

**May 18, 2016 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.  
DATE: May 18, 2016  
PLACE: D&R Canal Commission Office, Stockton, New Jersey

**ATTENDING COMMISSIONERS:**

Vice Chairman John Loos, Commissioner Julia Allen, Commissioner Mary Leck,  
Commissioner Phil Lubitz, Commissioner Bruce Stout, Director Lynn Fleming

**STAFF:** Executive Director Marlene Dooley, Mr. Joseph Ruggeri,  
Deputy Attorney General Melissa Abatemarco, Ms. Colleen Christie Maloney

**GUESTS:** Superintendent Patricia Kalleser; Mr. Robert Barth, D&R Canal Watch; Mr. Robert von Zumbusch, D&R Canal Commission Advisory Committee; Dr. Michael Ehrenreich; Mr. Jay Kruse, Mr. Andrew Grover and Mr. Mark Meyhew, ESE; Ms. Tina Shutz, Mr. Robert Bird, Mr. Charles Henry, and Mr. Mark Tozzi, NJDOT .

At 10:05 a.m., the following commissioners were present: Vice Chairman John Loos, Commissioner Julia Allen, Commissioner Mary Leck, Commissioner Phil Lubitz, and Commissioner Bruce Stout.

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**

The Commission confirmed the June 15, 2016 Commission meeting date.

**Minutes**

**April 20, 2016 Meeting Minutes**

Vice Chairman Loos called for a motion on the April 20, 2016 meeting minutes. Commissioner Lubitz made a motion to approve the minutes and Commissioner Leck seconded the motion. Vice Chairman Loos asked for corrections on the minutes. Hearing none, he called for a vote. Commissioner Allen abstained from voting. The minutes were approved.

**April 20, 2016 Executive Session Minutes**

Vice Chairman Loos called for a motion on the April 20, 2016 executive session meeting minutes. Commissioner Stout made a motion to approve the minutes and Commissioner Leck seconded the motion. Vice Chairman Loos asked for corrections on the minutes. Hearing none, he called for a vote. Commissioner Allen abstained from voting. The minutes were approved.

**Review Zone Projects**

Vice Chairman Loos stated that, unless he heard an objection, he would discontinue having projects outlined by staff. There was no objection.

### **Zone A Projects**

Vice Chairman Loos stated that there were six Review Zone A projects. He stated that the two Department of Transportation projects would be discussed individually. He then listed the remaining four Review Zone A projects: 14 Blue Ridge Road Shed, 31 Clinton Street Deck, 1 Ferry Road Porch Modification, and Caffé Galleria Patio. Vice Chairman Loos asked if any Commissioner wanted a project pulled out for individual discussion. Hearing no request, he asked for a motion on the four projects. Commissioner Lubitz made a motion to approve the projects and Commissioner Stout seconded the motion. Vice Chairman Loos asked for comment and, hearing none, he called for a vote. The projects were approved unanimously.

### **Zone B Projects**

Vice Chairman Loos stated that there were 11 Zone B projects and that he was separating out Enclave at Princeton Junction, which includes a waiver request, for individual discussion. He stated that the remaining 10 projects, Province Line Road Bike Trail and Road Widening, MidAtlantic Building Addition, Chand Palace Modification, Sunnymead Road Residential Subdivision, Aurobindo Pharmaceutical Facility, Hovione NJ Facility Expansion, Nassau Racquet and Tennis Club Parking, DOT Route 1 South: Nassau Park Blvd to Quaker Bridge Mall Overpass, Institute for Advanced Study Olden Lane Walk, and Trenton-Mercer Airport Taxiways H, B, and F-FAA Phase II, would be voted upon en bloc unless a Commission member wanted a project individually discussed. Commissioner Stout and Director Dooley discussed stormwater management for the Sunnymead project. Hearing no further comment, Vice Chairman Loos asked for a motion on the four projects. Commissioner Lubitz made a motion to approve the projects and Commissioner Stout seconded the motion. Vice Chairman Loos asked for comment and hearing none, he called for a vote. The projects were approved unanimously.

At 10:10 a.m., Director Fleming joined the meeting.

### **15-2768A Enclave at Princeton Junction (W. Windsor)**

Vice Chairman Loos asked Director Dooley to describe the project. She described the 45-acre property for which a development is proposed. Director Dooley and Vice Chairman Loos discussed the stream corridor intrusion and waiver, and preserving land of equal and greater ecological value. Director Dooley and Commissioner Stout discussed the ratio of preserving land on site and off site. Director Dooley and Commissioner Lubitz discussed land preservation and land which may be considered unbuildable, such as wetlands. Commissioner Allen noted that land can be compromised even if not built upon and that preservation addresses soil stabilization, water quality, and wildlife habitat. Commissioners Leck and Allen discussed management and stewardship. Vice Chairman Loos asked for a motion to approve the Enclave at Princeton Junction project. Commissioner Stout made a motion to approve the project and Commissioner Allen seconded the motion. Vice Chairman Loos asked if there was further comment. Hearing none, he called for a vote. The project was approved unanimously.

### **Department of Transportation Rumble Strip Projects**

#### **16-3183B Rte 29 Maintenance, Repair and Rumble Strips (M.P. 17.16 -18.10) (West Amwell Twp and City of Lambertville)**

Vice Chairman Loos asked Director Dooley to outline the project. Director Dooley noted that the project was for a permit after the fact. She noted that the DOT had repaved the roadway and constructed center line rumble strips. The project is within Review Zone A, meets stormwater impact standards, and has State Historic

Preservation Office approval. Staff conducted multiple inspections at Fireman's Eddy. The project is within a Transportation Zone and noise is considered as it relates to the principle in the Master Plan regarding serenity in the park. Staff found the noise did not impact the park given present noise and its intermittent nature. Staff also found that the project met the standards for a waiver based on compelling public need.

Vice Chairman Loos asked for a motion to approve the Department of Transportation Route 29 West Amwell Maintenance and Rumble Strip project. Director Fleming made a motion to approve the project and Commissioner Leck seconded the motion. Vice Chairman Loos asked for comment from the Commission.

Commissioner Stout stated that he visited the Fireman's Eddy area and that his data collection differs from staff showing 14 of 84 vehicles crossed the mid-point or approximately 15% occurrence. He noted that noise is influenced by size and weight of vehicle and that while he was at Fireman's Eddy three fully loaded gravel trucks went down the center line and it was extremely loud. He referenced the Master Plan regarding serenity, acknowledged that the area is a Transportation Environment but believes the level of noise completely changes the character of the Park and is a significant detriment to the Park. Commissioner Stout also noted that DOT did not provide site specific data to indicate a problem with lane deviation on Route 29 and he does not believe that one can make an inference that there is a problem on Route 29 with general national or state level data. Lastly, Commissioner Stout noted that the Commission has been respectful of the mission of the DOT and their work, and the Commission has been flexible in working with the agency. Commissioner Stout is offended that DOT constructed the rumble strips and then came to the Commission for a retroactive application. He stated he intends to vote "no" on the project and strongly urges fellow Commissioners to vote the same.

Commissioner Allen discussed identifying areas of the project that have direct impact on the park and those that do not. Commissioner Stout stated that his observations indicate a problem where there is a bend in the road. Where the roadway is straight, people stay in the lane but, where there is a bend in the road, people deviate and hit the rumble strip. Commissioner Stout noted the Fireman's Eddy and Lambertville to Stockton areas as examples.

Commissioner Stout and Vice Chairman Loos noted the proximity of the park boundary throughout the project area. Vice Chairman Loos noted that he is convinced from reviewing DOT data provided that rumble strips save lives and avoid injury, that rumble strips were identified as the highest priority for addressing the distracted driving accidents on these types of roads, that the State has a plan with the Federal Government, and, that as part of that plan, DOT receives federal funds. However, he also has observed and finds that there is "incidental contact" with the rumble strip which is careless driving at the curves and hitting the rumble strip versus situations in which drivers are distracted or incompetent in driving and crossing into the other lane. In situations where a driver is incompetent or distracted and crossing the line, it is well worth the noise to the park. But if incidental areas could be identified, the noise to the park could be eliminated. Vice Chairman Loos stated that he would vote to approve the project with a condition that, for areas subsequently identified as having incidental contact, DOT would remove the strip. He recognized that a standard would have to be identified. He stated that he was not comfortable rejecting all rumble strips.

There was substantial discussion regarding incidental contact and its definition including who would make the determination of "incidental contact," data needed, involvement of the public, and DOT hiring a consultant.

Commissioner Leck noted the proximity of houses on Route 29 and there was discussion regarding the Commission's authority being from the park only.

Commissioner Lubitz stated he agreed with Vice Chairman Loos. However, he stated that he believes the Commission has a much more limited role in controlling the public right of way and defers to DOT on safety issues because they have the expertise in this area. He further noted that even in areas where crossing the center line is "incidental," he believes it underscores the need for the rumble strip. He noted that there are many types of noise within the park that are incidental, such as helicopters or trucks breaking, however it is not within the Commission's purview to regulate. Commissioner Lubitz noted that he finds that a gravel truck crossing the line at a curve is the most dangerous place possible. He stated that the Commission is limited to imposing a condition that DOT use noise abatement techniques to reduce the sound coming into the park such as trees or vegetation. The Commission should defer to DOT.

Commissioner Stout stated that his observations indicate that individuals are clipping a corner and making a lot of noise; it is not a distracted driver that is about to go into the other lane. He reiterated that DOT has not done an analysis to indicate that there is a problem where rumble strips are being constructed.

Director Dooley noted that DOT stated in their application that they were using state and federal data because the nature of drowsy and distracted driving is that it is not linked to a type of roadway but to behavior which could happen in any location.

Commissioner Lubitz stated that drivers cutting a corner is a law enforcement issue. Police ticketing drivers that cut the corner is a better solution than removing the rumble strip.

Vice Chairman Loos discussed the planting of trees within the park and on the other side of the roadway. He discussed noise and how planting trees on both sides could address sound. Vice Chairman Loos, Commissioner Lubitz and DAG Abatamarco discussed the rules and jurisdiction. Commissioner Lubitz stated the placing of trees outside the park should be a suggestion rather than a condition because he believes placing trees outside the park is beyond the Commission's jurisdiction.

Director Fleming discussed safety, which is of the highest concern, and she found it unacceptable that a rumble strip could be removed on such a road due to noise and result in an accident or fatality. She stated that the Commission must find ways to mitigate noise and asked DOT if it had any proposals for mitigation.

Mr. Henry noted that he is within Project Management Office at DOT. He first noted that DOT values the long standing relationship with the Commission and regrets the present circumstance in which DOT is requesting a permit after the work was done. Mr. Henry noted that rumble strips are a surface treatment constructed and treated as a maintenance project and, initially, DOT assumed it did not require an environmental permit. After discussions with Commission staff, DOT realized that the work required a permit and submitted an application. DOT did inform staff of this requirement and to stop work until the permit is obtained. However, the construction of rumble strips is part of a larger regional rumble strip project for the South, Central and North regions that was approved by the federal government, and

which had fourteen State representatives. Therefore, while working with Commission staff, DOT continued construction in areas outside the Commission's jurisdiction in order to keep to the construction schedule. At some point the project was accelerated and the work mistakenly performed.

Vice Chairman Loos stated that when the first project area was constructed last September, it was somewhat understandable. However, the later one was not. It was a major mistake and higher levels simply did not communicate to appropriate staff.

Mr. Henry discussed the substandard geometry and features of the Route 29 roadway which makes addressing safety difficult. Mr. Henry noted that DOT does recognize the character of the park and scenic byways and attempts to embrace design exemptions in these areas. However, DOT believes it cannot relax the safety policies related to the placement of rumble strips and in April provided information regarding a waiver based on compelling public need. He noted that the use of rumble strips is based on national and statewide basis because cross over accidents are random in location. He further noted that the Federal Highway Administration established the Highway Safety Improvement program to achieve significant reduction in fatalities on all public roads. It mandates each state to develop a strategic highway safety plan to set goals and prioritize safety improvements. New Jersey DOT established a plan which includes a goal of reducing fatalities by 2.5% annually. This is a difficult goal given New Jersey's increase in motorists on the road. New Jersey crash data shows lane departure and distracted driving is the leading cause of fatalities and significant injuries from crashes. Five years of NJ crash data from 2008-2012 shows that distracted driving caused 47% of fatality and serious injury with the most serious on undivided roads. The concrete median is the best choice but is not an option on Route 29 given the character of the roadway.

Mr. Tozzi discussed the present DOT program for rumble strips including determination for placement on roadways and systematic placement of rumble strips including that the roadways met the same criteria as those roadways where people were crashing. He stated that one does not know where people are going to fall asleep or where someone is going to be texting and the fact that a driver is hitting the centerline and someone else might be hitting the centerline could also lead to a crash.

Vice Chairman Loos asked about flexible markers in the middle of the road and the use of barriers in areas with incidental areas. There was discussion regarding size of roadways for barrier use, need for recovery where fixed objects used, clearance, minimum shoulder width and concerns raised with approaches that have more of a visual presence.

Commissioner Allen discussed road widening with striping. There was substantial discussion including lane width, existing rumble strip policy, and environmental, stream corridor and historic district concerns.

Commissioner Stout stated that rumble strips vary as to depth and width. Dr. Ehrenreich noted that there are different technologies and referenced the Minnesota Noise Study provided by DOT. There was substantial discussion including discussion of Pennsylvania's rumble strips, DOT not indicating the quietest rumble strips, method of construction, minimal size and that DOT would continue to discuss quieter rumble strips that still meet safety need but they would not remove the presently installed strips due to compelling need.

Director Fleming asked if DOT has any proposals for mitigation. DOT representatives did not have any proposals.

Commissioner Stout reiterated that both projects are retroactive and that the rumble strips were placed between issuance of the staff report and the meeting.

Vice Chairman Loos asked about a slower speed limit and there was discussion as to how DOT identifies speed limits, studies to lower speeds, and enforcement of existing speed limits.

Director Fleming asked about the center line crash list. DOT representatives noted that they are one mile segments having three crashes per year. Those roads were treated first then other roads with similar characteristics treated.

Director Fleming asked about the design standards for the NJ rumble strips and DOT outlined the current standards and their development.

Vice Chairman Loos asked for comment from the public.

Dr. Ehrenreich made substantial comment including that DOT maintenance concerns should not be the Commission's concern, that DOT should look at other options including flexible post delineators and that trees would not provide meaningful mitigation. He also discussed the history of the Canal Commission, its role and that the Commission is faced with one of the most important issues that it has faced in 40 years. Dr. Ehrenreich commented on the DOT requiring two after the fact permits, the Commission's authority to deny permits, mitigation, and the need to remove rumble strips in areas of incidental contact. He discussed the Commission staff's findings regarding number of vehicles coming in contact with the rumble strip, and stated that it indicated incidental contact and the road having zero history of excessive lane deviation accidents. Dr. Ehrenreich discussed DOT taking measurements of incidental contact along the length of the rumble strip and identifying areas of high incidental contact and removing the rumble strip unless specific crash history warrants otherwise and outlined that Federal Technical Guidelines call for the omission of rumble strips in areas of high incidental contact such as horizontal curves.

Mr. von Zumbusch stated that widening the road will not help and will change the character of the road, and that planting trees will do little to impact noise and will change the nature of road. He noted that the road is a scenic byway and the view of the canal should not be screened. Mr. von Zumbusch discussed rumble strips on Route 27 near his home and that it is not a problem, and that long, straight stretches are not a problem but areas vary and need different considerations including in a scenic byway. He discussed examining quieter rumble strips and he noted that a rumble strip does help with inattentive and sleepy drivers.

Mr. Barth made comment including that the D & R Canal is on the State Historic Register, that Route 29 is a scenic byway and the Commission must preserve the history of the area and he believes the rumble strips are an encroachment. He discussed past history with the DOT and that the retroactive request for a permit shows a lack of respect for the public and the Commission.

Superintendent Kalleser noted she had hoped that the permit process would provide an opportunity to

discuss the impact of rumble strips in the Kingwood Township area because of the large number of events which result in the frequent crossing of the center line but, driving in today, she noted the rumble strips were installed. She stated she would still like to discuss a cross walk in the project area.

Vice Chairman Loos stated that, without a plan for DOT addressing areas of high incidental contact, he did not plan to vote for the project. He noted that he believed flexible delineators would slow traffic and address the problem at the curve area.

Ms. Shutz, DOT, stated that the flexible delineator is a visual measure. It would not help with distracted driving or falling asleep. She also expressed concern that "high incidental contact" is undefined. There was substantial discussion of flexible delineators as a traffic calming measure, the need to define "incidental contact," and have an objective standard for high incidents, having rumble strips and flexible delineators in combination, concerns with delineators creating traffic hazards if hit, and examining the Pennsylvania rumble strip technology.

Commissioner Stout raised the Commission rejecting the project without prejudice and requesting that the DOT return with a plan for elimination of areas of high incidental contact and for those areas recommend an alternative such as a flexible delineator or a different type of rumble strip.

Commissioner Lubitz stated that the Fisherman's Eddy area has been identified as a high incidental contact area.

Commissioner Loos called a vote on the motion to approve the project. There were no votes to approve the project and the motion failed.

There was discussion by the Commissioners as to how to proceed including the need for testing the viability of flexible delineators, concerns regarding the visibility of flexible delineators, roadway design, and the potential need for differing approaches at different areas such as the Brookville Hollow area versus Fisherman's Eddy.

Vice Chairman Loos directed staff to meet with DOT during the next month, find ways to address concerns raised by the Commission, for DOT to do a test at Fisherman's Eddy, and for DOT to return to the June meeting with a revised project and suggestions for mitigation in high incident areas.

16-3183A DOT Rte 29 and Rte 175 Rumble Strips (Ewing, Hopewell Twp, W. Amwell, Lambertville, Stockton, Delaware, Kingwood)

Vice Chairman Loos asked for a motion on the second rumble strip project. Commissioner Stout made a motion to deny the project without prejudice. Commissioner Lubitz seconded the motion. The motion was unanimously approved.

**Executive Director's Report**

Director Dooley discussed the work tally and fees. Director Dooley noted that the proposed notice of readoption of Commission rules without change was filed with the Office of Administrative Law. She noted a site visit in the Trenton/Ewing area of the park with Superintendent Kalleser to examine an encroachment onto park property.

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

Superintendent Kalleser noted staff previously documented the above-referenced encroachment into the canal wall in Trenton/Ewing. She noted the DEP's Forestry unit is discussing Emerald Ash Borer management at Blackwells Mills and South Bound Brook which would impact the park. The unit would like to present to the Commission at the June meeting. She noted a new playground was installed at Bulls Island. She noted a proposed temporary repair to the sink hole at Prallsville Mills which would be presented at the Historic Sites Council on June 16, 2016. She also discussed grant funding from NJDOT for a certain path project.

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

Staff from the NJWSA were unable to attend and there was no report.

### **New Business**

There was no new business.

### **Old Business**

#### **Bulls Island**

Vice Chairman Loos asked Director Fleming if there was an update or timeline for the reopening of Bulls Island. There was no update. Commissioner Lubitz noted the recent article regarding Liberty State Park and the DEP examining other opportunities to develop Parks for commercial opportunities. Director Fleming noted that the purpose was to develop recreational opportunities. She noted there have been discussions regarding special events. She noted that the development of new camping areas had become difficult due to new Department of Health regulations regarding oversight of park projects and requirement for "flush toilets" at new camp grounds. She noted that parks does not have to follow local health department rules but must comply at a state level.

Commissioner Loos questioned how to proceed on Bulls Island. He stated that for two years DEP represented that there would be a schedule for stakeholder meetings, web site publishing, and public comment with a specific schedule/plan proposed. When it was not met the first year, they said it would be done the second year. Director Fleming asked the schedule that was represented and there was discussion. Commissioner Lubitz asked to place "scheduling of a public hearing" on Bulls Island as an agenda item on the June meeting. Commissioner Allen discussed roadway standard and "dangerous trees." You can have a trail and the "dangerous tree" standard applied. A plan is not required. Director Dooley noted that Director Mark Texel wanted to speak with the Commission but he was not available for today's meeting. Director Dooley will reach out to Director Texel.

### **Public Forum**

Mr. von Zumbusch discussed the Canal Symposium he attended, including two films which were presented, one from 1976 and one from 2000. The Kingston Historic Society will show them at the June 7 meeting at the Kingston firehouse, at 7:30 pm.

Mr. Barth noted Canal Watch activities, including a hike starting at Ellarsie, the June 4 history walk from Blackwells Mills to Griggstown, and the annual meeting of D&R Canal Watch on June 12, 2 pm, at the Muletenders Barracks. He stated he would like to see Bulls Island Park open. He noted the bad odor from the Lambertville sewerage plant and Vice Chairman Loos requested that the subject be put on the June 2016 agenda.



**Executive Session**

Vice Chairman Loos stated that the Commission needed to enter Executive Session to discuss the lease for the Commission's office. Commissioner Lubitz made a motion to enter Executive Session. Commissioner Stout seconded the motion.

At 12:00 pm, the Commission entered Executive Session.

At 12:25 pm, the Commission re-entered the public meeting.

**Adjournment**

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

The meeting adjourned at 12:25 pm.

Respectfully submitted,



Marlene Dooley, Secretary

