

**August 19, 2015 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.

DATE: August 19, 2015

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

**ATTENDING:**

**COMMISSIONERS:** Vice Chairman John Loos, Commissioner Julia Cobb Allen,  
Commissioner Mary Leck, 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:** Mr. Joe Shepherd, NJWSA; Mr. Robert Barth, Canal Society of NJ and  
D&R Canal Watch; Mr. Robert von Zumbusch, D&R Canal Commission  
Master Plan Advisory Committee; Mr. Gene Porzio, Altran; Mr. and Mrs.  
Smith; Mr. Russell Smith, HVE, PC; Mr. Richard Goldman, Drinker  
Biddle; Mr. Earl Deamond, Picus Associates; Mr. James Rhatican, CSG;  
Mr. James O'Leary, PSEG; Mr. Timothy Holmes, PSEG; Mr. Rivera.

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 September 16, 2015.

**Minutes of the Meeting**

**Minutes of the July 15, 2015 Meeting**

Vice Chairman Loos asked for comments or corrections on the minutes. Commissioner Stout made a typographical correction. Vice Chairman Loos asked for a motion on the meeting minutes with the correction. Commissioner Texel motioned to approve the minutes with the correction and Commissioner Stout seconded the motion. The minutes were approved unanimously.

**Review Zone A Projects**

Vice Chairman Loos asked Director Dooley to describe the projects.

**15-4682 63 Bridge Street (Lambertville)**

Director Dooley described the project, in which the applicant will install an exterior stairway on a property. Vice Chairman Loos asked for comment from the commission and the public. Hearing none, he asked for a motion. Commissioner Texel moved to approve the project and Commissioner Stout seconded the motion. The project was

approved unanimously.

15-0171D Monmouth Real Estate Modification (Franklin)

Director Dooley described the project at an existing shopping center, in which the applicant proposes to modify an access ramp for which the commission previously gave approval. Vice Chairman Loos asked for comment from the commission and the public. Hearing none, he asked for a motion. Commissioner Texel moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

15-2883A Landmark Square (South Bound Brook)

Director Dooley described the project, in which the applicant will construct a townhouse complex. Commissioner Texel and Director Dooley discussed screening and landscaping. Vice Chairman Loos asked for further comment from the commission and the public. Mr. von Zumbusch noted the importance of knowing what species of trees and plants would be used in a landscaping plan. Mr. Barth and Director Dooley discussed fencing and canal access. Vice Chairman Loos asked for a motion. Commissioner Stout moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

15-4397A 26 Perry Street Residence (Lambertville)

Director Dooley described the project, in which a new home will be constructed to replace a fire-damaged home. Vice Chairman Loos asked for comment from the commission. Commissioner Texel asked for clarification about the demolition. Director Dooley described the process for review and previously approved demolition projects within Review Zone A. Vice Chairman Loos asked for a motion. Commissioner Stout moved to approve the project and Commissioner Leck seconded the motion. The project was approved unanimously.

15-1768B 39 Market Street (Franklin)

Director Dooley described the project site, which involves the renovation of accessory buildings of the Laurie Rubber Factory in East Millstone. Director Dooley noted that the project received municipal and local historic approval and work had begun. However, the work has stopped and the applicant is now seeking Commission approval. There was discussion about the project and what is visible from the park. Commissioner Leck asked for clarification about the block wall. Vice Chairman Loos described the view from the canal path and noted that the Laurie Rubber Factory had been demolished at the site across the street and adjacent to the park.

There was extensive discussion about the new block and stucco wall with glass blocks.

Mr. Rivera discussed the background of the project, including that his client had invested time and financial resources into the restoration of these buildings, his client planned to live at the property, and the project is a nice adaptive reuse. He discussed the masonry wall which will provide screening and soundproofing to the home which is located very close to Market Street. He described the wall, with the clear glass blocks in the design.

Mr. Rivera noted that his client had worked for 1-1/2 years with the municipality for approval. He noted it was not an oversight by his client that the project had not come

before the commission and that the municipality did not direct his client to the commission. Director Dooley noted that she had spoken with Franklin Township and they reviewed the matter and acknowledged that they did not refer the applicant to the commission.

Vice Chairman Loos asked if there was a landscaping plan for the wall. Mr. Rivera noted that his client would be agreeable to providing a landscape plan. Commissioner Leck stated that if there was a plan, it should be native plantings.

Commissioner Texel discussed reuse of the historic buildings, including that the adaptive reuse was very well done and that there is a benefit to the saving of the two buildings. He found the wall to be a reasonable compromise given that the restoration was such a success. He noted that one will see the historic roofline of the buildings from the canal.

Vice Chairman Loos asked if there had been a previous wall on the site. Mr. Rivera explained that there had been a brick wall at the site across the street and that pieces of that wall were salvaged to be decoratively included in the new wall.

Mr. von Zumbusch discussed restoration and context, including that the restoration of the buildings was well done, but he objected strongly to the glass block in the wall. He stated that the project is along the scenic byway and glass block is inappropriate in the historic context of the building and scenic byway. He described the glass block detail as deconstructionist.

Mr. Afran discussed potential precedent, including that the wall design might alter the park user's experience if it was constructed in a more densely developed area. Vice Chairman Loos noted that this is a rural environment, and not urban as is Lambertville. Mr. Barth agreed with Mr. von Zumbusch about the glass blocks, including their impact to the context of the canal, the village, and the property.

Mr. Rivera agreed that the original wall across the street was of solid brick with openings for iron gates. His client seeks some light, along with privacy, into the courtyard space. Mr. von Zumbusch argued that the courtyard is wide enough to provide additional light and that the wall would have an impact on the byway and from the canal.

Commissioner Texel asked Director Dooley about the areas of the commission's purview. Director Dooley outlined the commission regulations, including review of setback, the color and materials requirements, and, if located in a historic district, it's impact on that district.

Commissioner Stout noted the inconvenience caused to the applicant, who had worked with the municipality for 1-1/2 years, if the commission rejects the project because of the wall design. Mr. Rivera reiterated that his client was unaware that review by the commission was required. He noted the wall is quite a distance from the park and there is a lot of brush along the canal path which would partially obstruct the project from view. He noted a conflict between municipal historic boards and the commission.

Mr. von Zumbusch noted the commission has a responsibility to make the right decision

and also consider Secretary of Interior standards. Vice Chairman Loos asked Mr. von Zumbusch to describe what was contrary to the Secretary of Interior standards in the case. Mr. von Zumbusch replied that the glass block design draws attention to the wall, rather than the historic aspects of the building, and the new element should be downplayed. The stucco is acceptable as it is neutral. He noted the wall is right on the scenic byway and the D&R Canal Commission was one of the stakeholders for the byway. From the park, one would see a distracting jagged wall. The point would be to keep a design neutral and compatible, and not draw one's attention away from the historic aspect.

Mr. Rivera disagreed with Mr. von Zumbusch. He noted one can see through the glass block and the block glass will bring light in, which his client wants. The wall is a new element and not intended to mimic what is there. The Secretary of Interior standards would not want new construction to mimic historic. He noted his client prefers the glass block and would agree to landscape the wall.

Mr. von Zumbusch noted that a rectangular shape, rather than the "v", would be better. He noted that Secretary of Interior standards would not want a design to intrude on the historic aspect.

Vice Chairman Loos noted it was his understanding that the Franklin Historic Commission did not like the wall itself and the owner suggested the glass block, and the historic commission then approved the project.

Vice Chairman Loos called for a motion. Commissioner Texel moved to conditionally approve the project with the owner agreeing to modify the shape of the glass block to a rectangle shape and submitting a planting plan. Commissioner Allen seconded the motion.

The vice chairman opened the floor for discussion. Vice Chairman Loos noted the design does not fit in with the historic district, that a square window would be better than the "v" shape, and he personally would prefer no wall. He also noted that if there had not been this adaptive reuse by the applicant, the buildings would have likely been demolished. He suggested that there must be some give and take in terms of preserving the byway, restoring the historic structures, and allowing the owner to find use for the site, and, therefore, he would support the motion.

Commissioner Stout noted he would vote against the motion. He supports the applicant's restoring the buildings. He agreed with Mr. von Zumbusch's viewpoint on the project in terms of the historical character. He would prefer a solid wall.

Commissioner Leck noted that the glass disrupts the flow of the wall.

Vice Chairman Loos asked Commissioner Texel if he would consider amending his motion to give the applicant two options, either go with a rectangular shape or eliminate the glass block all together. Commissioner Texel stated he would support that as did Commissioner Allen. Commissioner Stout disagreed with a motion providing an option. Mr. Rivera commented, including that the Department of Interior finds that new elements

introduced in a restoration project be separate from the original structure. There was discussion about the architectural illustration which was submitted and the appearance of the glass in the wall.

Commissioner Texel asked that the vote be on his original motion, requesting a rectangular shape to the block and a planting plan. Vice Chairman Loos called for a vote on the original motion, which included changing the shape of the glass block from a "v" to a rectangular shape. He reminded the commissioners that a vote of four was needed to pass the motion. Vice Chairman Loos, and Commissioners Texel and Allen voted in favor of the motion; Commissioners Stout and Leck voted against the motion. The motion failed to carry.

Commissioner Stout moved to approve the project with the condition that the wall be solid block covered with stucco, and painted a brick red as suggested by the color illustrations. Commissioner Leck seconded the motion. Vice Chairman Loos asked for comment. Mr. von Zumbusch commented that the original brick wall was continuous without the proposed element.

Vice Chairman Loos called for a vote. Vice Chairman Loos, and Commissioners Allen, Texel, Leck, and Stout voted unanimously to approve the project with the conditions: a stucco covered block wall painted a brick red.

Mr. Rivera and Vice Chairman Loos discussed the next step for the applicant. Director Dooley and Mr. Rivera discussed the commission's independent statutory authority. Vice Chairman Loos and Director Dooley discussed contacting the municipality to inform them of the conditional approval.

#### DRCC#15-4736 Route 518 Bridge Replacement

Vice Chairman Loos and Director Dooley noted that agenda was revised to remove the 518 Bridge over the Canal project from consideration; it was not complete for review.

#### Review Zone B Projects

Vice Chairman Loos asked the director to give a brief outline of the eight Zone B projects which would then be voted upon *en bloc*.

#### 15-4703 Family Dollar Store (Trenton)

Director Dooley described the redevelopment of the 0.67-acre site, including an underground detention system and that manufactured treatment devices would be used for stormwater management.

#### 15-2436FF BMS Building 9 Renovation and CMB Addition (Hopewell)

Director Dooley described the project at the applicant's Hopewell campus and the existing and new stormwater management facilities. The project is outside the stream corridor.

#### 15-2436GG P1-B9 BMS Walkway (Hopewell)

Director Dooley described the project in which the applicant will install porous concrete walkways largely on an existing parking lot.

15-3713A Franklin Center (Franklin)

Director Dooley described the three-acre project site on which two homes will be demolished and a retail center will be constructed. An underground detention basin and two MTDs will provide stormwater management.

15-3644A ARND Warehouse Expansion (South Brunswick)

Director Dooley described the project on the 20-acre site with existing two warehouses and stormwater facilities. The project includes an addition to a warehouse and expansion and construction of new stormwater management facilities. The project is not within the stream corridor.

15-3453B Princeton Architectural Laboratory Modification (Princeton)

Director Dooley described the project, which adds to a previously approved building and includes modification of the driveway and stormwater facilities.

15-3012C Ridge Road Substation Modification (South Brunswick)

Director Dooley described the modification submitted by the applicant, PSE&G. The Commission issued a conditional approval in March 2015.

15-4327B Princeton Shopping Center Renovation (Princeton)

Director Dooley described the project which includes the reconstruction of parking and the change of use of the gas station to a restaurant, and will result in the decrease of impervious surface. A stream corridor is located on the property and the director recommends a waiver of no adverse impact, with the applicant agreeing to enter into a conservation agreement.

Vice Chairman Loos asked if anyone wanted to speak about the projects. The PSE&G Ridge Road Substation was set aside for separate discussion and vote as there would be substantial discussion. Vice Chairman Loos called for a motion on the Zone B projects with the exception of the PSE&G Ridge Road Substation. Commissioner Texel made a motion to approve the projects with the exception of the PSE&G project. Commissioner Allen seconded the motion.

Vice Chairman Loos called for discussion on any of the Zone B projects for which the motion was made.

Commissioner Stout and Mr. Ruggeri discussed soils, ground water recharge and permeability related to the Princeton Architectural Lab project.

Commissioner Leck and Director Dooley discussed Princeton Shopping Center and the removal of the underground storage tanks for the gas station. Director Dooley noted tank removal matters would be managed by DEP and site remediation program. Commissioner Texel inquired about the recommendation of the waiver of stream corridor standards. Director Dooley discussed the waiver, including that the impervious surface in the stream corridor was legally placed before the establishment of the commission and there was a decrease of impervious surface and therefore not an adverse impact.

Mr. Afran commented, including that he was involved in litigation related to the tanks at the Princeton Shopping Center and that the tanks were removed in 2012.

Vice Chairman Loos called for a vote on the Zone B projects, excluding the PSE&G Ridge Road Substation. The projects were approved unanimously.

15-3012C Ridge Road Substation Modification (South Brunswick)

Vice Chairman Loos opened the discussion to the public. Mr. Rhatican noted the PSE&G Substation is part of a large infrastructure upgrade approved by the commission in March 2015. He discussed the project including that they were modest modifications requested by the planning board due to concerns of a nearby homeowner and that a fully compliant project now was modified to accommodate concerns of the neighbors. He noted that the commission rules provide no opportunity for input from third parties and PSE&G objects to consideration of the third party input.

Mr. Porzio commented, including that the applicant met the township conditions and received a letter of approval and all questions, including those about groundwater recharge and permeability, have been addressed.

Mr. Afran discussed notice including a discussion of the adjournment of the February meeting, the submission of 600 pages of engineering material on short notice, and that the rights of the public were considered when adjourning the matter. He discussed the project including that the project was approved by the municipal planning board subject to significant engineering changes. Mr. Afran discussed the removal of soil by Princeton University, and issues related to the local approval.

Vice Chairman Loos asked Director Dooley if the project has municipal approval. Director Dooley discussed local approval including the original local approval, that staff deemed the current project a major modification and the August 11, 2015 letter from the Township. Mr. Rhatican stated that there is a local approval. Mr. Afran noted the letter of August 11 had four engineering requirements to be satisfied, including one related to a soil placement and removal permit and the other a tri-party stormwater agreement, and therefore the project is not municipally approved. Vice Chairman Loos asked for clarification. Director Dooley stated that it was her opinion that the project had local approval. Mr. Rhatican noted a tri-party agreement was recorded March 13, 2015 and that the other items in the August 11 letter have no bearing on commission stormwater review.

Mr. Afran noted there is a substantive question about the soil removal permitting. Vice Chairman Loos noted the commission does not deal with remediation and does not see that the outstanding items would hold up the commission's review.

Mr. Afran commented, including that Mr. Russ Smith would discuss regulatory issues. Mr. Rhatican noted again that commission rules do not allow for the participation of a third party. He objected to substantive explanation or testimony from the objecting engineer.

Vice Chairman Loos noted the discussion is open to the public and any member of the

public could speak.

Mr. Russ Smith discussed the project extensively including dates and items on which he received and reviewed materials submitted to him, N.J.A.C. 7:45-8.5(a)1 and specific recharge standards and the NJ Best Management Practices requirements for infiltration basins, N.J.A.C. 7:45-8.5-3 and the seasonal high water table, N.J.A.C. 7:45-8.6(a)1 and subsurface basins, and N.J.A.C. 7:45-8.4(c) and NSPS requirements. Mr. Smith stated that the modified design does not comply with portions of the Commission's regulations and cannot be approved.

Mr. Porzio made several comments regarding the road and flooding, including the soils report indicating that groundwater is well below what is needed in the particular area, that during the 100-year storm for one hour peak period two inches of water would appear along side of road and the spillway would be flooded but not the roadway.

Mr. Russ Smith discussed soil modeling and seasonal high ground water, the location of the spillway, and the relationship between the access road and freeboard on basins.

Mr. Ruggeri made extensive comments including discussion of the permeability testing and infiltration basins and the rate of infiltration to the ground, the use of BMP manuals, the permeability rate, the NSPS standards, and that the project met the standards. Vice Chairman Loos and Mr. Ruggeri discussed groundwater elevations and the borings and elevations.

Commissioner Texel, Mr. Ruggeri, and Director Dooley and Mr. Smith all discuss the Best Management Practices (BMPs) manual. Vice Chairman Loos and Mr. Ruggeri discussed infiltration and volumes.

Commissioner Allen noted that the modeling could be from perched water for the seasonal high water table. Mr. Russ Smith discussed this issue including that he believed the water was not perched. Mr. Russ Smith and Mr. Porzio discussed perched water.

Mr. Rhatican commented, including that the commission staff engineer has approved the stormwater, and municipal engineers find the plans satisfactory and that the commission's requirements have been satisfied. He noted that PSE&G has "bent over backward" to provide information.

Mr. Afran commented, including that regulations must be satisfied and, if the applicant cannot satisfy them, the project cannot be approved.

Vice Chairman Loos called for a motion on the project. Commissioner Stout moved to approve the project. Commissioner Leck seconded the project. The project was approved unanimously.

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

Director Dooley provided the monthly work tally. She discussed financial disclosure information; she will contact the ethics officer to discuss broad language to be sure the commissioners do not have to submit materials.



Director Dooley noted that the Laurie Rubber is adjacent to the 39 Market Street project discussed earlier in the meeting and the commission allowed sampling at the Laurie Rubber site and the results were received. She and Vice Chairman Loos concurred that she would contact the DEP to see if they would make a presentation on the results.

Director Dooley attended an open house hosted by the Army CORP and NJDEP related to the Delaware River Basin and plans to construct a flood wall in Lambertville adjacent to the canal path, generally behind the lumber yard and canal studios. Director Dooley received short notice of the project and the meeting, and the meeting was not well attended. There was discussion, including visual impact, flooding in different areas of Lambertville, and outcome of the project. Commissioner Stout asked for more information about the project. Mr. Shepherd noted that two areas that would benefit from a flood hazard mitigation project, the Swan Creek area in Lambertville and Stockton, were eliminated early on due to Wild and Scenic River designation administered by the National Park Service. Vice Chairman Loos asked for clarification on the commission's review of such a project. Director Dooley noted the applicants were aware that commission review is required, for visual, at least.

Director Dooley reported on membership of the commission, including open positions and that Douglas Palmer was still considered a member because he did not formally resign. Vice Chairman Loos asked Director Dooley to try to contact Douglas Palmer to discuss the issue.

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

There was no report from the superintendent.

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

Mr. Shepherd noted there was maintenance dredging from Cherry Tree Lane to Whitehead Road. Wetlands permits are going to be renewed.

#### **Old Business**

Commissioner Stout inquired about the schedule for the Swan Creek Bridge replacement. Director Dooley stated that she had spoken with DEP staff who anticipated the bridge work in mid-September.

Vice Chairman Loos inquired about the dangerous pedestrian crossing at Weston Canal Road. Director Dooley noted she and Superintendent Kalleser met with a municipal representative within the past year regarding signage and lights. Director Dooley would discuss with the superintendent and provide more information at the next meeting.

Commissioner Texel reported that there is a meeting scheduled this month with DEP personnel regarding the Bull's Island tree removal plan. A revised proposal may be submitted in October.

Commissioner Texel reported that Mr. Mulvan would attend the September 16 commission meeting, as he would attend an event at the Princeton Battlefield.

Vice Chairman Loos noted he would be out the November commission meeting.

Director Dooley reported she would email information related to Special Officer Training and ethics.

There was additional discussion regarding commission membership. Commissioner Leck made a motion that the commission send a letter to the governor's office asking that they reappoint the existing commissioners and seek to fill vacancies on the commission. Commissioner Allen seconded the motion. It was approved unanimously.

Vice Chairman Loos discussed the importance that municipalities within the Commission Review Zones A and B are aware that some projects require review by the commission. He suggested sending a letter referencing the commission's regulations and asking each municipality to distribute copies of the letter to staff that may have occasion to review projects within the municipality. Director Dooley noted that Franklin Township routinely refers applicants to the commission, but may need clarification about the visual review.

Commissioner Stout noted how many applicants use complex water control devices and was concerned about maintenance. Vice Chairman Loos discussed the commission's list and effort to follow up. Director Dooley noted that municipalities inspect the systems. She also noted the importance of nonstructural measures early on in design, something the commission rules require.

Mr. Barth distributed a copy of the lecture at the recent Canal Watch meeting at which retired canal commission director Jim Amon spoke. He noted Mr. Amon will speak at the November 20, 2015 Canal Society meeting. Mr. Barth expressed his concern about visual impacts on the canal.

#### **Executive Session**

There was no executive session.

#### **Adjournment**

Vice Chairman Loos noted he would entertain a motion to adjourn the meeting. Commissioner Texel motioned to adjourn and Commissioner Stout seconded the motion. The motion was approved unanimously. The meeting adjourned at 1:05 p.m.

Respectfully submitted,



Marlene Dooley  
Secretary