

**January 18, 2017 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:05 a.m.
DATE: January 18, 2017
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

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

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

GUESTS: D&R Canal State Park Superintendent Patricia Kalleser; Mr. Aimer Garcia, NJWSA; Mr. Michael Sellar, NJWSA; Mr. Robert von Zumbush, D&R Canal Commission Advisory Committee; Mr. Robert Barth, D&R Canal Watch; Ms. Linda Barth, D&R Canal Watch; Mr. Jerome Harcar, BRS; Ms. Krista Heinrich, T&M Associates; Mr. Rob Freud, Dynamic Engineering.

Vice Chairman Loos announced that this was a regularly scheduled meeting of the D&R Canal Commission and that all provisions of the Open Public Meeting Law of 1976 had been met in the scheduling of the meeting.

Administrative Items

The Commission confirmed the February 15, 2017 Commission meeting date.

Vice Chairman Loos asked Director Dooley to conduct the election of vice chairperson and treasurer. Director Dooley asked for a nomination to elect a vice chairperson. Commissioner Lubitz motioned to approve John Loos as vice chairman. Commissioner Allen seconded the motion. Director Dooley called for a vote on the motion. It was approved unanimously.

Vice Chairman Loos asked for a motion to elect the treasurer. Commissioner Stout clarified that the treasurer would run the meeting in the vice chair's absence. Vice Chairman Loos confirmed. Commissioner Stout moved to elect Commissioner Lubitz as treasurer and Director Fleming seconded the motion. The motion was approved unanimously.

Minutes

December 21, 2016 Meeting Minutes and Executive Session Minutes

Vice Chairman Loos called for a motion to approve the December meeting minutes and executive session minutes. Director Fleming made a motion to approve both sets of minutes and Commissioner Leck seconded the motion. Vice Chairman Loos asked for discussion and corrections on the minutes. Hearing none, he called for a vote. Commissioner Stout abstained. Vice Chairman Loos, Director Fleming, and Commissioners Allen, Leck, and Lubitz voted in favor of approving the minutes. The motion was approved.

Review Zone Projects

Zone A Projects

Vice Chairman Loos noted that 16-3020C 495 Weston Canal Road requested a waiver. He asked if any Commissioner wanted to discuss any other project individually. Commissioner Lubitz stated he had a question regarding 80 Wilson Street and Commissioner Stout stated he had a question regarding North Union Street Park. The Zone A projects were handled individually.

16-3020C 495 Weston Canal Road (Franklin)

Vice Chairman Loos discussed the project, including that the current project is for an amendment to a previous approval. The present modification reduces the height of the buildings from the previously approved project, but the height of the buildings in the modified project exceeds the 40-foot height requirement in the regulations. Therefore, the modification requires a waiver from the Commission which is not explicitly stated in the report.

Director Dooley stated that a project was approved on the site in 2004, and again in 2012. Currently before the commission is a modification of the 2012 project. She noted that for a modification, the rules require any change from the previous approval to be reviewed under the regulations. The height of the buildings is changing and therefore should be reviewed. In 2012, the height of the buildings was 50 feet. The height of the buildings is being modified to 46 feet. She stated that the project does not meet the current 40-foot height limit and would require a new waiver. Director Dooley noted while not in the report that the modification would be eligible for a waiver at N.J.A.C 7:45-12.7, as it is expected the project will not be visible from the park.

Mr. Freud, the applicant's engineer, distributed line-of-site illustrations and described the view of the project from the eye-level of a person in the park. He noted that existing vegetation and proposed evergreens in front of the detention basin and along the buildings will provide screening.

Vice Chairman Loos noted that the project was an improvement from the previously approved 50-foot height buildings and it complies with the waiver. There was discussion regarding the landscape plan for the project, native plantings, and adequacy of screening. It was noted that the planting plan was not being modified from the previously approved project and the applicant stated they were amendable to working with the Commission. Commissioner Lubitz stated that the commission should be modest when a project is modified, and suggested limiting review to the changes such as the height. Regarding the height, Commissioner Lubitz noted that the applicant could have maintained the 50 foot height and he was pleased that the height of the building was being lowered by four feet.

Vice Chairman Loos asked for comment from the public. Hearing none, he called for a motion. Commissioner Lubitz moved approval of the project with a waiver, and Commissioner Stout seconded the motion. It was approved unanimously.

16-2091G NJ American Water Canal Road Treatment Plant: Spoils Stockpile Facility (Franklin)

Vice Chairman Loos asked for comment on the project from the commission and then the public. Hearing none, he called for a motion. Commissioner Stout moved to approve the project. Director Fleming seconded the motion. It was approved unanimously.

15-3348D Cadwalader Park Playground and Picnic Area Renovations (Trenton)

Vice Chairman Loos asked for comment from the commission. Hearing none, he asked for comment from the public. Mr. Barth noted that the stairway referenced in the report is presently blocked off. He also asked for clarification regarding the gabion walls referenced in the staff report. Director Dooley, Mr. Harcar, and Vice Chairman Loos discussed the stairway, the gabions, and future bridge replacement. Vice Chairman Loos called for further comment, and hearing none he called for a motion. Director Fleming moved to approve the project and Commissioner Lubitz seconded the motion. It was approved unanimously.

16-1669A North Union Street Park (Lambertville)

Vice Chairman Loos asked for comment on the project. Commissioner Stout asked for further information related to Phases 2 and 3. Director Dooley noted the application is currently for Phase 1 only, which is limited to sidewalks and rain gardens. Ms. Heinrichs, engineer for the City of Lambertville, confirmed that the application currently before the commission is for Phase 1 only, and that there were ongoing discussions in the city about future improvements. The currently proposed rain gardens are designed for maximum build out. It was noted that any future improvements would require Commission approval. Vice Chairman Loos called for further comment. Hearing none, he asked for a motion. Commissioner Lubitz motioned to approve the project and Commissioner Allen seconded the project. It was approved unanimously.

14-4594 80 Wilson Street (Lambertville)

Director Dooley described the project, which involves three townhomes. Mr. Ruggeri and Commissioner Lubitz discussed runoff and the drainage system under the driveways. Vice Chairman Loos asked for further comment and hearing none called for a motion. Director Fleming moved to approve the project and Commissioner Lubitz seconded the motion. The project was approved unanimously.

17-4964 NJWSA Gaging Station Washington Crossing (Hopewell)

Vice Chairman Loos called for comment on the project. Hearing none, he called for a motion on the project. Commissioner Stout motioned to approve the project and Commissioner Allen seconded the motion. The project was approved unanimously.

Zone B Projects

15-4770 Buy-Rite Development (Hopewell)

Vice Chairman Loos asked for comment. Commissioner Stout expressed concern that a septic system is located in the stream corridor. Director Dooley discussed the stream corridor, including existing and proposed intrusions in the stream corridor, and the stream corridor waiver for no adverse impact. Mr. Ruggeri discussed that ideally the septic would be removed for the corridor but also discussed that the project is a redevelopment, the existing two septic systems are closer to the stream and the upgrade of the new septic system. Vice Chairman Loos noted the consequence of not approving the project and allowing the two older septic systems closer to the stream and a worse condition to continue.

There was continuing substantial discussion regarding the existing septic systems in the stream corridor and allowing a new septic system in the stream corridor. Commissioner Lubitz asked if the existing septic system would accommodate the new development. Mr. Freud described the old systems which are from 20 to 30 years ago and the new septic system which provides pretreatment with aeration and a disposal system, which he stated

was a substantial improvement from the existing conditions. He discussed the soil testing throughout the site which limited location of the septic and benefits of the new system.

Vice Chairman Loos asked for comment from the public. Hearing none he called for a motion. Commission Allen motioned to approve the project and Commissioner Lubitz seconded the motion.

Commissioner Stout stated that the project was recommended for approval not because it was ideal but because it was better than what was there now. Director Dooley noted how the Commission has historically examined stream corridor waivers based on no adverse impact for sites being redeveloped. It examines whether the project is an improvement from the existing condition. For the present project staff considered that the impervious surface in the stream corridor is being reduced, parking is being removed from the stream bank, removing an old septic from the 100-year floodplain, travel surfaces will be treated, and over an acre of lawn will return to a meadow condition in the corridor. Commissioner Lubitz asked if the regulations differentiate between an existing project that is being redeveloped and a new project. Director Dooley said “no.” Director Dooley outlined the stream corridor waivers under the rules. Director Dooley described the waiver for “no adverse impact” and that, in examining whether the project creates “no adverse impact” to the stream corridor, the existing condition is considered. Therefore, redeveloped projects frequently seek a waiver under this provision. Commissioner Lubitz noted that it is understandable why we might approve this project, but placing a septic in the stream corridor is not an ideal situation. He expressed a concern with creating a precedent that could apply to an undeveloped site. Vice Chairman Loos read the language of the stream corridor waiver provision at N.J.A.C. 7:45-12.4. He stated that an undeveloped site would not be eligible for a waiver unless they preserved other lands.

Commissioner Stout asked Mr. Freud if the septic system could be moved elsewhere on the site. Mr. Freud noted their analysis indicated this is the only place it could be placed, and it was outside the 100-year floodplain. He described the site and soils. Commissioner Loos asked if this was the best septic system for the site. Mr. Freud described the system, identified the location and the location of the two old systems and the operation of the existing system.

Commissioner Stout asked what would differentiate this situation from placing septic within a stream corridor for a new development. Vice Chairman Loos noted that the analysis is whether a project creates an adverse impact. That means, as a result of this project, is the situation going to get worse for this stream corridor. For an undeveloped piece of land, the answer is clearly “yes.” But for a redeveloped site, this project does not create adverse impact. The overall situation is beneficial to the environment. Commissioner Stout raised a concern that “no adverse impact” could be that there is a potential for harm to the stream corridor regardless of what is in there currently.

Director Dooley again noted that the rule is broad and does not have specific criteria. She noted that she was stating how the rule has been interpreted by the Commission previously. In considering “no adverse impact,” the Commission has looked at the existing conditions to determine the impact to the corridor. Sites have impervious surface in the stream corridor which was placed prior to the Commission stream corridor regulations and which can legally remain in the corridor such as parking without water quality or failing septic. Historically, the commission has considered, where these sites are redeveloped, whether the project is improving the existing situation. Commissioner Stout asked if a condition was horrendous and it was made less horrendous, would it be approved? Director Dooley stated “no.” She explained it is an analysis of the overall situation including the existing situation. One would ask if preserving an acre of meadow adjacent to the

stream, maintaining the existing woods, removing septic systems in the floodplain and reducing pavement but also having an updated septic in the 100-foot buffer and stormwater controls on the reduced pavement result in “no adverse impact?”

Director Fleming stated that she was considering the issue of pre-existing septic systems. The issue of upgrading an existing septic would be different than seeking a new septic. The new septic would be a different category. Commissioner Lubitz agreed and considered the new septic is an upgrade in technology from existing conditions. Commissioner Lubitz asked if there was a maintenance plan and asked Mr. Freud to describe it. Mr. Freud noted that the septic is subject to state and local regulation and described methods of treatment with the new system and commercial versus homeowner systems. There was discussion about overall sites including the multiple lots, the three septic systems, the leaching field, existing septic systems, improved management of stormwater, the effluent and discharge, and the square feet of the septic from the stream. Mr. Freud also discussed the slope of the property. The Commission discussed the existing impervious surface in the corridor.

Vice Chairman Loos asked for further questions from the commission. Hearing none, he called for a motion. Commissioner Allen moved to approve the project and Commissioner Lubitz seconded the motion. Vice Chairman Loos called for comment from the public. Hearing none, he called for a vote. Vice Chairman Loos, Director Fleming and Commissioners Leck, Lubitz, and Allen voted to approve the project. Commissioner Stout abstained. The project was approved.

Executive Director’s Report

The Executive Director distributed the monthly work tally and discussed it. She noted the commission had vacated a large portion of the three-bay barn storage area at the request of the Delaware River Mill Society. Park and Commission staff moved most file cabinets to the conference room. The project is ongoing.

Director Dooley discussed a conference call in which she participated related to a flood wall proposed by the Lambertville MUA at Swan Creek.

Director Dooley noted a large New Jersey Transit County Yard project that was before staff for review. She discussed mitigation related to the stream corridor.

Director Dooley discussed a recent Montgomery Township project in which the issue of whether Commission easements on township land was raised. Director Dooley discussed the regulatory provisions and past handling. Vice Chairman Loos, Commissioner Lubitz and Director Dooley discussed the matter, including that there is nothing in commission regulations which exempts public entities, the commission’s long history of entering easements with governmental entities, and the term “other measures” in the rules. Director Dooley noted a project with the Mercer County airport. Vice Chairman Loos and Commissioner Lubitz noted that the holder of an easement can change an easement and a municipality can change a stream corridor ordinance.

Vice Chairman asked about the DOT and Amwell Road Bridge. Director Dooley stated that an application for the project has not been submitted for review.

Park Superintendent’s Report

Superintendent Kalleser noted that DOT is working with DEP regarding an MOU regarding repair of

the sink hole at Prallsville Mill.

Superintendent Kalleser noted there was dumping three different times at the parking lot of Six Mile Run in Franklin Township. The local police and park police have been notified and are taking action. The superintendent noted that she attended conference calls regarding the Scudder Falls I-95 Bridge expansion and the proposed flood wall at the Lambertville Sewerage Treatment Plant.

Superintendent Kalleser noted a temporary detour of the path in Lambertville at the lock, and patrons are being diverted to a paved road. The path is expected to reopen in a month. She also noted an attempted suicide in the canal in Lambertville on Sunday where a person was rescued. The superintendent notified the Commission that Spruce Run will be closed to swimming again this summer.

Superintendent Kalleser reported there will be meetings with organizations to discuss Emerald Ash Borer management plans and she anticipates that the project will be before the Commission at the February meeting.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported on daily maintenance of the canal. Vice Chairman Loos asked about the invasive hydrilla, and its relationship to the gage approved at the meeting, and plans to manage the invasive plant. Mr. Sellar noted that the gage measures water flow, which is helpful. Also, the NJWSA is requesting proposals, both technical and cost, for management of the invasive plant. Commissioner Leck asked about location and spreading of the hydrilla. There was discussion about how the invasive hampers waterflow in the canal and its origination. Mr. Garcia noted the plant is known in Asia, Australia, Africa, and now in Florida.

Old/New Business

Bulls Island

Vice Chairman Loos noted that commission staff is collecting data and he anticipates a meeting of the Master Plan advisory committee in February or March. Director Dooley noted she would draft a letter to the advisory committee.

Odors in vicinity of Lambertville Sewerage Treatment Plant

Director Dooley reported on a discussion she had with Mr. Horn, the head of the Lambertville MUA. Mr. Horn offered to meet with the commission to discuss this concern. Vice Chairman Loos asked staff to invite him to discuss the matter at the next meeting.

Electronic Submission of Application Materials

Commissioner Lubitz discussed collecting material in an electronic format and suggested budgeting this year for a consultant to complete a thorough review of what is needed in the way of hardware and software, and backing up files and, at a minimum, people should be submitting materials in a PDF format. Commissioner Lubitz noted that in his municipality, after acceptance of a project, the materials must be submitted in a format compatible with GIS. Vice Chairman Loos asked if that was once the project was approved. Commissioner Lubitz said yes but the municipality does require initial submission in pdf. Commissioner Leck asked if the change of system required additional staffing.

Director Fleming reported that the purchase of new computers for the commission, which are GIS

capable, is moving forward at DEP. She also noted that she contacted the Pinelands Commission to discuss electronic submissions. The Pinelands Commission is also a regulatory body. She noted that they have a staff of 42, including GIS support staff, but submissions are not made electronically. She reported that Commissioner Martin is eager to move to electronic submissions but the department, despite a large computer support group, does not have the capacity right now but is working toward that goal.

Vice Chairman Loos noted the benefit of receiving commission meeting materials in a PDF format and noted that, in reviewing materials at home, it would be easier to review maps in color. Commissioner Lubitz noted that being able to zoom in is helpful. Commissioner Lubitz clarified that submissions in his municipality are paper submissions.

Director Dooley described the limitations of the computer system including that there are only three computers presently working and only two have internet access and there is no backup to the system. Ms. Maloney and Mr. Ruggeri described the age, slowness of the computers, and limited capability. There was discussion that the computers were estimated to be more than 13 years old, there is no back up system or computer support personnel. Director Dooley noted that this year the situation should be rectified but it will not be rectified with the initial computer purchase. Regarding electronic information, she recommended that the ability to map stream corridors gained by the commission, via GIS, is valuable environmental information on which Commission could report and would be a manageable project with limited staffing.

Commissioner Loos discussed developing a policy now for when the computers are in place. The policy would require both PDF submissions and, once an application is approved, a GIS plan. Vice Chairman Loos stated that his inclination was to draft a resolution for next month's meeting to require applicants to do some level of electronic submission. Commissioner Lubitz volunteered to investigate the requirements for submission of materials in Kingwood. Commissioner Stout expressed concern regarding applications by homeowners for simple projects. GIS submission would be too onerous. Superintendent Kalleser noted it would be difficult for her to submit such an application. Vice Chairman Loos requested that the issue of electronic submission be placed on the agenda for further discussion next month.

There was discussion regarding previous maps of the stream corridors available by the Commission and there was discussion regarding use of Google Maps.

Public Forum

Mrs. Barth requested that a park sign be installed on the side of the aqueduct at Parkside Avenue in Trenton to inform drivers they are going under the canal.

Mrs. Barth suggested that police occasionally patrol the bridges over the canal in Franklin Township, at Amwell Road, and Griggstown for vehicles above the weight limit.

Mrs. Barth expressed concern about a proposed compressor station at Trap Rock.

Mr. Barth discussed a recent cleanup at South Bound Brook along the canal in which approximately 16 people participated and collected a cubic yard of debris.

Mr. Barth noted there would be a January 29 canal walk at 2 p.m. near Lambertville Station to the lock marking the relationship between New Hope and Lambertville's canals. He noted that the number for reporting odors is 888-214-6830. Mrs. Barth noted that, during working hours, one could call 609-397-1496.

Mr. Barth noted he could not hear very well due to the heating system at the mill and a microphone system would be helpful.

Executive Session

There was no executive session.

Adjournment

Vice Chairman Loos called for a motion to adjourn. Director Fleming moved to adjourn and Commissioner Lubitz seconded the motion. The motion was approved unanimously. The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Marlene Dooley, Secretary