

**August 20, 2014 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:00 a.m.

DATE: August 20, 2014

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

ATTENDING:

COMMISSIONERS: Chairman Robert Bostock, Vice Chairman John Loos,
Commissioner Mary Leck, Commissioner Phillip Lubitz,
Commissioner Bruce Stout, Commissioner Ed Trzaska, and
Commissioner Mark Texel

STAFF: Mr. Vincent J. Mazzei, Jr., Deputy Attorney General Alison Reynolds, and
Ms. Colleen Christie Maloney

GUESTS: Ms. Stephanie Fox, D&R Canal State Park; Mr. Aimer Garcia and Mr. Ed Buss, NJ Water Supply Authority (NJWSA); Mr. Robert von Zumbusch, D&R Canal Commission Advisory Council; Mr. Robert Barth, D&R Canal Watch and D&R Canal Commission Advisory Council; Mr. Daniel Meara; Ms. Melanie Tucker; Mr. Leslie A. Walker, Meridian Engineering; Mr. Ron Morrieno, Wick Companies, Inc.; Mr. Mike DeAngelo, NJDOT; Mr. Ron Sebring, Ronald A. Sebring Associates; Mr. Walter Toto, Esq.; Mr. Greg Oman, Menlo Engineering; Mr. Richard Pulaski; Ms. Krista Heinrich, T&M Associates; Mr. Jim Lehman and Ms. Jane Wilson, Delaware River Recreation Foundation.

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.

Administrative Items

Chairman Bostock confirmed that next month's commission meeting date is September 17, 2014. Chairman Bostock stated that Executive Director Marlen Dooley is expected to return to the Commission in September.

Minutes of the Meeting

Minutes of the July 16, 2014 Meeting

Chairman Bostock asked for a motion on the minutes. Commissioner Lubitz moved to approve the minutes; Commissioner Texel seconded the motion. Chairman Bostock, Vice Chairman Loos, Commissioner Leck, Commissioner Lubitz, Commissioner Stout, and Commissioner Texel voted to approve the minutes; Commissioner Trzaska abstained. The minutes were approved.

Executive Minutes of the July 16, 2014 Meeting

Chairman Bostock asked for a motion on the minutes. Commissioner Lubitz moved to approve the minutes; Commissioner Leck seconded the motion. Chairman Bostock, Vice Chairman Loos, Commissioner Leck, Commissioner Lubitz, Commissioner Stout, and Commissioner Texel voted to approve the minutes; Commissioner Trzaska abstained. The minutes were approved.

Review Zone A Projects

14-2524B DiNapoli's Signs (Lambertville)

Mr. Mazzei described the project, which involves the installation of two new signs. Chairman Bostock asked for comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Texel moved to approve the project and Commissioner Trzaska seconded the motion. The project was approved unanimously.

14-3239A 273 N. Union Addition (Lambertville)

Mr. Mazzei described the project which involves improvements to a dwelling. Chairman Bostock asked for comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Stout moved to approve the project and Commissioner Lubitz seconded the motion. The project was approved unanimously.

14-4582 Cavallo Park Redevelopment (Lambertville)

Mr. Mazzei described the project, which involves improvements and rehabilitation to a city park adjacent to the canal. The city leases the property from the NJDEP. An environmental clean up will take place before the improvements to the park are made. In addition, the city is installing a stormwater treatment measure as mitigation for a previously Commission-approved road project on South Franklin Street. Commissioner Stout noted that there could be a conflict between the proposed project and additional foot traffic created by the recent detour of park users related to the closure of the park bridge over Swan Creek. City Engineer Krista Heinrich responded that the park project will take place in Spring 2015. Commissioner Texel noted that he anticipated there will still be a detour during the park project. Ms. Heinrich noted that the project will not interfere with the detour and described the construction access areas. There was discussion about hours of operation and impact to trees. Commissioner Leck inquired about the bioretention measures. Ms. Heinrich and Mr. Mazzei noted there will be two rain gardens in series. Vice Chairman Loos noted the benefit of adding the mitigation project to the Cavallo Park project. Chairman Bostock asked for comment from the public. Mr. Barth asked what entity would maintain the rain garden; Commissioner Texel explained that the city will maintain it. There was discussion about rain gardens. Chairman Bostock asked for a motion on the project. Commissioner Trzaska moved to approve the project and Commissioner Lubitz seconded the motion. The project was approved unanimously.

Review Zone B Projects

Chairman Bostock noted that, customarily, the commission voted on the Zone B projects en bloc, but because there were questions on several of the projects, the commission would review and vote upon the Zone B projects individually.

14-4437 2999 Princeton Pike (Lawrence Twp)

Chairman Bostock asked Mr. Mazzei to give an overview of the project, which had been denied without prejudice at the previous meeting. Mr. Mazzei described the proposed addition to an office building and associated improvements. He noted the project encroaches into a Commission-defined stream corridor, the applicant requested a waiver of stream corridor impact standards for the intrusion, and there is no opportunity to mitigate on site.

Mr. Oman, engineer for the applicant, noted that, since the last meeting, the applicant had contacted the D&R Greenway to discuss possible mitigation sites. Mr. Jay Watson, D&R Greenway, had been able to identify several properties which might satisfy the mitigation requirement, at least one of which had been recently purchased by the D&R Greenway. The average cost of the properties came to \$21,000 per acre. Based on the acreage of stream corridor intrusion, the applicant proposed \$16,000 for mitigation to be used to purchase or maintain a property. Mr. Oman noted that the applicant proposes to put \$16,000 in escrow until the commission can decide how the funds will be used. He emphasized that the applicant seeks to move forward with the construction project to satisfy his tenants. Vice Chairman Loos noted that the applicant's dollar figure was quite different than the figure previously discussed at the last meeting, which was based on the tax-assessed value of the project site. Mr. Oman responded that that tax-assessed figure discussed at the last meeting was \$130,000. Mr. Pulaski noted that the \$16,000 figure proposed by the applicant was based on data they had gathered, with the help of Mr. Watson, since the last meeting. Mr. Pulaski noted he had explored getting a 0.76-acre easement on a golf course near the project site as mitigation, but the process of acquiring an easement would take a longer period of time than setting up an escrow account. The applicant wished to offer mitigation payment in escrow.

Mr. Oman noted the existing condition that the project site is disturbed weekly by lawn maintenance. He noted the environmental benefits of the project, including that the project will result in improved water quality and groundwater recharge, and that the project was designed to provide disconnected areas of impervious coverage by placing pervious areas between them.

Chairman Bostock consulted with DAG Reynolds. DAG Reynolds stated that, in order to have the right nexus for mitigation, a specific property would need to be identified, with the value of the mitigation to be based on the per-acre value of acquiring the property.

Vice Chairman Loos noted that, in the past, the commission has accepted escrow if there was a high degree of confidence that the amount of escrow was enough to purchase property in reasonable proximity to the intrusion. He noted that other entities can be involved in identifying properties for mitigation. In addition to the D&R Greenway, other such entities and a county or municipality may provide opportunity for mitigation. He indicated he was not comfortable that \$21,000 would be a reasonable amount to purchase the appropriate mitigation. He suggested three ways to determine the value of mitigation: 1) find a property of equivalent value for purchase; 2) refer to the tax assessment of the current property, as had been done at the previous meeting; and 3) hire

an independent property appraiser to assess the current property.

Commissioner Trzaska noted that the project provides an environmental benefit, in that it will improve the existing water quality conditions at the site

Vice Chairman Loos asked the applicant to reconsider the offer of \$21,000 in mitigation. DAG Reynolds noted the Commission could take time to search for an appropriate property for mitigation. Mr. Pulaski noted that their research with the D&R Greenway resulted in the mitigation figure they proposed and that the D&R Greenway would agree to accept the mitigation funds to help purchase a property in the future. The D&R Greenway may purchase a property to change uplands to wetlands, for instance. Mr. Pulaski discussed the value of an industrial property the D&R Greenway identified in Trenton. He noted that the applicant had worked to produce historical data to provide the commission. He suggested putting funds into escrow. Commissioner Stout noted the risk involved in taking a certain amount of mitigation funds for escrow, only to find it is not enough.

Commissioner Lubitz noted that the Commission could not lose sight of the fact that the applicant was requesting a non-permitted use and the statute gives the commission ability to waive a non-permitted use if it provides a greater environmental benefit. While sympathetic to the applicant's time constraints, he noted his disappointment in the applicant's mitigation proposal and he had not seen an adequate effort by the applicant to meet the commission's requirements.

Commissioner Trzaska noted that the project is creating a greater environmental benefit with increased water quality at the project site. Commissioner Lubitz noted that the greater benefit was related to the mitigation, not what was occurring on the site.

Vice Chairman Loos stated that non-profits tend to purchase and preserve land for less than a municipality or county might spend. Rarely do they pay more than \$50,000 per acre. Commissioner Texel noted he would be more comfortable if a professional looked at the value of the six properties presented by the D&R Greenway.

Chairman Bostock stated that he understands the applicant's time constraints, but that the need for mitigation could have been addressed earlier in the application and review process by the applicant. He noted that the commission could deny the project without prejudice so the applicant could work further on a fair mitigation proposal, the proposal could be denied, or the commission could accept mitigation in escrow. Mr. von Zumbusch noted how Green Acres might approach the mitigation. The chairman and Vice Chairman Loos further discussed commission rules which require achieving a greater environmental benefit.

Mr. Oman noted the applicant would consider mitigation at \$50,000 per acre, which would be \$38,000 for the 0.76 intrusion. The applicant would be willing to put the funds in escrow until the D&R Canal Commission director returned.

Chairman Bostock called for a motion. Commissioner Trzaska moved to approve the project with mitigation of \$38,000, to be placed in escrow, to purchase property of

greater environmental benefit than the property that is being lost in the stream corridor on the project site. Vice Chairman Loos seconded the motion.

Commissioner Stout enquired about the possibility that the mitigation amount may not be adequate to purchase property of greater environmental benefit. Vice Chairman Loos noted that the funding would be escrowed until the commission decides how to spend the funds. He stated he was confident that the proposed figure would be enough to purchase 0.76 acres. The condition in the motion would be that the escrow be given to the commission, with the property to be purchased later, when identified by the commission. Commissioner Stout reiterated that the applicant knew of the statutory requirements of the commission and he would prefer the commission deny the project without prejudice until the applicant can submit a sound mitigation plan. Vice Chairman Loos noted that the commission knew the tax assessor's value for the property.

Chairman Bostock called for a vote. Chairman Bostock, Vice Chairman Loos, and Commissioners Trzaska, Leck, Lubitz, and Texel voted in favor of the project with the mitigation; Commissioner Stout voted against the project. The project was approved with the mitigation.

At 10:55, Commissioner Texel left the meeting.

Vice Chairman Loos offered to assist commission staff with the mitigation. Chairman Bostock noted he appreciated the offer.

14-3378B 36 Stults Road (So. Brunswick Township)

Chairman Bostock asked Mr. Mazzei to give a brief overview of the project. Mr. Mazzei described the project, which included construction of a manufacturing facility, and that the project involves a Remedial Action Work Plan (RAWP) to address cleanup of ground contamination. The applicant requests a waiver for stream corridor intrusion due to compelling public need, as a cleanup is required. He described tree removal and a planting plan. Chairman Bostock asked for comment from the commission and then the public; Mr. von Zumbusch and Mr. Mazzei discussed the management of the removed contaminated soil. Chairman Bostock asked for a motion on the project. Commissioner Stout moved to approve the project; Commissioner Lubitz seconded the motion. The project was approved unanimously.

14-4156B McGraw Hill Solar Array Drainage Improvements (E. Windsor Twp)

Mr. Mazzei described the drainage improvement to manage flooding in a roadway. Commissioner Leck asked if the drainage problem was a result of the installation of the solar array. Mr. Mazzei stated that the situation occurred after the array was installed. Chairman Bostock asked for further comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Stout moved to approve the project and Commissioner Lubitz seconded the motion. The project was approved unanimously.

14-4512 Aurolife Pharma Addition (So. Brunswick Township)

Mr. Mazzei described the expansion of the pharmaceutical manufacturing facility. Chairman Bostock asked for comment from the commission and the public. Hearing

none, he asked for a motion on the project. Vice Chairman Loos moved to approve the project and Commissioner Lubitz seconded the motion. The project was approved unanimously.

14-4557 NJDOT West Trenton Salt Storage Improvement (Ewing Township)

Mr. Mazzei described the project at a DOT maintenance yard, which will increase salt storage capacity. Chairman Bostock asked for comment from the commission. Commissioner Stout asked if a commission approval had been issued for the work in 2008. Mr. Mazzei indicated that it was not clear. Commissioner Leck noted that the project would increase salt storage by six times the existing capacity. Chairman Bostock asked for further comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Trzaska moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

14-4564 Rainbow Academy (East Windsor Township)

Mr. Mazzei described the project, which includes construction of a childcare center and associated improvements. Commissioner Leck and Mr. Mazzei discussed the soil type located at the site. Chairman Bostock asked for comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Trzaska moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

14-4577 760 Jersey Avenue (New Brunswick)

Mr. Mazzei described the project at the former AC Delco site, which includes renovation of an existing building and associated improvements, some of which will be in the stream corridor. Mr. Mazzei noted that the project will result in a net decrease of impervious surface in the stream corridor. Chairman Bostock asked for comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Loos moved to approve the project and Commissioner Lubitz seconded the motion. The project was approved unanimously.

Executive Director's Report

In Ms. Dooley's absence, Ms. Christie Maloney distributed a work tally to the commission.

D&R Canal State Park Superintendent's Report

Ms. Stephanie Fox reported in the superintendent's absence. The Millstone Valley Scenic Byway Visitor Center opened in Griggstown. The park used a \$24,000 grant to host the Student Conservation Association to perform trail and conservation work along the Delaware River Bluff area.

Vice Chairman Loos asked about improving the conditions of the path in Franklin. There was discussion about materials used to resurface areas of the path. Vice Chairman Loos noted that one solution might be the use of a honeycomb-shaped device filled with crushed stone. Mr. Barth spoke of considering many solutions and preparing a comprehensive approach to maintain the path as an historic artifact. Mr. von Zumbusch noted materials were selected related to the native soils in the area. Vice Chairman Loos

suggested trying different methods and materials in sections of the path to see how well they do over a period of time. Ms. Fox discussed applying for a grant from DOT to help fund resurfacing.

New Jersey Water Supply Authority (NJWSA)

Mr. Ed Buss noted the NJWSA will rehabilitate the Landing Lane Spillway and present the proposal to the commission in the next couple of months. He explained the history of repairs to the spillway. He noted on-going maintenance of the canal. The canal dredging project from Amwell Road to Kingston is in the planning stages.

Mr. Meara, a Lambertville resident, noted his concern about tree removal related to the upcoming repair near Lilly's and near his home. He discussed the trees that may be removed and his concern for the character of the path and the city. Mr. Buss noted NJWSA would remove as few trees as possible. A staging area and a crane are required for the work. Mr. Buss noted there would be vibration monitoring of structures. He indicated no trees would be restored on the Lilly's side of the canal. Mr. Buss noted that the project is expected to be presented at a September council meeting of the City of Lambertville before construction begins. Chairman Bostock noted that the commission would like to see as few trees removed as possible and proper monitoring of residences in close proximity. Mr. Buss noted it was in the NJWSA's interest to not cause disturbance to the residences.

Old/New Business

No old/new business was discussed.

Public Forum

Mr. Jim Lehman, Delaware River Recreation Foundation, made a presentation. Chairman Bostock noted that the presentation was in no way to be considered an application to the commission. Mr. Lehman noted he understood and that the group was looking for guidance, and realized permitting will be required. Mr. Lehman discussed the purpose of the Lambertville/New Hope group, which encourages recreation on the Delaware River with kayaks, canoes, and rowing craft. There is a substantial youth program at the Swan Creek Rowing Club. He and Ms. Jane Wilson described the pole barn they wish to build near the sewer plant in Lambertville, where boats are currently stored outside. They described a classroom on the second floor of the building, which would be used for education and open to groups other than their foundation and rowing club. There was discussion about current conditions, an improved temporary dock, parking usage, and use of the dock and classroom facilities by different groups.

Mr. Barth, D&R Canal Watch, noted the September 28, 2014, Canal Watch fundraiser on SPLASH in Lambertville. He encouraged visits to the Millstone Valley Scenic Byway Visitor Center, which is staffed on weekends. He noted a D&R Canal Watch hike on September 13, and the Canal Fest in East Millstone, on October 18,

Mr. Raffiani, a resident of Canal Road, West Windsor, spoke of his continued concern about maintenance of the road in front of his home. Mr. Mazzei and Ms. Fox agreed to speak to him after the meeting.

Mr. von Zumbusch noted a lecture on October 14, 2014, at the Kingston Historical Society, at 7 p.m., which will be about railroads and the canal in proximity of Kingston.

Commissioner Leck noted the September 28, 2014, walk along the Canal Lock 1 sponsored by Friends of the Abbott Marsh.

Commissioner Lubitz noted that a consortium of gas companies is proposing to install a pipeline from Scranton to Hopewell, which may pass close to Horseshoe Bend Park and a possible park campground site in Kingwood Township.

Executive Session

Chairman Bostock stated there would be no executive session.

Adjournment

Chairman Bostock noted he would entertain a motion to adjourn the meeting. Commissioner Lubitz motioned to adjourn and Commissioner Stout seconded the motion; the motion was approved unanimously. The meeting adjourned at 12:20 p.m.

Respectfully submitted,


Colleen Christie Maloney