

**March 18, 2015 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.

DATE: March 18, 2015

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

**ATTENDING:**

**COMMISSIONERS:** Vice Chairman John Loos, Commissioner Julia Cobb Allen,  
Commissioner Mary Leck, Commissioner Phil Lubitz,  
Commissioner Mark Texel

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

**GUESTS:** D&R Canal State Park Superintendent Patricia Kalleser; Mr. Joseph Shepherd, NJWSA; Mr. Robert Barth, D&R Canal Watch, DRCC Advisory Council; Mr. Robert von Zumbusch, DRCC Advisory Council; Mr. Bruce Afran; Mr. Gene Porzio, Altran; Mr. John Ford, Altran; Mr. Greg Olson, PSEG; Mr. David Roth, PSEG; Mr. James Rhatican, Wolff and Samson; Mr. Timothy V. Holmes, PSEG; Ms. Isabel Rooney, PSEG; Mr. Chris Light, PSEG; Mr. Jim O'Leary, PSEG; Mr. Earl Deamond, Princeton Forrestal Center; Mr. Rich Goldman, Drinker Biddle; Mr. Russell Smith, Hopewell Valley Engineering.

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. Notice of this meeting was also given on March 11, 2015 by way of notice filed with The Times, the Star Ledger, and the county clerks of Hunterdon, Mercer, Middlesex, Monmouth, and Somerset Counties.

**Administrative Items**

Vice Chairman Loos confirmed that next month's commission meeting date is April 15, 2015. Vice Chairman Loos noted that one member would leave the meeting at 1 pm and the commission would lose quorum at that time. He noted that if no action is taken on the PSEG project, the project may be approved by the 45-day provision.

**Minutes of the Meeting**

**Minutes of the February 18, 2015 Meeting**

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

### **Review Zone Projects**

Vice Chairman Loos noted that the commission needs five commissioners present for a quorum, and that four votes are needed to take action, not a simple majority.

### **Review Zone A Projects**

#### 15-4032C 3 Risler Street

Director Dooley described the project, including that the 0.30-acre property contains a single-family home, and the applicant proposes to construct a second-floor balcony and a porch over existing impervious surface. Director Dooley discussed waivers and visual impact. 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 Texel seconded the motion. The project was approved unanimously.

#### 15-4676 16 Wilson Street

Director Dooley described the project, including that the 0.13-acre property contains a single-family home and the applicant proposes to construct an addition. Director Dooley discussed waivers and that the project is not visible from the Park. Commissioner Texel and Director Dooley discussed the historic area in Lambertville. 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.

### **Review Zone B Projects**

#### Carried Forward from previous meeting: 14-3012B Ridge Road Substation (So. Brunswick)

Vice Chairman Loos noted that this project had been tabled at the February 2015 meeting. Commissioner Texel moved to take the project off the table and re-open the matter. Commissioner Lubitz seconded the motion. Vice Chairman Loos called for a vote. The motion was approved unanimously.

Vice Chairman Loos noted the matter was reopened and asked the applicant to describe the project.

Mr. Rhatican, representative of the applicant, PSEG, described the project, including that it is a 7.5-acre site, PSEG is under contract to purchase the property, and PSEG is proposing to construct a new switching station. He discussed that the project is part of a regional upgrade of the system and that the goal is to construct the facility and be operational for the summer. Mr. Rhatican discussed objector comments and that Commission staff identified some comments for response, the requested changes did not affect compliance and were addressed by the applicant. He noted that PSEG submitted changes to the commission late in the afternoon March 17. Mr. Rhatican noted that the February 2015 staff report found the project to be in compliance with commission stormwater regulations.

Mr. Light, a project manager for PSEG, outlined the need to construct the project, problems discovered in 2012, the role of Pennsylvania Jersey Maryland (PJM), and

mandates. Mr. Light noted the benefits of the location. Commissioner Texel asked about possible financial penalties and there was discussion with Mr. Light on this issue.

Mr. Porzio, engineer for the applicant, and Mr. Rhatican outlined the substation project including that the project has typical equipment and stormwater management techniques, compliance with the commission's stormwater management standards, several changes made to the project based on objector comments and commission staff requests.

There was discussion about a March 2, 2015 memo from Hopewell Valley Engineering (HVE). Director Dooley noted that at the February 18, 2015 commission meeting, the commission made the decision to table the project until the March 18 meeting. On March 6, the commission received comments from Mr. Russ Smith of HVE. On March 13, Director Dooley and Mr. Ruggeri discussed a number of comments with PSEG. Commission staff identified five points requiring clarification and PSEG responded to the five issues with a March 17 submittal late in the afternoon.

Commissioner Lubitz asked for clarification including that calculations needed to be corrected and the commission was not responsible for any delay. Director Dooley outlined the history including the project submission in August, December objector comments, response to comments, holding the project from the January meeting, the project being determined complete on February 5, 2015, the project being tabled from the February meeting, and the additional comments and responses. Mr. Rhatican noted that staff found the project in compliance in February 2015 and comments from the objector and subsequent corrections would not affect that.

Mr. Porzio outlined the five areas for which, on March 16, 2015, commission staff requested clarification and for which, on March 17, 2015, he submitted clarification. Commission staff provided to the commissioners a copy of Mr. Ruggeri's March 16, 2015 email to PSEG in which he requests clarification on the five areas. Vice Chairman Loos asked Mr. Porzio to further describe a strip drain and it was discussed. Mr. Porzio noted that this project is compliant both before and after these changes. Mr. Ruggeri agreed that these were the five areas for which staff requested clarification. Mr. Ruggeri stated that he had not yet had the chance to look at the PSEG responses submitted on the afternoon of March 17, 2015.

Mr. Afran noted he was appearing for objectors Mark and Kate Smith, whom he described as having a residence within the 200 feet notice area of the project. Mr. Afran discussed the 45-day rule and case law related to it. Mr. Afran stated that no evidence had been presented by the applicant that PSEG is subject to potential penalties by PJM or from a FERC order. Vice Chairman Loos noted that the commission's focus would be on the stormwater impact. Mr. Afran noted his client's concern of flooding and pooling of water. Commissioner Texel asked the distance from the project site to the objector's property. Director Dooley estimated that it was approximately 600 feet and identified it in an exhibit. Mr. Afran noted his client's concerns of a large berm which the property owner had constructed from contaminated soil. Vice Chairman Loos noted that the cleanup is not within the commission's jurisdiction.

Mr. Russ Smith, consultant for the objector, noted that he submitted comments on

December 24, 2014, February 17, 2015 and March 2, 2015. He noted the February 17 comments were not addressed and outlined them including concerns with the sizing of and adequacy of the drainage facilities. Mr. Ruggeri noted that staff examined the areas, which are very flat with about 1/10<sup>th</sup> of a foot change in topography. He noted the existing conditions and there would be no development in those areas and discussed commission standards. Mr. Ruggeri noted some areas are draining toward Route 1 and some are draining to a natural depression. Commissioner Leck and Commissioner Lubitz discussed soils and runoff with Mr. Ruggeri and referred to a Preconstruction Area Drainage Plan. Mr. Porzio noted he had discussed this issue with Mr. Ruggeri and there would be no additional stormwater impact in an area where the condition was not changed. Mr. Rhatican and Mr. Porzio noted they met commission standards, including stormwater and the NJDEP Best Management Practices (BMPs).

Mr. Smith discussed his concerns regarding accessing the road and the possibility of flooding and drainage system overloads. Mr. Ruggeri noted he had reviewed the calculations and found them to be adequate. Mr. Rhatican noted that these issues had been raised locally, and the municipality approved the plan. Mr. Smith disagreed with Mr. Porzio about water draining to Route 1 and noted concerns. Mr. Porzio disagreed and discussed NJDEP's Stormwater Best Management Practice Manual and the requirements of the Operation and Maintenance Manual and he finds that there is not a possibility of ponding or flooding roadway. Mr. Smith stated that that flooding on this roadway is still a possibility and will occur if the drainage area overloads the proposed system and outlined further, including redirecting water to Route 1, four drainage areas rather than three and calculations for the throttle of manhole and orifices. Mr. Ruggeri noted that the water quality devices, two JellyFish devices, were designed to accept a certain amount of flow rate and calculations can be found in the appendix.

Commissioner Leck discussed the soil, length of time of ponding, and stormwater quantity with Mr. Ruggeri, who explained that 0% infiltration is assumed and the applicant has submitted calculations that show infiltration within 72 hours after the storm event.

At 11:25 am, Vice Chairman Loos noted there would be a five minute break. At 11:30 am, the meeting resumed.

Mr. Rhatican, Mr. Afran and Vice Chairman Loos discussed quorum and the 45-day rule.

Mr. Smith noted that his March 2, 2015 memo questioned the nonstructural strategies and his concern about calculations for an area of unconnected impervious and an area of lawn, and the site's slope, trenches, the infiltration basin, soil erosion and sediment control. Mr. Ruggeri noted that soil erosion and sediment control is monitored by the SCD (Soil Conservation District) during construction and outlined the process. Mr. Rhatican noted the project has SCD permits. DAG Reynolds asked Mr. Smith which provision of Commission regulations is violated. Mr. Smith noted that it invokes issues of quantity, quality, and recharge. Mr. Ruggeri noted that the SCD checks this during construction and commission regulations look at the proposed development, not during construction.

Mr. Afran asked Mr. Smith if he could verify that the project is in compliance commission standards and with the five points for which commission staff asked clarification from the applicant on March 16. Mr. Smith outlined the points and then noted he was not able to review the latest submission for compliance. Mr. Afran noted the commission has accepted five of Mr. Smith's points and suggested that the commission could deny the matter without prejudice or the applicant could agree to extend review of the project to the next meeting and waive the 45-day rule.

Vice Chairman Loos asked Mr. Porzio for further information about the slope of the project. Mr. Porzio noted it was typical and that other substations were constructed with this grade. Mr. Rhatican noted that other PSEG substations had been constructed at this grade. Vice Chairman Loos asked for further information on the nonstructural strategies. Mr. Smith and Mr. Porzio responded.

Mr. Afran discussed compliance and objectors and their right to see evidence to be sure the project is in compliance.

Mr. Rhatican noted that the project was found fully compliant in a February staff report, and changes were made which modified and improved the project. He suggested that the commission could approve the project as it is compliant, and if necessary, impose conditions on the approval.

Commissioner Texel and Director Dooley discussed the purview of the commission, including that it is not charged with review of site access issues and flood issues are addressed by NJDEP.

Vice Chairman Loos noted that he found that there were eight issues identified today. The first five are the issues identified in the March 16 memo. He felt these could be the subject of a conditional approval subject to the engineer and staff approving. The remaining three include the slope on the site, sediment during construction, and whether additional area must be included in the calculations. The slope and sediment could be addressed at the meeting or in conditions. The additional drainage areas issue requires additional discussion prior to his making a determination.

Commissioner Lubitz noted his concern of the degree to which conditions will satisfy the commission's responsibility to adequately review the newly submitted materials. He noted his preference that a staff engineer review the newly submitted materials, rather than issue a conditional approval.

Commissioner Allen asked to hear from the staff engineer on the last three items: the slope, the sediment, and whether the additional area must be included. Mr. Ruggeri noted sediment during construction is not the commission's concern and that the SCD monitors sediment and erosion during construction. There was discussion about drainage and the topography. Vice Chairman Loos, Mr. Ruggeri, Commissioner Leck, and Commissioner Lubitz discussed the overall result, and run off for the entire site, and pre and post-construction with no increase in run off.

Mr. Rhatican noted that PSEG had successfully received permitting for a similar project

with similar slope, and even less than 1/2% slope. Mr. Afran noted that one could not accept this example without reviewing materials from those sites to compare with this site.

Commissioner Texel further discussed Commissioner Lubitz's concerns. He would, however, entertain a well crafted approval with conditions. He also noted the applicant had not demonstrated that there would be penalties and, therefore, there should be no rush to approve the project. He would favor an approval with conditions based on staff finding that the new submittal is in compliance or deny without prejudice.

Commissioner Allen noted conditional approval would be acceptable, with staff reviewing the final documents. She accepts that the stormwater impact on the additional 1-1/2 acres area would be *de minimis*, it was illustrated that the proposed slope has worked other places, and the sediment control during construction does not raise a matter of concern to carry this further, and she therefore would support a conditional approval.

Vice Chairman Loos opened the discussion to the public. There was no discussion. He called for a motion on the project, which might include, to deny without prejudice or approve with a certain set of conditions.

Commissioner Texel asked DAG Reynolds to outline the differences between denying without prejudice, a special meeting, and approval with conditions. DAG Reynolds discussed and noted that with a conditional approval the approval would not be issued until the conditions are met. Vice Chairman Loos noted that it would be conditional subject to staff determining if conditions met.

Commissioner Allen moved to approve the project consistent with her earlier comments and with the conditions listed in the March 16, 2015 memo. Commissioner Texel seconded the motion.

Vice Chairman Loos and Commissioners Allen, Texel, and Leck voted to approve the project. Commissioner Lubitz voted not to approve. The motion carried.

Vice Chairman Loos thanked Mr. Afran for his involvement. Mr. Afran asked for a copy of the applicant's March 17 submittal. The Vice Chairman asked staff to provide this to him.

Vice Chairman Loos noted there were five additional Review Zone B projects on the agenda and asked for comment.

There were no comments on:

14-3333C Forrestal Residential Community (Plainsboro)

15-3264B Modification of Bear Tavern Greene (Ewing)

14-3487 South Brunswick Hotel Modification (S. Brunswick)

There were comments on:

14-3006F Peddie School Improvements (Hightstown)

Commissioner Leck discussed stream corridor with Director Dooley.

14-2441P Princeton University Grounds & Building Support Area (Princeton)

Commissioner Leck discussed the proposed rain gardens with Mr. Ruggeri.

Vice Chairman Loos asked the commission to vote on the remaining five projects *en bloc*. Vice Chairman Loos asked for comment from the commission and the public on the remaining five Review Zone B projects. Hearing none, he asked for a motion on the projects. Commissioner Texel moved to approve the project and Commissioner Lubitz seconded the motion. The projects were approved unanimously

**Executive Director's Report**

Director Dooley referred the commissioners to the monthly work tally. She noted several projects, preparation of the statement on the proposed PennEast Pipeline for FERC, interviewing for a temporary staff position, and the receipt of a new copier. The office received a review and guidance on computers by DEP personnel, and was successful in moving funding for computers and an exterior hard drive. The office received several press calls related to Institute for Advanced Study decision.

Vice Chairman Loos commended Staff Engineer Joseph Ruggeri, DAG Reynolds, and Director Dooley efforts in reviewing projects the last two months.

**D&R Canal State Park Superintendent's Report**

Superintendent Kalleser noted that the Millstone Valley Preservation Coalition would host the second annual Millstone Scenic Byway celebration on April 18, 2015 from 2 to 4 pm and Park Historian Vicki Chirco would speak on the history of the D&R Canal. She noted the D&R Canal State Park has submitted materials for two 2015 National Recreational Trail grants, one for purchase of portable hand tools and a trailer and the other for bicycles which would be used for safety patrols. The superintendent participated in a conference call with the Circuit Coalition of New Jersey to discuss a priority list of trail projects and interconnections within Mercer County. Four projects were prioritized, three of which have a direct impact on the D&R Canal State Park. They include curb cuts and ADA improvements on the trail in Trenton, connection of Calhoun Street to Lambertson Road, and path improvements in the vicinity of the Port Mercer Bridgetenders House. These improvements would be funded by a William Penn Grant.

**New Jersey Water Supply Authority (NJWSA)**

Mr. Shepherd noted that, now that the ice has melted from the canal, NJWSA is addressing tree limbs and debris in the canal. It is addressing a sinkhole upstream of Whitehead Road Bridge in the vicinity of a Superfund site and the clean-up of the fish ladder at the Raritan River.

**Old/New Business**

Commissioner Leck noted activities at the Abbott Marshlands, including a trash pickup, and a History Weekend in April, and she encouraged all to visit the marsh website.

**Public Comment**

Mr. von Zumbusch discussed the April 18 Millstone Scenic Byway celebration and discussed the Carnegie Lake Dam Repair project. Director Dooley noted the applicant was expected to make a presentation on the dam repair to the commission at the April 2015 meeting.

Mr. Barth provided a Canal Watch activity schedule.

**Executive Session**

There was no executive session.

**Adjournment**

Vice Chairman Loos noted he would entertain a motion to adjourn the meeting. Commissioner Leck motioned to adjourn and Commissioner Texel seconded the motion. The motion was approved unanimously. The meeting adjourned at 12:40 p.m.

Respectfully submitted,



Marlene Dooley  
Secretary