



eastern environmental law center

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January 9, 2012

Via Certified Mail, Return Receipt Requested

Department of Environmental Protection
Land Use Regulation Program
ATTENTION: Ernest Hahn
CN 401
Trenton, NJ 08625-0401

**RE: Waterfront Development IP in Water; Water Quality Certificate
Permit Number 0905-07-0001.2 WFD 110001**

Dear Mr. Hahn:

The Eastern Environmental Law Center (“EELC”) writes this letter on behalf of its client, Fund for a Better Waterfront, to contest the New Jersey Department of Environmental Protection’s (“DEP” or “Department”) December 2, 2011 issuance of a waterfront development permit to Shipyard Associates (“Shipyard”). Shipyard’s proposal fails to comply with the fundamental requirements of the State’s Coastal Zone Management regulations. For the reasons stated below, we believe that the Department has erred in its issuance of this permit and urge the Department to void the permit.

**1. Shipyard’s Project Fails to Comply With The Public Open Space Requirements,
As Required Under N.J.A.C. 7:7E-3.48(d).**

Shipyard’s proposal calls for the rehabilitation of the existing North Pier and the construction of two eleven story residential towers with a waterfront walkway component. Shipyard was under an obligation to conform to the criteria set forth under N.J.A.C. 7:7E-3.48(d). Pursuant to this rule, non-industrial development upon piers is “conditionally acceptable *provided that specific amounts of usable landscaped public open space [is] incorporated into the project.*” Id. The incorporation of usable landscaped public open space is based upon the average building height of a proposed project.

In this case, Shipyard indicated that the average building height for its proposed

project would be 60 feet. Therefore, pursuant to the rules Shipyard was required to provide 45 feet of public open space for the full width of the waterward end of the pier and 30 feet of public open space for the landward end of the pier. N.J.A.C. 7:7E-3.48(d)(ii), (iv). Instead, however, in its application Shipyard only proposes a mere 16 feet of public open space at the waterward end of the pier and fails to include any proposals for public open space at the landward end of the pier. In its compliance statement, Shipyard proposes that, rather than to focus all of the waterward and landward public open space at the ends of the platform, it will instead “reorient as much as possible along the long, eastern side of the platform.” Shipyard attempts to justify its reduction of the required length by indicating that in providing additional public access along the west side of the platform, it is meeting the requirement by exceeding the total square footage required under the rules. While the rules do provide for such averaging under N.J.A.C. 7:7E-3.48(d)(1)(v)(1), this same rule also requires that the “*public open space at each pier end . . . be at least 20 feet in length or 70 percent of the minimum length.*” The minimum public open space required here is 31.5 feet and not the meager 16 feet proposed by Shipyard. Further, portions of Shipyard’s proposed usable landscaped public open space areas are not (1) landscaped and (2) open to the public. Accordingly, Shipyard is in violation of the public open space requirements under N.J.A.C. 7:7E-3.48(d).

2. Shipyard’s Project Fails to Adequately Demonstrate That Water Dependent Uses Are Infeasible For This Site and That Structurally Sound Pilings Exist For This Proposed Development Project.

Under N.J.A.C. 7:7E-3.43, housing development is “acceptable only over large rivers where *water dependent uses are demonstrated to be infeasible.*” Such uses are “conditionally acceptable on *structurally sound existing pilings....*” Similarly, under N.J.A.C. 7:7E-7.2(b)(2), in special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, “new housing is also acceptable on *structurally sound existing pilings....*” Shipyard has failed to adequately exhibit that the water dependent uses are infeasible for this site. Additionally, a review of the aerial photos of the platform where Shipyard is proposing to build its project reveals that a significant area at the northeast corner of the platform has failed and is currently open water area. Both the Special Urban Area and Housing Use Rules indicate that housing is acceptable on structurally sound pilings and that structurally sound existing pilings may be reconfigured “provided the total area of water coverage is not increased....” Based on this, it appears that Shipyard’s proposed project fails to meet the criteria under these rules.

3. Shipyard’s Proposed Project Directly Conflicts With The Coastal Zone Management Rules Because It Stands to Block The Views Currently Enjoyed by Many.

Under N.J.A.C. 7:7E-7.14(a), a high-rise structure includes those structures that are “more than six stories or more than 60 feet in height.” Such a structure must not block views that are “*currently enjoyed from existing residential structures, public roads or*

pathways." N.J.A.C. 7:7E-7.14(b)(4). Shipyard's project clearly falls within the scope of this regulation, as the buildings it is proposing to construct are eleven stories, with an average building height of 60 feet.

Allowing this project to be built will impede on the public's opportunity to enjoy significant views of the Hudson and New York City skyline. A number of private and public funds have been utilized for the purposes of constructing the Hudson River Waterfront Walkway at the Weehawken Cove. Much of this walkway will unite the public walk and waterfront park in Hoboken to the Hudson River Waterfront Walkway in Weehawken at Lincoln Harbor. Additionally, plans to build the Hoboken Boathouse at the western shore of the Cove are also in the works and will allow free public access, via kayaks, to the unique protected waters of the Hudson River at the Weehawken Cove. Thousands of people will enjoy the walkway as pedestrians and cyclists and thousands more will utilize the waters of the Weehawken Cove. The pier being used in this project extends north into the Weehawken Cove and would thus obstruct the public's views from the walkway and the waters of the Cove to the east towards the Hudson River and New York City Skyline.

This proposed project will also obstruct the views of current residents. Many individuals purchased their condominiums in the Hudson Tea complex because of one of its distinctive characteristics, which is the direct view residents have of the New York City skyline and the Hudson River. Many property owners at the Shipyard Project also invested in their units for the spectacular views to the north of the Hudson River, George Washington Bridge, and New York City shoreline. The construction of this project would result in a serious personal and financial loss for property owners at the Hudson tea building and the Shipyard Project.

Furthermore, this proposed project will also have an adverse impact on traffic in violation of N.J.A.C. 7:7E-7.14(b)(7). The waterfront in Hoboken has been intensely developed and the resulting traffic has caused failing levels of service at numerous intersections at the north end of town. As a result, there are only a few means of egress and ingress at the north end of Hoboken. The additional traffic produced by this project will only make this worse.

4. The Public Access Requirements of The State's Coastal Zone Management Regulations Would Be Greatly Diminished by the Approval of This Application.

The Public Trust Doctrine serves as an extremely important legal principle in this State and helps maintain public access for the benefit of all people. N.J.A.C. 7:7E-3:50. Public trust rights to tidal waterways and their shores (public trust rights) established by the Public Trust Doctrine include public access which is the ability of the public to pass physically and visually to, from and along lands and waters subject to public trust rights, and to use these lands and waters for activities such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating. N.J.A.C. 7:7E-3:50. For that reason, any development that "*adversely affects lands and waters subject to public trust rights is [strongly] discouraged.*" N.J.A.C. 7:7E-3:50(b).

Allowing this project to be constructed will directly contravene with the purposes of this rule. The end of the pier in this case is owned by the City of Hoboken and is considered by the City to be an ideal location for the expansion of public open space, which is desperately needed for the community. As the population of Hoboken continues to grow, the demand for public open space also grows with it. The open space opportunities at the water's edge are especially important because it helps increase the value of the open space exponentially. It is only logical that this entire pier be utilized as part of the City's open space inventory.

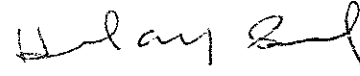
Developments on piers have seriously diminished the opportunity for public access within the state of New Jersey. They have, in effect, privatized the piers that exist over the Hudson River, the same lands that are subject to public trust rights by the State for the public's use. The City of Hoboken has been successful in preventing large scale private development projects from entering its piers, platforms or any land on the river-side of Sinatra Drive. As a result, Hoboken enjoys the most public portion of the waterfront anywhere along the New Jersey side of the Hudson River, south of the George Washington Bridge. Shipyard's project would not only reduce the public's guaranteed right under the Public Trust Doctrine but it will also reverse the remarkable progress that Hoboken has achieved over the past 20 years of waterfront development.

4. The Proposed Project Does Not Comply With the Requirements of the Original Waterfront Development Permit Issued Approved by the DEP for the Development of the Project Site

As part of the proposed Shipyard project, the project site was originally approved for use as public access to the waterfront and recreational uses including tennis courts and a tennis pavilion (NJDEP Permit No. 0905-93-001.6/.7.8). The original permit approved the construction of residential and retail buildings with the condition that "the public access improvements on the tennis pier are to be completed and open to the public within two years following initial occupancy of Development Block F." The current proposed project converts the tennis pier to residential use in violation of the original permit conditions. This inconsistency with the original approved permit should be a basis for a determination of non-compliance by the DEP as Shipyard has not demonstrated a reason for changing the original plans for public access.

For all the aforementioned reasons, the DEP should void the waterfront development permit it granted to Shipyard.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Semel". The signature is fluid and cursive, with a prominent initial "H" and a long, sweeping tail.

Hilary Semel, Esq.
Eastern Environmental Law Center
Attorneys for Fund for a Better
Waterfront

cc: Michael Barry, Shipyard Associates

**ADMINISTRATIVE HEARING REQUEST CHECKLIST
AND TRACKING FORM FOR PERMITS**

I. Permit Being Appealed:

Waterfront Development IP in Water; Water Quality Certificate, Permit Number 0905-07-0001.2
WFD 110001
Title and Type of Permit

II. Person Requesting Hearing:

Fund for a Better Waterfront (third party)
Name/Company

P.O. Box 1965; Hoboken, NJ 07030

Address

Hilary Semel, Esq.
Name of Attorney

744 Broad Street, Suite 1525

Newark, NJ 07102
Address of Attorney

III. Please Include the Following Information as Part of Your Request:

A. The date the permittee received the final permit;

The permittee received the final permit on December 2, 2011. The permit decision was published in the DEP Bulletin on December 21, 2011.

B. A copy of the permit, list of all permit conditions, and issues contested:

See attached for a copy of the permit and a list of all permit conditions. A detailed discussion of the issues contested are included in the attached letter dated January 9, 2012.

C. The legal and factual questions at issue;

A detailed discussion of the legal and factual questions at issue are attached in the letter dated January 9, 2012.

D. A statement as to whether or not the permittee raise each legal and factual issues during the public comment period on the permit;

The third party is not aware that permittee raised and adequately addressed each legal and factual issue during the public commenting period.

E. Suggested revised or alternative permit conditions;

See attached letter dated January 9, 2012.

F. An estimate of the time required for the hearing;

One day.

G. A request, if necessary, for a barrier-free hearing location for physically disabled person;

None requested.

H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and

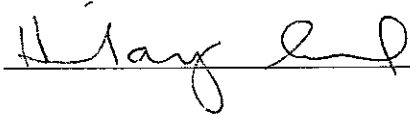
This matter is appropriate for dispute resolution and third party is willing to participate.

I. This form, completed, signed and dated with all the information listed above, including attachments to:

1. Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
401 E. State Street
CN 402, Trenton, NJ 08625-0402
2. Department of Environmental Protection
Land Use Regulation Program
ATTENTION: Ernest Hahn
CN 401
Trenton, NJ 08625-0401
3. All co-permittees (w/attachments)

IV.

Signature:



Date:

1.9.2012