

CITY HALL
HOBOKEN, NEW JERSEY

November 28, 2017

Commissioner Bob Martin
New Jersey Department of Environmental Protection
Division of Land Use Regulation
Post Office Box 420, Mail Code 501-02A
501 East State Street
Trenton, New Jersey 08625

Dear Commissioner Martin,

We are writing to strongly oppose NY Waterway's application for a provisional permit at the Union Dry Dock site on Sinatra Drive in Hoboken. We respectfully request that the DEP deny the application and require NY Waterway to submit a complete application for all proposed uses including ferry fueling and sanitary waste disposal, so a thorough evaluation of all the public safety and environmental issues are considered before a final decision is made. Since the ferry operation and maintenance use is proposed to be implemented directly adjacent to an active recreational area offering community wide kayaking and boating, it is critical that the safety of the public be given full consideration before a decision is made on this provisional permit. The provisional permit application demonstrates either a lack of comprehensive planning to consider all public safety issues, or a deliberate attempt to hide from the public and prevent a review of all the public safety and environmental issues.

Mayor-elect Bhalla has co-signed this letter, and together as the outgoing Administration and the new Administration starting in 2018, we write to strongly urge the DEP to require a full public safety and environmental evaluation of all NY Waterway's proposed uses, particularly including fueling and ferry black water disposal. Please consider the following as you review the provisional application:

- 1. Comprehensive planning is critical to ensuring public safety for all of NY Waterway's anticipated uses:** NY Waterway and NJ Transit leadership directly advised the City of Hoboken, including myself, that NY Waterway intended to fuel their ferries and remove sanitary wastes from them at the Union Dry Dock site in a meeting on November 9th. Rather than permitting a segmented piecemeal permitting approach, we request that the DEP require NY Waterway to submit a complete permit application for all the proposed uses, including fueling. This piecemeal provisional application mentions additional uses but does not give any clear consideration to the fueling uses which should be fully evaluated to

protect the public interest. A full report and analysis of spill mitigation measures, resiliency against future storm events, protection of endangered fish hatcheries, impact on navigation in the Hudson River and other related impacts, should be provided by NY Waterway and carefully evaluated by the DEP.

In addition to concerns about fueling ferries on site, next to a very active water recreation area on the Hudson River, other safety issues should be considered up front including the potential for raw sewage from the ferries contaminating the Hudson River, the ferry cleaning process including the collection of paint chips and aluminum scraps referenced in the permit. As part of the application process, NY Waterway should be required to provide a detailed operation and maintenance plan to ensure that they are well prepared to take precautions to protect the public interest.

2. The public deserves a full hearing on all the safety and environmental issues instead of a piecemeal secret decision making process by NY Waterway and NJ Transit without any local input whatsoever. Unfortunately after former Executive Director Jim Weinstein publicly committed in a letter that the acquisition of the Union Dry Dock was no longer under consideration by NJ Transit, NY Waterway and NJ Transit then secretly went ahead planning to purchase the property and use it for ferry maintenance, fueling and eventually bus maintenance. To date, the City has not received any information on the evaluation of other sites that were supposedly considered. Given the major public safety and environmental issues and NJ Transit's awareness that the City has had a long term vision, clearly stated in our 2004 master plan to connect our waterfront, the complete lack of any public process needs to be addressed. In order to ensure that all the issues are carefully evaluated, we request the denial of this application for failure to satisfy the regulatory requirements for a provisional permit, as more fully set forth in the attached analysis of our counsel, Joseph Maraziti, Jr. Esq, Maraziti Falcon LLP. If the Department instead chooses to consider this deficient application, we request a public hearing on this application in the City of Hoboken.

3. This provisional permit application represents a dramatic change in use. NY Waterway's application implies an estimated 80 trips per day in and out of the Union Dry Dock site, operating 17 hours per day. This is dramatically different from the longer term boat repairs of a few boats by Union Dry Dock. Again, we urge you to require a complete application of all proposed uses by NY Waterway so that all public safety and quality of life issues can be fully vetted.

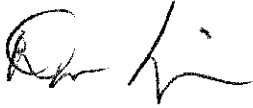
Finally, it is important that this entire transaction be fully evaluated in the light of day with full transparency for all interested parties. Unfortunately it appears as though the transaction has so far been conducted in a manner that appears intended to hide information from the public and from the City of Hoboken. This past July, in response to a referendum from the public, the City Council unanimously expressed its interest in acquiring the property for open space and voted to recommend that the Planning Board add the property to its open space map. The City then inquired numerous times through letters and phone calls as to whether the property was available for sale and the asking price. After finally meeting with Union Dry dock and learning that they were no longer planning to operate their

OFFICE OF THE MAYOR

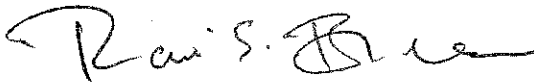
business, the City moved forward and received authorization for the use of eminent domain to acquire the property for open space. Unfortunately it appears that the City's inquiries resulted in a decision to not only keep all information about the transaction hidden from the City and the public, but to expedite the transaction and permitting process to avoid any public scrutiny and any full review of the facts, circumstances and harmful effects this proposed use would impose the City and its residents.

In addition to our letter, please also review the legal issues outlined by our legal counsel, Joseph Maraziti, Jr. Esq.

Thank you and best regards,

A handwritten signature in black ink, appearing to read "Dawn Zimmer". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Dawn Zimmer
Mayor

A handwritten signature in black ink, appearing to read "Ravinder S. Bhalla". The signature is cursive and includes a large initial "R" and a long horizontal stroke at the end.

Ravinder S. Bhalla
Mayor-Elect

**PUBLIC NOTICE OF APPLICATION
NJDEP WATERFRONT DEVELOPMENT PERMIT APPLICATION**

APPLICANT: Port Imperial Ferry Corp., d/b/a NY Waterway

PROJECT LOCATION: Block 259, Lot 1
901 Sinatra Drive
City of Hoboken, Hudson County

PROJECT DESCRIPTION: Removal of two existing dry docks and other floating equipment to be replaced by a 72' x 243' travel lift barge and 33' x 120' shop barge; installation of ramps and spud piles necessary to secure and utilize equipment, all in connection with the reconfiguration of the existing Union Dry Dock facility to serve as NY Waterway's ferry maintenance facility.

TO: All property owners within 200 feet:

Please take notice that an application for a Waterfront Development Permit will be submitted to the New Jersey Department of Environmental Protection (NJDEP), Division of Land Use Regulation, for the development described above and depicted on the enclosed site plan. The proposed modifications are shown on the attached site plan and described in the attached permit application. The application includes a request for a provisional permit pursuant to N.J.A.C. 7:7-20.1. Provisional permits are available if the commencement of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a federal or state agency.

A complete copy of the application is available for review either at the Municipal Clerk's office or by appointment at NJDEP's Trenton office. DEP welcomes comments and any information that you may provide concerning the proposed development and site. Written comments should be submitted to the Department within 15 calendar days of receiving this notice. Comments will be accepted until the Department makes a decision on the application. Please submit your written comments together with a copy of this letter to:

New Jersey Department of Environmental Protection
Division of Land Use Regulation
P.O. Box 420, Mail Code 501-02A
501 East State Street
Trenton, N.J. 08625
Attn: Hudson County Section Chief

Notice of this application is being provided to all owners of real property within 200 feet of the property boundary, to the Hoboken Construction Official, the Hoboken Environmental Commission, the Hoboken Planning Board, the Hoboken Municipal Clerk and to the Hudson County Planning Board, as required by N.J.A.C. 7:7-24.1.

Sincerely,
Cullen and Dykman, LLP
229 Nassau Street
Princeton, NJ 08542
Attorneys for the applicant

Dated: November 14, 2017

Webpage: www.nj.gov/dep/water/waterfront-development-application-11-14-17 © NY Waterway

RECEIVED
2017 NOV 20 AM 9:44
CITY CLERK
HOBOKEN, NJ 07030

Daisy Amado

From: Daisy Amado
Sent: Tuesday, November 28, 2017 5:45 PM
To: 'Bob.Martin@dep.nj.gov'
Cc: Dawn Zimmer
Subject: Union Dry Dock Site on Sinatra Drive in Hoboken
Attachments: Union Dry Dock Site -Ltr to Commission Martin 11.28.17.pdf

Importance: High

Commissioner Martin:

Please see attached correspondence sent on behalf of Mayor Dawn Zimmer and Mayor-Elect Ravinder Bhalla.

Daisy L. Amado
Office of the Business Administrator
City of Hoboken
94 Washington Street
Hoboken, New Jersey 07030
201-420-2000, Extension 1102

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November 28, 2017

New Jersey Department of Environmental Protection
Division of Land Use Regulation
P.O. Box 420, Mail Code 501-02A
501 East State Street
Trenton, N.J. 08625
Attn: Hudson County Section Chief

Re: Waterfront Development Permit Application
Port Imperial Ferry Corp., d/b/a NY Waterway
Block 259, Lot 1
901 Sinatra Drive
City of Hoboken, Hudson County

This firm represents the City of Hoboken ("City") in connection with the above-referenced application (copy enclosed). On behalf of the City, we submit the following comments on the application.

As an initial matter, we believe the application is premature and incomplete, and appears to be segmented such that it may evade proper regulatory review. For example, the applicant has represented to the City that the applicant intends to ultimately carry out significant fuel storage and refueling, as well as blackwater pumping, storage and/or disposal, as part of its proposed operations at the site. These activities are of particular concern given the project site's location in the Coastal High Hazard Area (V Zone). However, the application does not disclose such activities.

1. A Provisional Permit is Unwarranted.

The applicant has not demonstrated that a provisional permit is warranted. Under N.J.A.C. 7:7-20.1(a):

"The Department may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a Federal or State agency." (emphasis added)

The applicant has not satisfied the standard under this rule, because the applicant has not provided any information or documentation indicating that expedited commencement of construction is "necessary to meet the regulatory or funding requirements of a Federal or State agency." The applicant has not identified any such regulatory or funding requirements, nor has the applicant explained why expedited construction is somehow necessary to meet any such requirements. Rather, the applicant has merely stated that State funds are available for the project,¹ without demonstrating that such funds are contingent upon expedited commencement of construction.

2. Recreational Use of the Site has Higher Priority over the Proposed Industrial Use.

As the applicant acknowledges, recreational use has priority over the proposed industrial use at the site. Under N.J.A.C. 7:7-15.7(e),

"Marine resource-dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation." (emphasis added).

The City is taking substantial steps to provide for recreation and open space at the site. Specifically, the City Council adopted an

¹ The statement from Armand Pohan, Chairman - NY Waterway, in the letter dated October 23, 2017, addressed to Ms. Cathryn Schaffer, Environmental Specialist - NJDEP; and Mr. James Cannon, NY District - U.S. Army Corps of Engineers, to the effect that: "the current State of New Jersey transportation budget includes funds for the project to be used to purchase and improve this facility, is not consistent with the statement of Steven Santola, Executive Director, New Jersey Transit, made at a meeting with Dawn Zimmer, Mayor, City of Hoboken, on November 9, 2017, that \$12 million has been included in the 2018 Budget.

ordinance on November 13, 2017, entitled "Ordinance of the City of Hoboken Authorizing the Acquisition by Purchase or Condemnation of a Portion of the Real Property Located at 901 Sinatra Drive, Also Known As Block 259, Lot 1, Hoboken, New Jersey Now Owned by Union Dry Dock and Repair Company" authorizing the City to acquire the site for public open space, with fair compensation to the property owner. The City's master plan calls for the City to "reclaim the waterfront and gritty properties to create a circuit of parks and recreational amenities that will attract users from throughout the City"; and more specifically, for a remaining segment of the Hudson River Waterfront Walkway to be completed at the site. The City's efforts to provide recreation and open space at the site are consistent with the rule's rationale, which recognizes that although industrial uses are generally encouraged in special urban areas, the waterfront is a "valuable public resource", "urban areas are suffering from unmet recreation and open space needs", and "city dwellers must be supported in their efforts to rejuvenate and revitalize their cities, making them pleasant and economically viable places to live." N.J.A.C. 7:7-15.7(g).

3. The Department Should Hold a Public Hearing on the Application.

Additional information is necessary for the Department and the public to determine the scope and environmental impact of the proposed project. For example, the City understands that, although not disclosed in the application, the applicant ultimately intends to carry out fuel delivery, fuel storage and refueling operations (and to install associated equipment or improvements) and blackwater-pumping operations at the site. Moreover, with respect to water quality impacts, the applicant has not quantified the "aluminum shavings" which it proposes to store at the site, nor has the applicant provided any information as to the nature of the "incidental leaks/spills," including the frequency of such leaks/spills and the efficacy of the applicant's proposed "spill kits" in addressing such leaks/spills. A public hearing would facilitate the production and evaluation of such information and promote a fair, open and transparent process.

4. The Project Does not meet Marine Fish and Water Quality Requirements.

The applicant has not satisfied N.J.A.C. 7:7-16.2 because the applicant has not provided a project schedule that would not adversely impact the spawning and migratory patterns of marine fish. For instance, the American Shad, which engage in their largest spawning migrations in the Hudson River, would be adversely affected by the applicant's proposed use. Pursuant to N.J.A.C. 7:13-11.5, which applies to channels and/or riparian zones of a regulated water containing fishery resources, any construction, excavation, filling, or grading in the riparian zone, are prohibited during times when fish are breeding or are especially sensitive to disturbance. The American Shad spawning run occurs annually during the spring, and unlike the migratory Atlantic Sturgeon, the Hudson River is home to Shad and many other herrings. The American Shad have experienced a severe reduction in numbers especially in the Hudson River; for this reason, all fishing of American shad, including catch and release, was temporarily prohibited in the Hudson River.² The applicant's project qualifies as a disturbance; as the applicant acknowledges in its application that the proposed project will have a "direct adverse effect" and cause "disturbance" to marine life in the river. Although the applicant claims that these effects would be "minor," without providing further details of the actual schedule of operations, construction, required maintenance, and resulting discharge, the applicant has failed to satisfy the applicable rules.

5. The Proposed Use of the Property Will Not "Remain the Same" as its Current Use

The applicant has failed to show that, as it consistently asserts, the use of the Property will remain the same as under its previous owner, i.e. "the maintenance and upkeep of commercial

² Freshwater Fish, Herrings, New York State Department of Environmental Protection. <http://www.dec.ny.gov/animals/7043.html> (accessed November 28, 2017, originally published April 1993).

vessels." Further, the "maintenance and upkeep of commercial vessels" is an overly broad description which fails to account for the numerous and significant differences between the current use of the Property as a dry dock facility, and the applicant's proposed use, for the "routine repair" of its passenger ferries.

A. Current Use of the Property

The current use of the property is as a dry dock facility. Although a dry dock facility is, undoubtedly, a marine repair facility, it is not of the same character, nor does it permit the same level of activity as what is contemplated by the Application. The current use of the dry dock Property is as a repair facility for large boats typically used for commercial or industrial purposes. By the nature and size of the operation, the Property cannot accommodate more than a few boats at one time, and, as dry dock facilities are typically used for heavy maintenance, such as the painting or repairing of hulls, rather than standard upkeep, boats in a dry dock tend to stay for extended periods of time. Thus, there is limited traffic into and out of the Property. Further, the dry dock is not currently open at night, or on weekends, limiting the hours that access to the Property is needed.

B. Proposed Use of the Property

By contrast, the applicant proposes to use the Property for "routine vessel repair". It proposes to utilize the Property for repairs of its passenger ferry boats, of which it operates a fleet of 34, at least 20 of which will be "stored" on the Property each day. The applicant fails to define "routine" maintenance, but does indicate that it will be removing and replacing the equipment used by the previous owner, and re-configuring the layout of the Property, indicating that "routine" maintenance is different from the functions currently performed on the Property. If these boats are to be brought to the Property on a daily basis, with two shifts of crew over a seventeen hour operational day, there will be at least 80 boat trips per day, which far exceeds the existing boat traffic at the Property.

C. Applicant Proposes to Use the Property for "Vessel Storage"

The applicant contradicts its own assertion that it will use the Property for the same purposes as its current owner within the Application itself. In Section 1.0, entitled "Project Description", the applicant notes that "the facility will be used for vessel storage throughout the day". This use is not referenced in the Public Notice of Application, and no description or explanation of the proposed storage is contained within the Application. Further, the Property, since at least 1982, the earliest date for which the Applicant has provided permits, "has been utilized as a marine repair facility for the purpose of repairing tug boats and barges". At no time has the Property been used, at least, not according to the permits issued, as a storage facility for passenger ferry vessels, as is contemplated by the Application. Further, the statement that the Property will be used for "storage" is misleading; this gives the impression that the applicant plans to keep the boats "in long term containment, holding or placement", rather than to "park" the boats for the night, or a short period of time.

6. Applicant has Failed to Address the Environmental Impacts of its Proposed Work

The applicant, throughout the Application and supporting correspondence, asserts numerous times that the environmental impact of the proposed work is minimal, but it provides no justification for this assertion. While it is accurate to say that the site is currently being used as a marine repair site, and that its proposed use is also as a marine repair site, it is not acceptable to assume that the existing level of environmental protection employed by the existing use is acceptable for the proposed use. The applicant has failed to address the proposed increases in activity at the Property which will result in significant environmental impacts.

First, the applicant does not address what materials and equipment are to be utilized in the "routine" repairs it proposes to undertake on the Property. Presumably, these repairs will involve the

use of fuels, hydraulic fluids, oils, lubricants, and the removal and disposal of sanitary waste and potable water from the boats. No provision is made for the very real potential of spills or leaks into the waterway, or the storage of these materials on site. Further, movement of the boats into the Property for these "routine" repairs and for storage purposes will involve significantly increased marine traffic into the Property, resulting in increased noise, light, shadow, and disturbance of fish habitats located in the area. Given the proposed change in intensity of the waterfront use it is appropriate that more specifics be provided about potential impacts to the river's classification as a prime fishing area, mitigation of spill hazards, and stormwater pollution prevention.

In addition to the impact on the water side of the Property, the impact to the surrounding properties and roadways will be substantial. If, as the applicant proposes, 20 boats are docked at the Property each day, 20 crews will be responsible for retrieving those boats each morning, parking them at the end of the shift, and another 20 for retrieving and then parking the boats each evening. With 20 boats, 3 staff per boat, and 2 shifts per day, it is estimated that 240 vehicular trips per day plus maintenance staff plus fuel and supply deliveries will be made to the Property, all along one access road (Sinatra Drive), which already experiences heavy volumes at peak hours. Further, the Application neglects to account for the additional staff, or the additional facility upgrades that will be needed to support a facility which is open for longer hours, and with increased traffic.

A Phase I Environmental Hazard assessment that identifies existing hazards must be prepared prior to the issuance of any permit. Further, it is the City's position that detailed environmental studies should be provided regardless of the type of permit - provisional or otherwise. Further, it is important to note that the Applicant has provided no information regarding any future phases of development on this Property.

Given the increase in intensity and nature of the waterway use, and the failure of the applicant to address the environmental issues in more than a summary manner, the net opinion given by the applicant in Section 4.0 of its application, entitled "Statement of Compliance with the Rules on Coastal Zone Management" regarding the following applicable Coastal Zone Management Rules is fatally deficient and must be rejected as a sufficient basis for the Application:

APPLICABLE COASTAL ZONE MANAGEMENT RULES

- 7:7-9.4 Prime fishing areas
- 7:7-9.5 Finfish migratory pathways
- 7:7-9.7 Navigation routes
- 7:7-9.11 Ports
- 7:7-9-18 Coastal high hazard areas
- 7:7-9.41 Special urban areas
- 7:7-9.46 Hudson River waterfront rea
- 7:7-9.48 Lands and waters subject to public trust rights
- 7:7-15.7 Industry
- 7:7-15.9 Port Use
- 7:7-16.2 Marine fish and fisheries
- 7:7-16.3 Water quality

Please note that this correspondence is without prejudice or waiver of the City's right to provide additional comments.

Respectfully submitted,



Joseph J. Maraziti

Enclosures

C: Neil Yoskin, Esq.
Hon. Dawn Zimmer, Mayor, City of Hoboken
Hon. Ravi Bhalla, Mayor-Elect, City of Hoboken