

(Revised as noted at August 19, 2015 Meeting)  
**July 15, 2015 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.  
DATE: July 15, 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. Joe Shepherd, NJWSA; Mr. Robert von Zumbusch, D&R Canal Commission Master Plan Advisory Council; Ms. Lori Wade, Ms. Rebecca Traylor, and Mr. Darren Riegler, Michael Baker Intl.; Ms. Lisa Navarro, NJ Turnpike Authority; Mr. Rob Korkuch, ACT Engineers, Inc.

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 August 19, 2015.

**Minutes of the Meeting**

**Minutes of the June 17, 2015 Meeting**

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

**Review Zone B Projects**

Vice Chairman Loos noted there were no Review Zone A projects on the agenda. Vice Chairman Loos noted that Commissioner Stout had stated he would need to recuse himself on the discussion of the TCNJ project and that he felt the NJ Turnpike should be identified for a separate discussion. Therefore, Vice Chairman Loos held both the TCNJ and NJ Turnpike projects for separate discussion and asked Director Dooley to briefly describe the remaining eight Review Zone B projects.

**15-4070A Christina Seix Academy Modification (Ewing/Trenton)**

Director Dooley described the modification of a previously approved project, which will

reconfigure housing and result in a reduction of total proposed impervious surface.

14-2193A Way of the Cross Holy Temple (Ewing)

Director Dooley described the project, which involves a retro-active permit for a house of worship which was constructed on a 2.67-acre site and which was the site of a hazardous waste clean up. The municipality has not issued a final certificate of occupancy until the applicant obtained approval from the Commission. The applicant would revise the existing stormwater system to meet current Commission standards. Commissioners Stout and Lubitz and Mr. Ruggeri discussed the recharge and remediation measures, and the role of the NJDEP Site Remediation Program and their requirements.

15-4680 Van Nuys Farm Stand (Hillsborough)

Director Dooley described the construction of a 4,000-square-foot farm stand with parking, which will result in 0.8 acres of impervious surface. A bio-retention basin will provide stormwater management.

14-4652 Viatal Building (Hillsborough)

Director Dooley described the project on the 20-acre site, which will include construction of a 62,000-square-foot manufacturing building with parking and stormwater facilities, resulting in 4.8 acres of new impervious surface for both phases. There is a stream corridor but there will be no intrusion into the stream corridor.

15-3728B 700 College Road East-Clean Energy Servers (Plainsboro)

Director Dooley described the project, pad and piping for a fuel cell project. Piping will go through the 100-foot buffer of a tributary to Devils Brook but is a listed conditional use. The existing basin on site will address the additional stormwater on the site.

14-4663 Shared Properties Commercial and Residential Dev. (Monroe)

Director Dooley described the project, which involves construction of townhomes and commercial development on a 50-acre property and which will result in approximately 25 acres of new impervious surface. There is a stream corridor on the site. An outfall and a wood chip recreational path will be within the stream corridor but both are listed conditional use. The applicant has increased the stream corridor buffer by 21,000 square feet and will place a fence behind the townhouse area to prevent mowing in the corridor. There was discussion about recreational path materials. Director Texel noted that, in his experience, a path may be constructed with wood chips, and then, over time, the materials may be changed to stone or macadam, and sometimes materials are changed to address ADA compliance. Commissioner Leck discussed the potential for preserving the remaining undeveloped areas and Director Dooley noted that the easement area would be preserved and remain undisturbed. Commissioner Stout and Mr. Ruggeri discussed the placement of the scour hole in the stream corridor, which is a listed conditional use.

15-4747 Route 1 Brunswick Circle to Lake Drive (Lawrence)

Director Dooley described the project, which involves traffic calming measures, drainage improvements, and construction of grass medians within the project site on Business Route 1. Impervious surface will be reduced by approximately 1.05 acres and disturbance will be 14 acres.

15-3770A Stults Road: Modification to Triple Net Warehouse (So. Bruns)

Director Dooley described the project, which involves modification of a 2011 Commission approval. The applicant proposes to increase the parking area and the size of the basin.

Vice Chairman Loos asked for comment, first from the commission and then the public, on the eight Review Zone B projects which Director Dooley had described. Hearing none, he called for a motion on the projects. Commissioner Lubitz moved to approve the projects and Commissioner Stout seconded the motion. The projects were approved unanimously.

Vice Chairman Loos asked Director Dooley to describe the NJ Turnpike Authority Project.

15-3548B NJ Turnpike Authority Improvements to Maintenance Facility (E. Windsor)

Director Dooley described the project which involves upgrades to a turnpike maintenance yard, which was built in the 1950s. A stream corridor is located on the site, and Director Dooley discussed the placement of impervious surface prior to regulation of the stream corridor. She noted that there will be milling and repaving of existing parking areas within the stream corridor and recommended a waiver for this activity based on no adverse impact. She noted that the remaining stream corridor, 5.44 acres, is currently mowed. The applicant anticipates the need to develop the 5.44-acre portion of stream corridor in the future. The applicant has requested a waiver based on compelling public need and seeks to mitigate for this anticipated intrusion by preserving property off-site within the same watershed at a two to one ratio.

The applicant initially requested to enter a Memorandum of Understanding (MOU) with the Commission. Director Dooley outlined her basis for not recommending an MOU, but, rather, that the Commission issue an approval with the following conditions: that the applicant find an appropriate property within the same watershed, the property is approved by the commission, and the applicant purchase and deed restrict the property in a commission conservation easement agreement.

Commissioner Lubitz noted the concern of governmental or state agencies taking ownership of property as it can have a tax effect on the municipality. This mitigation plan would take approximately 10 acres off of the tax rolls in the municipality.

Ms. Navarro, NJTA, noted that the authority owns land which meets the Commission's criteria. Therefore, there would not be an impact on the ratables for the municipality.

There was substantial discussion regarding the type of land that is appropriate for mitigation. Vice Chairman Loos discussed ensuring that the land is a Commission stream corridor, which is the 100-year floodplain and the 100-foot buffer, and within the same watershed as the project property. Ms. Traylor described the potential mitigation sites and benefits and then potential properties for stream corridor mitigation.

Commission Stout referred to the staff report, which states that the current proposal does not meet the needs of the maintenance facility and there are plans to further

develop/encroach into the stream corridor. Ms. Navarro noted that, during the application and review process, the NJTA worked to minimize impacts to the stream corridor, but determined the proposed project will not meet all the maintenance facility's current and future needs. Ms. Navarro stated that the NJTA is concerned about deed restricting the 5.44 acres of remaining stream corridor at the maintenance yard site because of anticipated future needs, current needs, and turnpike safety. She noted that creating a separate site is not an option because maintenance yards need to be contiguous to the roadway they are serving. Ms. Navarro stated that the NJTA recognizes that any future projects in the 5.44 acre stream corridor would be subject to review by the commission and would also require wetland and floodplain review by the NJDEP.

Vice Chairman Loos noted that the NJTA would essentially bank the 5.44 acres of stream corridor at the project site for use by the NJTA Authority in the future, and the conservation easement would provide mitigation up front.

There was discussion regarding the use of an MOU. Director Dooley noted that the NJTA first proposed only an MOU. Director Dooley stated that the MOU alone would not meet the standards of N.J.A.C. 7:45-9.5. The NJTA then offered 2 to 1 mitigation in addition to the MOU.

Ms. Navarro proposed to have her lawyers work with commission lawyers to prepare an agreement which links the mitigation with the maintenance yard site. Director Dooley suggested that the mechanism to identify the link between the project site and mitigation site should be the certificate of approval, resolution, and the easement for the mitigation property. Vice Chairman Loos requested that Director Dooley work with the applicant to select the type of document to ensure that the conditions will be met for both parties.

Commissioner Texel asked about removing the existing 1,500-ton salt dome from the stream corridor area of the maintenance yard. Mr. Riegler explained the NJTA will be constructing a 6,000-ton salt shed with a brine station on the site outside the stream corridor. He noted the NJTA's ability to maintain the roadway and keep it open is an immediate safety concern. The proposed project will increase the capabilities of the 50-year-old facility, which maintains the roadway which was recently substantially expanded thereby substantially increasing maintenance needs.

Vice Chairman Loos asked for further comment from the commission and then the public. Hearing none, he asked for a motion on the project. Commissioner Stout asked if the commission should go into executive session to discuss details of the mitigation. DAG Abatemarco noted that the vice chairman asked that commission staff and the DAG determine the appropriate vehicle to meet the regulations. Vice Chairman Loos noted that the motion and conditions could address the issues including that preserving land off the site is in lieu of preserving the 5.44 acres of stream corridor and that NJTA is preserving the property off-site now for possible future encroachments in the 5.44 acre stream corridor on the maintenance facility site.

Commissioner Lubitz emphasized that the conditions should include that the applicant immediately preserve the agreed upon property off the site and not wait until there is a future intrusion into the stream corridor at the maintenance yard. It should be stated that

the NJTA is preserving land off the project site in lieu of preserving the stream corridor on the project site.

Commissioner Stout noted that a condition should be that the NJTA obtain permits from the Commission for future work.

Vice Chairman Loos asked Director Dooley to outline the conditions for the resolution. Director Dooley stated:

NJTA shall immediately identify 10.88 acres of commission stream corridor as defined at N.J.A.C. 7:45-1.4 within the same watershed as the maintenance facility; and

The mitigation property shall be presented to the commission for approval; and

Upon approval by the commission, the NJTA and Commission shall immediately enter a Commission stream corridor easement; and

The 10.88 property is to meet the Commission stream corridor regulations of N.J.A.C. 7-45.9.1 for the maintenance facility project site in the event the applicant develops the 5.44 acre at the maintenance project site in the future; and

NJTA will obtain any approvals required from the Commission for the maintenance facility site including the 5.44-acre stream corridor area.

Vice Chairman Loos noted the preserved 10.88 acres of stream corridor does not need to be contiguous.

Vice Chairman Texel noted that he found the basis for the waiver to be a public safety imperative and a compelling, even extraordinary, public need.

Vice Chairman Loos called for further comment from the commission, and then the public. Hearing none, he called for a motion. Commissioner Stout moved to approve the project with the conditions as outlined by Director Dooley. Commissioner Leck seconded the motion. It was approved unanimously.

#### 15-2789L TCNJ Travers-Wolfe Hall Remediation Project (Ewing)

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 project.

Director Dooley described the drainage pipe replacement project, which is part of a stormwater upgrade at the college. The college entered into a stream corridor easement with the commission previously and the pipe is a permitted use in the stream corridor. Vice Chairman Loos called for a motion. Commissioner Lubitz motioned to approve the project and Commissioner Leck seconded the motion. Vice Chairman Loos and Commissioners Allen, Texel, Leck, and Lubitz voted to approve the project. Commissioner Stout again stated his recusal. The project was approved.

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

Director Dooley discussed the month's work tally, fiscal year end, budget, and DAG billing. She discussed DOT bridge projects over the canal and the commission's review for visual impact, and recent discussion regarding replacing timber decking with concrete; there was also a discussion regarding noise generated by roadway rumble strips. It was agreed the bridge design should maintain the appearance of wood decking.

### **Park Superintendent's Report**

Superintendent Kalleser noted that the Emerald Ash Borer had been confirmed in the park. As planned, a vacant building at the Manville Causeway was removed. There was a successful July 4 opening of a new parking lot along the Delaware River in Kingwood Township. She met with representatives of the Mercer County Park Commission and Hopewell Township Police to discuss unsafe Route 29 crossings to an unauthorized rope swing and unauthorized use of the parking lot near the wildlife center. She noted that "No Parking" signs were installed in the parking lot. There was discussion about deterring the use of the abandoned rail trestle to cross over the canal, including its removal.

Commissioner Lubitz asked about the park's planned use of barriers or gates which were to be installed at boat ramps along the Delaware and which would be used during a high water situation. The superintendent noted that the barriers will be installed.

Commissioner Lubitz asked if park staff had determined if the river has been safe for tubing thus far this summer. The superintendent noted she does not make that determination. Director Texel noted that the park cannot block access to the river. The contract for Delaware River Tubing specifies a river level. There was discussion about the role of the marine police and safe use of the river.

The superintendent stated that she would attend a preconstruction meeting on July 28 regarding the bridge replacement at Swan Creek. A crane will be required to lift the bridge in place.

When asked about the status of a potential bridge behind the Easton Avenue diner, Director Dooley noted that there was on-going litigation that has delayed the project.

### **NJ Water Supply Authority Report**

Mr. Shepherd noted that he met with Mercer County DOT regarding placement of crosswalk equipment at Washington Road. The NJWSA will do maintenance dredging related to sloughing between Mulberry Street and Whitehead Roads.

### **Old Business**

Director Dooley and Vice Chairman Loos discussed the resolution regarding Bulls Island which was approved at the previous commission meeting and forwarded to Assistant Commissioner Boornazian's office.

Vice Chairman Loos asked the commissioners to review a letter Director Dooley was asked to prepare for PennEast. It was determined that further discussion should be conducted in Executive Session.

Director Dooley noted that Commissioner Texel requested to discuss state officer ethics

training. There was a discussion of the requirements, ways in which to meet the requirements, the liaisons to the State Ethics Office, the Ethics Code and whether the Commission should have its own Ethics Code. Vice Chairman Loos asked the director to send the training link to all the commissioners and outline the requirements. Vice Chairman Loos also asked that the state ethics code be provided in the August packet. Vice Chairman Loos discussed the filing of annual financial disclosure statements and asked the director to provide a copy of the financial disclosure requirements and, particularly, who is required to file.

### **Public Comment**

Mr. Korkuch asked for an opportunity to speak to the commission about a project, 15-3770A Stults Road: Modification to Triple Net Warehouse, for which the commission granted an approval earlier in the meeting and briefly outlined a concern and request for an exemption. Vice Chairman Loos stated that Mr. Korkuch could discuss the issue and then the Commission could determine whether a Motion for Reconsideration was appropriate. Mr. Korkuch further outlined a request that his client be granted a waiver of the nonstructural standards and be able to eliminate the requirement for porous pavement. He outlined the issues including noting that the project met the stormwater standards without the porous pavement, that the porous pavement was only to meet the nonstructural requirement and was redundant in this case. If the Commission could grant the waiver, it would be economically beneficial to the applicant due to the cost of porous pavement and cost of its maintenance. There was extensive discussion regarding the nonstructural standard. Mr. Ruggeri discussed the history of the project and that the addition of porous pavement in a limited way was to meet the nonstructural standard which is part of the stormwater review and standards. Director Dooley noted the previous director recommended porous pavement as a way for the applicant to meet the commission's nonstructural requirements. The director noted that the regulations do not have a waiver from the nonstructural standards. Mr. Ruggeri and Director Dooley discussed the basis for the nonstructural provisions. Commissioner Stout noted that the commission lacks the authority to grant such a waiver. Commissioner Lubitz noted that, when the regulations come up for review, it would be an opportunity to review the waivers and nonstructural standard. Commissioner Stout noted he did not find a basis for a motion to reconsider the project. Commissioner Lubitz agreed.

Commissioner Allen left the meeting at 12:10 p.m.

Mr. Korkuch stated that, in making his request, he did not know at that time that the commission did not have the ability to grant such a waiver. There was discussion about the nonstructural standards. Mr. Korkuch noted the intent of the nonstructural standards is met on the site. Vice Chairman Loos noted the commission lacked authority. Vice Chairman Loos called for a motion. Hearing none, he proceeded with the meeting.

Vice Chairman Loos asked for a motion to go into executive session. Commissioner Stout moved to do so to discuss legal matters. Commissioner Leck seconded the motion. It was approved unanimously.

### **Executive Session**

The Commission entered into executive session at 12:20 p.m.

**Post-Executive Session**

The commission returned to public session at 12:35 p.m.

Director Dooley discussed the need to readopt the rules. Vice Chairman Loos noted he and Director Dooley will meet to consider strategy and plan.

Commissioner Stout asked if there had been movement on selection of a chairman. Director Dooley stated there was not. Director Dooley noted that she had obtained the letters appointing the Commissioners in order to complete the chart showing the each Commissioner's status and the statutory standards. She noted that many of the current commissioners are in expired terms. Vice Chairman Loos asked the director to complete the chart, provide it to the Commissioners and place the matter on the August agenda for discussion.

**Adjournment**

Vice Chairman Loos noted he would entertain a motion to adjourn the meeting. Commissioner Stout motioned to adjourn and Commissioner Lubitz seconded the motion. The motion was approved unanimously. The meeting adjourned at 12:45 p.m.

Respectfully submitted,



Marlene Dooley  
Secretary