



**May 20, 2020 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.
DATE: May 20, 2020
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman John Loos; Commissioner Bruce Stout; Commissioner Phillip Lubitz; Mr. Edward Mulvan, designee for Commissioner Catherine McCabe; Commissioner Caryl Shoffner; Commissioner Julia Allen; and Commissioner John Reiser all participated via online platform and teleconference.

STAFF: Executive Director John Hutchison was present in the Commission conference room. Commission Engineer Joseph Ruggeri, Ms. Colleen Maloney, and Deputy Attorney General Jason Kane participated via online platform and teleconference.

GUESTS: Park Superintendent Patricia Kalleser; Marc Brooks, Executive Director New Jersey Water Supply Authority (NJWSA); Mike Sellar, NJWSA; Heather Desko, NJWSA; Robert von Zumbusch, D&R Canal Commission Advisory Committee; Robert Barth, Canal Watch; Daniel Popkin; Judy Detrano; Rikki Massand; Matthew Witters, Eustace Engineering; Linda Barth, Canal Watch.

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

Since Commission members were participating via telephonic device pursuant to Article III, Section 4 of the Commission Bylaws, the Vice-Chairman directed the Executive Director to take the roll. There being seven Commissioners present, the Director indicated to the Vice-Chairman that a quorum was

present, and that the transaction of Commission business could therefore proceed.

Vice-Chairman Loos announced that the State Senate had provided its advice and consent to the nomination of John J. Reiser of North Brunswick Township to be a member of the Delaware and Raritan Canal Commission, filling the vacancy created by the resignation of Mary Alessio Leck. Deputy Attorney General Kane then administered the Oath of Office to Commissioner-designate Reiser. Vice Chairman Loos congratulated Commissioner Reiser and welcomed him to the Commission.

Vice-Chairman Loos confirmed the June 17, 2020 Commission meeting date and stated that, given the ongoing public health emergency and declared state of emergency related to the COVID-19 pandemic, that the meeting would likely be held via online platform and teleconference.

Minutes

Vice-Chairman Loos asked if there were any comments with respect to the April 15, 2020 meeting minutes, and, hearing none, he called for a motion. Commissioner Lubitz motioned to approve the minutes and Commissioner Stout seconded the motion. Mr. Mulvan, Commissioners Lubitz, Stout, Allen, and Shoffner, and Vice-Chairman Loos voted to approve the motion. Commissioner Reiser abstained. The motion carried.

Review Zone Projects

Vice Chairman Loos requested that the Commissioners identify any Review Zone A projects for which they had comments or sought detailed discussion. 19-4096E Princeton Abbey and Cemetery -- Phase 2 and 20-1706B 1 Elm Street Extension -- Proposed Garage/Artist Studio were identified.

Director Hutchison stated that two projects listed on the Commission meeting agenda in Review Zone A would not be considered by the Commission, since they had not obtained municipal or county approval and were therefore not administratively complete pursuant to the requirements of N.J.S.A. 13:13A-14(c) and N.J.A.C. 7:45-3.4(d): 20-2099H PSE&G 472 Weston Canal Road -- Parking Expansion; and 20-5541 2 Main Street -- Mixed Use Development. In addition, the director stated that project 20-3651F Stony Brook Regional Sewerage Authority -- River Road WWTP UV Disinfection and Effluent Filtration Project, listed on the agenda as a Zone B project, was in fact a Review Zone A project.

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

- 20-1939C Mercer County Firearms Training Facility -- Containment Trap System (West Amwell Township)
- 19-2834C U.S. Route 1/Bakers Basin Road -- Proposed Fast Food Restaurant (Lawrence Township)
- 19-4309B 2 John F. Kennedy Boulevard -- Proposed Memorial (Franklin Township)
- 20-3651F Stony Brook Regional Sewerage Authority -- River Road WWTP UV Disinfection and Effluent Filtration Project (Princeton)

Commissioner Stout made a motion to approve the projects and Commissioner Lubitz seconded the motion. The vice-chairman called for comment, and hearing none, called for a vote. The motion was approved unanimously.

20-1706B 1 Elm Street Extension -- Proposed Garage/Artist Studio (Lambertville City)

Vice-Chairman Loos requested a motion to approve the 1 Elm Street project so as to enable discussion. Commissioner Stout made the motion and Commissioner Allen seconded the motion.

Commissioner Lubitz stated he appreciated that applicant made changes to the proposed design, but that the applicant's modification to the project did not satisfy his concerns as they related to the relationship of the proposed building to the existing residential dwelling on the property. For the benefit of the new commissioners, Commissioner Lubitz provided a description of the project site, noting that the lot was an "orphan" in terms of the Delaware and Raritan Canal State Park Master Plan, which identifies it as being part of the "Urban" canal environment in the City of Lambertville. He further noted that the property is totally separated from the rest of the city, by the railroad trestle, Alexauken Creek to the north and the bridge over the creek.

Commissioner Lubitz offered his assessment of the project renderings the applicant was asked to supply at the April Commission meeting. Commissioner Lubitz noted that the renderings could be seen as deceptive because the proposed building would be taller than the existing building, and that the proposed project would replace an existing low-slung garage that is barely visible from the towpath in part due to an eight-foot high berm. Commissioner Lubitz further noted that the property abutted the park path, with the existing house just feet from the path and the existing garage just over 50 feet from path. He stated that one rendering did not convey the relationship in height of the existing building to the new and the perspective in the rendering made the proposed project look much smaller.

Commissioner Lubitz further noted that the second requested rendering supplied by the applicant, which depicted the proposed landscape plan, illustrated how the new modern building would tower over the existing building, and that the proposed building's roof height, including the slope of that roof line, would be located high above the roofline of the nearby existing residence.

Commissioner Lubitz noted that while the property was located in the City of Lambertville proper, its isolated location created a kind of oasis along the park path. Commissioner Lubitz stated while he liked the proposed building, he did not like where it is proposed to be located. He noted that the argument that the proposed structure mimics other Lambertville buildings such as the Finkle's hardware warehouse building, which is located about three-quarters of a mile from the project site, was an insult to the senses. He stated that he would vote "no" on the project, since the applicant did not satisfy his concerns about the proportionality of the proposed and existing buildings. He suggested an easy solution would be to construct a 19th century "carriage house" structure, the design of which would be more appropriate to the project site.

Vice-Chairman Loos noted that the proposed structure was less than three feet taller than the adjacent residential dwelling, and asked Commissioner Lubitz if his objections were based upon the height of the proposed building, or the architectural style of the proposed building. Commissioner Lubitz responded that he had concerns about the proportion of the building when compared to the adjacent dwelling, including the roof apex height and the roof line. He also noted that he had additional concerns about the total square footage of the proposed project. He would appreciate the building in another setting, but that he viewed the proposed building was an enormous structure "lurking" over the path. He noted the path and park are an oasis, not a place for a building which lurks over the path. Finally, he noted that the Commission should be concerned for the impact of the project upon park users and how it would impact their experience.

Vice-Chairman Loos called for public comment.

Mr. Barth noted the proposed project would negatively change the view of a park user from the path and certainly have an impact on that view.

Mr. von Zumbusch noted he generally agreed with Commissioner Lubitz and argued that the existing dwelling was absolutely historic. He asserted that in the past it was believed that the existing residence was a supervisor's home for the Belvidere and Delaware Railroad. He noted that it was a mistake for the Delaware and Raritan Canal State Park Master Plan to identify the site as being located in an "Urban" canal environment.

The applicant, Mr. Popkin, stated that he found the characterization of the renderings he supplied as "deceptive" as upsetting and unfair to him. He noted he provided the Commissioners with the information they requested at the April Commission meeting, and specifically noted that he supplied a rendering of a view of the project from south of the railroad trestle bridge at the specific request of Commissioner Lubitz. Mr. Popkin noted that the existing dwelling is 35 feet from the park path and the existing garage/proposed project is 56 feet from the park path.

Commissioner Lubitz noted that he requested a rendering illustrating the proposed project and existing dwelling from a view directly from the opposite bank of the canal looking directly at the project site. Commissioner Lubitz clarified that he was not calling the applicant "deceptive," but rather, he was stating the rendering was deceptive due to perspective. He noted that he did not wish to impugn Mr. Popkin. Mr. Popkin stated that his notes on the request referred to the old railroad trestle bed. Commissioner Lubitz noted he requested the tracks. Mr. Popkin clarified that perhaps the Commissioner had requested the view "head on" from the railroad tracks and Commissioner Lubitz agreed that was his request. Commissioner Stout noted that the submitted rendering made the proposed structure look less tall than would be the reality, whereas a "head on" illustration would be more illustrative of the reality of the proposed project when it was constructed.

Mr. Popkin noted that he had submitted the renderings requested by the Commission. He also noted that the proposed project had been modified to be five feet shorter than that originally proposed at the April Commission meeting, and that it was now 2' 3" higher than the existing dwelling. He also reminded the Commission that the project site sits 20 feet further away from the park path than the existing dwelling, and that the site would be landscaped in the manner noted on his submitted materials. Mr. Popkin also offered to revise the landscaping to add more tree plantings if necessary.

Vice-Chairman Loos asked Mr. von Zumbusch to provide Commissioners with an explanation of the principles which should guide the construction of a new building that is proposed in close proximity to an existing historic building. The Vice-Chairman stated that it was his understanding that it was preferable to construct the new building in an architectural style that was significantly different than the existing building, in order to clearly differentiate the new from the old, and not to deceptively mimic the original design.

Mr. von Zumbusch that the Vice-Chairman's understanding was generally correct; however, the design of the new building, while different, must be compatible with the design of the older structure. Mr. von

Zumbusch stated that he did not find the perspective of the submitted rendering to be misleading; but that he found the “eve” line of the proposed building to be an important but intrusive element of the design. Finally, he noted that the Modern style of the building did not fit into the context of the overall site. He noted that the design of the proposed building reminded him of Mies van der Rohe’s Farnsworth House, which is one of the masterpieces of Modern architecture, but that the design was nevertheless inappropriate within the context of the historic Delaware and Raritan Canal corridor.

Commissioner Lubitz noted compatibility is illustrated in a museum designed by IM Pei, in Suzhou, China. While the design of the museum is modern, Commissioner Lubitz noted, it is an homage to the architectural style of the surrounding historic garden, and therefore compatible. In response to Vice-Chairman Loos’ question, Commissioner Lubitz noted that the pyramid shape designed by IM Pei at the Louvre could be an historic reference to the pyramid tents utilized at the time of the French Revolution and might reference the long history of France with Egypt, as demonstrated when Napoleon returned to France with an obelisk from Egypt.

Vice-Chairman Loos noted that the Commission regulations identify the proposed project site as within an “Urban” environment and that the “Urban” environment allow for structures at different setback distances from the park, built at different heights, and employing different architectural styles. He noted that for the Commission to be micro-managing types of architecture that could be used in an urban environment could be contrary to the intent of the establishment of the “Urban” environment in Master Plan. Mr. von Zumbusch reiterated the importance of context of the proposed design, while Commissioner Lubitz noted his continuing concern regarding the visual relationship between the existing and proposed buildings.

Mr. Popkin noted that with respect to context, the Canal Studios complex and Niece Lumber buildings were adjacent to the Delaware and Raritan Canal State Park, and that these commercial buildings were readily seen from the Delaware and Raritan Canal State Park path when entering the park from the city streets.

Mr. Popkin further noted that the proposed materials employed in the project -- glass and dark gray color exterior elements, along with the proposed modification to wood siding would moderate the view of the building from the park. He also noted that the studio is an addition on top of an existing garage that is located in a flood zone. He noted the proposed project is a small-scale change to the frontal viewscape of the property, and that the project affects roughly 4.5 percent of the 440-linear-foot property and 2.6 percent of the total footprint on site. In answer to Commissioner Lubitz’s question about the total square footage of the project, Mr. Popkin stated it was 3,200 square feet, with 1,212 square foot of existing building.

Mr. von Zumbusch stated his opposition to the project as proposed and further stated that he believed it should be rejected. He stated that if the proposal is accepted by the Commission, additional landscaping should be mandated as a condition of approval, and suggested that the view and character of the park would be changed, and that if the structure were to be built, it should be completely hidden from the canal and path with non-deciduous plantings.

Vice-Chairman Loos asked if the Commissioner who had made the motion to approve the project intended to revise the motion. He noted that, if not, a vote on the motion as made will take place. The

vice-chairman noted that if the motion to approve the project failed, alternative motions could be made.

Commissioner Reiser recommended that staff meet with the applicant and Commissioner Lubitz to discuss a compromise approach which involved revisions to the landscaping plan to better screen the project from the Delaware and Raritan Canal State Park. Vice-Chairman Loos responded that the last meeting resulted in the applicant withdrawing the application with a recommendation to modify and resubmit. Mr. Popkin stated that he did make revisions as requested by the Commission at the April meeting with consideration to Commission regulations, but that he would agree to plant additional landscaping.

Vice-Chairman Loos observed that it was his view that the majority of the Commission appeared to have reservations about the architectural style of the proposed building, finding the project as being too modern for the site, and requesting that the design be more compatible. The vice-chairman stated that he thought that “tweaking” the design would not satisfy the majority of Commissioners.

Mr. Popkin stated that the comments made at this meeting were not the same comments that were raised at the April meeting when the project was presented. He stated that he regarded the debate over the project to be a subjective exercise, and that he is a modernist, that he found the proposed project design to be quite beautiful, and that it was inappropriate that he satisfy many people proffering differing opinions about the project and making different design requests.

Vice-Chairman Loos asked if Mr. Popkin would consider additional landscaping. Mr. Popkin referred the Commission to the submitted photographs and the exhibit which illustrated the proposed landscaping and stated he could add more trees to enhance the vegetative screen. He offered to work that out the Director Hutchison. Mr. Popkin also noted that there were existing trees on the site that were not included on the landscaping illustration, including dogwood, and that he was not averse to adding even more vegetation.

Vice-Chairman Loos then posed a question to the Commissioners: if they did not like the style of the proposed building, could a greater enhanced landscape screen be an appropriate alternative? Commissioner Shoffner responded that she supported that idea of additional vegetation to enhance the screening of the project from the canal. Commissioner Lubitz responded that his concern was the size of the proposed building, and he did not think it could be adequately screened. Commissioner Stout agreed with Commissioner Lubitz’s assessment of the screening situation.

Vice Chairman Loos then called for a vote on the motion to approve the project as submitted.

Vice Chairman Loos voted “no”; but stated he was open to considering a motion that would require adequate screening which would include consultation with arborists.

Mr. Mulvan voted “no” and stated he agreed with John Loos that screening was of issue.

Commissioner Stout voted “no.”

Commissioner Shoffner voted “no”, and stated she was open to considering a motion that would require adequate screening.

Commissioner Lubitz voted “no.”

Commissioner Allen voted “no.”

Commissioner Reiser voted “no” and stated he would like to see the applicant meet with Commission staff and Commissioner Lubitz one more time to discuss how to revise the project.

Vice-Chairman Loos stated that the motion failed, and that the project was not approved.

Vice-Chairman Loos observed that it appeared that four Commissioners stated they would consider the proposed project with proper and significant screening, and noted the applicant could proceed with further staff consultation and members of the commission could attend, provided that it did not result in a quorum being present.

19-4096E Princeton Abbey and Cemetery -- Phase 2 (Plainsboro Township)

Vice Chairman Loos asked for comment on the project. Commissioner Stout requested clarification on the management of storm water from the project. Mr. Ruggeri noted that the work on the site was being done in phases. Mr. Witters, consultant for the applicant, Mr. Ruggeri, and Commissioner Stout discussed treatment of stormwater runoff, including that the applicant is incorporating bio-retention within its own site, treating stormwater before it gets to the discharge site, and reducing runoff rates and volumes, with water quality treatment at 95% TSS.

Commissioner Stout asked about one landscape plant, a “Panicum” hydrangea, which is listed as a “potential” invasive species on the New Jersey Invasive Species Strike Team “Do Not Plant” list. Director Hutchison noted that while plant is listed as a “potential” problem species, it is an ornamental species that is very common in formal planting situations, and that the proposed plant will not be placed in a Commission stream corridor. Commissioner Lubitz recommended the “Oakleaf” hydrangea as an alternative planting. Mr. Witters agreed to replace the Panicum with the Oakleaf hydrangea, and noted it will have better fall color.

Vice-Chairman Loos called for a motion on the project, with the change in landscaping design as discussed. Commissioner Stout made the motion which was seconded by Commissioner Lubitz. In response to a question from Mr. von Zumbusch about visual impact of the cemetery project and preservation of the corridor, Mr. Witters and Director Hutchison stated that the grave markers in this area of the cemetery would be flat and thus presented no visual impact at all. Mr. Witters stated that subsequent phases at the site will come in for review, as did Phases 1 and 2. Vice Chairman Loos called for a vote. The motion was approved unanimously.

Vice-Chairman Loos requested a motion to approve the five Review Zone B projects:

- 18-2294N The Lawrenceville School -- Campus Dining and Athletics (Lawrence Township)
- 20-2790C Ewing High School -- Athletic Complex Site Improvements (Ewing Township)
- 20-2965B Princeton High School -- Additions (Municipality of Princeton)
- 20-3341K Maplewood at Princeton -- Major Modification (Plainsboro Township)

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20-3791H Institute for Advanced Study -- Geo-Exchange System (Municipality of Princeton)

Commissioner Lubitz made the motion and Commissioner Stout seconded the motion. The vice-chairman asked for comment from the Commission, and then the public. Hearing none, he called for a vote. The motion was approved unanimously.

Executive Director's Report

Director Hutchison noted the workload for the period of April 14th to May 19th. In addition to the 11 projects on the May Commission agenda, the staff issued 12 deficient staff reports, 4 Jurisdictional Determinations, 8 Certificates of Approval, and 4 General Permits.

The Director noted that in April it had not been possible to make a bank deposit. As consequence, two deposits were made in May totaling approximately \$124,200. Deposits for Fiscal Year 2020 now totaled \$572,338, and that the Commission has already exceeded its anticipated annual appropriation of \$389,000 by approximately \$183,000. Mr. Hutchison noted that DEP Budget and Fiscal staff had revised the Commission's anticipated appropriation to \$450,000 for the current and future fiscal years.

Director Hutchison noted that even if fee revenues were to decline precipitously for the remainder of the fiscal year, he believed that with prudent spending decisions, and barring the withdrawal of the present waivers provided for fringe and indirect costs, the Commission would still be able to meet its obligations through the end of the extended fiscal year in September.

The Director noted that using remote meeting technology, he was able to hold 9 pre-application meetings from April 15th through May 19th, with another three meetings scheduled for the upcoming week.

The Director reported that on May 2nd the Governor issued Executive Order No. 136, which tolled or suspended the mandatory timeframes for the review of DEP permit applications pursuant to certain environmental laws. The Commission's land use program was not among the statutes listed in the Order; therefore, the 30-day time limit for the determination of administrative completeness and the 45-day requirement for an administratively-complete project to be considered by the Commission remain in effect. In other words, Director Hutchison said it was "business as usual" at the Commission.

The Director reported on legislation (S-2346/A-3919) that had been passed in both Houses of the Legislature by widespread bipartisan margins to implement a new version of the "Permit Extension Act of 2008" and extend certain environmental permits for the duration of the declared COVID-19 state of emergency, and not longer than six months or 12 months, depending on whether the project was subject to the suspension on non-essential construction activities in Executive Order No. 122. The Commission's land use program is one of the listed permit programs effected by the bill. The bill would take effect immediately and is retroactive to March 9, 2020, when Executive Order No. 103 was issued, declaring a public health emergency and state of emergency in response to the COVID-19 pandemic. The bill requires State agencies to place a notice in the New Jersey Register tolling approvals within 30 days of the effective date of the bill, so in the event the legislation is approved, the Director noted that he

would coordinate with DEP Office of Legal Affairs on the wording and publication of the appropriate notice documents.

Mr. Hutchison reported on legislation entitled the “Employee Job-Sharing Furlough Protection Act” which passed the State Senate on May 14th by a vote of 36-1 after having passed the General Assembly by a vote of 80-0. The legislation would implement a shared work program for State and local government employers. Under the bill, some non-essential state and local employees would be furloughed, and work hours and wages for those employees would be reduced to 40% -- essentially, working 2 days out of 5. The bill would then take advantage of a provision in the federal “Coronavirus Aid, Relief, and Economic Security (CARES) Act,” which increased weekly unemployment benefits by \$600, the cost of which is borne entirely by the federal government. With that additional unemployment compensation, it is believed that many low- and middle-income New Jersey public workers would not be disadvantaged by collecting unemployment for the 60% of their hours that they were furloughed. The temporary, part-time furlough would not affect employees’ pensionable time calculation, and they would continue to be enrolled in the State Health Benefits Plan or other plan. As things currently stood, Director Hutchison noted that he was the only designated “essential employee” at the Commission, and that he would monitor the bill’s progress and make staffing adjustments accordingly, while awaiting any guidance DEP Human Resources Unit chose to offer.

The Director noted that on May 13th he transmitted the final set of edits for the new Commission website to the NJ Office of Information Technology, and that the new site went live 10:30 a.m. The Director noted that revamping the Commission website, which was launched in 1999 and had undergone no appreciable changes since that time, was a major initiative that he undertook when becoming Director in 2017. Mr. Hutchison wanted to publicly thank the team at NJOIT, especially Data Processing Systems Programmer Carl Sebestyen and Promotional Material Specialist Mary Leather, who provided invaluable assistance in the design and implementation of the new website.

In addition to the standard professional-looking architecture common to all State Government websites, the new site has a wide array of new information in an easily accessible format, including: past meeting minutes, annual reports, the Bylaws, Commissioner biographies, links to the NJ-Geoweb mapping tool, FAQs regarding the land use program, copies of the Commission’s historic planning documents, Commission-related legislation, maps, staff contacts, interactive driving directions to the Commission office, links to canal-related organizations throughout the United States, and a tool for filing OPRA requests. Mr. Hutchison noted that the new website was a “living document,” that he hoped to expand and improve upon in the months and years ahead and hopefully generate interest in, and advocacy for the canal.

Mrs. Barth asked to be introduced to Commissioner Reiser. Commissioner Reiser stated he had worked for Middlesex County for 50 years, 43 of which as County Engineer, and that he is a resident of North Brunswick, NJ.

Park Superintendent’s Report

Superintendent Kalleser noted that park staff was responding to and implementing the various Executive Orders issued by Governor Murphy to address the ongoing COVID-19 public health emergency and declared state of emergency. She stated the park staff intends to on-board seasonal staff for the upcoming summer season, and that staff is cutting grass and addressing hazardous tree

complaints in various municipalities along the canal.

Superintendent Kalleser reported that she would be meeting with officials from the City of Lambertville regarding the operations of the Delaware and Raritan Canal State Park in that municipality with respect to social distancing. She also reported that park staff were maintaining the park bathroom in Lambertville from 11:00 am to 3:00 pm each day.

The Superintendent noted that archaeological work would commence at the Port Mercer Canal House in Lawrence Township as part of the preparation for the installation of the new septic system, which was funded in part using mitigation monies supplied by the Commission.

Superintendent Kalleser reported that, with regard to the Delaware and Raritan Canal State Park, picnicking would be allowed, but that grilling in the park would be prohibited. She noted funding was applied for to address the need for new park gates and resurfacing.

Commissioner Lubitz noted that, currently, cyclists cannot loop through to Bulls Island on the foot bridge from Lumberville, Pennsylvania, and requested that a lane be established through Bulls Island to allow the interstate transit. Superintendent Kalleser noted that Bulls Island is closed as it is predominantly a picnic area and that boaters can enter the river at the Byram boat launch. She noted that she hoped that the Division of Parks and Forestry will eventually permit access across the bridge, with a thoughtful strategy addressing issues such as restroom use and establishing a path across a paved area.

Commissioner Lubitz noted that the park staff could remove picnic benches and that the playground is cordoned off already, and that, during the week, it is mostly cyclists and walkers that utilized the pedestrian bridge. The superintendent noted that the park is experiencing, in addition to its regular visitors, an influx of out-of-state visitors and that a safe and manageable plan was of importance. She noted that the Delaware River Joint Toll Bridge Commission has been asked to make suggestions. Commissioner Lubitz stated that it was his opinion that it was an overreach to keep the Bulls Island parking lot closed.

New Jersey Water Supply Authority (NJWSA)

Mr. Sellar noted that the canal dredging contractor would begin to mobilize, perhaps in mid-June, with actual dredging at the end of June. He noted the Landing Lane Spillway project permits are pending, and that construction was anticipated in 2021. The Island Farm Weir project permits had been obtained, and the project will be bid to construct later this year. Work on the western embankment repair in Stockton Borough and the Bulls Island to Prallsville embankment design were both in process. He also reported that the dye test at the rehabilitation project at Six Mile Run would commence shortly. Mr. Sellar reported on positive progress of the Cedar Grove Brook watershed recharge basin improvement projects. He also noted that Transco had obtained permits to conduct repairs at their Ewing Township pipeline site, and that company expected a late June project start. Lastly, he noted that the mowing season was well underway and that grass cutting along the canal was being addressed by a limited NJWSA staff.

Mr. Sellar reported on the dumping of construction debris, likely asbestos tiles, in the canal at Canal Road and Suydam Road in Franklin Township, Somerset County. After limited responses from a contact with the Warn DEP Hotline, the Somerset Health Department, and DEP Solid Waste, NJWSA

will take the lead on the cleanup, the first step of which will be to have a lab sample materials, and, secondly, if the materials are found to be asbestos, a contractor will be brought in for the cleanup, and if not asbestos, NJWSA will manage the cleanup.

Old Business

Vice-Chairman Loos noted that the Commission adopted a resolution at the February 20, 2019 meeting which increased the salary of the Executive Director by 4%. The Vice-Chairman noted that he contacted the DEP Human Resources Division in November of 2019 to ascertain why the salary increase approved by the Commission was not processed. The vice-chairman stated that the reason given him by DEP Human Resources Director, was that without prior consultation with the Commission, the Executive Director was assigned, without his knowledge or agreement, to a collective bargaining unit, namely IBEW Local 30. The vice-chairman then noted that DEP Human Resources stated that the contract between the IBEW and the State was the controlling factor in determining the executive director's salary. Vice-Chairman Loos indicated that it was the stated position of the DEP Human Resources Division that any executive director of the Commission was considered a DEP employee and under DEP's control.

Vice-Chairman Loos noted for the benefit of the Commissioners present that since 1974, the appointment and compensation of the executive director has been the sole prerogative of the Commission, consistent with the plain language of the statute at N.J.S.A. 13:13A-11f, which authorizes the Commission to appoint the director, and determine the qualifications, terms of office, duties, services and compensation of same.

Vice-Chairman Loos further stated that the Commission has the authority pursuant to law to hire and to determine salaries, and that the assignment of the Commission executive director position to a bargaining unit without consulting the Commission, and the attendant refusal to process legally-adopted resolution, compromises the authority and independence of the Commission, and makes a mockery of the Commission. He stated that when he accepted appointment to the Commission, he did not agree to serve on a purely "advisory" body, but rather an independent Commission. He noted that he was pursuing the matter with Deputy Attorney General Kane and preparing a resolution expressing the Commission's displeasure. However, before introducing the resolution, he stated that he wished that this matter could be resolved internally with responsible officials at the DEP. Vice-Chairman Loos noted that the time spent by himself and Commissioner Lubitz on this issue was a misuse of their time, along with that of the Office of the Attorney General. Finally, Vice-Chairman Loos stated that all the Commissioners wish to give service to the State of New Jersey consistent with their responsibilities under law.

Commissioner Lubitz agreed that Vice-Chairman Loos had stated the central issues of the matter correctly, and that he hoped that the issue could be resolved internally and cooperatively with the DEP.

Mr. Mulvan left the meeting at 12:00 p.m. Vice Chairman Loos noted for the record that Mr. Mulvan's departure did not impair the quorum, and that a sufficient number of Commissioners remained present to conduct business.

New Business

Ms. Heather Desko, Senior Watershed Protection Specialist for the NJWSA, displayed a PowerPoint

presentation briefing the Commission on the authority's Delaware and Raritan Canal Aquatic Plant Management Plan for the 2020 management season. The purpose of the plan is to control Hydrilla (*Hydrilla verticillata*), an aggressive and invasive aquatic plant that has been found in the canal.

After providing a review of the 2019 management season, Ms. Desko noted that based on the success of the treatment over the past three years, the NJWSA would focus in 2020 on reducing the application of the herbicide fluridone in the canal, and the increase their monitoring efforts. She further noted that the NJWSA was planning a 90-day treatment cycle for 2020 that would commence in early July. She also noted that 40 out of the 60 miles of the Delaware and Raritan Canal would be surveyed for vegetation in 2020. A communication program would be implemented consistent with prior years' practice with stakeholders, which would include mid-season reports, weekly updates, and an end-of-season report.

In response to a request made by Commissioner Lubitz at the April Commission meeting, Ms. Desko addressed the question of the impact of fluridone herbicide on fish populations within the canal. First, she noted that fluridone was a registered herbicide that has been in use since 1986. She noted that fluridone's mode of action impacts plants only, since it disrupts the ability of the invasive Hydrilla plant to make sugar from photosynthesis.

Ms. Desko further noted that the existing peer-reviewed scientific literature indicated that fluridone concentrations in fish were generally reflective of that found in the water column, and that fluridone has had a low potential to accumulate in fish according to a 1986 U.S. Environmental Protection Agency study. Finally, she noted that there was no circumstance in scientific literature which documented fluridone irreversibly accumulating in fish tissue; rather, it dissipates after it is removed from the water column.

Several Commissioners thanked Ms. Desko for her presentation, which was thorough and interesting. Commissioner Lubitz and others requested that her PowerPoint presentation be emailed to Commissioners and interested stakeholders.

Public Session

Ms. Detrano of Lambertville expressed her approval for the NJWSA plantings along the canal in the vicinity of Coryell Street in the City of Lambertville and asked, on behalf of her neighbors, about the flags placed amongst the grasses. Mr. Sellar stated that the flags would remain in place until the warm season grasses took root.

Mr. von Zumbusch expressed his interest in seeing site plans via video conference at future meetings. Director Hutchison said that he would examine strategies to allow Commissioners and stakeholders to examine such documents electronically with the NJOIT, possibly through the use of a password-protected login on the Commission website.

Mr. Massand stated he encountered trouble accessing the Commission's new website and that something might be wrong with it. Mr. Hutchison suggested tapping the "refresh" button on his device's browser.

Mr. Massand also asked Superintendent Kalleser to comment on the situation of personal protective equipment being discarded in the park. He noted that as the Delaware and Raritan Canal State Park was being reopened, these materials were not being properly disposed of, and suggested that additional

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signage be erected to dissuade park patrons from irresponsibly discarding such items. Superintendent Kalleser noted that there were isolated incidents of gloves being discarded on the ground in the parking areas of the park, but that nothing had been thrown in the canal, and that staff was addressing the matter as part of their maintenance activities.

Executive Session

None.

Adjournment

There being no other business, Vice-Chairman Loos entertained a motion to adjourn. Commissioner Stout moved to adjourn, which was seconded by Commission Lubitz. Commissioner Lubitz welcomed Commissioner Reiser to the Commission. Vice-Chairman Loos stated his hope that the Commissioners presently in “hold-over” status would be reappointed as well. Vice-Chairman Loos called for a vote on the motion to adjourn, which was approved unanimously.

The meeting adjourned at 12:30 p.m.

Respectfully submitted,



John Hutchison, Secretary