

**November 5, 2015 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

TIME: 11:05 a.m.

DATE: November 5, 2015

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

**ATTENDING:**

**COMMISSIONERS:** Vice Chairman John Loos, Commissioner Ed Trzaska, Commissioner Julia Cobb Allen, Commissioner Bruce Stout, Commissioner Mary Leck, Commissioner Phil Lubitz, Mr. Ed Mulvan (Vice Chairman Loos and Commissioners Trzaska and Allen attended via conference call.)

**STAFF:** Executive Director Marlene Dooley,  
Deputy Attorney General Melissa Abatemarco,  
Ms. Colleen Christie Maloney

**GUESTS:** Mr. Robert Barth, D&R Canal Watch; Mr. Mort Cohen; Mr. Bruce Afran; Mr. Keith Nunes; Ms. Kip Cherry, Princeton Battlefield Society; Ms. Jean Hultgren, Princeton Battlefield Society; Mr. Chris Tarr; Mr. Michael Fagen; Mr. Robert von Zumbusch, D&R Canal Commission Master Plan Advisory Committee

Vice Chairman Loos called the meeting to order. Director Dooley announced that this was a 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. Vice Chairman Loos asked for a commissioner to run the meeting. It was determined that Commissioner Lubitz would run the meeting.

Commissioner Lubitz asked for a motion to go into executive session to discuss legal matters. At 11:05, Mr. Mulvan moved to go into executive session to discuss legal matters. Commissioner Stout seconded the motion. It was approved unanimously.

At 11:20, the commission resumed the public meeting.

Director Dooley stated that on February 18, 2015, the commission approved DRCC Project # 14-3781A Institute for Advanced Study Faculty Housing. On March 30, 2015, Mr. Afran on behalf of the Princeton Battlefield Society appealed the commission's decision to the appellate court. On October 30, 2015, Mr. Afran sent, by way of email to the commission's executive director, a request for stay of the February 18, 2015 decision. She stated the meeting this morning is being held to respond to the request. She stated that the standards are that the moving party must demonstrate that it has a reasonable probability of success on the merits, the threat and harm is irreparable if the relief is not granted, the public interest and relative hardship to the parties favor a stay, and the legal rights underlying the claim are settled.

Commissioner Lubitz noted some commissioners must leave by 12:30 p.m., and also five affirmative votes are required to pass a resolution. He stated that the attorneys would be given 10 minutes for opening remarks and five minutes to reply. The public would be allowed three minutes for comment.

Commissioner Lubitz recognized Mr. Afran. Mr. Afran spoke including referring to cases related to issuing a stay and reconsideration of votes. Mr. Afran discussed the commission's January 2015 decision on the project, and the motion for reconsideration at the February 2015 meeting. He noted the matter is of immense public interest and asked the commission to grant a stay of the February decision.

Mr. Tarr waived an opening statement.

Commissioner Lubitz asked the commission if they had questions. There were none.

Ms. Cherry discussed how the beginning of construction and 360 truck loads of soil which will be brought to the site, would affect the topography of the site. She requested that the commission grant a stay, and noted that by granting the stay, it would give the Battlefield Society time for their appeal.

Mr. Barth noted that granting a stay would not infringe on anyone's rights and that it would be prudent.

Mr. Afran stated that a stay does not prejudice anyone. It allows the court to proceed.

Commissioner Lubitz asked for further questions from the commission.

Mr. Tarr spoke including a discussion of the request for the stay, disputing some of the cases referenced, and his position that the request for a stay is not appropriate relief. He discussed that a stay would delay the work of the Institute.

Mr. Afran discussed the timing of the request for a stay and that the cases he referenced were compelling.

Commissioner Lubitz asked the commissioners if anyone had questions. There were no comments or questions. Commissioner Lubitz asked if any Commissioner wanted to make a motion. Commissioner Allen made a motion to stay the decision pending the court decision. There was no second. The motion failed.

Mr. Afran asked that it be noted that three commissioners attended on the phone, in case it was difficult to get a transcription later. Mr. Afran asked that a letter be issued stating the stay was not granted as he may need it for court.

### **Adjournment**

Commissioner Lubitz noted he would entertain a motion to adjourn the meeting. Commissioner Stout motioned to adjourn and Commissioner Leck seconded the motion. The motion was approved unanimously. The meeting adjourned at 11:50 a.m.

Respectfully submitted,

*Marlene Dooley*

Marlene Dooley  
Secretary

