



**October 18, 2023 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:00 a.m.
DATE: October 18, 2023
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman Bruce Stout and Commissioner Phillip Lubitz attended the meeting in the Commission office. Robin Madden, designee for Commissioner of Environmental Protection Shawn LaTourette; Commissioner Douglas Palmer; Commissioner John Reiser; and Commissioner Chris Shoffner participated via online platform and teleconference.

STAFF: Executive Director John Hutchison, Deputy Attorney General Jordan Viana, and Ms. Colleen Maloney were present in the Commission office. Commission Engineer Joseph Ruggeri, Communications Director Darlene Yuhas, and Executive Assistant Erica Vavrence participated via online platform.

GUESTS: Michael Sellar, Facilities Manager, New Jersey Water Supply Authority (NJWSA); Bob Barth, D&R Canal Watch; Robert von Zumbusch, Kingston Historical Society; Cameron Corini; James Talerico; Mike Marinelli, Menlo Engineering; Brad Bohler, Bohler Engineering; Kathy Hale; David L. Pasiecznyk; Linda Meier; Rikki Massand; Nic Messina; Dino Spadaccini.

Vice-Chairman Stout 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 Stout 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.

Since Commission members were participating in person and via telephonic device pursuant to Article III, Section 4 of the Commission Bylaws, Vice-Chairman Stout directed the Executive Director to call the roll:

October 18, 2023

Vice-Chairman Stout	Present
Commissioner Designee Madden	Present
Commissioner Reiser	Present
Commissioner Lubitz	Present
Commissioner Shoffner	Present
Commissioner Palmer	Absent

Director Hutchison stated that a quorum was present.

Commissioner Palmer joined the meeting at 10:02 a.m.

Administrative Items

Confirmation of November 29, 2023, Meeting Date

Vice-Chairman Stout stated that the November 15, 2023, Commission meeting is rescheduled to November 29, 2023.

Minutes

Approval of the Minutes of the September 20, 2023, Commission Meeting

Vice-Chairman Stout inquired if any of the Commissioners wished to propose comments or corrections to the September 20, 2023, Commission meeting minutes. Hearing none, he asked for a motion to approve the minutes as prepared by staff. Commissioner Shoffner made a motion to adopt the minutes as proposed, which was seconded by Commissioner Reiser.

Vice-Chairman Stout asked Director Hutchison to call the roll:

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Abstain
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The minutes were approved.

Review Zone Actions

Zone A Projects

None

Zone B Projects

#22-1851B	638 Brunswick Pike -- Cannabis Facility (West Amwell Township)
#22-2448E	330 Demott Lane -- Senior Residential Development/Solar Field (Franklin Township)
#23-2595B	Princeton Executive Park -- Modification (West Windsor Township)
#22-3475C	1100 Lenox Drive -- Brandywine Office Complex (Lawrence Township)
#21-5529A	Skillman Park Pathway -- Phase II (Montgomery Township)

October 18, 2023

The Vice-Chairman asked if any Commissioner wished to consider any Zone B project separately. Hearing none, the Vice-Chairman requested a motion on the Zone B projects. Commissioner Lubitz made a motion to approve the five Zone B projects, which motion was seconded by Commissioner Reiser. The Vice-Chairman asked for comment from the Commissioners, and hearing none, he asked if the public had comment.

Ms. Meier stated that on the evening prior to the Commission meeting she emailed Director Hutchison regarding her questions and concerns about DRCC #22-1851B 638 Brunswick Pike -- Cannabis Facility, a project which is located adjacent to her property in West Amwell Township. She offered her concerns about property easement rights and restrictions, wetland intrusions, and purported tree removal conducted in freshwater wetland areas.

Vice-Chairman Stout stated the Commission does not have regulatory authority over freshwater wetlands, which falls within the purview of the DEP.

Ms. Meier stated it was her understanding that the Commission could not issue a certificate of approval for a project until all other necessary State and local approvals are in place.

Director Hutchison interjected and stated that Ms. Meier's statement was incorrect. He stated that the Commission's regulations at N.J.A.C. 7:45-3.2 direct that a project application cannot be acted upon by the Commission until it has been determined by the staff to be a complete application, and that an application shall be considered complete when the applicant has submitted a resolution of approval for the project issued by the appropriate municipal and county approving agencies [Emphasis added]. The Director noted that this provision does not apply to any required State permits.

Ms. Meier then inquired what the ramifications were in the event that the applicant cleared trees on the project area lot randomly and haphazardly, beyond the 0.62 acre denoted in the submitted site plan, and without first installing a silt fence. She further asked whether there was a point in time when the Commission could direct the applicant to fix these actions or rescind its approval of the project because of these actions.

Mr. Spadaccini, an attorney representing the applicant for project DRCC #22-1851B 638 Brunswick Pike -- Cannabis Facility stated that the applicant had received every permit required for the project from the relevant State and local regulatory agencies. He further stated that Ms. Meier has filed civil lawsuits against the applicant on every permit they have thus far obtained. He further remarked that with respect to the purported freshwater wetlands violation, the applicant's contractor made an error removing the trees, and that the applicant notified the DEP of the situation and subsequently obtained an approval letter from the department. He stated he was happy to answer any questions the Commission might have regarding the project.

Ms. Meier stated that her concern is regarding the 0.62 acre of disturbance which she stated had occurred outside the boundary of the freshwater wetlands area on the site. She stated she did challenge the Commission's original approval and noted the Commission subsequently revoked their approval. Deputy Attorney General Viana interjected and corrected this remark, stating that the Commission had reevaluated its approval at the direction of the Superior Court, Appellate Division, and that the

October 18, 2023

certificate of approval for the project had not been revoked. Ms. Meier stated that she misunderstood.

Ms. Meier concluded by stating that the Commission should consider the issues she brought to the Commission's attention.

Mr. Spadaccini stated that the applicant had obtained all required freshwater permits. Vice-Chairman Stout restated that the Commission did not possess regulatory authority regarding freshwater wetlands regulations.

Vice Chairman Stout asked for further questions on the Zone B projects.

With regard to project DRCC #22-2448E 330 Demott Lane -- Senior Residential Development/Solar Field, Mr. Massand asked the Commission if the applicant had considered alternative solar installation designs that would not create as much disturbance as the proposed project. Vice-Chairman Stout asked Mr. Marinelli, consultant for the applicant, if the applicant considered other solar array design options. Mr. Marinelli stated that the project was designed with the client's preferred solar equipment.

The Vice-Chairman directed Director Hutchison to call the roll on the Zone B projects.

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	No Vote
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

The motion was approved.

Executive Director's Report

Director Hutchison reported on the Commission workload for the period encompassing September 20, 2023, to October 17, 2023. In addition to the five projects listed on the meeting notice, staff issued 16 deficient staff reports, 6 jurisdictional determinations, 8 certificates of approval, 9 general permits, 1 Estoppel Letter, and 2 letters addressing citizen complaints. In addition to those matters, staff organized and conducted nine pre-application meetings related to proposed and pending projects. As of October 17, 2023, there were 21 projects undergoing staff review.

Director Hutchison stated that fee collections totaled \$36,025 for the month. He stated that this is less than the \$51,925 collected in October 2022, and less than the \$52,150 collected in October 2021, and the \$55,912.50 collected in October 2020. He stated that this was the lowest October collection since \$20,512.50 was collected in 2019; however, in that case, the Commission was holding a significant number of checks to confirm that the applicant's had paid the correct amount, which is a practice used by his predecessors but with which he has since dispensed.

October 18, 2023

Director Hutchison reported that given the reduced fee collections and the low number of jurisdictional determinations processed, which tend to serve as a leading indicator of future Commission applications, it would appear that construction activity within the Review Zone had slowed.

Director Hutchison reported that the Commission's first quarter budget meeting was held with DEP Management and Budget staff on September 28. It was agreed that given the pace of application fee collections, it would be prudent to reduce the Commission anticipated appropriation for next fiscal year to \$500,000.

Director Hutchison reported that a large document scanner was delivered to the office from Ricoh on September 28. The staff will undergo training for its use this coming Thursday. The staff has submitted approvals to the DEP Office of Management and Budget for the hiring of two temporary employees at a rate of \$25.80/hour to scan Commission project documents and save them to the DEP shared drive, where they can be easily accessed for project application reviews and "Open Public Records Act" (OPRA) requests.

Director Hutchison reported that the project to repair the former Belvidere-Delaware Railroad trestle bridge, which conveys the Delaware and Raritan Canal State Park multiuse trail over the confluence of the canal and the Wickecheoke Creek at Prallsville Mills, Stockton Borough, has been completed. He noted that the reaction from people who have commented to the Commission staff has been overwhelmingly positive.

Director Hutchison reported that he and Darlene Yuhas began a long-term project to label and categorize on a spreadsheet the collection of Commission historical photographs, which have been kept in five three-ring binders in the Executive Director's Office. They are also examining how best to reproduce clear images from the photo negatives that are also kept in those binders. When completed, the Commission would scan the images, so that they can be shared with colleagues at the State Park Service and the rest of the DEP, as well as the NJWSA. He stated that he looked forward to working with the Commission's stakeholders to help identify images that have not been annotated.

Among the general permits issued this month were permits to relocate the USGS gaging station from the New Hope-Lambertville Toll-Supported Bridge to a location near the Lambertville Municipal Utilities Authority wastewater treatment plant while a project to rehabilitate the 119-year-old bridge is undertaken starting in January 2024 by the Delaware River Joint Toll Bridge Commission.

Director Hutchison also issued an emergency general permit to the New Jersey Department of Transportation (NJDOT) for repairs to the bridge that conveys Landing Lane over the Delaware and Raritan Canal in New Brunswick. On September 29, 2023, a vehicle struck the southeast wingwall parapet of the bridge, causing part of the parapet and wingwall to fracture and fall into the canal. Fortunately, there were no apparent injuries, and Rutgers University was playing football in Madison, Wisconsin, which hopefully eased the Saturday traffic impact of the accident.

Park Superintendent's Report

Commissioner Designee Madden stated that Superintendent Rojewski was unavailable to attend the meeting and that she would provide her report.

October 18, 2023

Commissioner Designee Madden reported that repairs at the pedestrian bridge on the multiuse trail at the Prallsville Mills were completed on October 6, 2023, and that the trail was open.

Commissioner Designee Madden reported that the multiuse trail was closed in the Titusville area of Hopewell Township due to a breach in the canal wall which resulted in a sinkhole. The breach and sinkhole were reported on October 5, and NJWSA had initiated repairs.

Commissioner Designee Madden reported that the DEP Office of Resource Development is working with the DEP to initiate emergency repairs for the sinkhole at the Prallsville Mills, which is located behind the grist mill adjacent to Wickecheoke Creek.

Commissioner Designee Madden also reported that NJDOT was overseeing the emergency repairs to the Landing Lane Bridge over the spillway of the Delaware and Raritan Canal.

Commissioner Designee Madden stated that a sinkhole caused by a collapsed storm sewer pipe was reported in July by a homeowner who lives on Easton Avenue/Main Street in South Bound Brook Borough, adjacent to Delaware and Raritan Canal State Park property. Following assessment of the site conducted by the NJWSA and the State Park Service, it was determined that the pipe in question was not State infrastructure. South Bound Brook Borough subsequently determined it was not municipal infrastructure, and it was likely that the pipe was a drainage feature installed by a property owner without the required permitting. Although not assuming ownership, the State Park Service, with the help of NJDOT, would commence repairs to the pipe as an emergency measure. She noted that an application to authorize the emergency project would be submitted to the Commission in due course.

New Jersey Water Supply Authority Report

Mr. Sellar informed the Commission that the project to rehabilitate the stone culvert, which conveys Six Mile Run underneath Canal Road, the Delaware and Raritan Canal, and the park multiuse trail in Franklin Township, Somerset County, (DRCC #22-3306C), was underway. The project will involve periodic road and park multiuse trail closures, which will be posted on the park website. Closures would not occur in the evening or on weekends.

Mr. Sellar reported site work continues for Phase 1 of the project (DRCC #22-3255D) to repair an approximate 1.0-mile section of the western embankment of the Delaware and Raritan Feeder Canal in Stockton Borough, which separates the canal from the Delaware River, and is generally located between the Prallsville Lock and the railroad bridge crossing over the canal at Brookville in Stockton Borough. He stated that work north of Bridge Street would be complete within the week, and the contractor would then move to the section south of Bridge Street. Work was anticipated to be complete within several weeks.

Mr. Sellar stated that NJWSA continued to monitor the Delaware and Raritan Canal and the Millstone River for a blue-green harmful algal bloom (HAB) caused by Cyanobacteria (i.e., Blue-green Algae), which was detected in the Millstone River last summer; however, no bloom had been detected thus far.

Mr. Sellar stated that NJWSA staff was addressing the sinkhole associated with a culvert on Easton Avenue (Somerset County Route No. 514) in Franklin Township near the border of that municipality

October 18, 2023

with South Bound Brook Borough. He stated that a contract was awarded for the project and a preconstruction meeting was to be scheduled.

Mr. Sellar reported that NJWSA crews mobilized on October 5 to address the leak on the Delaware and Raritan Canal in Titusville mentioned by Commissioner Designee Madden, and that after repairs had been completed the multiuse trail was reopened.

Mr. Sellar reported that NJWSA would be conducting autumn mowing and leaf maintenance seven days a week.

Old Business

None.

New Business

Proposed Amendments to the Commission Bylaws Adopted on April 18, 2018

Vice-Chairman Stout asked Director Hutchison to summarize the proposed amendments to the Commission's bylaws. Director Hutchison stated that a copy of the proposed amended bylaws was shared with the Commissioners in August 2023. He stated that there are two proposed amendments.

Director Hutchison noted there is an existing provision that allowed, in the absence of the Chairman, the Vice-Chairman to sign documents, such as resolutions and certificates of approval, for the Commission. However, since there is a long-term vacancy of the Chairman position and the Vice-Chairman, therefore, currently signs all such documents, the proposed amendment would allow the Commission Treasurer to sign documents in the Vice-Chairman's absence.

The second proposed amendment, found in new Section 9, provided that the Commission may impose a five-minute limit on individuals speaking during the public portion of a Commission meeting. This provision would ensure that the meeting is conducted in an orderly manner, to ensure that the public has an opportunity to be heard, and that a deliberative process is retained at all times. In addition, a speaker shall not be permitted to cede or yield their time to another speaker, a speaker's remarks shall not be subject to redaction, and speakers shall not engage in personal attacks or profanities uttered to threaten or intimidate, biased-based slurs directed against any "protected class" as that term is defined in the "Law Against Discrimination," N.J.S.A. 10:5-1 et seq.

Director Hutchison noted the provisions of the bylaws may be amended by the affirmative vote of a majority of the total authorized membership of the Commission at any regularly scheduled meeting, provided that advance notice of at least 30 State working days has been given to all Commission members and notice has been provided pursuant to the Open Public Meetings Act. He noted that the 30-day review period was complete, and the Commission could, therefore, vote on the matter.

Vice-Chairman Stout asked for comment from the Commissioners and then the public. Mr. Massand asked how a person would know about the provisions of the amended bylaws. Director Hutchison stated the amended bylaws would be posted on the Commission website.

Vice-Chairman Stout requested a motion to adopt the proposed amended bylaws. Commissioner Lubitz motioned to approve the amended bylaws, and Commissioner Reiser seconded the motion. Vice-

October 18, 2023

Chairman Stout directed Director Hutchison to call the roll:

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Yes
Commissioner Palmer	Yes

Public Comment

Vice-Chairman Stout asked if there were any comments from the public.

Mr. Pasicznyk identified himself as a resident of 3 Church Street, Stockton Borough, and asked to address the Commission regarding his concerns about a project recently approved by the Commission at 8 Church Street (DRCC# 23-5991) in Stockton Borough. The project site is located across the street from Mr. Pasicznyk's residence. He asked if the applicant would be restricted from constructing a swimming pool, as that was not considered in the total impervious surface reviewed for the project. He expressed concern that the project proposes the construction of a stormwater best management practice measure (BMP) about 40 feet from a neighboring property at 2 Church Street. He noted he was concerned about stormwater runoff and keeping water out of basement of residences on Church Street. He suggested that the proposed BMP be moved to the back of the project lot.

Mr. Pasicznyk further stated that he was unable to comment earlier on the project, prior to its consideration by the Commission, because he was unaware of it. He noted he requested documents via an OPRA request from the Borough of Stockton in April 2023, only to receive a response in July 2023. He noted that he contacted the Commission after the Commission approved the project and that Commission staff promptly provided him with the requested public records.

Vice-Chairman Stout stated that the Commission does not revisit a project after approval.

Nic Messina, the owner of the property at 2 Church Street, stated that he was attending the Commission meeting for informational purposes. He noted that he would take up any concerns about the 8 Church Street project with the developer of the property.

Ms. Meier stated that with regard to project DRCC #22-1851B, she had not pursued seven lawsuits related to the cannabis business adjacent to her property. She stated that several actions were appeals rather than lawsuits. She stated she challenged a permit issued by the Hunterdon County Department of Health, and that this had been revoked. She also stated she asked for clarification from the DEP regarding a General Permit No. 1 issued for the existing stormwater basin on the site. She stated she had a pending lawsuit against the West Amwell Township municipal planning board. She also stated that she challenged the issuance of a Treatment Works Approval for the project by the DEP. She noted there was also a lawsuit challenging the Delaware and Raritan Canal Commission's approval of the project. She further stated that there was additionally a challenge related to an alleged OPRA violation. These actions amounted to six actions, not the seven alleged by Mr. Spadaccini.

October 18, 2023

Mr. Spadaccini declined to comment and thanked the Commission for its time.

Mr. Pasicznyk expressed gratitude to the Commission staff.

Mr. Hutchison noted that to avoid confusion with respect to DRCC# 23-5991, a letter and a revised final staff report were issued to the applicant (Church Street Developers), which noted that the staff report had been corrected to clarify the scope of the project and removing reference to a swimming pool. He noted that a swimming pool is not within the scope of the approved project. He stated that Commission staff regretted the error, and that the applicant has been notified that any work beyond the scope of the project described in the staff report and certificate of approval could be subject to Commission review.

Written Public Comments

None.

Adjournment

There being no other business, Vice-Chairman Stout entertained a motion to adjourn. Commissioner Shoffner made a motion to adjourn, which was seconded by Commissioner Lubitz. Vice-Chairman Stout called for a vote on the motion to adjourn, which was unanimously approved by a voice vote.

The meeting adjourned at 11 a.m.

Respectfully submitted,



John Hutchison, Secretary