

**November 16, 2016 Minutes of the Meeting  
Delaware and Raritan Canal Commission**

**TIME:** 10:10 a.m.  
**DATE:** November 16, 2016  
**PLACE:** D&R Canal Commission Office, Stockton, New Jersey

**ATTENDING COMMISSIONERS:**

Commissioner Julia Allen, Director Lynn Fleming, Commissioner Mary Leck,  
Commissioner Phil Lubitz, Commissioner Bruce Stout

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

**GUESTS:** Mrs. Linda Barth and Mr. Robert Barth, D&R Canal Watch; Mr. Robert von Zumbusch,  
D&R Canal Commission Advisory Committee; Mr. Michael Sellar, NJWSA; Mr. Bryan  
Moog; Ms. Jamie Poli.

Commissioner Lubitz 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.

Commissioner Lubitz asked for a roll call to establish quorum. The following Commissioners stated their attendance on the record:

Julia Allen  
Lynn Fleming  
Phil Lubitz  
Mary Leck  
Bruce Stout

Commissioner Lubitz noted that there was a quorum for the meeting.

**Administrative Items**

The Commission confirmed the December 21, 2016 Commission meeting date.

**Minutes**

**October 19, 2016 Meeting Minutes**

Commissioner Lubitz called for a motion on the October 19, 2016 meeting minutes. Commissioner Stout made a motion to approve the minutes and Director Fleming seconded the motion. Commissioner Lubitz asked for any corrections on the minutes. Hearing none, he called for a vote and the minutes were approved unanimously.

**Review Zone Projects**

**Zone A Projects**

Commissioner Lubitz asked Director Dooley to give a brief outline of the first project.

16-4929 Stockton Eagle Gas Station Tanks and Canopy

Director Dooley described the project which includes replacement of underground gas tanks, new fuel dispensers and a canopy, and that the project requires a waiver as the canopy will be visible from the park. Director Dooley discussed the finding that the project met a waiver for a pre-existing nonconforming use and that the project will not be harmful to the character of the park. There was discussion on how the canopy will be lit. Mr. Moog, representative of the applicant, explained the canopy lighting, which will not be on the sides, but have lights facing down to light up the dispensers. There was discussion that the park is not open after dusk. Commissioner Lubitz asked for a motion on the project. Commissioner Stout made a motion to approve the project and Commissioner Leck seconded the motion. Commissioner Lubitz asked for comment and hearing none he called for a vote. The project was approved unanimously.

16-4923 6A Mill Street Shed and Generator (Stockton)

Director Dooley described the project which includes installation of a shed and a generator. The project requires a waiver due to setback standards in a Suburban Environment. Staff recommended approval based on a waiver for a pre-existing nonconforming use, in that the house predates the commission. Commissioner Stout stated he would support the project as it is in character with this area of the park.

Mr. Barth discussed access to the park generally and this area of the park including the embankment of the canal, adjacent to the river in Stockton. Director Dooley discussed access to this section of the path and park, which is used for maintenance by the NJ Water Supply Authority (NJWSA).

Commissioner Lubitz asked for a motion on the project. Commissioner Stout made a motion to approve the project and Director Fleming seconded the motion. Commissioner Lubitz asked for comment and hearing none he called for a vote. The project was approved unanimously.

16-2554C Lawrence Lexus Parking

Director Dooley described the project which included that there is an existing auto dealership, with a regional basin, and the expanded parking project would result in 1.3 acres of new impervious surface. Staff recommended approval.

Mr. von Zumbusch noted that the billboard on the property is visible from the park, was unfortunately previously approved by the commission, and the importance of this area of Route 1 as a gateway into Trenton.

Commissioner Lubitz asked for a motion on the project. Director Fleming made a motion to approve the project and Commissioner Stout seconded the motion. Commissioner Lubitz asked for comment and hearing none he called for a vote. The project was approved unanimously.

16-1964D 18 Mill Street Demolition (Stockton)

Director Dooley described the project which includes the demolition of a property which will be administered by Warren County, through FEMA funding. The property is along the canal, and will be owned and maintained by Stockton as open space after demolition. Staff recommended approval with four conditions as noted in the staff report. Mr. Ruggeri noted the limitations on redevelopment of the project site.

Commissioner Allen discussed possible use of the property by neighbors if it is not identified as open space. She suggested placing fencing on the property line. There was discussion about the fencing, including that it would not have been budgeted for when the application was made to FEMA. Mr. Ruggeri noted the FEMA applications are nationally competitive, and when an application is made, a cost-benefit analysis is conducted. The fence would probably represent a new cost which was unanticipated. There was discussion that a letter be sent from the commission to Warren County and the Borough of Stockton requesting that some visual delineation, in the way of a fence or markers, be placed on the property. Commissioner Stout made a motion to include the original conditions stated in the staff report, and that a letter be sent to Warren County and the Borough of Stockton requesting that some visual delineation, in the way of a fence or markers, be placed on the property. Director Fleming seconded the motion. Commissioner Lubitz asked for comment and hearing none he called for a vote. The project was approved unanimously.

### **Zone B Projects**

#### **16-4928 Heritage at Pennington**

Director Dooley described the project which included a new residential development. Staff recommended approval. Commissioner Leck and Director Dooley discussed the proposed number of parking spaces. Commissioner Lubitz asked for a motion on the project. Commissioner Stout made a motion to approve the project and Commissioner Leck seconded the motion. Commissioner Lubitz called for a vote. The project was approved unanimously.

#### **15-3089B 2351 Route 130 South (S. Bruns)**

#### **16-4926A 252 Sunset Road Pool (Montgomery)**

Commissioner Lubitz asked for comment on the two projects. Director Fleming and Commissioner Leck noted general concern about the large amount of development in the commission's Review Zone areas such as South Brunswick. Commissioner Lubitz asked for further comment. Hearing none, he asked for a motion on the project. Director Fleming made a motion to approve the projects and Commissioner Leck seconded the motion. Commissioner Lubitz asked for comment and hearing none he called for a vote. The projects were approved unanimously.

#### **16-3495A Williams Development (S. Bruns)**

Director Dooley described the project which included expanding an existing facility with new building, parking, and access drives. The applicant seeks a waiver of the stream corridor impact standards based on no adverse impact. The applicant states that the existing impervious surface in the stream corridor pre-dates the establishment of the commission and stream corridor standards and is therefore grandfathered and the present project will reduce existing impervious surface in the stream corridor by 0.75 acres and all impervious surface from the 100-year floodplain portion of the stream corridor. A total of 4.42 acres would be preserved in an easement. Staff recommended approval. Commissioner Lubitz asked for a motion on the project. Commissioner Stout made a motion to approve the project and Commissioner Allen seconded the motion. Commissioner Lubitz asked for comment and hearing none he called for a vote. The project was approved unanimously.

#### **16-3408A Applegarth Distribution Center (Monroe)**

Director Dooley described the project which is a warehouse, an office building and associated access drives. A tributary to Cranbury Brook is on site and an outfall and a portion of parking would be within

the stream corridor. Director Dooley discussed the stream corridor including that the applicant seeks a conditional use for the outfall and a waiver for the parking, that the parking area would intrude 3,000 square feet into the stream corridor, and that the applicant will preserve an additional 7,000 square feet of land adjacent to the corridor. Commissioner Lubitz asked for a motion on the project. Commissioner Stout made a motion to approve the project and Commissioner Allen seconded the motion. Commissioner Lubitz asked for comment and hearing none he called for a vote. The project was approved unanimously.

16-3455B Amwell Road Improvements (Franklin)

Director Dooley described the Somerset County road project which included milling and repaving road areas and some shoulder widening, including pedestrian path areas. The applicant requests conditional approval for a road project. Staff recommended approval. Commissioner Lubitz asked for a motion on the project. Director Fleming motioned to approve the project and Commission Allen seconded the motion. Commissioner Lubitz called for a vote. The project was approved unanimously.

16-4910 Route 206 Bridge over Crusers Brook (Montgomery)

Director Dooley described the DOT project which included bridge replacement and roadway work and a request for conditional use for road project. Staff recommended approval. Commissioner Lubitz asked for a motion on the project. Director Fleming motioned to approve the project and Commission Allen seconded the motion. Commissioner Lubitz called for a vote. The project was approved unanimously

**Executive Director's Report**

Director Dooley discussed fees and a meeting she attended on the proposed PennEast pipeline in Lambertville.

Director Dooley discussed comments received from West Amwell resident Michael Ehrenreich related to DOT rumble strips on Route 29 near his house. Director Dooley noted that the Commission had conditionally approved the DOT project and read the condition from the Commission's Certificate of Approval. "In the event the DOT identifies either mumble strips or their equivalent or delineator posts in addition to the existing rumble strips as an acceptable way to mitigate noise, DOT will install those on roadways adjacent to the park where it is appropriate due to incidental contact." On November 1, 2016, Dr. Ehrenreich contacted Director Dooley by email and asked her to inform the commission that he had contacted DOT regarding consideration of mumble strips and formulating a policy. DOT responded that while DOT is constantly looking at new safety methods no decision on mumble strips were made and they were complying with the permit. Director Dooley read Dr. Ehrenreich's comment into the record. "NJ DOT clearly has absolutely no intention of doing anything to change the rumble strips, stating 'we will comply with the permit as written'. In other words, they will take advantage of the ambiguous wording to do nothing." On November 2, 2016, Dr. Ehrenreich contacted Director Dooley and indicated he contacted DOT to follow-up regarding the Minnesota DOT study on "mumble strips". Director Dooley read his email into the record. "I am asking if there is any specific review underway in regard to determining their suitability, and if so when it can be expected to be completed." And NJ DOT responded, "Not at this time." Dr. Ehrenreich then stated "In other words, NJ DOT has just stated that it is taking no action or investigation whatsoever to determine if mumble strips are appropriate for use in the area of the park. This is absolutely contrary to the spirit of the discussion and the permit". He then urged action by the Commission to contact NJ DOT to demand that a plan be put in place to evaluate the Minnesota study.

Commissioner Lubitz noted the comments are duly noted. No further action was taken. Commissioner Stout asked about an area of rumble strip on Route 29 that had been removed near Dr. Ehrenreich's house. Director Dooley stated that the portion of rumble strip had been removed as the DOT policy is to break the rumble strips at intersecting roads and this section had not been placed consistent with current policy.

Director Dooley noted that the Commission had reviewed the I-95 Scudders Falls bridge in 2013 and approved the project with conditions. The conditions included submission of the final design to the Commission including the drawings for the bicycle and pedestrian lane and ramp from I-95 to the D & R Canal State Park. Director Dooley noted that the Delaware River Joint Toll Bridge Commission had submitted final designs and a modification of the project in August but she had not as yet found the project to meet the Commission standards. She showed a picture of the present design for the bicycle and pedestrian path which she had not found consistent. There was general comment about ensuring safety of entry onto the path, and the types of surfaces, colors and railings used within the D & R Canal State park.

Mr. Barth voiced concern about any utility vehicles to be used for maintenance and security on the DRJTBC bridge, and using the park path for access and egress.

There was discussion about the tree removal which has started in the general project site. There was discussion about the proposed swing bridge. Director Dooley expects that the mitigation funds will be transferred when all permits are granted. Director Fleming reported that she had contacted Mr. Mulvan during the meeting and he estimated that the swing bridge would be constructed within six to nine months after it started.

Mr. von Zumbusch further discussed the proposed bike path design, and noted that a simple, unobtrusive fence design, a lower curb, a color pavement, and removing the concrete pylons, would improve the design. He noted the project should meet the character of the park and the park's design concerns, not that of the DRJTBC structures.

Director Fleming and Director Dooley discussed the status of the building lease.

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

Superintendent Kalleser was not present and a report was not presented. Director Dooley noted that the application for the Emerald Ash Borer tree management plan was submitted and could be before the commission at the December meeting.

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

Mr. Sellar noted that the Cherry Tree Lane rehabilitation was complete, except for site restoration, the DOT's twin tunnel cleaning project is funded by the State, and an application will be submitted to the commission to install a USGS flow meter at Washington Crossing.

There was discussion regarding the potential use of an herbicide within the canal for weed control. Mr. Sellar noted two options would be considered and it is in the design phase. Commissioner Leck inquired about rates of application and weed harvesting. Mr. Sellar explained that weed harvesting had

been done this year with six miles at Washington's Crossing and three miles at Whitehead Road. The harvesting may be cost prohibitive.

Commissioner Stout asked about the status of the tarped bank along the canal south of Bridge Street in Stockton. He asked whether NJWSA closed that path area and why it was not open. Mr. Sellar noted that the repair is considered temporary and a long term repair would be within a capitol plan. Commissioner Stout noted he would advocate that NJWSA move the project up. Director Dooley suggested that Mr. Sellar could get additional information and report back to the Commission. Mr. Sellar was asked to report back.

### **Old Business**

#### **Bulls Island**

Commissioner Lubitz noted that discussion on Bulls Island should be held until Vice Chairman Loos returned to the next month's meeting.

### **Public Forum**

Mr. Barth noted there would be a three-mile history walk on November 26 at 10 am from Alexander Road to Port Mercer. He commented on the many years that the path between the canal and river in Stockton has been closed.

Mr. Barth discussed the length of time projected to open the proposed swing bridge, and he would like that design detail revisited. He referred to a bridge in Canada which opens more quickly. He stated that school students would be impatient and lose interest in the bridge if it takes a long time to open. He spoke of running electricity to open the bridge more quickly. Commissioner Lubitz requested that Mr. Barth submit the information on the Canadian bridge to the commission. Director Dooley noted that the swing bridge had been approved by the Commission and she believed the current construction standards for the bridge, as discussed at a previous meeting, may have affected the predicted opening time of the proposed swing bridge.

Mr. Barth asked if there was a report from Commissioner Palmer regarding the odor at the Lambertville Sewerage Plant. There was no report at this time.

Mr. Barth discussed frustration in the length of time it is taking to reopen Bulls Island.

Mr. von Zumbush noted that while the park closes at dusk, the Scenic Byway does not and that the Scenic Byway might be considered when projects, such as the gas station canopy in Stockton, come to the commission.

Mr. von Zumbusch reported that the Kingston Historic Society, which maintains the Griggstown Locktenders House, will have an open house on December 4, 3:30 pm to 5:30 pm.

Mr. Barth noted that NJWSA discussed a new invasive weed, Hydrilla, and he attended a stakeholders meeting regarding the Emerald Ash Borer. Mr. von Zumbusch noted that, with consideration to Emerald Ash Borer management and a replanting plan, no trees existed between the canal and the path when the canal functioned as a waterway.

**Adjournment**

Commissioner Lubitz called for a motion to adjourn. Director Fleming moved to adjourn and Commissioner Allen seconded the motion. It was approved unanimously.

The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Marlene Dooley, Secretary