

**December 16, 2015 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.

DATE: December 16, 2015

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

ATTENDING:

COMMISSIONERS: Vice Chairman John Loos, Commissioner Bruce Stout,
Commissioner Mary Leck, Commissioner Phil Lubitz,
Commissioner Texel
(Commissioner Texel attended by teleconferencing.)

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

GUESTS: Superintendent Patricia Kallessen; Mr. Robert Barth, D&R Canal Watch;
Mr. Robert von Zumbusch, D&R Canal Commission Advisory
Committee; Ms. Dana Hecht, NJDOT; Mr. Omar Hameed, NJDOT; Mr.
Bill Birch, NJDOT; and Mr. Brian Strizki, JMT.

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 Item

Approval of 2016 Meeting Dates

Vice Chairman Loos called for discussion related to the proposed meeting dates. Hearing none, he called for a motion. Commissioner Leck moved to approve the proposed dates and Commissioner Lubitz seconded the motion. The motion was approved unanimously.

Minutes and Executive Minutes of the Meetings of November 5 and 18, 2015

Vice Chairman Loos called for corrections on the meeting minutes for November 5, 2015, November 18, 2015, and the executive session minutes associated with those meetings. Hearing none, Vice Chairman Loos called for a motion to approve the minutes and executive minutes *en bloc*. Commissioner Lubitz moved to approve the minutes and Commissioner Stout seconded the motion. They were approved unanimously.

Review Zone A Projects

15-3202A The Village at Lambert Green (Trenton)

Director Dooley described the project, including that it is an apartment and townhouse development with parking and stormwater management facilities. Vice Chairman Loos asked for comment from the commission. Commissioner Lubitz, Commissioner Stout, and Mr. Ruggeri discussed the management of stormwater at the site, water quality, recharge, runoff, discharges to the canal, and existing outfalls to the canal.

Commissioner Leck and Mr. Ruggeri discussed the infiltration basin.

Vice Chairman Loos asked for further comment from the commission and the public. Vice Chairman Loos noted that five votes would be needed for the commission to take action. He called for a motion. Commissioner Texel motioned to approve the project and Commissioner Leck seconded the motion. Commissioners Texel, Leck, and Stout, and Vice Chairman Loos voted to approve the project. Commissioner Lubitz abstained. The motion did not carry. Vice Chairman Loos noted the project was not approved and at the end of the 45-day period after which it was considered to be complete, it would be approved pursuant to the 45-day rule. There was discussion regarding commission action required to approve and to disapprove a project and the 45-day rule and its application.

Zone B Projects

Vice Chairman Loos asked for a brief description of the Zone B projects.

15-4797 40 Carter Road Single-Family Home (Lawrence Twp)

Director Dooley described the project including that it is a single-family home, with rain gardens to address stormwater impact.

15-4531 Lawrenceville Gardens Expansion (Lawrence Twp)

Director Dooley described the project including that there is an existing townhouse development, the stormwater basins, the existing stream corridor on the site and that there is a path proposed within the corridor and the applicant would record a commission stream corridor easement.

15-2436II BMS Building 21 Compound Mgt Extension Project (Hopewell Twp)

Director Dooley described the Bristol Myers-Squibb (BMS) project including that the existing stream corridor for which a commission stream corridor easement has been recorded, the existing regional stormwater basin, and the debit and credit system for stormwater.

Commissioner Lubitz stated for the record that he works for a nonprofit for which BMS is a contributor. However, he stated that it will not affect his ability to vote and he would therefore vote on the project.

Commissioner Stout and Director Dooley discussed the easement on the Lawrence Gardens project and the pervious pavement to be used on the walkway.

Commissioner Stout and Director Dooley discussed the BMS credit and debit system, clarifying that there are very few credits left.

Vice Chairman Loos called for motion to vote on the Zone B projects. Commissioner Stout moved to approve the Zone B projects and Commissioner Leck seconded the motion. The projects were approved unanimously.

Previously Approved Project

Discussion of COA Conditions: 15-4736 Route 518 Bridge Replacement (Franklin Twp)

Director Dooley gave an overview of the project including that the commission had approved the project with conditions. The conditions were to construct a signalized crosswalk and wooden sidewalks, to tint the bridge deck a color similar to the wood presently on the deck, a condition noting that this project is separate and distinct from other bridge projects in the canal system, and that DOT must receive SHPO approval. Director Dooley noted that NJDOT requested to appear before the commission to update the commission on the progress related to the conditions, problems identified with providing wooden sidewalks and to request that the condition to provide wooden sidewalks on the bridge be eliminated.

Ms. Hecht, NJDOT, introduced the DOT team in attendance and outlined the status of all conditions including that NJDOT would take responsibility for maintaining the crosswalk signal on the county road in order to fulfill the condition.

Ms. Hecht and Mr. Strizki reported on further research DOT had done related to timber and concrete bridge decks and sidewalks. Mr. Strizki discussed average daily trips, bridge railing ratings and systems, the structural reasons that a timber sidewalk on the concrete bridge would not work, and that the NJDOT would work with the concrete supplier to create a cement stamp for the sidewalk which would mimic existing conditions.

There was substantial discussion regarding the bridges over the canal, including Mr. von Zumbusch noting that the bridge details be made available prior to the meeting and Mr. Barth discussing that the D&R Canal Watch is working on developing a canoe trail within the canal and concerns that the height of the bridge allow for park patron in canoes to pass under the bridge. Mr. Strizki noted the bridge would be higher by an inch on one side, creating a greater area through which to pass.

Vice Chairman Loos summarized the applicant's request that the commission amend the conditions of approval to change a wooden sidewalk to the concrete sidewalk. Ms. Hecht noted that DOT would stamp and color the sidewalk to mimic the existing wood sidewalk. Director Dooley discussed the minor modification provision of the rules.

Commissioner Lubitz stated he found the NJDOT had made a good faith effort to meet the commission's concerns and he was satisfied with the proposal. Commissioner Lubitz made a motion to accept the proposal to remove the condition that wooden sidewalks be provided. Commissioner Stout stated that the applicant appeared to have done due diligence and seconded the motion. Commissioner Texel noted he would prefer a wooden deck and sidewalks, but he would support the motion. He noted that each bridge replacement along the canal must be reviewed individually to preserve the character of the district.

Mr. Barth proposed requesting mitigation for changing the conditions, such as a sign on the bridge which would inform about crossing the canal. Mr. von Zumbusch noted that, though NJDOT had made an effort, he believes there should be more time to consider the

design carefully for alternatives. He would not recommend a sign on the bridge, as there was not an existing sign and it is not in keeping with the character of the park. Superintendent Kalleser noted that there is a park sign in the parking area, which is in close proximity to the bridge.

Commissioner Stout noted the motion-activated crossing signal on Rt. 518 in Hopewell and asked the NJDOT to review it with consideration to the crosswalk to be provided with this project. Director Dooley noted that one charge of the proposed task force would be to review crosswalks within the park. Commissioner Lubitz reemphasized that the decision to approve this bridge is not to be construed as approving future bridges along the canal. Vice Chairman Loos called for a vote. The modification was approved unanimously. Vice Chairman Loos directed staff to make the modification.

Executive Director's Report

Director Dooley provided and commented upon the monthly work tally. She reported on preparation of two statements of items related to litigation, media reports related to the Institute for Advanced Study Faculty Housing project, and revenue collection. She also requested to discuss legal advice related to developing a policy for mitigation offsite for stream corridors in executive session.

Park Superintendent's Report

Superintendent Kalleser noted planned activity at Cadwalader Park, an upcoming April 16, 2016 symposium on New Jersey canals, a scheduled meeting with Army Corp regarding the proposed flood wall in Lambertville, that the park is involved in several matters involving encroachment on park land and ownership issues, and that volunteers from the American Legion had cleaned up a cemetery in Franklin Township. Vice Chairman Loos discussed the cemetery.

New Jersey Water Supply Authority (NJWSA) Report

There was no NJWSA report.

Old Business

Commissioner Texel noted that he met with colleagues to discuss the Bulls Island matter. There was discussion of the Department website that will provide information and allow for comment and Vice Chairman Loos requested that the commission be informed one day prior to the website becoming live.

Vice Chairman Loos, Commissioner Texel, and Director Dooley discussed the Princeton Battlefield Society and the Institute for Advanced Study faculty housing project, including comments made by a member of the Legislature, requests by the Battlefield Society to the NJDEP related to the wetlands, and that construction is active at the site.

Vice Chairman Loos discussed the PennEast pipeline.

New Business

There was no new business.

Public Forum

Vice Chairman Loos opened the meeting to public comment.

Mr. Barth discussed the D&R Canal Watch's January 9 clean up in South Bound Brook. He discussed access to executive session minutes. Vice Chairman Loos, DAG Abatemarco, Director Dooley and Commissioner Lubitz discussed review and access to the executive minutes and posting draft meeting minutes on the website prior to approval by the commission body. Vice Chairman Loos requested that staff review executive minutes from the past two years. There was discussing regarding making them available including Commissioner Lubitz recommending that it be done on an individual basis, per request.

Mr. von Zumbusch voiced objection to a policy of not posting draft minutes, as the public and applicants who were present may want to make a correction. Mr. Barth agreed. Commissioner Lubitz noted that only approved minutes should be posted. Director Dooley noted a recent OPRA request. Vice Chairman Loos noted the commission would discuss legal advice related to the matter in executive session.

Executive Session

At 11:30 a.m., Vice Chairman Loos called for a motion to enter into executive session to discuss legal matters. Commissioner Stout motioned to do so and Commissioner Leck seconded the motion. It was unanimously approved.

Public Session

At 12:15 p.m., the commission returned to public session.

Vice Chairman stated that the commission would be developing a policy related to mitigation off-site for intrusions in the stream corridor on a project site.

Vice Chairman Loos noted that the commission had granted a waiver to the Executive Group for intruding into a stream corridor and a proposal related to off-site mitigation. Director Dooley outlined the proposal including that it was a six-acre property in Cranbury Township within the Millstone Watershed which the D&R Greenway is working to preserve, that the property connects to open space and paths in East Windsor also, that the Millstone River is on the property, and the owner would donate the property to the Greenway, however there is no funding for the removal of solid waste on the property, such as building foundations, which needs to be removed from the property in order to close. It is estimated that approximately \$6,000 would be required for the environmental assessment that has been done and to remove the solid waste. The property would be owned by Cranbury Township, but would not be developed. There was discussion of the commission requiring a commission easement that would prevent mowing and the potential for "no mow" signs as part of the mitigation. The "no mow" easement area would be two times the square footage of stream corridor intrusion from the Executive Group project. Commissioner Lubitz discussed the need to be cautious about use of the funding if, for instance, it was found that a larger clean up was required at the site. Director Dooley and Mr. Ruggeri discussed the phase 1 review of the site. In response to a question from the public, Vice Chairman Loos noted the town would put the preserved property on its open space inventory. Vice Chairman Loos called for a

motion to authorize the mitigation proposal. Commissioner Stout motioned to accept it and Commissioner Lubitz seconded the motion. It was approved unanimously.

Adjournment

Vice Chairman Loos called for a motion to adjourn. Commissioner Stout moved to adjourn and Commissioner Lubitz seconded the motion. It was approved unanimously. The meeting adjourned at 12:30 p.m.

Respectfully submitted,



Marlene Dooley
Secretary