

**MINUTES OF THE MEETING OF December 21, 2011
Delaware and Raritan Canal Commission**

TIME: 10:15 a.m. – 11:55 a.m.
DATE: December 21, 2011
PLACE: Canal Commission Office
Stockton, New Jersey

ATTENDING

COMMISSIONERS: Vice Chairman Martin Jessen, Mr. David Knights, Mr. John Loos, Ms. Donna Mahon, Ms. Alison Mitchell and Mayor Phyllis Marchand

STAFF: Ms. Marlene Dooley, Deputy Attorney General Lewin Weyl, Ms. Colleen Christie Maloney.

GUESTS: Ms. Patricia Kalleser, D&R Canal State Park; Mr. Bill Bogosian, NJWSA; Mr. Joseph Shepherd, NJWSA; Mr. Bill McKelvey; Mr. Robert Barth; Mr. Theodore Chase, Sr.; Mr. Scott Thomas, Franklin Township; Mr. Mark Healy, Franklin Township; Mr. Fred Daniels; Mr. Lawrence Terhune

The meeting opened at 10:15 a.m. Vice Chairman Jessen announced that this was a regular meeting of the D&R Canal Commission and that all provisions of the Open Public Meeting Law of 1976 had been met.

MINUTES OF MEETINGS

Minutes of the Meeting of November 17, 2011

Ms. Mitchell noted that the name Shuck was misspelled in the minutes. Ms. Mitchell moved to approve the minutes with that correction and Mr. Knights seconded the motion. The minutes were approved unanimously.

REVIEW ZONE ACTIONS

Review Zone A Projects

11-4101

Ms. Dooley noted that the applicant and representatives for project, 11-4101 Terhune Farm, were in attendance. Mr. Jessen requested that the Terhune project be reviewed first. Mr. Loos recused himself and left the room.

Ms. Dooley was asked to present the project. She posted the site map and outlined the facts of the project including that the project site was 145 acres, in Zone A, and abuts the canal. The applicant, Mr. Terhune, lives on the property and farms the entire site. Mr. Terhune presently grows hay. The applicant is proposing a subdivision and construction of two barns. There are two stream DRCC stream corridors on the project site. Ms. Dooley also noted that the Township intends to purchase the property for Open Space. The Township intends to allow farming on the land. Ms. Dooley lastly outlined the DRCC rules on easements, conservation easements and previous handling of farming in the buffer.

Representatives of Franklin Township also gave a presentation. Mark Healy, Township Planner,

gave an overview of the Township Master plan. Mr. Healy presented a map which illustrated the Township's Open Space Plan and described the importance of acquiring Mr. Terhune's farm as part of that plan. The Township would purchase most of the property except for the parcel on which Mr. Terhune lives. The Township would buy the development rights for that lot. The Township wants Mr. Terhune to continue to be able to live on the property and continue to farm unrestricted. Mr. Healy noted that the purchase of this property is an important part of the Township's open space initiative. The Terhune property is in the middle of a large tract of land already designated as Open Space. This property is one of the last three large pieces along the canal to preserve. In addition, Mr. Healy noted that farming is a historic use of the property. Mr. Terhune's family has farmed for generations. There was farming in the Township since the Dutch settled in the late 1700s. Lastly, the Township stated it is using State Agricultural Development Committee (SADC) funds and raised a concern that SADC may not allow restrictions on farming.

There was discussion regarding the Commission's stream corridor regulations, historic uses allowed in easements and the specific facts and history of this project site.

Mr. Knights noted that his experience with the Commission was that there is farming along the canal. He discussed three properties that were actively farmed along the canal and that he believed there were other such projects. Mr. Knights referenced a farming project on State land.

Mr. Jessen noted that the history of the canal was that farms surrounded it and were an integral part of it. The view is a positive one.

Mayor Marchand noted that the Township's plan to preserve open space was important and that the Commission should consider the value of preserving farms for future generations.

Ms Mitchell noted that farming can sometimes be of an industrial nature and of the need to protect the Canal as a drinking water source. After Mr. Terhune stops farming hay, it would be important to specify an agricultural use that would have little or no impact on the water quality.

Agricultural uses that would have a high impact on the lot and, potentially, on the canal were discussed, including livestock (pigs), turf farming, large-scale greenhouse and container farming; the potential visual impacts of solar farming and wind farming were also discussed.

Mr. Knights noted that it was the degree and kind of agricultural activity that was at issue.

There was discussion regarding what, if any, restrictions were appropriate for the easement area.

Ms. Marchand asked if the township had received any negative impact from the public regarding the plan, and Mr. Healy replied they had not. Mr. Healy noted that the land is in the Canal Preservation zone.

Mr. Knights asked the Township to comment on how they could assure the Commission that uses such as solar farming, and concrete structures would be limited.

Mr. Chase, Member Open Space Committee, Franklin Township, spoke, in part, to restricting the farming to hay farming and row crops. It would continue to give the farming viewscape but preclude concrete, more intensive farming and activities such as solar farming.

Ms. Marchand agreed that she would like to see the property farmed as it is now, for hay, in the interest of water quality and visual impact.

There was discussion as to whether use of SADC funding might limit restrictions on farming.

Ms. Mitchell noted her concern that uses are limited in easements and that SADC might generally be against restrictions on easements. But she also noted that she was aware of a case where SADC has allowed restrictions and SADC may allow a restriction in agricultural use if the lot is in close proximity to a drinking water source. Ms. Mitchell offered to provide any assistance to the applicant with discussions with SADC.

Mr. Knights and Mr. Jessen said they favored the least restrictions to be noted in the easement.

Mr. Barth raised concern that some water does drain into the Canal; if anything goes into the Canal he suggested that Best Use Practices be implemented. He sought clarification regarding any changes of use on the parcel along the canal. There was discussion generally about the Township's Canal Corridor.

Mr. Chase pointed out that the view shed needed to be protected.

Mr. Knights motioned that Block 19, proposed Lot 36.02 have a restriction in the DRCC conservation easement that would say the use of the land is restricted to hay and field crops with no structures.

There was discussion whether language prohibiting impervious surfaces was needed; it was determined the proposed language was sufficient.

Ms. Mitchell asked for clarification that the lot under discussion was between the Canal and Canal Road, not the lot on the other side of Canal Road. Ms. Mitchell asked for clarification that the standard DRCC easement would be used on the remaining lots and blocks with a stream corridor.

Mr. Knights agreed that there would be two forms of the easement, the standard DRCC easement language on the stream corridor on the northeast parcels and the language restricting the use of the land to hay and field crops with no structures for Lot 36.02.

Mr. Jessen asked for further discussion; there was none.

Mr. Knights moved for approval and Ms. Mahon seconded the motion. The project was approved unanimously.

There was a brief break from the meeting.

After a break, the meeting resumed.

Ms. Dooley stated that Mr. Terhune had a question and asked that it be discussed on the record. Mr. Terhune asked if the stream corridor easement on Block 33.01 proposed lot 17 prohibited horses. He noted that he did not have horses now but someone in the future might. Mr. Knights suggested that the Commission address these issues at a later time when they knew the specific facts. If a future owner wanted to put a prohibited use in the stream corridor area, Mr. Knights

stated, that applicant would need to come before the Commission. Mr. Terhune wanted to be clear that it was only the two acres in the stream corridor that would be subject to an easement but that hay would be allowed; Mr. Knights agreed and clarified that the larger area outside the easement area would be unencumbered.

Mr. Loos returned to the meeting at 11 a.m.

The following Review Zone A projects were approved unanimously after Mr. Loos motioned for approval and Ms. Mitchell seconded the motion.

11-3639B Woodrose North Main Street Sidewalks/patio

11-4249 52 N. Union Street Window

11-4102 Rescue Mission-Trenton

11-4189 AT&T Antennas-Mercer Medical Trenton

Review Zone B Projects

11-4151A Chase Bank Site Modification

Mr. Knights motioned to approve the project and Mayor Marchand seconded the motion. The project was approved unanimously.

11-3969A Princeton Forrestal Center G-2 Basin

Mr. Knights recused himself regarding 11-3969A Princeton Forrestal Center G-2 Basin and left the meeting. Ms. Marchand motioned to approve 11-3969A and Ms. Mitchell seconded the motion; the project was approved unanimously.

Mr. Knights returned to the meeting.

08-3604 Addition of Condition to COA for GFA Warehouse

Ms. Dooley explained that this project had been previously approved by the Commission and that applicant had asked that a Certificate of Approval be issued noting the conditions of the approval. Mr. Loos motioned for approval of the new Certificate and Mr. Knights seconded the motion; the certificate was approved.

EXECUTIVE DIRECTOR'S REPORT

Ms. Dooley reported on the staff's monthly workload and incoming revenue. She noted that staff processed ten Deficiency Letters, ten Jurisdictional Determinations, and one General Permit 1, and issued three Certificates of Approval, in addition to reviewing on-going projects. She stated that application fees brought in \$21,850 in revenue last month.

Ms. Dooley noted that she had several inquiries regarding previously approved projects that were about to expire and the applicability of the NJ Permit Extension Act.

She noted that she attended a meeting regarding the I-95 Scudders Falls Bridge improvements and that it will be a project the Commission will review in the next year or so.

Ms. Dooley addressed staffing issues for the office and staffing over the holidays.

Ms. Dooley presented a draft letter prepared by the Delaware River Mill Society regarding the

safety issues related to the crosswalk on Route 29 at the Prallsville Mills. The Delaware River Mill Society requested that the Commission sign the letter of concern with other groups, many of which use the Prallsville Mill complex. Mr. Loos moved to agree to add the Commission to the letter; Mr. Knights seconded the motion and it was approved unanimously.

Ms. Dooley reported on Scudders Falls Bridge at Bernard Drive. She and Ms. Kalleser noted that a portion of the material was being fabricated at a manufacturing facility.

D & R CANAL PARK REPORT

Ms. Kalleser reported that the portion of the path in Alexandria Township has completely failed and there is a 20-foot drop off; the path is blocked off to the north at 12th Street in Frenchtown. She noted a new Park fee schedule was released. She noted that scuba divers had been in the canal at Demott Lane and reported that the bridge abutments were sound and that a January 12, 2012 meeting would be held to discuss a new bridge for that location. She noted the temporary closure of a portion of the path in Kingwood Township because of work at the DeRewal Superfund site. She noted Green Acres is exploring the purchase of a property in Kingwood Township, Hunterdon County, of 138 acres. Hazardous trees were removed at the Prallsville Mills complex. The well in Griggstown has been repaired after a car accident. The Sherman House environmental report is completed.

NEW JERSEY WATER SUPPLY AUTHORITY REPORT

Mr. Shepherd reported that 90% of in-house FEMA work is complete and that the Water Supply is meeting with FEMA on Tuesday. .

NEW BUSINESS

No new business was discussed.

PUBLIC FORUM

Mr. Barth thanked the Commission members for their work. He introduced Mr. McKelvey as a canal historian, author, and valuable resource to the Commission. He showed copies of Mr. McKelvey's publications and noted their importance to the archival materials owned by the Commission. He also explained that Mr. McKelvey had taken oral histories from many canal workers including canal boat captains and had recently had the tapes transcribed. Mr. McKelvey noted that he intends to post the transcribed interviews on line after editing them. Mr. Loos suggested that the Commission might be interested in posting the interviews on its web site.

Mr. Chase thanked the Commission for a thorough and balanced review of the Terhune Farm project. He hopes to hear more about a bridge over the canal in Somerset in the future.

Mr. Knights moved to adjourn the meeting and Mr. Loos seconded the motion. It was approved unanimously. The meeting ended at 11:55 a.m.

Respectfully submitted,

Marlene Dooley
Secretary