Revised Minutes

January 21, 2015 Minutes of the Meeting
Delaware and Raritan Canal Commission

TIME: 10:05 a.m.
DATE: January 21, 2015
PLACE: D&R Canal Commission Office
Stockton, New Jersey

ATTENDING:

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

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

GUESTS: D&R Canal State Park Superintendent Patricia Kallesser; Mr. Joseph Shepherd, NJ Water Supply Authority; Mrs. Linda Barth, D&R Canal Watch; Mr. Robert Barth, D&R Canal Watch, DRCC Advisory Council; Mr. Robert von Zumbusch, DRCC Advisory Council; Mr. and Mrs. Smith; Mr. Douglas Chaabrak, Amy S. Greene Environmental.; Mr. Jerry Hurwitz, Princeton Battlefield Society; Mr. Chris Tarr, Stevens and Lee; Miyuki Kaneko, Stevens and Lee; Mr. Russell Smith, Hopewell Valley Engineering; Mr. John Masten, Institute for Advanced Study, Mr. Chad Goerner; Ms. Phyllis Marchand; Mr. Bruce Afran; Ms. Kip Cherry, Princeton Battlefield Society; Mr. Thomas O'Shea, Van Note-Harvey Associates.

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 February 18, 2015.

Vice Chairman Loos noted that the commission would elect a vice chairperson and treasurer. He asked Director Dooley to conduct the election. Director Dooley asked for nominations for the vice chairperson. Commissioner Trzaska motioned to nominate Vice Chairman Loos. Commissioner Texel seconded the motion. The director asked for further nominations; hearing none, she called for a vote. Commissioners Stout, Leck, Trzaska, Texel, and Allen voted to approve Mr. Loos as the Vice Chairman; Vice Chairman Loos abstained. The motion was passed and Vice Chairman Loos was elected.

Vice Chairman Loos asked for nominations for treasurer. Commissioner Stout motioned to nominate Commissioner Texel. Commissioner Trzaska seconded the motion. The vice chairman asked for further nominations; hearing none, he called for a vote. Vice Chairman Loos, and Commissioners Stout, Leck, Trzaska, and Allen voted to approve Mr. Texel as the treasurer; Mr. Texel abstained. The motion was approved and Commissioner Texel was elected as treasurer.

Minutes of the Meeting

Minutes of the December 17, 2014 Meeting

Vice Chairman Loos asked for comments or corrections on the minutes. Hearing none, he asked for a motion on them. Commissioner Stout motioned to approve the minutes and Commissioner Leck seconded the motion. Vice Chairman Loos and Commissioners Allen, Leck, Stout, and Texel voted to approve the minutes; Commissioner Trzaska abstained. The minutes were approved.

Review Zone A Projects

15-4562A Johnson Garage (Hopewell Township)

Director Dooley described the project, which includes construction of a garage and stormwater management measures. The project 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 Trzaska moved to approve the project and Commissioner Stout seconded the motion. The project was approved unanimously.

14-4664 Canal Center Window and Skylights (Lambertville)

Director Dooley described the project, which includes replacement of a window with a garage door and skylights on a commercial property. The project is not visible from the canal. Vice Chairman Loos 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 Stout seconded the motion. The project was approved unanimously.

Review Zone B Projects

Vice Chairman Loos noted that all Review Zone B projects, with the exception of the Institute for Advanced Study Faculty Housing, would be described and then voted *en bloc.*

14-4661 2 Manville Causeway (Franklin Township)

Director Dooley described the project, which will demolish a home severely damaged by flood, which was acquired by the NJDEP through Green Acres. Commissioner Texel asked if there was historic value to the home and the age of the home. Superintendent Kallesser noted the home is estimated to be from the 1950s or 1960s and it is not listed on a historic registry.

14-3062D FedEx Office Expansion (So. Brunswick Township)

Director Dooley described the project, which will result in 0.45 acres of new impervious surface. Two building additions and parking and other paved areas will be constructed.

14-4610 Hillsborough Park Parking Expansion
Director Dooley described the project, which results in 0.35 acres of new impervious surface. Parking will be expanded using porous pavement.

13-4467 Hankins Center (Robbinsville)
Director Dooley described the project, which will result in approximately six acres of new impervious surface. Six commercial use buildings will be constructed along with associated improvements such as drive areas, parking, stormwater management systems, lighting, and landscaping.

14-3727B One Research Way (Plainsboro Township)
Director Dooley described the project, which will result in an increase in approximately 0.17 acres of new impervious surface. Additional parking spaces, walkways, and a generator pad will be constructed and some structures will be removed. The property is included in a General Development Plan (GDP) for Princeton Forrestal Center and will use some porous pavement for water quality.

14-3444A Schäfer's Sports Center (Ewing Township)
Director Dooley described the project, which is a modification of a project previously approved by the Commission in 2007. The project will result in 1.8 acres of new impervious surface, and includes construction of a building, and associated parking, driveway, and stormwater management improvements. Commissioner Stout, Mr. Ruggeri, and Mr. Mazzei discussed the low flow rate for the two-year storm on the project site.

Vice Chairman Loos asked for further comment from the commission and then the public on the Review Zone B projects which had been discussed. Hearing none, he asked for a motion on the projects. Commissioner Leck moved to approve the projects and Commissioner Texel seconded the motion. The projects were approved unanimously.

14-3791B Institute for Advanced Study Faculty Housing (Princeton)
Vice Chairman Loos noted that the commission reviewed a similar project in January 2014, and that the current project, 14-3791B Institute for Advanced Study Faculty Housing, was a *de novo* review; the project is a new application.

Vice Chairman Loos asked Mr. Tarr, attorney for the applicant, to describe the project. Mr. Tarr outlined the project including that the current project is outside of the stream corridor. Mr. Tarr outlined his position related to the regulations and the commission's jurisdiction and asked that those speaking restrict comments to the stormwater regulations.

Vice Chairman Loos asked for comments or questions from the commission. Commissioner Texel asked about the visual barrier of the project from Battlefield Park. Mr. Tarr described the 200-foot municipal buffer historic district, the easement and the planting plan.

Vice Chairman Loos noted that the commission is reviewing the project for drainage. He asked commenters to limit comments to the commission's jurisdiction.

Mr. Afran, attorney for the Princeton Battlefield Area Preservation Society, disagreed that the commission's jurisdiction is limited to stormwater and outlined his position.

Commissioner Texel asked about State Historic Preservation Office (SHPO) review. There was limited discussion and DAG Reynolds outlined that wetlands and SHPO review is not within the commission's jurisdiction and that the stream corridor regulations do not apply.

Mr. Smith, Hopewell Valley Engineering, spoke on behalf of the Princeton Battlefield Area Preservation Society. Mr. Smith presented nine exhibits and discussed the "prohibited use" section of the regulations; he further discussed the retaining wall and its location four feet from the stream corridor, horizontal bench slope, toe and heel drains, toe slope, and the manufacturer's specifications. There was discussion regarding the retaining wall, which included Commissioner Leck, Mr.Mazzei, staff engineer, Mr. Tarr, and Mr. O' Shea, engineer for the applicant. Commissioner Stout asked to hear from the applicant. Mr. O'Shea stated the wall was five feet outside the corridor, discussed drains, topography, that no structures would be in the corridor and stated the applicant's commitment to stay out of the corridor. Mr. Afran discussed submission requirements.

Commissioner Stout asked for clarification of the geogrid and how it could implicate the commission's jurisdiction. Mr. Smith's responded including possible changes that could result in impacts occurring in the stream corridor. Both Vice Chairman Loos and Commissioner Trzaska noted if the Commission approval did not authorize uses in the corridor, the use could not occur; Commissioner Trzaska and Vice Chairman Loos discussed fencing on the corridor edge. Mr. Tarr stated that the applicant was not conducting work in the stream corridor and Mr. O'Shea stated that the applicant is placing a fence outside the stream corridor line. There was discussion about temporary fencing and Vice Chairman Loos and Commissioner Texel discussed partnering with the municipality for oversight. Vice Chairman Loos noted that the applicant has established they will not go into the stream corridor. Mr. Afran discussed the sufficiency of the application and the Commission's responsibility for oversight. Mr. Tarr stated the commission approval is shared with the municipality and the municipality would recognize approval conditions. Mr. Afran, Mr. Tarr, Vice Chairman Loos, and Director Dooley discussed the commission's jurisdiction and the relationship with municipalities.

Vice Chairman Loos asked for comments from the staff engineers. Mr. Mazzei noted that he found that the wall could be built and there are options to vent the water. Mr. O'Shea discussed the design including that the water can weep through the wall and lateral piping. There was discussion on the soil and toe drains including Commissioner Leck, Mr. Mazzei and Mr. Smith. Mr. O'Shea stated that he understood the commissioner's comments and would integrate these concerns. Vice Chairman Loos noted that a condition of approval could be that the commission engineers review the final plans.

Mr. Smith discussed dwelling setback requirements and applying a similar setback to the

wall. Vice Chairman Loos stated the Commission must follow its regulations and noted that the buffer sets the project back 100 feet.

At 11:45 a.m., Vice Chairman Loos asked for a motion to enter into executive session for the purpose of discussing an attorney-client matter. Commissioner Stout motioned to enter into executive session and Commissioner Trzaska seconded the motion; it was approved unanimously.

At 12:05 p.m., the commission resumed the meeting. Commissioner Texel moved that the commission return to open session. Commissioner Stout seconded the motion. It was approved unanimously.

Vice Chairman Loos noted that the commission went into executive session to discuss legal issues related to the completeness of the application, and it was determined that the application was complete.

Mr. Tarr noted that the stream corridor regulations at N.J.A.C. 7:45-9.3 state that the uses listed are prohibited "within the stream corridor" and that Mr. Smith's comments should be limited to activities "within the stream corridor." Mr. Afran discussed his broader view of the stream corridor regulation including noting that the uses include "actions that result in the death of native vegetation," N.J.A.C. 7:45-9.3(a) 8. DAG Reynolds noted that before one enters N.J.A.C. 7:45-9.3 and the prohibited uses section, one must first go to 9.1 "scope of review" which states that a project is only subject to review for stream corridor impact "if the project includes a portion of the stream corridor." Vice Chairman Loos asked for the legal analysis to be at the end and to continue with the presentations.

Mr. Smith stated there was a stream corridor on the site and DAG Reynolds asked Mr. Smith to show which part of the project is within the corridor; he discussed the 20 acre site. Mr. Mazzei later noted that the corridor was outside the limit of disturbance. Mr. Smith discussed the existing flow of the stormwater to the stream, the location of the proposed basin, the discharge of stormwater to a location further down the stream outside the stream corridor, and potential impact to native vegetation due to diverted water. He also discussed a tree survey. Vice Chairman Loos asked the applicant about existing conditions and tree planting. Mr. Tarr and Mr. Afran discussed the planting plan. There was also discussion regarding the scour hole, its size, location and operation.

Mr. Tarr asked that Mr. Goerner be able to speak, as he had to leave the meeting.

Mr. Goerner noted he is a former mayor of Princeton Township, who served two terms on township committee. He encouraged the commission to approve the project and noted that Princeton is sensitive to the historic and environmental nature of the project area.

Vice Chairman Loos asked if anyone else in the room wished to speak.

Ms. Marchand, former mayor of Princeton Township for 14 years, and former D&R Canal Commission commissioner, noted that the project had been very carefully reviewed by the Princeton municipality staff, planning board, flood control, environmental and historic boards and the municipality approved it. She noted the

narrow scope of the commission's review, and recommended and encouraged the commission to approve the project.

Mr. von Zumbusch noted that he has been a member of the Princeton Historic Preservation Commission. He clarified that the Princeton Historic Preservation Commission did not have jurisdiction so did not approve the project, but gave a recommendation for approval.

Commission Texel asked about the archeological work to be done at the site. Mr. Tarr discussed the archeological protocol and the archeological projects on site.

Ms. Cherry, Princeton Battlefield Area Preservation Society, presented an exhibit, and discussed the use of fill on the site. In response to Ms. Cherry's reference to visual impacts, DAG Reynolds noted that the project is in Review Zone B, and the commission has no authority for visual impact review in Zone B. Ms. Cherry noted the importance of the Battle of Princeton to the history of the country and the economic value of the park. Mr. Afran, Mr. Mazzei, and Ms. Cherry further discussed the fill at the site.

Mr. Hurowitz, president of the Princeton Battlefield Area Historic Society presented Exhibit 11, a map showing the movement of the Battle at Clarke's Farm, and discussed the Battle of Princeton, that the housing is proposed to be constructed where this battle took place, and that the Princeton Battlefield is listed by the National Trust for Historic Preservation as one of the 11 most endangered historical sites in the nation. He suggested that the Institute had not met the commission's requirements.

Mr. Barth, D&R Canal Watch and the D&R Canal Commission Advisory Council, noted the historic importance of the battlefield. He is pleased to hear of the archeological studies.

Mr. Tarr asked to put several exhibits into the record. He presented five exhibits and asked Mr. O'Shea to present the drawings. Mr. O'Shea discussed the project including noting that the project was designed to stay outside of the stream corridor, that the constructed wetlands provided 90% TSS removal which is higher than regulations require, that the design would treat existing untreated areas, and that the scour hole is compliant with regulations and outside the stream corridor. There was extensive discussion including Commissioner Trzaska, Vice Chairman Loos, Commissioner Stout, Commissioner Leck, Mr. O'Shea, Mr. Mazzei, Mr. Smith, and Mr. Afran regarding the stormwater management, the scour hole and its distance from the corridor, plantings and vegetation, potential for erosion, the wetland basin and the spillway design storm.

Vice Chairman Loos asked Mr. Mazzei to confirm that the application was complete and he had all the information required to make the review. Mr. Afran discussed his position on the term "legal completeness." Mr. Mazzei discussed the submission requirements in the regulations.

Vice Chairman Loos asked both parties to provide any final summary remarks.

Mr. Afran presented his summation including his position that there were unanswered

engineering questions regarding the drains that could result in intrusion in the corridor and require a waiver, his view on the authority of the commission, stream corridor provisions, and the reduction of surface water.

In response, there were questions and discussion including Vice Chairman Loos, Commissioners Leck and Stout, and Mr. Mazzei about the extent of the reduction of water flow and the water supply available adjacent to the project site. Commissioner Leck noted her visit to the site, an existing pipe, and that the area is not an undisturbed area.

Mr. Afran discussed the historic value of the project site. Vice Chairman Loos noted that the commission did not have jurisdiction in this area and DAG Reynolds noted that the commission's decision needs to be based on regulatory authority.

Mr. Tarr presented his summation including that the applicant had moved all development out of the stream corridor and his position that it limits the Commission's jurisdiction to a stormwater review and that there had been a calculation of the stormwater effects, stormwater meets the commission's standards, and commission staff recommends approval of the project. He also noted the Melick-Tully report. He noted the applicant was agreeable to a conditioned approval, which might include the construction of a barrier chain link fence/silt fence at the corridor line, and that the design of the retaining wall be such that there would be no intrusion beyond the fence and stormwater be constructed as designed by their engineers and approved by a commission engineer.

Vice Chairman Loos questioned the discussion of the stream corridor regulations and stated his position that the prohibited use section at N.J.A.C. 7:45-9.3(a) 8 must be read in context of the opening phrase "the following uses shall be prohibited within a stream corridor." He stated it is a jump to say an applicant cannot do anything in the Review Zone B, outside the commission's stream corridor buffer, that could theoretically result in destruction of something in the stream corridor. The legislators did not give the commission the right to take land.

DAG Reynolds agreed but noted in addition that before applying N.J.A.C. 7:45-9.3, N.J.A.C. 7:45-9.1 must be fulfilled which states that an applicant is only subject to stream corridor impact review "if the project includes a portion of the stream corridor." Director Dooley and Mr. Mazzei outlined the operation of the stream corridor section including that conditional uses are allowed "within the corridor," that these do not require a waiver, and provided an example.

Vice Chairman Loos stated he would entertain a motion. Commissioner Trzaska moved to approve the project with the following conditions:

1. there shall be no disturbance of the stream corridor buffer;
2. the applicant shall construct a temporary chain link fence prior to beginning of construction to keep all work out of the corridor;
3. the applicant shall give notice to the commission that the fence is placed and commission staff shall inspect the fence and its location;
4. the commission shall advise Princeton of the purpose and importance of the fence.

Regarding involving Princeton, DAG Reynolds noted that the commission statute states that "The commission's decision shall be final and binding on the municipality, and the commission may, in the case of any violation or threat of a violation of a commission's decision by a municipality, or by the appropriate municipal reviewing agency, as the case may be, institute civil action (1) for injunctive relief; (2) to set aside and invalidate a decision made by a municipality in violation of this subsection; or (3) to restrain, correct or abate such violation." Vice Chairman Loos noted this is clear direction from the legislature.

Vice Chairman Loos stated that there could also be a condition regarding the toe drain. There was brief discussion and then brief discussion regarding the type of fence.

Commisssion Stout asked for a reading of all the conditions. Vice Chairman Loos read:

1. there shall be no disturbance of the stream corridor buffer;
2. the applicant shall construct a temporary chain link/snow/silt fence prior to beginning of construction to keep all work out of the corridor;
3. the applicant shall give notice to the commission that the fence is in place and commission staff shall inspect the fence and approve its location;
4. the commission shall advise Princeton of the purpose and importance of the fence; and
5. a commission engineer shall review and give final approval of the plans to review the drains.

Commissioner Stout seconded the motion.

Vice Chairman Loos asked for discussion on the motion.

Commissioner Allen noted that she will vote against the project, as there will be tremendous stream corridor impacts from the project, including the wall so close to the edge of the stream corridor and the diversion of water will have a very negative affect on the vegetation in the stream corridor The trees are more sensitive than we think to the huge change in flow of the water. There is a good chance a lot of trees will die. The project could be built as not to have such a large impact on it.

Commissioner Leck noted that, based on her observation of the pipe going under the road and what happened after that there is a potential for erosion.

Vice Chairman Loos noted he would vote in favor of the motion. Vice Chairman Loos discussed the saddle and pipes in the stream corridor. The reason we protect stream corridors is that that the commission is charged with protecting the water quality of the canal, and he believes that diverting water downstream 60 feet is not going to have an adverse impact on the quality of the water. As a private citizen, he would prefer the site not be developed due to historic significance. He noted that the commission must vote on the regulations and he believes with the conditions the project is compliant.

Commissioner Trzaka stated he would approve the project and echoed Vice Chairman Loos' thoughts. He noted the historic value of the project area but also noted that he will

vote within the regulations and jurisdiction of the commission; this commission is tasked with protecting the watershed and water supply to the canal.

DAG Reynolds asked Commissioner Allen if, since she intended to vote against the project based on stream corridor impact, is it her position that the project contains a part of the stream corridor.

Commissioner Allen stated "It is." Commissioner Allen stated that it is her opinion that the commission is charged with protecting the stream corridor, and this project will have a detrimental affect on the corridor.

Commissioner Texel noted that a year ago he voted "no" on the previous project because the applicant sought a waiver and he felt there were significant concerns related to the waiver. This proposal has addressed a lot of those concerns. Personally he noted, taking off his hat as a Commissioner for a moment, the bigger, transcendent part of the site of which Mr. Hurowitz earlier spoke; it is there. However, the commission cannot rule on that today because of the commission's charge.

Vice Chairman Loos called for a roll call vote.

Allen: no
Texel: abstain
Trzaska: yes
Loos: yes
Leck: no
Stout: yes

Vice Chairman Loos noted that the motion does not carry. There are seven members of the commission currently. The Commission needs a majority of the seven members in order to pass a motion; or four "yes" votes for a motion to pass. Therefore the motion dies.

DAG Reynolds asked Commissioner Leck to specify the reason for denying the application.

Commissioner Leck noted that water coming off of the property will have an impact on the stream corridor. Also, the materials she received did not show where the retention basin was going to be and how that would have an impact on the site. Lastly, she was responding to the way in which the building was going to occur with all the filling which will have a great impact on the site; greater than she thought initially.

New Jersey Water Supply Authority (NJWSA)

Ms. Kallesser reported for Mr. Shepherd, as he had left the meeting. Three projects had been completed: the Cherry Tree Lane temporary repairs, the Swan Creek Aqueduct Rehabilitation project, and the repair at Lilly's in Lambertville.

D&R Canal State Park Superintendent's Report

Superintendent Kallesser confirmed that the multi-use trail at Lilly's in Lambertville is

open and the repair complete; Thomas Edison College will assume a lease for the West Hanover Street Canal House on January 6, 2015, and use it as an office annex for the college; and a new State Park Service geocache policy was recently implemented, requiring caches on park property to be identified and approved. Amwell Road is closed between the Millstone River and Market Street and will reopen at the end of February, per NJDOT.

Executive Director's Report
Director Dooley referred the commissioners to the monthly work tally and noted she would report in more detail next month.

Old/New Business
There was no old or new business.

Public Comment
Mr. Barth asked all to note the D&R Canal Watch activities and looks forward to seeing all on the path.

Executive Session
There was no executive session.

Adjournment
Vice Chairman Loos noted he would entertain a motion to adjourn the meeting. Commissioner Stout motioned to adjourn and Commissioner Allen seconded the motion. The motion was approved unanimously. The meeting adjourned at 1:55 p.m.

Respectfully submitted,

Marlene Dooley
Secretary