

*Revised June 16, 2015*  
**May 20, 2015 Minutes of the Meeting**  
**Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.  
DATE: May 20, 2015  
PLACE: D&R Canal Commission Office  
Stockton, New Jersey

ATTENDING:

COMMISSIONERS: Vice Chairman John Loos, Commissioner Mary Leck,  
Commissioner Phil Lubitz, Commissioner Bruce Stout,  
Commissioner Mark Texel, Commissioner Ed Trzaska

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

GUESTS: D&R Canal State Park Superintendent Patricia Kalleser; Mr. Marc Brooks, Mr. Aimer Garcia, and Mr. Joe Shepherd, NJWSA; Mrs. Linda Barth, D&R Canal Watch; Mr. Andrew Robins, Sills Cumiss Gross; Mr. Brian Weyman; Mr. Brian Strizki, JMT; Mr. Edward Redfield, PetroScience; Mr. Amar Singh Gill and Mr. Jasbir Singh Gill, APCO Petroleum; Mr. James Rhatigan, CSG Law; Dr. Theodore Chase, Franklin Township; Ms. Krista Heinrich, T&M 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 June 17, 2015.

**Minutes of the Meeting**

**Minutes of the April 15, 2015 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 Trzaska seconded the motion. The minutes were approved unanimously.

**Review Zone A Projects**

**15-4696 Lambertville Library Generator (Lambertville)**

Director Dooley described the project, which involves the installation of an emergency generator outside of the Lambertville Public Library. Vice Chairman Loos asked for comment on the project. Hearing none, he called for a motion on the project. Commissioner Lubitz moved to approve the project and Commissioner Stout seconded

the motion. Vice Chairman Loos asked for comment from the public. Hearing none, he called for a vote. The project was approved unanimously.

15-2383D Justice Center Generator (Lambertville)

Director Dooley described the project, which involves the installation of an emergency generator outside of the Lambertville Justice Center. Vice Chairman Loos asked for comment on the project. Hearing none, he called for a motion on the project.

Commissioner Lubitz moved to approve the project and Commissioner Stout seconded the motion. Vice Chairman Loos asked for comment from the public. Hearing none, he called for a vote. The project was approved unanimously.

15-4462B 11 Arnett Avenue Patio (Lambertville)

Director Dooley described the project, in which a homeowner will install a patio and shed in the rear yard of a property. The property is within a stream corridor. Director Dooley recommended a waiver from stream corridor impact standards as the project would not have an adverse impact on the stream corridor. Vice Chairman Loos asked for comment on the project. Hearing none, he called for a motion on the project. Commissioner Trzaska moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

15-4721 Washington Road at D&R Path Safety Improvements (Princeton)

Director Dooley described the project, which involves the construction of a solar-powered high visibility crosswalk where the D&R Canal State Park path crosses Washington Road in Princeton. She recommended approval conditioned upon 1) the pole, light assembly and related equipment be painted black, 2) the applicant work with the park superintendent and NJ Water Supply Authority on the placement of the equipment on and near the park path, and 3) that NJ State Historic Preservation office approves of the project. The director noted that the project would require a waiver of review standards based on compelling public need. Safety is of concern because of traffic on Washington Road and park users crossing over it. Vice Chairman Loos asked for comment on the project. Commissioner Texel and Director Dooley discussed the visual impact of the project. Mrs. Barth commented that this is a project which will greatly benefit park patrons. Vice Chairman Loos asked for a motion on the project. Commissioner Stout moved to approve the project with conditions as noted by the director in the staff report and Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for comment from the public. Hearing none, he called for a vote. The project was approved unanimously.

**Review Zone B Projects**

Vice Chairman Loos noted there were three projects related to the College of New Jersey (TCNJ). Commissioner Stout stated on the record that, because he is employed by The College of New Jersey, he would recuse himself from participating in the discussion of or voting on The College of New Jersey projects. Commissioner Lubitz noted for the record that his daughter attends the college. Vice Chairman Loos asked Director Dooley to describe the three projects. Director Dooley noted that a stream corridor easement has previously been established with the college on the Ewing Township campus site and that no work for the current projects is proposed in the stream corridor.

15-2789J TCNJ Brower Student Center Addition (Ewing)

Director Dooley described the project which includes a 13,900-square-foot addition and 0.12 acres of new impervious surface.

15-2789K Modification for Campus Town Development (Ewing)

Director Dooley described the project which includes the construction of two new buildings, additional parking, and expanding of a stormwater basin.

14-2789I TCNJ STEM Building and Chemistry Addition (Ewing)

Director Dooley described the project which includes the construction of a new science, technology, engineering, and math (STEM) building and an addition to the existing chemistry building.

Vice Chairman Loos asked for comment on the three TCNJ projects. Hearing none, he called for a motion on the project. Commissioner Texel moved to approve the projects and Commissioner Trzaska seconded the motion. Vice Chairman Loos and Commissioners Texel, Trzaska, Leck, and Lubitz voted to approve the projects. Commissioner Stout again noted his recusal. The project was approved.

14-4626 Gables at Applegarth (Monroe)

Director Dooley described the project, currently a farm field, which will be developed with townhouses and commercial buildings. There is no stream corridor on the property. The project will result in approximately 11.90 of impervious surface.

14-2608A Subdivision for Princeton Glen (Plainsboro)

Director Dooley described the project which involves the construction of a childcare facility. The site received approval from the Commission in 2000 for 12 dwellings and a childcare facility. The childcare facility was never constructed and the applicant proposes to construct four dwellings in its place and upgrade the detention basin.

14-4541 Zamkotowicz (Hillsborough)

Director Dooley described the project, which involves construction of four homes on a site with an existing home, and which will result in 0.63 acres of new impervious surface.

14-3089A 2351 Route 130 South (South Brunswick)

Director Dooley described the project, which will construct two warehouses onsite, modify two existing stormwater basins, and result in 33 acres of new impervious surface.

Vice Chairman Loos asked for comments on these Zone B projects. Commissioner Lubitz asked for clarification on the stormwater structure for the Princeton Glen project. Mr. Ruggeri described the functions of the drop box structure.

Commissioner Lubitz asked for clarification on the maintenance of stormwater facilities on a project such as the Zamkotowicz project and maintaining a swale over time. Director Dooley described the commission's conservation and maintenance easement agreement. There was discussion about a municipality's role regarding maintenance of such structures. Dr. Chase noted that Franklin Township requires an annual license of

stormwater facilities and homeowners are required to report quarterly to the engineering staff. Vice Chairman Loos suggested that the commission review a copy of Franklin's ordinance on such facilities and share it with other municipalities within the commission's jurisdiction.

Vice Chairman Loos called for a motion of the following Zone B projects:

14-4626 Gables at Applegarth (Monroe)  
14-2608A Subdivision for Princeton Glen (Plainsboro)  
14-4541 Zamkotowicz (Hillsborough)  
14-3089A 2351 Route 130 South (South Brunswick)

Commissioner Stout moved to approve. Commissioner Lubitz seconded the motion. The projects were approved unanimously.

15-4672 APCO Petroleum-Cranbury (Cranbury)

Director Dooley described the project, which is the redevelopment of an existing service station. It is a 17-acre site in Cranbury, much of it in the stream corridor of the Millstone River. The project will result in 0.14 acres of new impervious surface and an intrusion of 5,912 square feet. There was discussion regarding "grandfathered" areas and the net intrusion was outlined as approximately 5,084 square feet. As there is not area to mitigate on site and the applicant is currently unable to find suitable property for mitigation off site, the applicant has offered to put funds in an escrow account so that land can be purchased at a later date at a ratio of 2:1 compensation. Director Dooley noted the commission has previously accepted 2:1 compensation for off-site mitigation, provided it results in a greater ecological benefit.

Director Dooley noted that the applicant proposed to place \$12,400 in escrow, based on mitigating 2:1 for the 5,084-square-foot intrusion into the stream corridor. That figure was based on the current township assessment of the property with a value equalizer.

Vice Chairman Loos discussed the proposed mitigation and placing the mitigation funds in escrow. He suggested that the applicant have a Green Acres approved appraiser assess the value of the property to determine the mitigation amount. There was discussion about how the commission would proceed once the applicant received results of the assessment. Mr. Robins spoke on behalf of the applicant. He noted that the \$12,400 number was identified based on the 105% equalized value of the property. He noted the applicant was amenable to getting an appraisal from the Green Acres approved list.

Commissioner Lubitz noted concern about seepage of underground gas tanks on an ecologically sensitive site. Mr. Robins noted that the site has certain controls related to underground tanks such as the NJDEP underground storage tank program, leak detection systems in place, and inventory control.

Commissioner Leck inquired about moving the proposed building out of the stream corridor. Mr. Robins noted that the site has issues with site triangles. The corner lot has a lot of traffic. The project was pulled back, minimally, to back away from triangle, and this resulted in encroachment.

Commissioner Trzaska moved approving the project with certain conditions:

1. that the applicant get a modified appraisal from a Green Acres approved appraiser;
2. that the currently proposed mitigation figure, \$12,400, is the lowest amount of acceptable mitigation and the applicant would adjust the figure upwards, as needed, based on the fair market value found in the new appraisal;
3. the mitigation will be 2:1 based on the 5,084 square feet of intrusion (5,084 intrusion x 2 = 10,168 square feet) ;
4. the applicant will select the appraiser from the Green Acres list, notify the commission of the choice, and provides a copy of the appraisal and, within 30 days of appraisal, the money would be deposited in escrow.

Commissioner Stout asked the applicant if they would agree to these conditions. The applicant agreed to the conditions.

Vice Chairman Loos called for a vote. The project with conditions was approved unanimously.

Conceptual Approval: Rehabilitation of the Cherry Tree Lane Spillway

Mr. Brooks, Chief Engineer, NJWSA, Aimer Garcia, NJWSA Project Manager and Mr. Strizki of JMT, were present to discuss the rehabilitation for the Cherry Tree Lane Spillway in Lawrence Township, Mercer County.

Mr. Strizki gave some history of the spillway, which was designed when the Route 1 freeway was designed, and likely constructed in 1964 to plans prepared by NJDOT. He discussed the high velocity of water which flows into the Assunpink Creek. The NJWSA found that there was concrete erosion and leaking and a scour hole developed underneath the spillway to the front face, undermining the spillway. An emergency repair was required in December 2014 when several defects were discovered.

The spillway will be replaced, in kind. However, the velocity will be reduced with the proposed construction of a purge pool. Velocity is expected to be reduced from 16 feet per second to one foot per second. A rough finish will slow the velocity as well. Steel sheathing will be used to cut off seepage and support the spillway.

There was discussion about the project, including access and reconstruction, type of concrete, flow control during construction, removal of vegetation, and access to the park path. When construction is completed, sheeting will be cut off below the mud line and capped. Some brush will be removed, but no trees. The park path may be used during construction but will remain passable for park users. The rehabilitation is expected to take approximately three months.

Vice Chairman Loos asked for further comments and encouraged commissioners to express any reservations about the project as presented conceptually. Commissioner Texel and Superintendent Kallesser requested that the NJWSA work with the park superintendent to coordinate access as needed.

### **Executive Director's Report**

Director Dooley noted the busy month with several OPRA file reviews, several meetings, and increase in work related to the end of the Permit Extension Act. She noted the month's work tally sheet.

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

Superintendent Kalleser noted that DOT would be replacing a bridge at Amwell Road, Route 514, in approximately two years. A temporary repair was recently completed. Franklin Township passed a resolution asking the NJDOT to add a walkway across the bridge on the south side of the bridge. D&R Canal Watch wrote a letter to NJDOT in support of a walkway.

Director Dooley noted that she communicated to Tina Shutz, NJDOT, that the commission is interested in adding a pedestrian walkway to the bridge reconstruction project. Vice Chairman Loos suggested the commission create a resolution in support of the pedestrian walkway. He pointed out that the population center in the area is on the southern side of the bridge and there are safety issues with crossing busy Amwell Road. A pedestrian crossing on the south side of the bridge would be a great improvement to park users and to businesses in East Millstone.

The superintendent noted that NJDOT will work on the DOT Route 518 bridge for one month in December. Commissioner Trzaska asked if it is a full replacement. It is unclear.

The superintendent noted that a building was being demolished along Route 1.

The superintendent expressed gratitude to Jim Klinger at NJWSA for providing historic information on guard rails.

Commissioner Stout inquired about the repair of the Swan Creek Bridge over the path in Lambertville. Superintendent Kalleser noted there was a delay in permitting, and perhaps it would be open by July 4<sup>th</sup>. Commissioner Stout, Commissioner Texel, and Superintendent Kalleser discussed the walk through at the Holcombe House in Stockton.

Commissioner Stout asked about the plastic sheeting and tarps along the bank of the canal in Stockton. Mr. Brooks noted that the sheeting/tarps are temporary and are intended to keep the embankment from getting pre-saturated prior to the river coming up. Some of the temporary tarp will be replaced. NJWSA is working on a long term solution.

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

Mr. Shepherd noted that NJWSA was repairing a stormwater in-fall at Whitehead Road and Mulberry Street. The NJWSA is addressing dead tree and limb removal at Hermitage Avenue, in part created by beavers. The NJWSA has vacated property in Lambertville in the vicinity of the 202 bridge which is owned by the Joint Toll Bridge Commission.

Vice Chairman Loos asked how many customers are supplied water from the canal. Mr.

Brooks noted that one million customers received water from the canal. Mr. Shepherd noted that, in a water emergency, the canal would provide water to areas of Bergen County.

### **Old/New Business**

Vice Chairman Loos noted that the objectors to the PSEG substation in South Brunswick had submitted a letter to the commission in which they state that the stormwater calculations were done incorrectly and they ask for reconsideration of the commission's motion or to authorize an adjudicatory hearing. Vice Chairman Loos noted that the matter would be discussed in executive session.

Mr. Rhatican, a representative of PSEG, noted he had not received a copy of the materials submitted by the objector, although he had been listed as copied on the letter. He noted that PSEG asks that the motion for reconsideration be denied. He noted that there is no avenue in DRCC rules for an objector of a third party to make such a request. He discussed case law prohibiting a third party from asking for an adjudicatory hearing. He noted that due process has been served in this case. He noted his client asks the commission to deny the request both substantively and procedurally.

### **Public Comment**

Mrs. Barth asked about the status of the resolution discussed at the previous meeting regarding opening Bulls Island to park users. Director Dooley noted that she was preparing the resolution. Vice Chairman Loos asked her to prepare the resolution for the next month's meeting.

Mrs. Barth asked about the status of the steep spillway at South Bound Brook and accessibility. There was discussion about the steep slope, steps, and a railing. Director Dooley noted that she had done a field visit with representatives of NJWSA, the D&R Canal State Park, the NJ Historic Preservation Office, and the Office of Resource Development. Superintendent Kallesser commented on the field visit.

Mrs. Barth commented on a problem with the path at Port Mercer with stone which makes bike riding difficult. There was discussion about the path, and PSEG use of that section of the path.

Superintendent Kallesser discussed possible transportation enhancement funds and identified improvements of the park path as a priority. The park is writing a proposal to submit for consideration of a project.

### **Executive Session**

At 11:50 a.m., Vice Chairman Loos called for a motion to move into executive session to discuss legal matters:

WHEREAS, N.J.S.A. 10:4-12 permits the Delaware and Raritan Canal Commission to conduct a meeting from which the public is excluded in certain circumstances; and

WHEREAS, the Delaware and Raritan Canal Commission has determined that such certain circumstances exist; and

WHEREAS, the minutes of the executive discussion shall be made available to the public when the matters under discussion are no longer confidential in nature; and

WHEREAS, the regular meeting of the Commission will reconvene at the conclusion of executive session;

NOW, THEREFORE, BE IT RESOLVED by the Delaware and Raritan Canal Commission that it shall enter into executive session for the following reasons, as outlined by N.J.S.A. 10-4-12:

To discuss legal matters.

This resolution shall take effect immediately.

Commissioner Lubitz moved to do so and Commissioner Stout seconded the motion. It was approved unanimously. The commission entered executive session at 11:50 a.m.

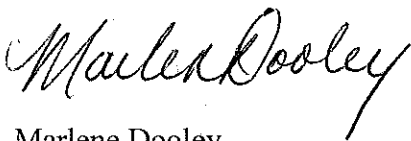
**Enter Public Meeting**

The commission entered public meeting at 12:30 p.m. Vice Chairman Loos noted that the PSEG Substation project was discussed. He noted that final approval by the commission had been issued and the applicant is free to proceed with the project. The commission will review further the letter it had just received from the objectors. The staff engineer will report back to the commission between now and the next monthly meeting.

**Adjournment**

Vice Chairman Loos noted he would entertain a motion to adjourn the meeting. Commissioner Leck motioned to adjourn and Commissioner Lubitz seconded the motion. The motion was approved unanimously. The meeting adjourned at 12:35 p.m.

Respectfully submitted,



Marlene Dooley  
Secretary