

URBAN WATERFRONT ACTION GROUP

February 12, 2003

MINUTES

Piers 122 & 124 - PRPA Chester Downs Racetrack – The Flynn Co.

Attendees

Paul Scally	Delaware River Basin Comm.	pscally@drbc.state.nj.us
LTJG Kevin Sligh	US Coast Guard	ksligh@msogruphila.uscg.mil
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Bennett Blum	Midatlantic Co.	beanieblum@aol.com
Chris Linn	DVRPC	clinn@dvrpc.org

1. The meeting began at 10:05 a.m.

Expansion of PRPA's South Philadelphia Port District

2. Chris Linn of DVRPC chaired the meeting. Members of the UWAG committee and the applicants introduced themselves.
3. Mr. McDermott of the Philadelphia Regional Port Authority (PRPA) described the overall operations and history of PRPA. He described the importance of the Tioga Marine Terminal, which was made into a 'super terminal' in the 1970s. This was the last time that the PRPA had come before regulatory agencies requesting to 'change the river'. This project was similar to the one that PRPA is currently proposing in that they want to convert a number of finger piers into a super pier. The Tioga Marine Terminal is currently the premier fruit importation facility on the Delaware River and as a result, Phila is the most important fruit importation city on the East Coast. In addition, two of the Navy's LMSR vessels are also lay berthed at the Tioga Terminal.

Mr. McDermott pointed out that PRPA's facilities were recently designated a 'strategic military port'. The military also contracted with PRPA to have 35 acres of the Packer Avenue Marine Terminal available to them on 24 hours notice.

Mr. McDermott discussed what he called the 'IKEA situation'. Developers and the City tried to take away 44 acres of PRPA's ground in the port district to build an IKEA and other 'big box' retail establishments. In the end PRPA gave up their rights to the 44 acres in return for Pier 122, 124, the Whiskey Yard (28 ac) and other lands west of the piers. PRPA will also acquire other lands 'inside the loop track' formerly owned by Conrail. All of these lands are slated to come under PRPA's control by the start of 2004.

Mr. McDermott stated that the State of PA owns 25 acres on the southeast corner of the Navy Yard, not the PIDC. The Navy created this land from fill.

Mr. McDermott said the PRPA is focused on expansion of their port facilities in the vicinity of Piers 122 and 124 for a number of reasons. First and foremost is that the location is south of the Walt Whitman Bridge, which, with a height of 154 feet, acts as a barrier to larger ships going upriver. That is why PRPA conceded the IKEA site for lands south of the bridge. In addition, Norfolk Southern is planning to build a world-class intermodal yard on 168 acres in the S. Phila Port District. PRPA is also planning to double the number of containers they currently handle at Packer Ave., which is currently operating at capacity. Therefore, PRPA needs to expand their operations. Mr. McDermott stated that the PRPA's current facilities generate 5500 jobs. He also emphasized that it is difficult for PRPA to handle its current volume of cargo using the outdated finger piers at Packer Ave, and therefore the expansion at Piers 122 and 124 is crucial to PRPA's future success.

4. Mr. Lawrence continued the presentation by describing in greater detail PRPA's operations and plans for the future in the South Philadelphia Port District. He said that Pier 122 is the last bulk facility on the Delaware. It is 1100 feet in length and 80 feet in width. Pier 124 is

not currently a working pier. It is 1300 feet in length and 170 feet wide. There is damage to the southeast corner of Pier 124. The current projects cover about 50 acres of ground, 25 over water and 25 over land.

Mr. Lawrence said that they have investigated several options for building the super pier. Packer Ave. was built with stone (?) piles, which is under consideration for the new pier. They have also considered sheet (?) piles and a 'high-deck' structure would be a third possibility.

Mr. Lawrence said that their current strategy would leave a 25-acre parcel of wetlands undisturbed. They would also be able to extend the Delaware Ave. service road and bring rail track into the facility. The project would give PRPA the 2000 feet of berthing space that they need. A drainage channel that runs through the site would need to be re-routed.

Mr. Lawrence said that the port's options for expansion are limited by a number of factors, most significantly the Walt Whitman Bridge. The site's good access to rail and proximity to the Packer Ave. Terminal also favored its selection. Sites further to the south would have required over \$170 million in dredging, so they weren't cost effective.

Mr. Lawrence stated that they realize there is mitigation work to be done. There is an acre of wetlands that PRPA wants to do something with and they have been in discussions with DEP about this parcel.

5. Mr. Toth asked PRPA why they couldn't use the existing Naval Shipyard and other existing piers to expand their facilities.

Mr. McDermott responded that the Shipyard is under the jurisdiction of the PIDC and that the Navy has kept every deep-water berth with the exception of two finger piers. One of these finger piers is being used for the cruise ship facility and the other pier is leased by Metro Machine, and they've been keeping it dry-docked. Plus, the Navy has been using that berth for a vessel. Finally, PIDC's master plan does not include industrial port facilities for the Naval Shipyard.

Mr. McDermott stated that they can't expand in Port Richmond because not only do they have to deal with the Walt Whitman Bridge but also the Ben Franklin Bridge, which has an air draft of 134 feet. No one is talking about lifting either bridge. Finally, in terms of maintaining the existing finger piers, 124 has not been worked since the early 1980s and is currently silted in. Also, it has been damaged by collisions and needs a new superstructure. Finger piers generally silt in every two years and dredging is a large financial and environmental burden. Larger ships don't want to be put in finger piers and the 'super-pier' design just makes for a much cleaner operation, particularly in light of the expanding use of land-side container cranes.

6. Mr. Toth asked if PRPA sought out the 'strategic military port' designation. Mr. McDermott said that they had and that they had been working on obtaining the designation for three and a half years. Mr. McDermott said that their ultimate goal was to become an 'agile' port with the ability to quickly coordinate the movement of equipment and troops.
7. Mr. Cianfrani asked about the depth at Packer Ave. Mr. McDermott said they keep it dredged to 40 plus 2 feet. If the main channel goes to 45 feet, Packer has the ability to go to 45 plus 2.

Mr. Cianfrani asked about the depths of the finger piers. Mr. Lawrence said that the south side of Pier 122 is in the 35-foot range, and the north side, which is not used, is in the 20-foot range. Pier 124 is in the teens.

8. In reference to questions over PRPA's current dredging permits, Mr. Anderson said that DEP would want to repermit the entire facility with new dredging permits if the port was going to be modified
9. Mr. Cianfrani asked what kinds of mitigation were proposed. Mr. Lawrence said they had considered several options including mitigating the 25 acre parcel on the southeast corner of the Navy yard or they may remove a dilapidated pier, Pier 179, up by the Tioga Marine Terminal.
10. Ms. Riportella inquired as to whether PRPA planned to use fill or a deck structure to build the super pier. In response to the impacts of the project on the aquatic environment of such a project, Mr. Musil commented that of the approximately 25 acres of water that the project would effect, only 5 acres are shallow water.

Mr. Musil stated that they were considering different options to mitigate the impacts of the project, including building an artificial reef in the shoal area south of the piers. In addition, Mr. Musil requested input from the regulators in the room in order to identify 'at risk' habitats that PRPA could protect using their condemnation authority. With that authority PRPA could create easements or place at risk areas under public control.

11. Mr. Cianfrani asked if any piers could be removed as part of mitigation efforts. Mr. Lawrence said that yes, Piers 179 and 98, plus other piers in S. Phila could potentially be removed. Mr. Brandwein asked the other agencies if removing old/outdated/decaying piers would qualify as mitigation.

Mr. McDermott asked if anyone had any knowledge of a particularly egregious site. Mr. McDermott stated that they could acquire such a site and perform the necessary mitigation required to improve the natural habitat in that area.

12. Mr. Anderson said that he would like to know the results of any benthic studies that had been conducted in the general area of Piers 122 and 124 in order to get some idea of what kinds of 'critters' may be living in the area. He questioned whether there may be Mussels or clams or other food for Sturgeon in the mudflats around the piers

Mr. Musil stated that they wanted to conduct sampling but had not yet determined the best time to do so.

13. Mr. Muir argued against using a 'cap' because it would result in the loss of large amounts of habitat. There may be water underneath a cap but the environment would be seriously degraded. Mr. Muir thought a cap was a lose/lose situation because not only is habitat lost but so is the mitigation potential associated with fill.

14. Mr. Cianfrani asked if the mitigation ratio is the same for shallow and deep water. Mr. Brandwein stated that shallow water habitat is more valuable, but he would need to discuss precise mitigation ratios with the USFW's Delaware River Coordinator.

Mr. Musil stated that most of the project area is deep water. Mr. Cianfrani told PRPA to show water depths on their application. Mr. Musil asked if 10 feet was the dividing line between 'shallow' and 'deep' water.

15. Mr. Musil asked the regulators if they wanted them to perform any plant studies. Ms. Riportella asked if there was any wild celery in the area.

Mr. Muir told Mr. Musil to include juvenile fishes in their benthic study.

16. Mr. Brandwein asked what was happening with the main portion of the Navy base. Mr. McDermott replied that Kaeverner was using the former base, 180 acres had been leased to Norfolk Southern and the cruise ship terminal was located at the former base. In addition, there had been talk of high-end retail and a 'racino' on the base.

17. Mr. Cianfrani told PRPA to put together a preliminary proposal and send it out to the corps and the state. He also told them to put together a list of ideas and possibilities for mitigation.

With respect to ideas for in-kind mitigation Mr. Muir stated that what they were trying to accomplish was to increase the functionality of the Delaware River.

Mr. Anderson said that he wanted to get a look at the benthics of the site. Mr. Anderson also emphasized that it was important to determine how similar the site is to the 'Publiker(?)' site, based on sediment samples and grain size, in order to determine the viability of using the Publiker studies for this project.

Mr. Muir stated that the Publiker site had lots of toxics (it was a superfund site) when the benthics were done.

18. Mr. Anderson told PRPA that they should think about the transfer of permits and how that would take place.

Chester Downs Racetrack

1. Mr. Kevin Flynn of The Flynn Co. introduced the project and provided a description of the overall site. The site extends from Ridley Creek to a wet slip to the south. Many of the slips at the site were filled in since the days when the site was the Sun Shipyard.
2. Mr. Flynn said that the primary issue regarding the racetrack is that its southeastern corner goes over a wet slip. They wanted to determine the best way to handle the situation, whether it would mean filling in the wet slip or bridging over it. The current depth of the wet slips at the site is 6 to 10 feet. At this point, Mr. Flynn turned over the presentation to Mr. Koep.
3. Mr. Koep said he wanted to learn more about development along the waterfront so that they could guide and plan their project appropriately. He said they wanted to avoid the water and stay above the high-tide line.

Mr. Koep said that the wet slip in question is 500 feet long and 200 feet wide. The racetrack intersects the north edge of the wet slip at 250 to 270 feet. They want to either bulkhead across the wet slip and fill in a portion of it or build a high-bridge structure. Their final decision would be based on a cost perspective, which has yet to be worked out.

Mr. Koep pointed out that there were once as many as eight shipways at the site, which have since been filled. The water's edge is now broken down concrete and other forms of riprap. They would like to have a promenade along the existing water's edge without disturbing the edge itself, but they wouldn't mind cleaning it up and creating a short bulkhead above the high-water mark to accommodate a paved path.

4. Mr. Flynn stated that they tried to move the track around ten different ways to avoid the wet slip, but they could not do it due to the size of the track and constraints at the site, such as existing buildings. The foundation of one of these buildings is composed of four-foot thick reinforced concrete that would be cost prohibitive to dismantle so they plan to locate a parking lot in this area.
5. Mr. Anderson asked Mr. Flynn if he had researched the submerged lands licensing documents held by the former owner. Mr. Flynn said he had not as it was the first time they had ever developed on the waterfront. Mr. Anderson said that he should look into it immediately because all along the Delaware waterfront there is a line that establishes where the state owns the bed of the river (or what used to be the bed of the river) and where a private entity owns the riparian land. Mr. Anderson has found it extremely difficult to find that line in the City of Chester. Mr. Anderson suggested looking at the historical archives in Harrisburg and any existing permits issued to Metro Machine and the Sun Shipyard.

Mr. Anderson said that finding that line was important because he has to deal with an issue called "proper purpose" or "water dependency." A horseracing track is not water

dependent. So, if the racetrack extends into what used to be the bed of the river, it will be tough to permit.

Mr. Flynn described what he thought to be the deed line on the site sketches. Mr. Anderson said that the deed line may be similar to the bulkhead line but he did not know if a bulkhead line was ever adopted in the City of Chester. Mr. Blum stated that the Flynn Co. would need to review old deeds to determine whether they are on riparian land or operating on land that was created from fill and is in the bed of the river. When land is created in the bed of the river it is only leased to the user of that land by the state and is not owned by the lessee.

Mr. Flynn said that he thought the entire track was located on 'upland' except for the little piece that covered the wet slip. However, he said he would investigate the riparian lands issue more thoroughly.

6. Mr. Flynn said they planned to use the wet slip adjacent to the track for a marina.
7. Mr. Cianfrani said that the "water-dependency" issue would only be invoked by the creation of fill. As a result, Mr. Flynn stated that they would cap the wet slip with a deck structure to accommodate the track.

Mr. Cianfrani asked what was the public perception of the project. Mr. Flynn said that the public was overwhelmingly supportive. Mr. Loeper stated they had met with a wide array of groups in Chester including churches, schools and community groups to discuss the project and that they were supportive. Mr. Flynn stated that the project would generate over 2000 jobs if the track had slots.

8. Mr. Anderson asked if any dredging would be required for the marina. Mr. Flynn said that no dredging would be needed. Mr. Anderson stated that every marina on the Delaware requires dredging at some time and that any permit application for a marina would have to establish a maintenance draft dredge depth. The permit would prohibit the disposal of the dredge materials in PA. Mr. Flynn said they could use the dredge materials on-site. Mr. Anderson said that if he chose to do so it would force the involvement of DEP agencies other his own. The Flynn Co. may need to get a 'beneficial re-use' permit from Harrisburg if they chose to use dredge materials on-site. Mr. Flynn stated that they did not currently intend to dredge. Mr. Anderson replied that they would still have to establish a maintenance draft depth for the marina and that future dredging may require an amendment to the permit.
9. Mr. Flynn said they will have 500 feet of linear dock in the marina. Mr. Cianfrani asked how many slips they would have? Mr. Flynn said that there would be no pilings or slips, only floating docks, and that they expected to have room for 25 to 30 vessels. Mr. Cianfrani said that they should show the federal navigational channel on their application.
10. Mr. Anderson said that the large mooring dolphins in the river would have to be taken out if they weren't going to be used. Mr. Muir asked if they could be used for a fishing pier with

public access from Ridley Creek. Mr. Flynn thought that this might be a good use for the mooring dolphins, because removing them would be extremely difficult.

11. Mr. Anderson asked how the people and horse sewage would be handled. Mr. Flynn said the horse waste would be trucked out. Mr. Anderson said that the Flynn Co. would have to get their 537 sewage facility approval from DELCORAH(sp?) before DEP would accept an application for an encroachment permit. Mr. Flynn said they had a good working relationship with DELCORAH.
12. Mr. Scally asked if there were any CSOs on the property. Mr. Koep said he wasn't sure if there were but he wouldn't be surprised to find them. Mr. Scally said that CSOs would not be a pleasant feature if the site were to host large numbers of people.
13. Mr. Flynn stated that there is an ugly and dirty riprap structure at the high-water line that had to be removed in order to make the site aesthetically pleasing for a promenade.

Mr. Hess said that removing the concrete riprap may be a good idea, but after it was removed they would have to create a bulkhead to stabilize the bank. Mr. Loeper agreed and said that they were using the work done along the Christina River in Wilmington as their model.

Mr. Flynn said there would be a 30-50 foot mudflat at low tide if they built the bulkhead at the current high-water mark and therefore they wanted to push the bulkhead out to the halfway point between low and high tide. Mr. Brandwein said that moving the bulkhead further into the river would be a big problem because the mudflat is critical habitat.

Mr. Anderson said it would be possible to cut back into the fill slope to create a new river-edge that has both aesthetic and habitat values and could serve as a mitigative gesture for some of their other work.

Mr. Anderson said they should refine their overall proposal and meet with them again to discuss each of the things they intended to do.

14. Mr. Blum asked if there was enough water depth to get boats into the marina. Mr. Flynn said there was plenty of water and that sediment from Ridley Creek did not reach down to the marina.
15. Mr. Scally suggested that the track have the ability to store water to enhance the capacity of the local water purveyor. He said the cap and the marina would create shadows and that the Ridley Creek area would be a good place to do mitigation to offset the environmental impacts of the project. Mr. Scally said that whether or not they held a public hearing would depend on the extent of water uses.
16. Mr. Anderson asked if the applicant expected to go through the Act 2 programs. Mr. Flynn responded positively. Mr. Anderson asked to be notified when they meet with the Act 2 people so that he could be represented. Mr. Anderson was concerned with contamination

issues on the site. As a result, Mr. Anderson stated that the applicant may require an NPDES individual permit for the site.

Mr. Flynn said that he thought that Metro Machine had done all the soil clean-up on the Site and that nothing was capped, but they would re-test the site before submitting an application to DEP. Mr. Loeper said he would notify Mr. Anderson the next time they met with the Act 2 program.

17. Mr. Toth asked if the Act 2 process would eliminate the need to get a 105 permit. Mr. Anderson said that that may be the case.
18. Mr. Flynn asked how long it takes to get a response from the day they submit their permit application. Mr. Cianfrani said that it all depended on the degree to which they interface with or intrude into the water, but he thought it would take between 60 and 90 days. Mr. Anderson said the DEP has a 130-day permit review period. In the first 20 days they let the applicant know if their permit application is complete. When the application is incomplete the 130-day clock turns off and it doesn't go back on until the applicant furnishes the necessary information. Mr. Anderson said the average time for permitting is 90 to 100 days. Mr. Hess said that one way to speed up the process is to conduct certain tests, like PNDI searches, ahead of time. Mr. Scally advised adding six weeks for a public hearing if the project is considered to be 'major' due to water withdrawals or other factors.

Ms. Riportella thought the project would cause only minimum impacts from the NMFS's point of view but they would require some mitigation measures, i.e., creating viable habitat along the edge of a new bulkhead or improving conditions along the Ridley Creek.

Mr. Muir said the ideal compensation for the shading impacts of the track would be creating shallow water emergent vegetation, which would also create an ideal aesthetic environment for the public. Creating emergent vegetation along with providing public access to a fishing pier would make it difficult for EPA to turn down the project.

Mr. Anderson asked how the public would access a fishing pier. Mr. Flynn said he envisioned the public accessing the pier via the southern side of the site. Free parking would be available to the public, but DEP staff would be charged a fee.

Mr. Brandwein said that USFW would not have a problem with the project as long as the applicant stayed out of the mudflat areas.

Lieutenant Sligh said there may be some lighting requirements for the fishing pier.

19. Mr. Koep asked what the level of design documentation in the permit application should be. Mr. Anderson replied that the application should be based on the final design.

Mr. Anderson told the applicant they can do a couple of things ahead of time including conducting a PNDI search and chasing down the identified agencies to find out about possible conflicts and finding out if there are any historic structures on the site. The

applicant should also research old navigation permits to determine the legal land/water boundary at the site.

20. The meeting adjourned at 12:40.