

**February 17, 2016 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.
DATE: February 17, 2016
PLACE: D&R Canal Commission Office, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice Chairman John Loos, Commissioner Julia Allen, Commissioner Bruce Stout, Commissioner Mary Leck, Commissioner Phil Lubitz, Commissioner Mark Texel

STAFF: Executive Director Marlene Dooley, Mr. Joseph Ruggeri by telephone, Deputy Attorney General Melissa Abatamarco, Mr. Giovanni Williams

GUESTS: Superintendent Patricia Kalleser; Mr. Robert Barth, D&R Canal Watch; Mr. Robert von Zumbusch, D&R Canal Commission Advisory Committee; Mr. John Hencheck, Citizen; Ms. Barbara Hencheck, Citizen; Dr. Michael Ehrenreich, Citizen; Mr. Walter Hopkin, River Links; Mr. Gary Beckendorf, River Links; Mr. Joe Malison, River Links; Mr. Robert Bird, NJDOT; Mr. Richard Jaffe, NJDOT; Ms. Sophia Azam, NJDOT

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.

Executive Session

At approximately 10:05 a.m., Vice Chairman Loos called for a motion to enter executive session to discuss legal matters. Commissioner Stout made a motion to enter executive session and Commissioner Leck seconded the motion. It was approved unanimously.

At approximately 10:15 a.m., the commission returned to public session.

Return to Public Session

Vice Chairman Loos clarified an issue regarding voting by the Commission. Under the Commission's statute, the Commission needs a simple majority of those Commissioners present for a project to be approved. For example, if there are five commissioners in attendance, three votes are needed for a project to be approved or if there are six commissioners in attendance, four votes are needed for a project to be approved.

Administrative Items

The Commission confirmed the March 16, 2016 Commission meeting date.

Minutes

January 20, 2016 Meeting Minutes

Vice Chairman Loos called for a motion on the January 20, 2016 meeting minutes. Commissioner Stout made a motion to approve the minutes and Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for any corrections on the minutes. Hearing none, he called for a vote and the minutes were

approved unanimously.

January 20, 2016 Executive Session Minutes

Vice Chairman Loos called for a motion on the January 20, 2016 Executive Session minutes. Commissioner Stout made a motion to approve the minutes and Commissioner Leck seconded the motion. Vice Chairman Loos asked for any corrections on the minutes. Hearing none, he called for a vote and the minutes were approved unanimously.

Review Zone Projects

Vice Chairman Loos noted that the projects would be handled individually and then he would open the meeting to a discussion on rumble strips because there is a member of the public and representatives for DOT present for that discussion. The Commission would then continue with the remaining agenda.

Zone A Projects

16-4452A 1406 River Road Solar (Hopewell Twp)

Director Dooley described the project which included that it was a solar project at a single-family home in a transportation environment. Staff recommended a waiver from the set back based on a pre-existing non-conforming use. Vice Chairman Loos asked for a motion on the project. Commissioner Texel made a motion to approve the project and Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for comment and hearing none he called for a vote. The project was approved unanimously.

16-4820 J & J Guest House (New Brunswick)

Director Dooley described the project which included that it was an addition at the J & J meeting facility and handicap access and parking. Staff recommended a waiver based on pre-existing nonconforming use for set back but found it met the standards for visual impact, including materials and height. Vice Chairman Loos asked for a motion on the project. Commissioner Stout made a motion to approve the project and Commissioner Leck seconded the motion. Vice Chairman Loos asked for comment and hearing none, he called for a vote. The project was approved unanimously.

16-2618B 238 Weston Canal Subdivision (Franklin Twp)

Director Dooley described the project including that it was a minor project and a subdivision within Review Zone A. She also described the history of the review of subdivisions. Vice Chairman Loos asked for a motion on the project. Commissioner Stout made a motion to approve the project and Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for comment. Mr. Barth asked about future building on the lot, potential visual impacts and deed restrictions. Director Dooley discussed the visual impact standards, the Commission's jurisdiction and the present review to ensure the subdivision does not create a hardship situation. Robert von Zumbusch raised reminding applicants of the need to meet the standards in the future. There was discussion by Commissioner Lubitz, Texel, Loos and Allen regarding hardships and deed restrictions. It was determined that the Commission could include a reminder of the need for permitting in a cover letter. In the alternative, Vice Chairman Loos asked if a commissioner wanted to amend the motion. There were no amendments, Vice Chairman Loos called for a vote and the project was approved unanimously.

Zone B Projects

15-4070B Christina Seix Academy (Ewing Twp/Trenton)

Director Dooley described the project which included the modification of a 2011 approval to create a bus drop-off and security building and a reduction in the amount of impervious surface previously approved. Vice Chairman Loos asked for a motion on the project. Commissioner Texel made a motion to approve the project and Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for comment. Hearing none, he called for a vote and the project was approved unanimously.

16-3383A SOLD Proposed Housing Modification (Ewing Twp)

Director Dooley described the project which included that it was a modification of a previous approval, that the stormwater system was built, and that the project was changing from the construction of 32 buildings to 17. Vice Chairman Loos asked for a motion on the project. Commissioner Lubitz made a motion to approve the project and Commissioner Texel seconded the motion. Vice Chairman Loos asked for comment. Hearing none, he called for a vote on the project. The project was approved unanimously.

15-4796 Single Family Home and Equestrian Farm (West Amwell Twp)

Director Dooley described the project which included that it was a residence and a new home, barn, riding area, and wet pond were being constructed. Vice Chairman Loos asked for a motion on the project. Commissioner Lubitz made a motion to approve the project and Commissioner Stout seconded the motion. Vice Chairman Loos asked for comment. Hearing none, he called for a vote on the project. The project was approved unanimously.

16-1985D Hillsborough School Parking (Hillsborough Twp)

Director Dooley described the project which included that the school was reconstructing sidewalks, parking and drives. Vice Chairman Loos asked for a motion on the project. Commissioner Stout made a motion to approve the project and Commissioner Lubitz seconded the motion. Vice Chairman Loos asked for comment. Commissioner Texel asked about the maintenance of the Manufactured Treatment Device (MTD). Director Dooley and Commissioner Texel discussed the maintenance plan, identification of who will maintain the systems, deed restrictions by private entities, reviews by DEP and locals and DRCC retention of information. Vice Chairman Loos called for a vote. The project was approved unanimously.

New Business

Vice Chairman Loos stated that unless there was an objection, the Commission would hear new business next. There were no objections raised.

Rumble Strips

Mr. Richard Jaffe, Director of Capital Programs, NJDOT, Mr. Robert Bird, NJDOT, Ms. Sophia Ossum, NJDOT and Dr. Michael Ehrenreich, local resident, introduced themselves. Dr. Ehrenreich raised concerns related to the installation of center line rumble strips from Lambertville to Fisherman's Eddy and noted that the rumble strips were installed without necessary permits. Dr. Ehrenreich noted that area was a transportation zone pursuant to the Master Plan but noted the difference between the hum of traffic and rumble strips which are intended to be disruptive in order to alert drivers. Dr. Ehrenreich stated that his research indicated that the rumble strip would generate 80 decibels of noise from 50 feet. He outlined that noise adversely affects park users and wildlife and noted the Commission's role to

protect the environment of the Park and protect intrusions by individuals and government. He referenced NJAC 7:45-11 and 7.5-10.3 which he stated speak to the spirit of noise and noted the Commission's previous discussion regarding the Route 518 bridge in which the Commission discussed noise impacts. Dr. Ehrenreich stated that there are many means to effectuate safety but the DRCC has one mechanism to protect the park through approving or disapproving a project. He stated that there is no safety issue on the road that is being addressed. The DOT has a general policy to place rumble strips on rural roads with a speed above 35 miles per hour. Dr. Ehrenreich asked the Commission to direct DOT to remove the rumble strip. Dr. Ehrenreich stated that the only time rumble strips should be considered in a park environment is when there is a demonstrated history of lane deviation accidents that can only be corrected through rumble strips at that location. Lastly, he amended his request asking for a safer crossing at Fireman's Eddy.

Vice Chairman Loos asked Mr. Jaffe to respond. Mr. Jaffe outlined the NJDOT's efforts to develop safety standards and the background on the rumble strip policy. He stated that there have been analyses on the cause of accidents and the studies show that the most serious injuries and fatalities are caused by lane departures and distracted driving. He further noted that the Federal Highway Administration (FHA) and NJDOT are addressing safety priorities and strategies as part of the mission for safer roads in NJ. He stated that one of the nine most favored safety counter measures is the installation of rumble strips. FHA and NJDOT met to discuss safety standards of the NJDOT including whether rumble strips were appropriate to add to the State roadway system. In their review, the safety benefits, noise, and costs were considered. Mr. Jaffe also stated that there were several projects prior to adopting a State-wide standard. He discussed Route 31 between I-95 and the Pennington Circle and Route 70 as examples. Mr. Jaffe stated that nationally, statistically, there has been a huge drop in accidents caused by lane departures and distracted driving accidents due to rumble strips. Mr. Jaffe stated that there was no indication that lane departures were specific to a type of road. Mr. Jaffe recognized that rumble strips cause noise. It is not as loud as a truck but it is a noise that previously did not exist. However, he noted that the noise is intermittent and only when alerting someone that they are leaving a lane. Mr. Jaffe further stated that speed is the major factor in the severity of a head on collision. Some states, like Pennsylvania, place rumble strips on roads that have a speed of 25 mph. NJDOT selected 35 miles per hour. Mr. Jaffe noted that the NJDOT standard was created in November 2013. The FHA wants to see NJ safety records improve, therefore, the NJDOT is not just creating rumble strips when resurfacing a road but is also installing rumble strips projects.

Vice Chairman Loos asked if there are alternatives to rumble strips. Mr. Jaffe stated that a divided highway also addresses lane departures and noted US Route 1. Mr. Jaffe noted that even on interstates with 30-foot grass medians, that distance is not sufficient to prevent head on collisions. Rumble strips and guiderails are being added to the 30-foot grass median. Mr. Jaffe believes rumble strips are a positive safety innovation.

Commissioner Lubitz asked the sound level of rumble strips. Mr. Jaffe noted that it depended on the type of vehicle and speed. Some informal noise measurements were performed at the Route 29 location but he did not have specific numbers. Dr. Ehrenreich noted that the California Transportation Department estimated an average range is 75-80 decibels at 50 feet. Commissioner Lubitz stated that that level would be acceptable according to the NJ State daytime standard (80). Commissioner Lubitz asked if there is a way to engineer rumble strips to reduce the decibel level and still obtain safety benefit. Mr. Jaffe stated that there are different depths but he did not have specific information. He noted rumble

strips train a driver to slow down and stay in a lane. It is changing driver behavior. Dr. Ehrenreich noted that the Minnesota Department of Transportation is testing a sinusoidal rumble strip which would create less external noise and more within the cab.

Dr. Ehrenreich noted he agreed rumble strips are a good safety measure but questioned if they need to be on every inch of every road. The concept of zero risks does not exist. It is about relative risk versus cost. The DOT views it as a cheap safety measure and rumble strips are acceptable but only where there are no residences or parks. Other measures must be explored. In addition, there is no specific information that Route 29 or this one mile stretch needs rumble strips. There was no discussion regarding a particular history of accident being addressed due to lane deviation in excess at this location or on Route 29. Vice Chairman Loos noted a serious accident on Route 29 due to lane deviation. Dr. Ehrenreich stated that accidents sometimes occur but it is not proven to be in excess. Rumble strips are a cheap alternative for the NJDOT but expensive for everyone else.

Commissioner Stout asked the NJDOT if there was analysis of the Route 29 corridor. Mr. Jaffe stated "no." The analysis was based on nation-wide information and that the centerline rumble strip policy is not based on a particular roadway. Commissioner Stout noted that NJDOT had no data to indicate that there is a serious safety issue on this stretch of road. Mr. Jaffe said it was considered standard best practice for any roadway over 35 miles per hour or higher. Commissioner Leck asked if the lowering of the speed limit was considered as a measure. Mr. Jaffe stated that changing speed limit has not been shown to change driver behavior. Commissioner Stout asked if there was any indication that the fact that cars that are driving over the rumble strips and causing the noise means lane departures might occur. Do we think it is preventing lane departures by drivers hearing the noise and getting back in their lane? Mr. Jaffe stated that it is indicated by the statistics. Commissioner Texel stated that he believes rumble strips work and that his experience traveling Route 29 was that he did not inadvertently hit the rumble strips. Commissioner Texel asked about the Commission's authority and whether noise is within the Commission's jurisdiction.

Director Dooley noted that she determined the Commission could take jurisdiction in this matter and that it was a minor project. She noted the standards for General Permits which include road work and for Minor Projects within Review Zone A. She noted the Visual, Natural and Historic impact review does not contain a noise standard but there is a review for consistency with the Master Plan. She noted that N.J.A.C. 7:45-10.3 is not for noise abatement of a major project. She noted this area of Route 29 is a transportation environment within the Master Plan. She also noted that there are two NJDOT projects before the Commission. The retroactive permit for the are being discussed and a larger Route 29 project. Director Dooley noted that the visual, natural and historic impact review is assessed from the park.

Dr. Ehrenreich presented a proposal. He stated that the NJDOT policy does not prohibit skipping a small area and that other State policies allow the skipping of areas. There is a particular curve in the roadway at Fireman's Eddy that drivers cut which results in hitting the rumble strip. The NJDOT should remove the rumble strip in this area of approximately 100 feet where there is a high rate of "incidental" contact. He stated that hitting the rumble strip does not mean that we are avoiding accidents. The vast majority of noise is from incidental contact. He noted that it is not to say that occasionally we won't save a life but which 100 feet will save a life. It is relative risk versus perceived cost.

Commissioner Lubitz questioned the jurisdiction of Commission in this dispute. He stated that the

Commission jurisdiction would not allow the mitigation of sound to a homeowner's property. It is sound from the park. The Commission cannot measure excessive or acceptable sound. The State standard is 80 decibels levels of daytime sound. Vice Chairman Loos also noted that the intermittent nature of the noise was an issue. Commissioner Lubitz discussed the State standard regarding intermittent noise and that the standard changes at night. He noted that the park is closed at night and that from the discussion, he felt the rumble strips would meet the State standard. Vice Chairman Loos agreed. He noted that that removing the 100 feet to address a homeowner's concern is not within the Commission's jurisdiction.

Commissioner Stout stated that he wants to visit the site and hear the noise. He asked if the Commission has the capacity to review sound. Director Dooley stated "no" and that the regulations do not have a decibel level standard. Commissioner Stout noted the past extensive and detailed discussions related to visual issues and that noise is just as intrusive and a concern for the park. Director Dooley noted the specific design standards for visual impact within the regulations and that a review "in accordance with the Master Plan" is more subjective. She also noted that staff had conducted site inspections as part of their review. There was substantial discussion by the Commissioners and public of the need for any inspections to be done at peak traffic hours and for periods of time sufficient to hear any intermittent contact with the rumble strips. Commissioner Leck noted that the Commission should consider nesting birds and wildlife. Dr. Ehrenreich noted a link from the National Parks Department with studies of noise on wildlife.

There was discussion as to the issue presently before the Commission and whether a vote should be taken. Vice Chairman Loos noted that Director Dooley had raised the policy issue to him. He also had reviewed news articles. Vice Chairman Loos requested the issue be placed on the agenda as a general policy discussion since the matter could be handled as a General Permit which Director Dooley issues or come before the Commission. The Commission can provide guidance to the Director for the overall project. The Commission could also consider whether the noise is so intrusive that the Commission should require mitigation so that the park experience is not compromised. Commissioner Loos noted that he did not believe it rose to that level.

Commissioner Stout stated that the authority on this issue should not be ceded to the Director. The Commission should vote on the issue.

Commissioner Lubitz noted the State noise standard and that if the noise exceeds the State standard, the Commission may be able to require mitigation. There was discussion among the Commissioners as to mitigation.

Dr. Ehrenreich stated that 60 decibels is ambient road noise at which a wall is built. He further noted that the curve in the road is unique. It is incidental, pointless noise. Dr. Ehrenreich stated that the NJDOT should perform the noise studies.

Mr. von Zumbusch noted that the Commission did have a decibel level in their rules but the standard was eliminated because the Commission did not have a sufficient manner in which to conduct an evaluation. Mr. von Zumbusch stated that these issues should be considered on a case by case basis. He stated that individuals should visit the site and the Commission should examine the issue in an overall sense. It is up to DOT to provide any specific analysis.

Mr. Barth noted that the roadway is part of a scenic byway and noise is a concern. He also noted that noise is different when it travels across water.

There was discussion regarding alternative safety measures such as reflectors, flashing lights, chevrons and signs. Mr. Hencheck discussed a road in Cape May with an effective use of reflective strips to keep drivers within their lane. Director Dooley noted that the regulations have visual restrictions which would have to be considered also.

Vice Chairman Loos asked the NJDOT if they have the ability to conduct a study and there was discussion about studies in the larger project area. Mr. Jaffe stated that the studies were done nationally and that State studies would be duplicative. Vice Chairman Loos requested that the data on the noise be provided to the Commission. Vice Chairman Loos also stated that the Commission should visit the site and ensure they are conducting a review for at least 15-20 minute periods, at different times of day and during peak traffic times. He noted the Commission review was from the park. He encouraged the NJDOT to meet with Dr. Ehrenreich and find a solution short term. The NJDOT noted that they have a meeting scheduled with Dr. Ehrenreich.

Commissioner Stout made a motion not to cede authority to the Executive Director for the permitting in this matter. Director Texel seconded the motion. Commissioner Lubitz recommended that it not be a motion and that the Commission request that the Director bring the matter back to Commission prior to issuing a permit. The Commissioners agreed and the motion was withdrawn.

The NJDOT noted that rumbles strips are along Route 32 and adjacent to the Park in PA.

Executive Director's Report

Director Dooley provided and commented upon the monthly work tally. Director Dooley also distributed a handout on the budget and it was determined it would be discussed at the next meeting. Director Dooley also discussed that the Commission has a lease with the Delaware River Mill Society and that the Commission is in a hold over status on the lease. She noted that that the Commission has paid a nominal amount for many years, staff expect to have the rent increased and that new leases may require more maintenance by the leaseholder. There was a discussion of the recent issues, concerns related to moving, and recent conversations with the Office of Leases. Vice Chairman Loos asked if there was an opportunity to have a lease with the State. Director Texel discussed that the present lease is with the DRMS, subleases, the need for fair market value, the role of the Office of Leases, maintenance of historic buildings, and the vital role of non-profit leasees in maintaining historic buildings. It was assured that the lease is being given attention. Superintendent Kalleser noted the efforts to date. Director Dooley noted the needs of the Commission related to shuttling engineering projects to staff engineers in Trenton, having a hearing room and determining the appropriate amount the Commission can pay toward rent with fees from the regulated community. Commissioner Lubitz stated that if the buildings were purchased with public funds then they should be used for a public purpose. It is not commercial real estate. Mr. von Zumbusch asked who paid for the renovations of the Commission building and there was some discussion. There was then an update on the Bridge Task force letter and the model escrow agreement.

Park Superintendent's Report

Superintendent Kalleser discussed the awarding of the contract for the demolition at Bulls Island and

that work will be occurring throughout the summer. She also discussed that staff are reviewing park boundaries at Six-Mile Run in Franklin Township due to conflicts, hunting, postings and intrusions. The Cadwalader Park project is still under discussion and has a DCA and the land manager review. She noted that on Sunday, February 21, 2016, there is a celebration of George Washington's birthday at Rockingham.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Shepherd discussed operation and maintenance including the removal of dead trees due to storm damage and the development of plans for the replacement of Ten Mile Waste gates.

Old Business

Bulls Island

Commissioner Texel discussed the status of a review for a new proposal for reopening Bulls Island including that there was not sufficient time for public comment this year in order to meet all the tree removal within time restrictions. DEP will have a public comment process on a website and meetings for stakeholders. Park staff are also available to conduct site visits with Commission members. It was estimated that it would be a three to four month process. Vice Chairman Loos asked if there was a method to mark the trees intended for removal. There was discussion regarding marking the trees or a virtual method.

Public Forum

John and Barbara Hencheck made a presentation regarding research they conducted which identified the mass burial site of the Irish workers who built the canal and African Americans who died aiding the workers during the Asian cholera epidemic. The site is a 72-acre farm on Rock Road in Lambertville. They discussed the epidemic that killed the workers, the living situation of the workers, the hospital, process for the care and handling of victims, and the nature of the burial due to the disease and its contagion. They provided copies of the early history of Lambertville and locational information to the Commission. Mr. Hencheck noted that the PennEast Pipeline is slated to go through the burial site and that it is against the law to desecrate a Potter's Field. He gave the example of the change in location of the Jaffitz Center due to the identification of a burial site. He noted the legislative representatives and FERC who were also provided the information. He also noted that the next year is the 185-year anniversary of the canal and he would like to see a ceremony on the site in recognition of the contribution of these individuals who gave their lives and protection of those burial sites as others in formal cemeteries. He noted that the State Historic Preservation Office was provided information, given a presentation and is reviewing the information. He also discussed an original, untouched access "road along the rocks" to Lambertville. Commissioner Lubitz noted that Senator Cody is interested in locating Potters Fields and recommended speaking to him. Commissioner Loos asked Director Dooley to discuss with SHPO.

Robert Barth requested that the January 2016 minutes be posted as soon as possible. There was discussion with Commissioner Texel regarding the website on the Bulls Island proposals and request for comment and when the website would be completed. Mr. Barth announced the Canal Society Symposium on April 16, 2016 and a Canal Watch walk on March 5 from Bulls Island to Holcombe Jimison Farm.

Adjournment

Vice Chairman Loos called for a motion to adjourn. Commissioner Stout moved to adjourn and Commissioner Lubitz seconded the motion. It was approved unanimously.

The meeting adjourned at 12:15 p.m.

Respectfully submitted,


Marlene Dooley, Secretary

