

**June 17, 2015 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.

DATE: June 17, 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 Bruce Stout, Commissioner Mark Texel

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

GUESTS: D&R Canal State Park Superintendent Patricia Kalleser; Mr. Marc Brooks, Ms. Sharmila Rahman, Mr. Paul McKean, and Mr. Joe Shepherd, NJWSA; Mr. Robert von Zumbusch, D&R Canal Commission Master Plan Advisory Council; Mrs. Linda Barth, D&R Canal Watch; Mr. Robert Barth, D&R Canal Watch; Mr. James Rhatican, CSG Law; Mr. Chris Adams, Civil Dynamics; Mr. Tom Boccino, Somerset County; Mr. Jeff Reynolds, The Reynolds Group; Mr. Russell Smith, Hopewell Valley Engineering; Ms. Alison Mitchell, NJ Conservation Foundation.

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.

Commissioner Texel joined the meeting at 10:10 a.m.

Administrative Items

Vice Chairman Loos confirmed that next month's commission meeting date is July 15, 2015.

Minutes of the Meeting

Minutes of the May 20, 2015 Meeting

Vice Chairman Loos asked for comments or corrections on the minutes. Director Dooley noted that the minutes were revised related to Commissioner Stout's recusal from matters related to The College of New Jersey and read the changes into the record. Specifically, the language on page two would read "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." The language on page three would read "Commissioner Stout again noted his recusal". Vice Chairman Loos asked for further comment. Hearing none, he asked for a motion. Commissioner Leck motioned to approve the minutes with the changes and

Commissioner Allen seconded the motion. The minutes were approved unanimously.

Review Zone A Projects

15-171C Monmouth Real Estate (Franklin Twp)

Director Dooley described the project, first noting that the project is a Zone A project. The project site is a five-acre site developed before 1980 with a strip mall, and adjacent to the canal. The current project involves the construction of an additional handicap entrance and awning over existing pavement. Vice Chairman Loos asked for comment on the project. Hearing none, he called for a motion on the project. Commissioner Leck moved to approve the project and Commissioner Allen seconded the motion. Vice Chairman Loos asked for comment from the public. Hearing none, he called for a vote. The project was approved unanimously.

15-4295A 115 Clinton Street (Lambertville)

Director Dooley described the project, which involves demolition of a shed and construction of a fence at a home along the canal. 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.

15-4738 23 Jarvis Place (Trenton)

Director Dooley described the project, which involves the demolition of a row home in disrepair by the City of Trenton. The city found the property to be an imminent hazard. Vice Chairman Loos asked for comment on the project. Commissioner Texel asked about ownership and eminent domain after the demolition. Commissioner Texel, Mr. Barth, and Mr. von Zumbusch discussed the recent number of demolitions adjacent to the park in Trenton and the potential visual impact. Mr. Barth offered to photograph the properties. Vice Chairman Loos called for a motion on the project. Commissioner Lubitz moved to approve the project with conditions as outlined in the staff report and Commissioner Stout seconded the motion. The project was approved unanimously.

Lease: Golden Nugget Antique Market (Lambertville)

Director Dooley described the lease, a renewal of an existing lease on a small portion of the flea market site, which is used for access and vendor space, and which is adjacent to Route 29 and the park. The lease is approved by the State House Commission. Vice Chairman Loos discussed the lease, the public bidding process, and noted the increase in value realized on agricultural land in Franklin Township through use of the public bidding process. Commissioner Texel discussed park properties and the administration of those leases through the Office of Leases. Commissioner Lubitz noted the public access provision in the lease and discussed, more generally, public access, and the importance of ensuring that leases or other legal documents entered allow the public to access the park and do not limit park operations. Commissioner Lubitz noted the state should never enter into a lease which would restrict access to the park by the public. Mr. von Zumbusch noted that the property is along the Scenic Byway and the leased property could potentially be used to enhance the byway. Vice Chairman Loos asked for a motion. Commissioner Texel moved to approve the lease and Commissioner Leck seconded the motion. The commission approved the motion, unanimously.

Review Zone B Projects

Vice Chairman Loos noted that the NJ Turnpike Authority project was removed from the agenda and he asked Director Dooley to describe the remaining Zone B projects.

Director Dooley noted the following:

14-0030E Providence Corporation (S. Brunswick Twp)

The applicant would subdivide the one-acre property, part of the Dow Jones site, and construct two homes with infiltration basins.

15-2287A Brackin Residence (Hopewell Twp)

The applicant would construct a home, use permeable pavers or pavement, and construct a detention basin. A stream corridor exists on the site but there is no intrusion. Because construction is close to the stream corridor, the applicant will place a temporary fence prior to construction to prohibit intrusion into the stream corridor.

15-4717 Indoor Recreational Facility (Lawrence Twp)

The applicant would construct the facility on an 11-acre site and install two manufactured treatment devices. Impervious surface will be reduced.

15-1647E Spooky Brook Irrigation-Supplementary Water (Franklin Twp)

The applicant would install a supplementary water supply system for the county-owned golf course. The project is within the stream corridor but the golf course is grandfathered and the project will not intrude into a "no mow" areas previously established by the commission and Somerset County.

15-4384A 370 Scotch Road (Ewing Twp)

This project would expand parking in three areas of the medical office complex, none of which are in the previously defined commission stream corridor, and construct a subsurface detention basin and manufactured treatment devices.

15-3341G Discovery Years Child Care Center (Plainsboro Twp)

This project is located on the Princeton HealthCare System site and includes construction of a daycare center with associated parking. It will use an existing regional stormwater basin and include manufactured treatment devices for water quality. The project is outside of the stream corridor. Commissioner Leck noted that the site appears to have only car parking spaces, and nothing for larger bus or van traffic. There was discussion related to parking including Vice Chairman Loos noting issues handled by municipal ordinances.

15-4698A Galleria at Twin Rivers (E. Windsor Twp)

The project site is three acres and will be developed as a commercial site with buildings, drives, parking, a subsurface detention basin, and a manufactured treatment device. There is no stream corridor on the site.

Vice Chairman Loos asked for comments from the commission and the public. Hearing none, Vice Chairman Loos called for a motion on the Zone B projects. Commissioner Stout moved to approve the projects and Commissioner Leck seconded the motion. The

projects were approved unanimously.

Executive Director's Report

Director Dooley discussed the month's work tally sheet and the approaching conclusion of the 2015 fiscal year. Commissioner Lubitz asked about DAG legal advice and billing. There was discussion about legal fees and funding. Vice Chairman Loos asked Director Dooley to provide a copy of a quarterly report of DAG charges so the commissioners could see the typical information provided, and as part of the ongoing effort to understand the budget and operational costs.

Resolution regarding Bulls Island State Park

Director Dooley noted that the Commission had requested that she prepare a resolution regarding Bulls Island. Vice Chairman Loos referred to the resolution and read from the final paragraphs of the draft resolution:

“NOW THEREFORE, BE IT RESOLVED:

The Commission urges the Department of Environmental Protection to seek input from the public, to submit a revised plan to the Commission, and to reopen the northern area of Bulls Island as soon as possible.”

Vice Chairman Loos asked for comment. Commissioner Lubitz motioned that language be added to show urgency, including “Whereas inaction on the part of the department (DEP) has caused continuous harm to the citizens of New Jersey by depriving them of the use of public lands.” There was discussion about the language. Commissioner Stout moved to approve the resolution as written by the Executive Director. Commissioner Texel seconded the motion.

Vice Chairman Loos noted that, to show some urgency, he would propose an amendment to the resolution which would add “with all haste.” Commissioner Stout noted that the draft resolution contains the language “as soon as possible.” Commissioner Texel noted it would be helpful to include language which reflected the need to take action this summer in order to allow an approved plan to proceed this fall or winter and ensure timelines for restrictions related to endangered species can be met.

Commissioner Lubitz noted that his patience is wearing thin. It was represented that the Department was working on a plan and based on the schedule the Commission should have seen it by now; he also noted the substantial amount of time that has lapsed since the plan was last presented to the commission. Commissioner Texel noted his concern with the modified language particularly use of the word “harm” and discussed the prior plan that the Commission did not approve. Commissioner Lubitz noted the importance of adding urgency. Commissioner Stout noted that he appreciates the need for urgency, but felt the language as drafted was adequate. Vice Chairman Loos asked if there was a second on the amended motion. He noted that the amended motion was not seconded, and therefore was dead. Vice Chairman Loos called for a vote on the motion by Commission Stout and seconded by Commissioner Texel to approve the resolution as drafted. It was approved unanimously.

Commissioner Lubitz requested that Bulls Island be specifically listed on each agenda going forward, until the matter is resolved.

Resolution regarding Pedestrian Walk on Route 514 Bridge Replacement

Director Dooley noted that the Commission requested that she prepare a resolution regarding adding a pedestrian walkway to the NJDOT's Route 514 bridge reconstruction. Vice Chairman Loos referred to the resolution and read from the final paragraphs of the draft resolution:

“NOW THEREFORE BE IT RESOLVED:

That the Delaware and Raritan Canal Commission hereby formally requests that the DOT include the creation of a new pedestrian walk/bikeway along the south side of the bridge with their design plans of a new/replacement bridge over the canal at Route 514/Amwell Road in East Millstone.

Be it further resolved that a certified copy of this resolution be transmitted to the Franklin Township Open Space Advisory Committee, the New Jersey Department of Transportation, the New Jersey Department of Environmental Protection Historic Preservation Office and the New Jersey State Park Service.”

The Vice Chairman requested that a copy of the resolution be sent to the Franklin Township Council, in addition to the entities named in the resolution. He called for a motion on the resolution. Commissioner Stout motioned to approve the resolution and Commissioner Lubitz seconded the motion. The motion was approved unanimously.

D&R Canal State Park Superintendent's Report

Superintendent Kallesser noted that the path in Kingwood Township from the north gate of Old River Road in Byram up to Warsaw Road will be closed until June 30, 2015. DOT is improving the parking area and trail.

The Superintendent and the NJWSA will meet with Mercer County representatives regarding the location of structures for the crosswalk at Washington Road as outlined in the Commission approval.

The Superintendent informed the commission of theft and vandalism at the Cook Natural Area in South Brunswick.

Park personnel addressed debris and encroachment issues on a section of path in the Hilltonia section of Trenton.

Commissioner Texel outlined additional information received from the Office of Leases regarding leases and the Golden Nugget Antique Flea Market lease.

New Jersey Water Supply Authority (NJWSA)

Mr. Shepherd noted that NJWSA repaired two outfall pipes in Trenton and repaired an area of path at Quaker Road and Provenceline Road.

Conceptual Approval: Embankment Repairs Raven Rock Lock to Prallsville Lock

Marc Brooks, Chief Engineer, NJWSA, Chris Adams, Civil Dynamics, and Matt Tomaso, PS&S, presented information on proposed repairs to the canal embankment between Raven Rock and Prallsville. The project would permanently repair areas of the embankment between the canal and the river with consideration of the historic engineered design, and address the impact of brush, trees, sediment, and erosion. A total of 25 repair areas were identified. The presentation included that the embankment would have the appearance of dry-laid stone, that the stone will be installed with inset mortar, the original stone will be used as much as possible and the anchoring system was described.

There was extensive discussion regarding sediment and trees. Trees have grown into the original hand-laid stone of the embankment. Trees will be removed as needed to make the repairs. Vice Chairman Loos asked if there was a tree maintenance plan to address further growth or growth of saplings in the embankment. Mr. Adams noted that, from an engineering standpoint, the trees are damaging the original embankment and a long-term maintenance program would be prudent. Mr. Brooks noted that NJWSA has a maintenance permit with the DEP and the Army Corp for the overall canal which allows tree removal for maintenance and currently takes down trees only if they are dead or within the canal. There was discussion about taking down the trees which are endangering the integrity of the embankment. Mr. Brooks noted the NJWSA continue to discuss and seek guidance from the commission to take down trees that are clearly damaging the embankment.

Mr. Tomaso described the cultural and historic guidelines which are considered for the project to maintain the historical integrity of the canal, including the shape of the prism and embankment and the aesthetic of the embankment. The stone armoring will have the appearance of the original dry-laid stone, original stone will be re-used, and geologically equivalent stone will be used as needed.

Construction access is planned on previously accessed work areas along the canal.

It was noted that the State Historic Preservation Office reviewed and concurs with the proposed repair project.

Commissioner Lubitz asked about consideration to eagles nesting nearby and foraging in the area. Mr. Adams noted that the project would meet all timing restrictions.

Mr. von Zumbusch commended NJWSA for inviting the early involvement of the cultural resource consultant and the removal of the trees is commendable in terms of the restoration of the canal. Mr. Barth commended the NJWSA team on the proposed approach to the project which will mimic the original engineered design, including the dry-laid appearance of stones. Also, one might consider periodic removal of trees to protect the canal.

Commissioner Leck noted that a tree maintenance plan should be implemented.

Vice Chairman Loos noted the commission would not vote on the conceptual approval of the project. He asked the commissioners to voice any area of concern about the proposed

project. Hearing none, he noted that the commission has not identified any issues and understands the NJWSA will proceed with the design. He noted that Commission approval of the final design will be required.

Public Comment

Mrs. Barth noted that the commission and nonprofit groups had discussed the canal bridges in the past. She understood that there was tentative agreement to have a moving bridge which would allow vessels to pass. She asked that the DOT be asked to make a bridge that is high enough for boats or that is movable. There was discussion including the level of traffic on Route 514 artery.

Mr. von Zumbusch inquired as to why there was not public comment during consideration of the resolutions. Vice Chairman Loos noted the Commission's broad inclusion of the public generally and the full agenda. Mr. von Zumbusch requested that the resolution on the pedestrian walkway on Route 514 be forwarded to the Franklin Township Open Space. Vice Chairman Loos directed Director Dooley to forward the resolution to the Franklin Township Open Space, Historic Preservation and Trails Advisory committees.

Mr. von Zumbusch noted that the bridge should be passable by canoe and kayak, and attempts to raise the road and the bridge to higher elevation would impact its relationship to the house, and perhaps creating flooding upstream if there is an embankment.

Ms. Alison Mitchell, Policy Director of the New Jersey Conservation Foundation (NJCF), noted that the NJCF sent a letter to the commission requesting that the commission take jurisdiction on the PennEast pipeline matter and she discussed the issue including her view of the Commission's authority to review, that the commission may be able to review the project and make improvements and reduce harm, and that in a resource report, the commission is listed on the permit check list as an entity from which PennEast would need permits. Ms. Mitchell also commended the letter the Commission staff sent to FERC.

Mr. Barth thanked the NJWSA for fixing the path near Port Mercer. He noted that former D&R Canal Commission Executive Director Jim Amon will speak at the Canal Society's meeting on June 28 and that there will be a bike ride from Kingston to Griggstown on June 20. Mr. Barth discussed commission rules in Zone A and the Scenic byway. Mr. Barth inquired if there was any progress on getting a chairman appointed to the commission. Vice Chairman Loos noted that the chairman is appointed by the Governor. Mr. Barth commented that at Route 514/Amwell Road there is a pin for the swivel of the bridge. He would like that historic and cultural item to be protected. Mr. Barth thanked the commission for pursuing the Bulls Island resolution.

Mr. von Zumbusch noted the impact that projects along the two scenic byway corridors have on the byway and whether changes to future commission regulations could possibly address these concerns. Regarding Ms. Mitchell's presentation, he noted that the pipeline project involves many municipalities. He noted that there is a weakness when the impact is reviewed piece meal, and not in its totality.

Mrs. Barth asked if the Master Plan advisory committee would meet soon on the Master Plan. Vice Chairman Loos stated that the commission might wait for a chairman to be appointed and staffing to improve. Mr. von Zumbusch suggested adjusting the web site to reflect this. Director Dooley noted that she saw a role for the Advisory Committee on certain historic or visual impact issues that arise from the public or within projects; she noted as examples the request to examine the viewshed in Trenton related to the recent demolitions and an issue on Mapleton Road.

Old Business

Vice Chairman Loos noted that, at the previous meeting, the commission discussed receiving a letter from a third party requesting that the commission make a motion for reconsideration of the approval of DRCC# 14- 3012B PSEG Ridge Road Substation. Staff Engineer Joseph Ruggeri was asked by Vice Chairman Loos to review the submitted materials and report to the commission.

Mr. Ruggeri noted the basis of the request including issues relating to expanding the drainage area and that if the area were expanded the project would not be in compliance with commission standards. He described the expanded area and the application of the rate reduction under the rules. Mr. Ruggeri outlined the manner in which he conducted his review of the larger drainage area including obtaining the PSEG stormwater model, recomputing the existing and proposed flows and examining the third party's calculations and methodology. Mr. Ruggeri determined that the project met Commission standards.

Vice Chairman Loos asked if, after Mr. Ruggeri's report, any commissioner wished to make a motion for reconsideration. No motion was made.

Vice Chairman Loos discussed the PennEast Pipeline. He suggested asking PennEast to make a presentation about how the pipeline will impact the commission review zones and discussed potential for mitigation. There was a brief discussion regarding jurisdiction including Commissioner Stout, Commissioner Lubitz and DAG Abatemarco. Director Dooley noted the pipeline may be crossing existing commission stream corridor easements, and, if so, she believed amended easements and mitigation would be required. Vice Chairman Loos noted that PennEast should do the analysis and present the data. Director Dooley noted that in a previous project this analysis was done by the applicant. Commissioner Stout noted the importance of using every available tool to protect the canal and park, which is an incredible resource. Commissioner Texel suggested the director speak with DEP staff who are reviewing the project including wildlife management areas, Green Acres areas and Natural and Historic Resources impacted. There was substantial discussion regarding the pipeline crossing streams that the Commission regulates and Commissioner Lubitz noted that the pipeline is crossing the Lockatong sometimes multiple times on one property. Vice Chairman Loos noted that the commission could provide a regional forum and the commission should request that the company present their project and its impact on the commission regulated streams, show methodology, and explore mitigation. Commissioner Stout suggested that the commission ask the executive director to draft a letter to ask PennEast to come in, after consultation with department. Vice Chairman Loos offered to assist with the letter. Commissioner Texel noted he would ask DEP staff, including the Natural Lands Trust, to reach out to the executive director.

Mr. Rhatican, attorney for PSEG on the Ridge Road Substation project, asked if there would be further action regarding the request of the third party for reconsideration. Vice Chairman Loos stated there was no motion made by a commissioner to reconsider, and, absent that request, the project was approved several months ago, and there would be no further action by the commission.

Vice Chairman Loos asked to reopen the discussion on the proposed resolution for the Route 514/Amwell Road bridge. Commissioner Stout offered language to request that the design consider making the bridge navigable by watercraft and Vice Chairman Loos noted the resolution should ask that consideration be given to the historic and cultural resources at the site, such as the swivel pin. Commissioner Texel motioned that language be added to the resolution which includes consideration of watercraft and historic and cultural resources. Commissioner Lubitz seconded the motion. It was approved unanimously.

Commissioner Stout noted a serious safety concern that the public is crossing Route 29 near the Mercer County Wildlife Center to access the park and possibly a rope swing on the Delaware River. Park Superintendent Kalleser noted that the park police are aware of the problem and she further discussed the crossing of the canal over the remnants of an old bridge in the canal, investigation into removing that structure, rope swings on the Delaware, activities in an area of the park where the incline is dangerous and ongoing efforts to discourage unsafe and unauthorized activities in the park and fencing to prohibit access to the remnant of the old rail bridge over the canal. Commissioner Lubitz noted that people should be encouraged to use the park and river and that the concern raised was with the crossing of Route 29. Commissioner Lubitz raised whether the issue is a problem of inadequate parking and access to the river. There was further discussion on this issue including existing parking and access points in the area, the use of the area, reaching out to the county to prohibit parking in this area and to continue to work with the state police regarding the crossing of Route 29 in the area.

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 Leck seconded the motion. The motion was approved unanimously. The meeting adjourned at 12:35 p.m.

Respectfully submitted,



Marlene Dooley
Secretary

