

URBAN WATERFRONT ACTION GROUP

July 14, 2004

MINUTES

Portside at Pier 28S

Philadelphia Naval Business Center – Water and Stormwater Utilities

Attendees

Alexis Mulusky	PADEP CZM	amelusky@state.pa.us
Ben Ginsberg	CH Planning	benjamin.ginsberg@chplanning.com
Bennett Blum	Mid Atlantic Co.	beanieblum@vzavenue.net
Bill Jenkins	Army Corps of Engineers	william.h.jenkins@usace.army.mil
Chris Linn	DVRPC	clinn@dvrpc.org
Dan Martin	Marathon Engineering	dan.maritn@marathonconsultants.com
Everald McDonald	PADEP CZM	emcdonald@state.pa.us
Joseph Musil	Urban Engineers	jfmusil@urbanengineers.com
Kenneth R. Anderson	PADEP SERO	kanderson@state.pa.us
Kevin Sligh	U.S. Coast Guard	ksligh@msogrophila.uscg.mil
Larry Toth	PADEP CZM	latoth@state.pa.us
Michael Weaver	DePaul Group	michael.weaver@depaulgroup.com
Paul Scally	Delaware River Basin Comm.	pscally@drbc.state.nj.us
Randy Brown	PADEP SERO	rabrown@state.pa.us
Richard Hluchan	Ballard Spahr	hluchan@ballardspahr.com
Todd Lutte	U.S. EPA Region 3	lutte.todd@epa.gov

1. The meeting was called to order at 10:10 a.m.
2. Chris Linn of DVRPC chaired the meeting. Members of the UWAG committee and the applicants introduced themselves.

Portside at Pier 28S

3. Mr. Linn gave a brief overview of the project and introduced Dan Martin, Senior Environmental Scientist at Marathon Engineering, who presented the project to UWAG.
4. Mr. Martin explained that Portside at Pier 28 is be a 16 story residential project roughly within the footprint of Pier 28S on the Delaware River adjacent to Bainbridge Ave., one block south of South Street. The existing waterfront structure was pile-supported with the deck removed in the early 1980s. The new structure would have concrete pilings that would be threaded through a portion of the existing pilings and new pilings would also be installed to the immediate north of the old Pier28S to provide the required structural support.

Mr. Martin showed some photographs of the existing site at low tide and at high tide. The low tide pictures clearly showed the edge of the pier line. Mr. Martin also presented engineering drawings showing the pile structures that would support the new building and their location relative to the existing bulkhead and the remnants of Pier 28S.

Mr. Martin informed the group that the project had been presented to UWAG in September 2001. At that time, the project also included an interpier marina between Piers 28 and 30. The current version of the project does not include a marina at this point.

Mr. Martin stated that they had begun correspondence with resource agencies. The PA Fish & Boat Commission had identified three species of concern.

5. Mr. Martin stated that federal legislation exempted Portside (Pier 28) from the requirements of the public trust doctrine, and that this area could be used for projects other than water-dependent uses. Mr. Anderson replied that the legislation only referred to the historic Pier 28S structure, which is no longer in existence, and that the legislation did not exempt new construction from the public trust doctrine.

Mr. Hluchan stated that the legislation removes the public trust doctrine for a general area (as defined by specific metes and bounds), including the entire project area, and not just for pier structures that existed at the time the legislation was enacted. Mr. Hluchan explained that it was their understanding that they had a lease to a portion of the bed of the river and that he would further clarify this for Mr. Anderson. This was the same lease which applied to the Pier 30 project.

6. Mr. Martin described various permits and actions that would be required to execute the project: a 105 Permit from DEP, a Coastal Zone Management consistency determination through section 105, Section 10 and Section 404 Permits from the Army Corps, concurrence

of no impact to navigation through the Coast Guard, appropriate lighting arrangements with the Sterling Heliport, and City of Philadelphia building permits.

7. Mr. Martin stated that a significant concern of the 2001 UWAG was the benthic organisms that were using that area and the impacts of shading from the building on those organisms. Mr. Martin reported that the existing benthic study gave them a good grasp of what was occurring. They did not think that there would be a significant or adverse impact on the organisms using the area. Analytic sampling had been performed within the footprint area of Pier 28S, and the samples were relatively clean.
8. Mr. Toth asked how DEP would look at the structure with regard to fisheries impacts, and what the Corps' position would be on the project. Mr. Toth said that from his viewpoint the project will result in the construction of an entirely new non-water-dependent structure. In addition, the project will have fisheries impacts.

Mr. Jenkins asked if Pier 30 had had a deck. Mr. Toth responded that it did, and that as a result, the environmental impacts were already there before the construction of Dockside.

9. Mr. Martin said that for Pier 28 the pile system would be brand new and that they would not be using the existing piles.
10. Mr. Toth asked if the applicant had heard from NMFS. Mr. Linn reported that Anita Riportella from NMFS could not attend, but she had forwarded comments. Anita stated that NMFS viewed this project as the construction of a new non-water-dependent structure because the old Pier 28 had been gone for more than 20 years. Mr. Toth stated that the difference between this project and the project at Pier 30 was that Pier 30 had an existing deck, and that 90 percent of the environmental impacts in the case of Dockside were already present. The Portside project at Pier 28, by contrast, would involve a brand new deck, a brand new structure, and brand new pilings – all of which are non-water-dependent. Mr. Hluchan pointed out the project does not have to be water-dependent under both the state and federal legislation. The point of the legislation was to spur redevelopment in the Penn's Landing area, and it specifically allows residential projects. The applicant had had this same discussion with regard to Pier 30. Mr. Toth agreed that the legislation gave the City a submerged lands license agreement.
11. Mr. Toth stated that when the 105 Permit is issued from the State, there will have to be an analysis on the impacts to fisheries. If the analysis finds that there is an impact on fisheries or on the water, then the only way that the permit can be issued is if mitigation and compensation are performed. Compensation could come in the form of public access. Mr. Hluchan said that they would have that discussion at the appropriate time and that they intend to address all the impacts.
12. Mr. Martin stated that the project would mimic the wingwalls that were constructed on Pier 30. Mr. Scally asked if the CSOs in the area would be re-routed. Mr. Martin replied that the CSOs are in the interpier area and would not be effected by, and do not effect, the project.

13. Mr. Anderson stated that the fisheries resource study was performed in the existing piling area, and not in the project area, which is to the north of the existing Pier 28 footprint. The study therefore does not account for the aquatic life that is using the area that will be impacted by Portside. Mr. Martin said that an inspection of the photographs shows that there appears to be common habitat on both sides of the Pier 28 footprint. Mr. Anderson suggested supplementing the existing study by pulling another sample in the project area and comparing it to the existing results.

Mr. Anderson asked the applicant if they intended to remove the remnants of Pier 28. The applicant replied that they had not yet decided on that. Mr. Anderson stated that the regulations clearly specify that old structures must be removed and that the bed of the river would need to be restored to its original state. Structures cannot be abandoned in place. Mr. Weaver stated that the pilings would probably be removed if the interpier marina was ever constructed. Mr. Anderson said the treatment of the existing pilings should be discussed in the permit application.

14. Mr. Anderson stated that even if the project caused no adverse environmental impacts, the project may still be characterized as an “adverse impact” because it is a “public trust taking.” Mr. Hluchan replied that the legislation states that residential housing is appropriate for this area (and therefore, the project is not a public trust taking), and that the regulations should “give way” to the legislation in this instance. Mr. Anderson stated that a 105 Permit and an impact analysis would still be required, regardless of any legislation. In addition, Mr. Anderson emphasized the need for the application to include at least the shell of a removal plan.

Mr. Anderson reiterated that DEP would view this project as a new structure and not the modification of an existing structure. This circumstance will be a big hurdle for DEP because they have water-dependency clauses and regulations to deal with that are not nested under the submerged lands license section of the regulations. The permit application will need to adequately address these issues.

15. Mr. Jenkins stated that the Corps’ issues would be the same as those they had for Pier 30. The Corps is particularly concerned with the impacts of shading. Mr. Toth asked what exactly is meant by shading. Mr. Martin replied that there are two types of shading: the permanent shading directly underneath the pier and the moving shadow cast by the building. Mr. Anderson aptly compared the project to a “giant sundial.”
16. Mr. Anderson asked how the Corps would consider the shading impacts of the project considering that mudflats are “special aquatic sites.” Mr. Jenkins replied that the Corps had not yet determined that the mudflats in question are “special aquatic sites.”
17. Mr. Anderson expressed concern over the impacts of the project on sediment settling patterns in and around Pier 30. He wondered if the new structure would cause more or less sediment to settle in adjacent areas, in the same manner as a snow fence alters snow drift formation locations. Changes in sediment settling patterns could impose dredging burdens on other parties.

18. Mr. Martin asked if EPA had comments. Mr. Lutte said that EPA's comments would mirror those of the Corps and DEP, but he could not definitively give EPA's comments because he was only filling in at UWAG for other EPA staff.
19. Mr. Martin asked if the Coast Guard had comments. Lieutenant Sligh responded that the Coast Guard would want to be kept apprised of the location of construction barges and they would require that the construction barges be kept out of the federal channel. Mr. Martin told the Coast Guard that they would send them a courtesy copy of the application. Mr. Anderson asked if there would be any navigation problems associated with the future marina. Lieutenant Sligh said he wasn't sure, but he would discuss the issue with the district office. He also reiterated that the Coast Guard's primary concern was the federal channel.
20. Mr. Toth asked Mr. Anderson what DEP would need to see on the application with regard to the potential for the future marina. Mr. Anderson replied that it would be wise if the applicant crafted a few sentences to identify the marina as a possible future project. The marina would, of course, require its own permit application. Mr. Scally suggested that it would be beneficial for the applicant to address the refuse emerging from the adjacent CSO and potential solutions to this problem in its permit application.
21. Mr. Scally asked if Portside would affect flight lines for the heliport. Mr. Martin said that it would not because Portside will be no bigger than Dockside, which is closer to the heliport. Lieutenant Sligh asked if Mr. Martin was aware of Sterling Heliport's expansion plans. Mr. Martin said that he had just heard about these plans and would investigate to see if the expansion would have any impact on Portside or Dockside.

Philadelphia Naval Business Center – Transfer of Water and Stormwater Utilities to PWD

22. Mr. Ginsberg described the water and stormwater utilities at the Philadelphia Naval Business Center. Mr. Ginsberg asked what permitting issues would need to be addressed to transfer the ownership of those utilities from the Philadelphia Industrial Development Corporation (PIDC) to the Philadelphia Water Department (PWD).

Mr. Ginsberg stated that there is no on-site treatment of wastewater and that 45% of the incoming water supply is lost to brakes and leakages.
23. Mr. Jenkins asked if there are any outfalls. Mr. Jenkins stated that the Corps would only need an informal notice regarding the transfer so they could know who is responsible for all the outfall structures at the business center.
24. Mr. Toth asked if the properties still controlled by the Navy are on a separate system. Mr. Ginsberg replied that they are not.
25. Mr. Anderson asked Mr. Ginsberg who he represented. Mr. Ginsberg stated the he represents PIDC and PWD.

26. Mr. Musil pointed out that if outfalls are transferred to PWD, pipes will need to be identified and some of them may require industrial discharge permits.
27. Mr. Anderson stated that there are 52 acres of fill outside of the former Navy base. Such fill may not be grandfathered, and if that is the case, the fill would require an encroachment permit because it is occupying public trust waters. Mr. Anderson added that fills in navigable waters cannot be permitted.
28. Mr. Anderson suggested meeting with Jen Fields and Keith Dudley to determine the existence of industrial discharges.
29. Mr. Anderson was not aware of any permits that were issued to the Navy during its tenure. Mr. Anderson stated that DEP would need "as-built" plans and they would need to know how things would be operated. They will need to know what is on public trust land and what is not. 105 Permits will be required for all encroachments. NPDES permits will be needed for industrial discharges.
30. Mr. Anderson reported that Sara Panteledo (sp.?) worked on base closure plans and knows the historical progression of the base boundaries over time. She also knows where hotspots are and whether or not they have been removed.

Mr. Anderson stated that any permit application should include a PNDI search form. If species are identified, other agencies may have to get involved.

31. The meeting adjourned at 12:05.