

**December 17, 2014 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.

DATE: December 17, 2014

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

ATTENDING:

COMMISSIONERS: Vice Chairman John Loos, Commissioner Julia Cobb Allen, Commissioner Mary Leck, Commissioner Phillip Lubitz, Commissioner Bruce Stout, and Commissioner Mark Texel

STAFF: Director Marlene Dooley, Deputy Attorney General Alison Reynolds, Staff Engineer Joseph Ruggeri, Ms. Colleen Christie Maloney

GUESTS: D&R Canal State Park Superintendent Patricia Kalleser; Mr. Joseph Shepherd, NJ Water Supply Authority; Mr. Bill White, NJDEP; Mrs. Linda Barth, D&R Canal Watch; Mr. Robert Barth, D&R Canal Watch, DRCC Advisory Council; Mr. Robert von Zumbusch, DRCC Advisory Council; Dr. Theodore Chase, Franklin Township; Mr. Karl Pehnke, Langan Engineering; Mr. John Manilio, REDCOM.

Vice Chairman Loos 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

Vice Chairman Loos confirmed that next month's commission meeting date is January 21, 2015. Commissioner Lubitz noted he was unavailable for the meeting.

Vice Chairman Loos noted that, at the January 21, 2015 commission meeting, the commission should reorganize and elect officers.

Minutes of the Meeting

Minutes of the November 19, 2014 Meeting

Vice Chairman Loos asked for comments or corrections on the minutes. Hearing none, he asked for a motion on them. Commissioner Lubitz motioned to approve the minutes and Commissioner Stout seconded the motion. The minutes were approved unanimously.

Review Zone A Projects

13-2957A 49 Bridge Street Garage (Lambertville)

Director Dooley described the project, which includes restoration of a one-story garage which fronts on Ferry Street and is not visible from the canal park. Vice Chairman Loos asked for comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Lubitz moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

14-4032B 3 Risler Street (Stockton)

Director Dooley described the project, which includes construction of a porch and walkways for a single-family home. The property abuts the park and a stream corridor is located on the property. Director Dooley noted that the project requires a waiver of stream corridor and visual impact standards, and that staff finds the project will not have an adverse impact. Vice Chairman Loos asked for comment from the commission and the public. There was discussion about construction materials, including pressure treated lumber and potential adverse impact. Vice Chairman Loos asked for further comment. Hearing none, he asked for a motion on the project. Commissioner Texel moved to approve the project and Commissioner Lubitz seconded the motion. The project was approved unanimously.

14-382A 29 Fiddlers Creek Demolition (Hopewell Twp.)

Director Dooley described the project, which includes demolition of an addition to a barn. The project is not visible from the park and is outside of the Canal Historic district. Vice Chairman Loos 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.

14-4289A 3050 Brunswick Demolition (Lawrence Twp.)

Director Dooley described the project, which involves demolition of a park-owned building. The project is funded through mitigation received for stream corridor intrusion for the Bakers Basin/Route 1 project, which was approved by the commission in late 2013. The demolition will improve parking and recreational opportunity for park users. There is a stream corridor on the site, but the project will result in an improvement by removing the impervious surface and reverting it to grass.

Vice Chairman Loos discussed a procedural concern as to whether the NJDEP Commissioner, or his representative at the commission meeting, should recuse himself or herself on all DEP matters. Vice Chairman Loos noted that the question in no way questions Commissioner Texel's integrity or independence. Vice Chairman Loos outlined his concerns which included that the representative acts on behalf of the Commissioner, situations where there is a direct interest in a project, discussion of a NJ Supreme Court case, Griggs vs. Borough of Princeton, the "ex officio" status of the DEP Commissioner's appointment to the commission, and the meaning of the statutory language "may lawfully vote."

DAG Reynolds noted that the Division of Law's informal opinion at this time is that the DEP Commissioner or his designee does not need to recuse himself from DEP matters which come before the commission. DAG Reynolds outlined the position including an examination of the legislation and that the NJ legislation specifically requires that the DEP sit on the commission and she distinguished the Griggs case from the commission's situation. DAG Reynolds noted that in the case Vice Chairman Loos referenced, there was no indication that legislature wanted a representative for the university on that board, and here, at the commission, the legislature did. DAG Reynolds noted that the commission could 1) ask for a formal opinion from the Division of Law, 2) contact the

ethics office at the DEP, and 3) ask the State Ethics Commission (SEC) to take a position. Commissioner Stout noted the commission should defer to the Deputy Attorney General's opinion.

Vice Chairman Loos suggested that the commission seek an opinion from the State Ethics Commission (SEC) on the matter. He noted that this month's agenda did not include any matters which may be controversial, but that a bigger matter could come up on a future agenda. Commissioner Stout recommended that the commission start with seeking a formal decision from its Deputy Attorney General. Vice Chairman Loos noted that it could be a starting point. DAG Reynolds noted that the request must be made in writing.

Commissioner Texel recommended getting a formal opinion from the DAG and go to the SEC as needed; he noted that he would be helpful and he would certainly abide with the advice. Commissioner Texel outlined his thoughts including that the case referenced did not involve State government and that previous NJDEP Commissioner designees had voted on both DEP and Park projects. Vice Chairman Loos noted that the history of voting is mixed. There was discussion regarding what constituted economic interest, personal benefit and the appearance of conflict. Commissioner Lubitz noted that there could also be an institutional conflict and provided an example. DAG Reynolds noted that the issues are very fact sensitive. Commissioner Stout motioned to request written opinion from DAG Alison Reynolds on the matter; Commissioner Lubitz seconded the motion. There was additional discussion including that the Commissioner's vote is only one of seven but then noting that a vote could be three to four. Mr. von Zumbusch noted that in the past, the NJDEP Commissioner's designee voted on some projects and recused himself on others and he pointed out that if the designee had a personal conflict, the NJDEP Commissioner could select another designee to vote on such a project. Vice Chairman Loos repeated the motion, requesting written opinion from the DAG on the broad issue of whether the NJDEP Commissioner's designee can vote on DEP projects. The motion was approved unanimously.

Vice Chairman Loos asked for further comment from the commission and the public on 14-4289A 3050 Princeton Pike Demolition. Hearing none, he asked for a motion on the project. Commissioner Stout moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

14-2796C Princeton Signs (Princeton)

Director Dooley described the project, which will install "Welcome to Princeton" signs at three locations. Vice Chairman Loos 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. Vice Chairman Loos asked for further comment. Mr. von Zumbusch commented that signs had been approved by the Princeton Historic Preservation Commission. Vice Chairman Loos called for a vote. The project was approved unanimously.

14-4341A Princeton University Electronic Score Board (W. Windsor Twp.)

Director Dooley described the project, which includes installation of a scoreboard at athletic fields in Review Zone A. Vice Chairman Loos asked for comment from the

commission. Vice Chairman Loos asked for a motion to approve the project. Commissioner Stout moved to approve the project and Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for further comment from the commission and the public. Mr. von Zumbusch recommended, similar to the lightening shelter on the field, conditioning the approval on the planting of a visual barrier of evergreen trees should the scoreboard be visible from the park. Commissioner Stout and Lubitz agreed to change the motion to include that the approval will include a condition that the project be screened from the winter view from the park, if needed, with evergreens. Vice Chairman Loos called for a vote. The project, with the condition, was approved unanimously.

14-3283C Swan Creek Pedestrian Bridge (Lambertville)

Director Dooley described the project, which includes replacement of the park bridge which crosses Swan Creek. Vice Chairman Loos asked for comment from the commission and the public. Hearing none, he asked for a motion on the project. Commissioner Lubitz motioned to approve the project and Commissioner Stout seconded the motion. Mr. White, NJDEP, noted the bridge will be replaced, in kind, with an approximately 6-foot by 50-foot bridge and use existing abutments. Vice Chairman Loos called for a motion to approve the project. The project was approved unanimously.

14-4695 35 Montgomery Place Demolition (Trenton)

Director Dooley described the project, which includes the demolition of a building which the City of Trenton had determined to be a safety hazard. Vice Chairman Loos asked for a motion on the project. Commissioner Texel moved to approve the project and Commissioner Stout seconded the motion. The project was approved unanimously.

Review Zone B Projects

14-2663B BMS Princeton Pike Roadway Project (Lawrence Twp.)

Director Dooley described the project, which includes township-required improvements to Princeton Pike related to the Bristol Myers-Squibb project approved by the Commission earlier in 2014.

14-2997B JMJ-1 Building Office/Warehouse (Franklin Twp.)

Director Dooley described the project, a modification of a previously commission-approved project. That project was not built, however a stream corridor easement was completed. The current project does not impact the stream corridor.

14-3536A Advantage Tennis (W. Windsor Twp.)

Director Dooley described the project, a modification of a 2009 commission-approved project. A portion of the project was constructed, including parking and stormwater facilities, and the current project includes construction of tennis courts.

Vice Chairman Loos asked for a motion to approve the Review Zone B projects. Commissioner Lubitz moved to approve the projects and Commissioner Stout seconded the motion. Vice Chairman Loos asked for comment from the commission and the public; hearing none, he called for a vote on the projects. The projects were approved unanimously.

Conceptual Approval: 14-3300A Landing Lane Spillway Conceptual Approval

Director Dooley noted that, at the request of NJWSA, this project will be reviewed at a later time.

Executive Director's Report

Director Dooley discussed the monthly work tally, project movement related to the Permit Extension Act, completed mitigation, receipt of mitigation monies, personnel matters, notary signature, a new copier, and matters related to the Review Zone A viewshed, including telecommunication towers.

Director Dooley discussed a matter related to the New Jersey Turnpike Widening project mitigation. The applicant contacted the commission to discuss modifying some areas of the mitigation which the commission approved.

Director Dooley noted a possible proposal for a 1.5-mile arts, lighting, and sound project along the canal in the City of Trenton. There was discussion about the project and the challenges it might create for the park, the State Historic Preservation Office, and the DOT and potential economic and cultural benefits of projects.

D&R Canal State Park Superintendent's Report

Superintendent Kalleser noted a recent meeting she attended with Director Dooley, SHPO, and NJWSA regarding the Landing Lane Spillway. Red shale was delivered for towpath resurfacing in Franklin Township. The Griggstown Locktenders House experienced a flooded basement due to rain. There will be a short-term detour on the path in Lambertville related to the canal bank repair near Lilly's.

New Jersey Water Supply Authority (NJWSA)

Mr. Shepherd noted that there were temporary repairs to the Cherry Tree Lane spillway and that the Swan Creek Aqueduct repair was almost complete. Vice Chairman Loos asked for a dredging schedule update and Mr. Shepherd replied that it would be in 2015. Commissioner Texel asked about repair work on the path near Quakerbridge Road and Mr. Shepherd noted that dead trees were being addressed.

Old/New Business

Commissioner Stout noted that he would like to request a 6-month fiscal year budget report and follow up on the improper charges that were identified in the previous budget discussion. There was discussion about fiduciary responsibility, and charges related to computer network support and attorney general fees. Vice Chairman Loos asked for a budget report for the January 21, 2015 meeting. Commissioner Stout asked Commissioner Texel for information related to the parks budget. There was discussion about the anticipated reduction in parks' budget and the impact on parks staff, parks maintenance, DEP site remediation work, park's capitol projects, and other DEP areas, and the responsibilities of open space stewardship.

Superintendent Kalleser noted that, in Spring 2015, asphalt repairs will be made to the Prallsville Mills complex.

Vice Chairman Loos noted a successful Canal Fest in East Millstone, with over 3,500

people in attendance.

Public Comment

Mrs. Barth showed a copy of her new book, The Millstone Valley, a “then and now” photo book featuring historic photos of the D&R Canal and the Millstone River.

Commissioner Leck noted the publication of a new book about the Raritan River, by Judy Shaw, produced by Rutgers University Press.

Mr. Barth noted the 2015 activities planned by D&R Canal Watch, including a January 10 clean up at South Bound Brook at 10 am. He noted his interest in showing the 29-minute video about the history of the canal. Mr. Barth noted that the D&R Canal is on the historic register and the Landing Lane Spillway should be reviewed with consideration to history first and recreation after that. He noted that Bulls Island would come before the commission soon, and that he had not seen information on the public process. Commissioner Texel noted that there will be public process.

Mr. von Zumbusch noted that Montgomery Township was opposed to telecommunications silos and they could be prominent on the scenic byway.

Executive Session

There was no executive session.

Adjournment

Vice Chairman Loos noted he would entertain a motion to adjourn the meeting. Commissioner Lubitz motioned to adjourn and Commissioner Texel seconded the motion. The motion was approved unanimously. The meeting adjourned at 11:40 a.m.

Respectfully submitted,



Marlene Dooley
Secretary