not personally involved. Mr. Knights disagreed and stated that there should be different standards based on the magnitude and scale of projects; he also discussed situations where members recuse themselves as a precaution versus situations where it is required and raised concerns regarding projects that are for the public good. Mayor Marchand discussed "the appearance of a conflict" and her experience in other forums; she noted that, at times, the appearance of a conflict was announced to the public and it was asked if anyone objected to voting prior to the vote. Vice Chairman Loos stated an appearance of conflict is the same as a conflict. Vice Chairman Loos also noted that the matter is not about Mr. Texel's personal involvement but because he represents the Commissioner of NJDEP on the Commission. Vice Chairman Loos referenced a Supreme Court case involving the Princeton Planning Board. The Supreme Court ruled a member of the planning board for Princeton who

works at the university could not vote on projects relating to the school, even if he has no involvement with the project. Mayor Marchand agreed with the Vice Chairman. Ms Mitchell agreed the project is good and it is not controversial but the Commission needs to look at rules, procedures and precedent the Commission may set for future projects.

There was discussion that the Delaware River Mill Society (DRMS) leases the Prallsville Mills, obtained a Byway grant for 80% of the funding for the project, and is the proponent of the project, and whether those facts result in the project not being a NJDEP Parks project and would not require Mr. Texel to recuse himself. It was determined that because the building is owned by NJDEP Parks, they provide 20% matching funds and the project is overseen by NJDEP, Mr. Texel would still be required to recuse himself.

Mr. Texel asked whether the Doctrine of Necessity would be applicable to this project and allow it to proceed. Vice Chairman Loos stated that the Doctrine of Necessity is only available in cases of real emergencies. Mr. Knights agreed. There was discussion regarding the grant and whether the grant could be in jeopardy due to the delay. It was noted that the project has been ongoing since 2009 and that there were no current deadlines to put the project in jeopardy.

Vice Chairman Loos ruled, as the chair, that Mr. Texel has a conflict requiring recusal and, therefore, there is not a quorum to vote. He noted that a majority of Commissioners can override the chair.

Ms. Mitchell expressed concern with the larger issue that the Commission does not have a quorum if one Commissioner has to recuse him or herself. Vice Chairman Loos noted that if this was a private project, it could be automatically approved after 45 days, but the rules do not provide the same authority for State projects. Vice Chairman Loos agreed it was extremely problematic if Mr. Texel must recuse himself from voting on NJ State Park projects. Superintendent Kalleser said this issue will come up again and that these are all important projects. Vice Chairman Loos and Mr. Knights agreed. Vice Chairman Loos stated that, while it is terrible that important NJ State Park projects cannot move forward, the Commission cannot bend the rules or law to prevent it.

There was general discussion regarding the need to fill the vacancies on the Commission to allow important government projects to move forward and private projects to move forward expeditiously. There was general concern that the Governor's Office, Senate Judiciary Committee and NJDEP need to understand the impact of having only five sitting Commissioners and not filling vacancies.

Mr. Knights motioned to move the Zone A projects, except for the Prallsville Mills Restroom project. Mayor Marchand seconded the motion.

Vice Chairman asked if there were any questions from the public. Mr. Barth asked what aspect of the State Police Campus project would be visible from the park. Staff stated that the guard booth will be visible but is partially glass, a distance of 400 feet, and other aspects of the existing campus are visible. Mr. Barth asked if the applicant can screen the

guard booth. Ms. Dooley stated it can not be screened on campus property because of the need to see people coming up the road.

The Review Zone A projects, other than Prallsville Mills restrooms, were approved unanimously.

Review Zone B Projects

- 12-4324 Frenchtown Solar III (Kingwood)
- 13-2226A Mercer Mall-Chevy's Redevelopment (Lawrence)
- 12-3758B JER/Herring Orchard Residential Development (Montgomery)
- 13-3762A Westminster Choir College New Academic Building (Princeton)
- 11-4108 Princeton Junction Commons (West Windsor)
- 13-3341C Children's Hospital of Philadelphia Office (Plainsboro)
- 13-3685 Key Homewood Suites (Monroe/So. Brunswick)
- 11-1985A Triangle School Play Yard (Hillsborough)
- 12-4384 Scotch Road Medical Campus (Ewing)

Mr. Knights moved to approve the Zone B projects. Mayor Marchand seconded the motion. The following discussion occurred:

12-4324 Frenchtown Solar III (Kingwood)

Ms. Mitchell asked about the compaction of gravel and maintenance roads such as in Frenchtown Solar and whether it created water quality concerns. Mr. Mazzei said uniform size gravel would not compact and keeps its void size. The main concern is gravel being pushed into the ground. Solar panel equipment does not require heavy construction and would result in less compaction. Part of the nonstructural section relates to not compacting the soil.

13-3341C Children's Hospital of Philadelphia Office (Plainsboro)

Mr. Texel asked if the Commission had received local approval for the CHOP project. Ms. Dooley stated that it had. Ms. Mitchell asked for clarification of the stream corridor area and why the Commission should not require a stream corridor. Ms. Dooley showed the map of the site and the small amount in the corridor mostly taken up with the town required path; most of the corridor is on the neighboring property. Mr. Knights noted that NJDOT owns the neighboring property, has a wetlands mitigation area and Plainsboro is requesting paths to link to the 30-acre park on the site.

The motion to approve the Zone B projects carried unanimously.

Projects subject to 45-Day Rule:

12-4323 Merwick-Stanworth (Princeton)

Mr. Knights recused himself on Merwick-Stanworth. The Commission therefore did not have quorum and the project is be subject to the 45-day rule. Mr. Knights noted the procedural similarities between this project and the discussion on the Prallsville Mills Restroom project. The difference is that the Merwick-Stanworth project can be approved under the 45-day automatic provision because it is a private project. However, if there

were people in the room who objected to the project, they would not have a voice because the Commissioners cannot hear the matter. Ms. Dooley also noted that applicants state that they appreciate that their project can be approved, however, the extra 45-day delay is often problematic.

Mayor Marchand noted that the Merwick-Stanworth staff report incorrectly listed "Princeton Borough." Mr. von Zumbush noted that the correct reference for the newly merged Princeton Borough and Princeton Township is "Municipality of Princeton."

#### **New Jersey Water Supply Authority (NJWSA) Report**

Mr. Shepherd stated that the repairs to Colonial Park Spillway continue and are expected to be completed in June. NJWSA requested proposals for the bank repair from Prallsville to Brookville and from Prallsville to Bulls Island. Dredging is still scheduled for the first quarter of 2014.

#### **Old Business**

Meeting Date: The May 15 date for the next Commission meeting was confirmed.

Crosswalk in Lambertville: There were no comments related to the letter from the Commission to Mayor DeVecchio regarding establishing a crosswalk in Lambertville where the path crosses Bridge Street.

10:55 a.m. – 11:05 a.m. There was a break in the meeting. At 11:05 a.m. Vice Chairman Loos called the meeting to order.

#### **Scudders Falls I-95 Bridge Presentation**

Representatives for the Delaware River Joint Toll Bridge Commission (DRJTBC) and their consultant, AECOM, (hereinafter "presenters") gave a presentation on plans to widen and improve Route I-95 at Scudders Falls in the areas of Lower Makefield Township, Pennsylvania, to Bear Tavern Road in Ewing Township, New Jersey, in order to relieve traffic congestion, improve traffic flow, and address increased traffic needs, obsolescence of structures, and safety. There is no application presently before the Commission; the presentation was in anticipation of submitting an application in May or June 2013. The presenters noted that they have been working with the Commission staff since 2008 on issues related to stormwater, stream corridors, and mitigation. The discussion included the history of the roadway and changes envisioned including the elevations, use of barriers, use of electronic tolls, sound barriers, number of lanes, potential for rapid transit, ramp configuration, and duration of the project. The discussion specific to the Commission's jurisdiction included the bicycle and pedestrian path which is envisioned to connect to the D & R Canal Park Path, visual impact of the piers and structures adjacent to the canal, handling of stormwater from the roadway, impacts to stream corridors and mitigation for visual and stream corridor impacts. Some specific items noted, related to the project, were that stormwater would not be discharged to the canal, a pier presently in the canal would be removed, there will be aesthetic treatments on the abutments and the bridges, and mechanisms would be put in place to ensure park

users are not impacted during construction. Presenters also noted that a Programmatic Agreement between various agencies had been signed regarding conceptual agreements including mitigation funds and use of those funds. It was noted that the Commission is not a signatory to that document. Other environmental issue areas discussed included wetlands, flood hazard area, archeological impacts, potential diversions of State property, impacts to forested areas and state open waters. It was noted that there is estimated to be 20 acres of new impervious area from the project.

The presenters stated that the next steps will be to submit an application to the Commission and establish a Memorandum of Agreement with impacted regulatory entities for the pedestrian and bicycle path. It was noted that information about the project could be found at the DRJTBC website.

### **Master Plan Discussion**

Vice Chairman Loos noted that at previous meetings, Commission members had raised concerns with beginning the process of amending the Master Plan when there are presently only five sitting Commissioners and the Governor has nominated eight people for appointment to eight of the nine Commissioner positions. Therefore, there may only be one member, Mr. Texel, who would see the process through to conclusion and many new Commissioners expected to complete the process when they were new to the Commission. Vice Chairman Loos recommended appointing the Advisory Council to work with Commission staff to identify potential changes to the Master Plan. A time line for amending the Master Plan would not be adopted at this time but would be established when new members are appointed. Mr. Texel recommended that the Advisory Council adopt milestones and a timeline using the established process for the Advisory Council as a guide but perhaps extending the deadline by a month. Vice Chairman Loos suggested a six month process. Superintendent Kalleser asked the number and names of the candidates to the Council. Ms. Dooley stated the candidates were:

James C. Amon  
Robert H. Barth  
Theodore Chase  
Herbert Spiegel  
Robert von Zumbusch

There was discussion that the Commission could add additional members to the Council and specifically that the Commission would look to obtain members from areas outlined in Advisory Council procedure for which they did not have representatives in order to ensure balance; areas discussed included geographic areas, elected officials, and environmental backgrounds.

Ms. Mitchell made a motion to establish the Advisory Council and appoint the five members. Mayor Marchand seconded the motion. The motion carried unanimously.

Mr. Knights left the meeting at 12:15 p.m.




**Public Session**

Mr. Barth announced that Canal Watch will be sponsoring a bus trip on Sunday, April 21. In addition, on June 9, Archeologist and Professor Richard Veit will speak on the canal from New Brunswick to East Millstone in 1970.

**Additional Note**

Mr. Texel announced that May 11 is the New Jersey State History Fair at Washington Crossing State Park.

Respectfully Submitted,



Marlene Dooley  
Secretary

