



**January 15, 2020 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:00 a.m.
DATE: January 15, 2020
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice Chairman John Loos; Commissioner Bruce Stout; Commissioner Phil Lubitz; Director Olivia Glenn and Commissioner Julia Allen via telephone.

STAFF: Executive Director John Hutchison; Commission Engineer Joseph Ruggeri; Deputy Attorney General Jason Kane; Ms. Colleen Maloney.

GUESTS: Superintendent Patricia Kalleser; Executive Director Marc Brooks, New Jersey Water Supply Authority (NJWSA); Michael Sellar, NJWSA; Angela Gorska, NJWSA; Linda Barth, D&R Canal Watch; Robert Barth, D&R Canal Watch; Wayne Petko, D&R Canal Watch; Robert von Zumbusch, D&R Canal Commission Advisory Committee; Rikki Massand, Montgomery Township Landmarks Preservation Commission; Christian Roche, Langan Engineering; Karen Jezierny, Princeton University; Jacob Turin, Engel Burman; Judy Detrano, Lambertville KLG; Mitchel Ardman, Reynolds Group; Maryann and Scott Milford, Milford Farms; Mike Mann, Stockton Borough Council; Ted Bayer, Bayer-Risse.

Vice-Chairman Loos announced that this was a monthly meeting of the Delaware and Raritan Canal Commission and that the provisions of the "Senator Byron Baer Open Public Meetings Act" (OPMA) had been complied with in the scheduling of the meeting.

Vice-Chairman Loos announced that the meeting was being taped pursuant to the exception set forth at Section C.(1) of DEP Policy & Procedure 2.85 "Prohibition of Recording in the Workplace" Policy adopted on September 18, 2019.

Administrative Items

Vice-Chairman Loos confirmed the February 19, 2020 Commission meeting date.

Annual Election of Officers

Vice-Chairman Loos noted the Commission's Bylaws direct that the Commission reorganize at the January meeting and elect offices for the calendar year 2020, and that he would entertain nominations for the positions of vice-chairman and treasurer. Commissioner Stout moved to re-elect Vice-Chairman Loos as vice-chairman and Commissioner Lubitz as treasurer. Commissioner Lubitz seconded the motion. Vice-Chairman Loos called for further nominations. Hearing none, he called for a vote. The motion carried unanimously.

Minutes

Vice-Chairman Loos asked if there were any comments on the December 19, 2019 Commission meeting minutes. Hearing none, Vice-Chairman Loos said he would entertain a motion to adopt the minutes. Commissioner Stout moved that the Commission approve the December 19, 2019 meeting minutes, which motion was seconded by Commissioner Lubitz. The minutes were approved unanimously.

Review Zone Projects

Zone A Projects

Vice-Chairman Loos requested a motion to approve the Zone A projects:

- 18-3642B Easton Avenue Redevelopment/QuickChek (Franklin Township)
- 19-1523A 6 Coryell Street -- Deck Replacement and Guardrails (Lambertville City)

Commissioner Lubitz moved that the Zone A projects be approved, which motion was seconded by Commissioner Stout.

Vice-Chairman Loos asked for comment or questions regarding the projects. Commissioner Stout noted the Easton Avenue/QuickChek project staff report did not specify use of native vegetation species for proposed landscaping as a condition of approval. Commissioners Lubitz noted this site is a commercial site, and not within a stream corridor. There was discussion of whether it is appropriate for the Commission to permit the planting of ornamental species outside the boundaries of the Commission-regulated stream corridor. Vice-Chairman Loos suggested that rather than imposing a prohibition on non-native species, that the certificate of approval for the project contain the condition directing that no invasive species be included in the landscaping plan. Mr. von Zumbusch commented that there may be situations where the use of non-native species is appropriate from a historic perspective, such as the planting of ornamental species within an historic park.

The vice-chairman called for further comment on the projects; and, hearing none, called for a vote. The motion to approve the Easton Avenue Redevelopment/QuickChek project with the condition that no invasive tree or shrub species be included in the landscaping plan and the 6 Coryell Street project was approved unanimously.

Zone B Projects

Vice-Chairman Loos asked for a motion to approve the Zone B projects:

- 19-2441U Princeton University -- Residential Colleges (Municipality of Princeton)

Executive Director Hutchison stated that upon the advice of the DEP ethics liaison officer he would leave the room for the consideration of the project. Director Hutchison then left the conference room.

January 15, 2020

Commissioner Stout motioned to approve the project, and Commissioner Lubitz seconded the motion. It was approved unanimously. Mr. Hutchison returned to the conference room and resumed his seat following the vote.

19-5376A Milford Farm -- Single Family Residence (Kingwood Township)

Commissioner Stout commented on the stream corridor intrusion and the proposed mitigation and inquired how the proposed mitigation would provide a "greater ecologically beneficial effect" on the site, and thereby meet the criteria for a waiver of strict compliance with the stream corridor impact review standards.

Director Hutchison provided a description of the project, noting that the applicants proposed to construct a single-family residence on the property. The project site is located within the Lockatong Creek watershed area. Two tributaries to Lockatong Creek, a Commission regulated stream that flows into the Delaware and Raritan Canal, are located on the property. One stream reach is located to the west and the other to the east, and both streams confluence just north of Slacktown Road. In the course of the review of this application by Commission staff, historic aerial photography indicated that additional coverage was placed on the property, including portions of a driveway, silo foundations and barns. These structures were not previously reviewed by the Commission. The construction of the barns had created prohibited intrusions into the Commission stream corridor that staff sought to resolve with the applicants in the review of the residential development project. Director Hutchison further noted that the applicant would set aside land onsite to compensate for the unpermitted stream corridor intrusions. Mr. Ruggeri commented that the proposed mitigation area abutted the defined stream corridor, thereby adding to its overall size and environmental benefit. He further explained that staff proposed that row crop and livestock grazing be allowed to continue within certain portions of the stream corridor because the areas had been historically-farmed.

Vice-Chairman Loos concurred with Commissioner Stout's assessment that the creation of mitigation area outside the defined Commission stream corridor was not as ecologically beneficial as preserving the defined stream corridor.

Mr. Bayer of Bayer-Risse Engineering, Inc., introduced himself as the engineer representing the applicants. He presented a site map which described: the historically-farmed areas of the property; the stream corridor; the proposed mitigation area; the existing barns; and proposed residence. Mr. Bayer explained that in 2010, the applicants worked with the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) to construct the barns on the property. Mr. Bayer noted that the applicants believed that they were in compliance with their permitting requirements, only to learn later that Commission review and approval of the barns was required. Mr. Bayer reported on the proposed stormwater management facilities, including a bioretention basin partially located within the stream corridor and that roof runoff from the barns would be redirected to the basin. Mr. Bayer commented that the 2.2-acre compensation area had been disturbed at some point, that it is adjacent to the stream corridor, and that the area would be subject to natural succession, effectively increasing the size of the stream corridor.

Vice-Chairman Loos suggested that in order to ensure an ecological benefit, it would be appropriate to allow 2.2 acres of currently-farmed area within the Commission stream corridor to revert to a natural state, or in the alternative to place restriction on 2.2 currently-farmed acres that allows only livestock

grazing. Commissioner Stout commented that 1:1 mitigation area outside of stream corridor does not meet a greater ecological benefit threshold, and that he is concerned that cattle grazing in the stream corridor could create a fecal waste runoff issue. Mr. Ruggeri noted that the 2.2-acre mitigation area does increase the size of the stream corridor, thereby adding a benefit.

Commissioner Lubitz observed that that while this portion of Kingwood Township continues to be zoned agricultural; the township could identify the area for more intensive development in the future. He noted that ensuring that the property remain in agricultural use was more preferable from an environmental perspective when compared to dense residential development.

Director Hutchison clarified that the staff report recommended approval of a waiver of strict compliance with the stream corridor impact review standards based upon both of the criteria at N.J.A.C. 7:45-12.4(a) in the proposed mitigation plan; namely, that the project as proposed will not have an adverse impact upon the stream corridor's ability to function as a buffer for the water course's ecological health and as a natural area, and the project incorporated environmentally sound site planning techniques in the way of preserving natural areas so as to demonstrate a greater ecologically beneficial effect on the property.

Mr. Bayer reported that following a discussion with his clients, and to satisfy the Commission's request that the project provide an enhanced environmental benefit to the site, they would agree to place an additional 2.2 acres of the stream corridor into an easement which would limit the agricultural activities within that area solely to livestock grazing.

Director Hutchison noted that, in making a recommendation of approval, staff had considered other Commission projects which permitted historically-farmed and grazed areas within a stream corridor to continue such activities.

Vice-Chairman Loos requested a motion to approve the project. Commissioner Lubitz made a motion to approve the project as recommended by the staff, with the condition that an additional 2.2 acres of historically-farmed area within the stream corridor be limited to livestock grazing only, and not the planting of row crops. He commented that this would ensure a greater ecological benefit. Commissioner Allen seconded motion. The vice-chairman then called for further comment. Hearing none, he called for a vote. Director Glenn and Commissioners Allen and Lubitz voted to approve the motion; Vice Chairman Loos and Commissioner Stout voted against the motion. The motion carried.

Vice-Chairman Loos asked for comment on the remaining Zone B projects.

- 19-2940B Carriage Farm Additions -- Distillery and Microbrewery (Hillsborough Township)
- 18-5298 Adichunchanagiri Cultural & Spiritual Foundation (ACSF) of USA, Inc. -- Proposed Temple Building and Associated Infrastructure (Franklin Township)
- 19-5441A 1217 Route 206 -- Proposed Bank with Drive-through Facilities (Montgomery Township)

Commissioner Stout made a motion to approve the projects, which motion was seconded by Commissioner Lubitz. Vice-Chairman Loos asked if the commissioners and then the public had comment or questions regarding the project. Hearing none, he called for a vote. The motion was approved unanimously.

Executive Director's Report

Director Hutchison reported on the workload for the period covering December 17, 2019 through January 9, 2020. During that period, the staff issued: 14 deficient staff reports; four Jurisdictional Determinations; five Certificates of Approval; and three General Permits.

The Director reported that fee deposits for the month of December totaled \$66,125.50, and that Fiscal Year 2020 deposits totaled \$341,288. He noted that the amount compared very favorably to the same point last year when the Commission had deposited \$205,166. With five months remaining in the fiscal year, the Commission was \$47,000 away from collecting enough fees to meet its anticipated annual appropriation of \$389,000.

The Director reported that despite the Holiday season, staff participated in nine pre-application meetings since the last Commission meeting, with an additional four meetings planned.

The Director reported on his meeting with the Division of Archives and Records Management (DARM) on January 14, 2020, at which he signed the Records Transfer Acknowledgment Form accessioning the Commission collection of 35 mm slides to DARM for scanning. Once a group of the most interesting images has been scanned, they will be transmitted to the Office of Information Technology (OIT) for inclusion in the new Commission website.

Director Hutchison reported in a recent conversation with the construction code official for Hopewell Township about certain residential renovation projects which are potentially subject to Commission jurisdiction under a General Permit No. 1. He noted that under the Commission's enabling statute and regulations, all Commission permitting is triggered by the need for a project to obtain a municipal permit -- either from the planning board/zoning board of adjustment, or an administrative permit such as a building or electrical permit. The GP-1 authorizes projects in Zone A that are necessary to carry out the repair, rehabilitation, maintenance or reconstruction of a structure, road, utility line, or stormwater management measure or basin lawfully existing prior to January 1980, or approved anytime thereafter by the Commission. GP-1s are issued on a fairly regular basis for projects in Zone A such as roof and window replacements.

The Department of Community Affairs, Division of Codes and Standards adopted amendments to their Uniform Construction Code (UCC) regulations regarding the need to obtain a permit from a local construction official certain repairs. Certain repair projects which had been classified as "minor work" and subject to municipal permit are now considered "ordinary maintenance" and not subject to a permit. For example, a permit is not required for the re-roofing of an existing detached one- or two-family dwellings, as well as accessory buildings such as garages, sheds, pool houses, and the like that are accessory. Since the stripping the roof down to existing sheathing or putting on a second layer of roof covering does not require a municipal permit, it will therefore not trigger the need for a Commission permit. Replacing sheathing will still require a municipal permit, and therefore, a Commission permit. Also, windows and doors (including garage doors) may now be replaced without a permit provided they are installed in the same rough opening without altering the dimensions or framing.

The Director noted that he raised the issue because while GP-1s represent a small portion of the Commission's workload (26 GPs total in 2018) and fee collections (\$1,900 out of \$439,000 in FY

2019), it is likely that the Commission staff will be reviewing fewer of them in the months and years ahead, absent a redefinition of the term “project” in the Commission statute and regulations. With that will come the potential for reduced scrutiny over the visual impact of these projects. The Director noted that a person may now replace a metal roof with a shingle roof, and provided that the underlying sheathing does not need replacing, such a project would not be subject to Commission review. Members of the public and stakeholders of the Commission will need to adjust their concerns to reflect the new reality “on the ground.”

The Director reported that on January 9, 2020 he participated in a review of the Stockton embankment project with staff from the NJWSA and the contractor for tree removal. The NJWSA is taking a conservative approach to removing trees along the embankment as part of the repair project, removing only those trees on the canal side of the embankment which would impede the project, as well as dead or dying trees on both the river and canal sides of the embankment.

Mr. Hutchison also reported that at the request of Commissioner Stout, he and Superintendent Kalleser made a site visit to view the Delaware River Joint Toll Bridge Commission (DRJTBC) vehicles parked along the access point to the canal near the U.S. Route 202 bridge. He reported that he saw a motorboat, two SUVs, a dump truck and a crane. The Director reported on his call to the DRJTBC Director of Community Affairs, who said she would look into the situation. It appears that the DRJTBC is parking serviceable -- but surplus -- DRJTBC vehicles on the property for ultimate auction to local governments. While the DRJTBC said that the arrangement was “temporary,” they could not give a date for their removal.

The Director noted that the Commission’s regulations define a “governmental project” as the undertaking of a public improvement, disturbance, development, construction or land-use change by a State department or agency, county, municipality or any other governmental entity. Mr. Hutchison observed that was unclear to him whether the parking of vehicles (or a vessel) rises to the definition of a “project.” He also noted that he was reluctant to propose that the DJTBC implement a screening project for the vehicles because he noticed what appeared to be either a drainage ditch, or an uncoded tributary of Alexauken Creek that ran parallel to the canal. If this watercourse were regulated, the construction of a berm to screen the vehicles may be a Zone A major project with a stream corridor intrusion. He requested to know the Commission’s pleasure before proceeding further with this matter.

Commissioner Stout noted that the DJTBC should consider the historic site on which they have placed the vehicles and vessel. Vice Chairman Loos asked Director Hutchison to contact the DJTBC and ask them to make suggestions to improve the situation.

Park Superintendent’s Report

Superintendent Kalleser reported that the State Park Service was conducting discussions with Lawrence Township zoning officials regarding the proposed septic system for the Port Mercer bridgetender’s house. She reported on progress toward placing gutters and snow stops on the Commission office building. The superintendent reported that, related to the 50th anniversary of the creation of the DEP, park staff submitted ideas for projects, including a colonial garden to be planted at the Griggstown Bridgetender’s station and, tentatively, using internal staff resources to design improvements for the Demotte Lane Bridge parking lot. She reported on receipt of a federal grant to replace eight gates within the park along the main canal. She reported on a Canal Watch meeting at which preservation activities

for the East Millstone bridge tender's station were discussed. The Superintendent also reported that a park encroachment on Southard Street in the City of Trenton was resolved and that the situation will be monitored by staff in the future.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported that dredging on the main canal in Franklin Township was complete for the 2019 season with sediment being trucked off site. He reported that permitting matters were being addressed for Landing Lane/Raritan River rehabilitation project. Mr. Sellar reported on progress for the Stockton embankment repairs, which included an inspection of the trees to be removed. He reported that repair and inspection options for the Six-Mile Run project were under consideration. Mr. Sellar also commented on the progress of permitting for the leak repair in the vicinity of Scudders Falls in Ewing Township, which was being addressed by Williams-Transco. Mr. Sellar reported that the Cedar Grove Watershed improvement project, which will result in the rehabilitation of four detention basins, will begin in the spring.

Old Business

Vice-Chairman Loos commented that the Commission would consider soliciting project concepts related to the use of funds deposited in the "PSE&G/D&R Canal Pole Line" mitigation account (#4875-009) collected as compensation for the 2005 PSE&G project to construct a transmission pole in the canal State Park in Franklin Township (DRCC #05-3250). Proposals would require description of the project, cost estimate for the project and documents supporting the cost estimate, other funds that would be committed to the project, demonstrated support from a municipality, the county or non-profit/advocacy organizations, and partnership with others.

Commissioner Stout asked Director Glenn if mitigation funds, such as for the referenced PSE&G mitigation and the Scudder Falls/Swing Bridge mitigation, could be allocated in different ways. Director Glenn responded that for the PSE&G account, there could be a nexus of related efforts to advance pedestrian access in the vicinity of Demott Lane, such as bike lanes, with Somerset County and Franklin Township. As for the mitigation provided for the impact of the Scudder Falls/Interstate Highway Route 95 project, the funds are more to be dedicated to interpretive and education projects.

Vice Chairman Loos stated that, without objection, the discussion would be tabled to the February Commission meeting.

New Business

Vice Chairman Loos noted that the first item of new business would be the Commission's consideration of the NJWSA 2020 vegetation management plan, submitted in accordance with Schedule B, Section 1, Subsection C(2) of the "Agreement for the Development, Maintenance and Operation of the Delaware and Raritan Canal Transmission Complex as a Water Supply Facility and for Public Recreation, Conservation and Historic Purposes as part of the Delaware and Raritan Canal State Park" dated June 17, 1986.

Mr. Sellar noted the goals of NJWSA to maintain the transmission complex which supports the flow of water in the canal, and which delivers over 100 million gallons of water per day to 1.5 million New Jersey customers. He observed that vegetation management allows for safely maintaining the water flow, maintenance of the embankment areas, keeping a path clear to allow vehicles to travel along the

path, and allows staff to visually inspect the embankment. Examples of trees to be removed include diseased Ash trees, invasive species, trees that threaten public safety, trees that impede access to the canal by NJWSA staff, tree damage from storms, trees that are severely leaning over the canal and multiuse trail. Mr. Sellar further noted that vegetation management can include planned work and emergency work related to severe weather events. He noted that NJWSA regularly communicates with the Commission, the DEP Division of Parks and Forestry, and SHPO regarding tree work proposed in the Delaware and Raritan Canal State Park. Mr. Sellar also provided Commissioners an overview of vegetation-related activities that will be addressed in the City of Lambertville.

Ms. Detrano commented on her concern that vegetation maintenance was unsupervised. Mr. Sellar responded that maintenance was in fact supervised. Ms. Detrano asked if consideration was given to nests and asked if a survey had been done of resident birds, squirrels, bats, beavers and other wildlife that could be displaced as a result of tree trimming and removal activities in Lambertville. Ms. Detrano also asked who made the decision to identify which trees that needed to be cut. Mr. Sellar responded that the NJWSA staff identifies trees to be removed and that concerns for threatened or endangered species can be reported to the DEP Endangered and Nongame Species Program. Executive Director Brooks commented that when conducting tree trimming and removal activities, the NJWSA complies with any timing restrictions related to wildlife species, which are addressed in DEP permit requirements imposed on the NJWSA.

Mr. Barth asked about work to be done in other 60-odd miles of the park beyond the City of Lambertville, including addressing trees and stone walls. Director Brooks noted that the vegetation management plan addresses the entirety of the Delaware and Raritan Canal, and codifies maintenance activities performed by NJWSA along the canal. Mr. Barth noted concern that he was not able to review the plan and comment prior to the Commission voting on the plan. Director Hutchison stated that the vegetation management plan was listed on the Commission meeting notice

Mr. von Zumbusch noted that from an historic preservation perspective, the DEP and the Commission should resist efforts to require the replacement of trees near the former towpath. He remarked that during the canal's period of historic significance, trees would not have been present so close to the canal, as they would have impeded the use of the path by mules and interfered with boat masts and sails.

Commissioner Lubitz noted his concern regarding trees and breaches of the embankment between Bulls Island and Prallsville. Director Brooks reported that a maintenance/repair project for this area was being devised by the NJWSA for eventual submission to the Commission.

Ms. Gorska narrated a PowerPoint presentation which detailed of the vegetation maintenance plan relating to the City of Lambertville. She noted that the NJWSA proposed a pilot native buffer planting plan for the embankment in Lambertville, which was developed in response to the concerns expressed by city residents related to vegetation and tree removal work conducted in 2019. She noted that the pilot native buffer planting plan was included within the broader 2020 vegetation maintenance plan, which addressed the entire canal within NJWSA's jurisdiction.

She stated that the pilot plan was a transferable model that could be employed in other sections of the canal where appropriate. The plan addresses 600 linear feet of canal embankment in Lambertville, and includes the removal of existing vegetation including invasive species and the planting of warm season

January 15, 2020

native grasses.

Vice-Chairman Loos asked for a motion to approve the plan. Commissioner Stout moved to approve the plan as proposed by the NJWSA, and Commissioner Allen seconded the motion.

The vice-chairman then asked for further discussion. Commissioner Lubitz requested a clarification on whether the plan would remain in effect until a successor plan was approved by the Commission. Mr. Sellar confirmed that Commissioner Lubitz's interpretation of the 1986 lease agreement was correct, but that the plan could be reevaluated as needed, and that targeted areas could change based on factors such as severe weather events.

Mr. Barth asked about public participation in reviewing the plan and asked how he could comment. Director Hutchison noted the authority of reviewing and approving the plan lies entirely and solely with the Commission and that the Commission is under no obligation to provide a copy of the plan to the Commission's ad hoc advisory committees prior to the Commission voting on the plan. Commissioner Stout noted that in the interest of transparency, the plan should be shared with the public.

Vice-Chairman Loos called for a vote. Vice-Chairman Loos, Director Glenn, and Commissioners Allen and Stout voted to approve the motion; Commissioner Lubitz abstained. The motion carried.

Public Session

Mr. Mann reported that on February 29th the "Love Mother Earth 2020" event will be held at Prallsville Mills from 12:00 noon to 5:00 pm. The event promotes environmental awareness through art. March 1, 2020 is the alternative date in the event of snow.

Mrs. Barth noted she would be speaking about the Delaware and Raritan Canal at the Lambertville Historical Society Meeting to be held on January 19th at the Lambertville Justice Center.

Mr. Massand reported that he was appointed as the liaison to the Commission by Montgomery Township. He noted his continuing interest in the Griggstown Causeway and a potential project related to it. He noted he is a photographer and would provide photos of the Commissioners for the website if requested.

Mr. Barth distributed the 2020 events schedule for D&R Canal Watch and noted a January 26th walk scheduled within Lambertville and New Hope -- the two-canal walk.

Executive Session

None.


Adjournment

There being no other business, Vice-Chairman Loos entertained a motion to adjourn. Commissioner Stout moved to adjourn, which motion was seconded by Commissioner Lubitz. The motion was approved unanimously.

The meeting adjourned at 12:00 noon.

January 15, 2020

Respectfully submitted,



John Hutchison, Secretary