

Summary Minutes

ALEXANDRIA WATERFRONT COMMISSION

Thursday, December 18, 2012

Alexandria City Hall, Room 2000

Members:

Present: Dennis Auld, Citizen, Park Planning District II
Gina Baum, Alexandria Park and Recreation Commission
Christine Bernstein, Founders Park Community Association
Suzanne Bethel, Old Town Business and Professional Association
Morgan Delaney, Historic Alexandria Foundation
Stewart Dunn, Alexandria Planning Commission
Art Fox, Citizen east of Washington St. and south of King St.
Charlotte Hall, Alexandria Chamber of Commerce
Melinda (Mindy) Lyle, Citizen, Park Planning District III
Nathan Macek, At-large citizen from west of Washington St. and Chair
Jody Manor, Alexandria Convention and Visitors Association (ACVA)
James McCall, Alexandria Archaeological Commission
Paul Smedberg, Alexandria City Council
Stephen Thayer, Citizen east of Washington St. and north of King St.
Townsend A. (Van) Van Fleet, Old Town Civic Association
Christa Watters, Citizen east of Washington St. and north of Pendleton St
Ryan Wojtanowski, Alexandria Environmental Policy Commission

Excused: Kent Barnekov, Alexandria Seaport Foundation
Doug Gosnell, Alexandria Marina pleasure boat leaseholder
Patricia (Pat) Miller, Commission on the Arts

Absent: Trey Hanbury, Citizen, Park Planning District I

City Staff: Fran Bromberg, Acting City Archeologist
Jack Browand, Division Chief, Marketing, Special Events and Waterfront
Operations, Dept. of Recreation, Parks, & Cultural Activities (RPCA)
Jim Hixon, Dockmaster, RPCA
Iris Portny, Commission Recording Secretary, RPCA
Nancy Williams, Principal Planner, Planning and Zoning (P&Z)

Guests: Brian Buzzell
David Chamowitz, Hart, Calley, Gibbs & Karp (HCGK)
Eric DeSoto, Chairman, Board of Governors, Old Dominion Boat Club
(ODBC)
Bert Ely, Friends of the Alexandria Waterfront
Harry Harrington, ODBC
Kathy Seifert, Alexandria Seaport Foundation

Welcome and Introductions

The Commission was called to order at 7:30 a.m. and Commissioners, staff and guests introduced themselves.

Approval of Minutes from November 20, 2012 meeting

Moved by Dunn, seconded by Hall, to approve the summary minutes of the November 20, 2012 meeting with a correction on page 6 changing Food Pavilion “owners” to “holders of its master lease”. The motion passed by unanimous voice vote.

Discussion: Wales Alley Correspondence

Commissioners considered a request from the Park and Recreation Commission (P&RC) and Environmental Policy Commission (EPC) to co-sign a draft letter from P&RC and EPC to City Council regarding Wales Alley Extended, the portion of the alley east of The Strand. Macek said the revised draft of the letter first submitted by Baum to Commissioners at their November 2012 meeting had deleted references to the recent court ruling regarding Wales Alley west of The Strand and to the City’s proposed flood mitigation improvements. Baum said the draft reflected the Park and Recreation Commission’s focus on open space and public access issues relevant to this site.

Van Fleet introduced Eric DeSoto, Chair of the ODBC Board of Governors, who was present to provide to Commissioners the ODBC’s comments on the draft Wales Alley Extended letter since it addressed the site on which the ODBC parking lot is located.

DeSoto read into the Commission record the following prepared remarks:

The ODBC has seen the draft joint letter from several City Commissions to the Mayor and members of City Council, and responds as follows.

The status of the 30 foot strip of land on the south edge of ODBC's parking lot -- frequently but erroneously referred to as "Wales Alley" -- has been settled since August 2009, when Judge Kennedy ruled in favor of ODBC in the long-running federal waterfront litigation.

Judge Kennedy issued an opinion in that case on September 3, 2008. In the period between that opinion and the final judgment of August 25, 2009, the issues of Wales Alley, the King Street Park, and Fayette Alley were placed before the District Court by either Old Dominion Boat Club or the United States or both. The City of Alexandria filed nothing and took no positions on any of the issues before the Court.

Judge Kennedy's August 2009 judgment read, in pertinent part, as follows:

ORDERED that defendant Old Dominion Boat Club’s (“ODBC”) motion for summary judgment is GRANTED in part and DENIED in part. In accordance with this Court’s September 3, 2008 Memorandum Opinion, ODBC is entitled to possess all of the fast land and all of the open pile piers on the North Tract, and all of the fast land and the open pile tending pier on the South Tract . .

The United States Has No Legal Interest In the 30-Foot Strip.

Peter May of the National Park Service seems to believe that the 1981 settlement between the United States and the City of Alexandria “concerning street ends and public rights of way” controls the disputed area described as Wales Alley east of the Strand.

ODBC was not a party to that settlement, and therefore is not bound by it.

Furthermore, as ODBC advised the District Court in the Joint Status Report of September 24, 2008, Wales Alley never extended east of the Strand. That being the case, the 1981 “settlement concerning street ends and public rights-of-way” between the United States and the City of Alexandria is entirely irrelevant to the Mr. May's claim to the City that ODBC is improperly using the 30 foot strip of land the United States identifies as Wales Alley.

Mr. May understands that the United States itself lacks a basis to directly challenge ODBC's possession of the disputed area, and so he attempts to enlist the City of Alexandria as its proxy. However, ODBC has been clear and explicit with the City about its rights in the 30-foot strip. In 1988, at the request of the United States' counsel, the City Attorney for the City of Alexandria asked ODBC to provide the basis for its position on Wales Alley. In a letter of September 23, 1988, ODBC fully set out the history of Wales Alley and the title history of ODBC's southern parcel. The City never responded. In November 2008, ODBC provided the United States with this 1988 letter to the City. The United States similarly never responded.

Judge Kennedy's Memorandum Opinion in September 2008 determined that “Old Dominion [Boat Club] has a riparian right to construct fill and build wharves over the bed of the Potomac River . . . within harbor lines established by the United States.”

Therefore, any such filled area is rightly possessed and controlled by ODBC, and for the reasons set out above, certainly not the United States.

On March 3, 2009, the United States filed Plaintiff's Revised Status Report in Judge Kennedy's Court, the first point of which read as follows:

1. Wales Alley and the Submerged Lands off of Fayette Alley

While plaintiff does not agree with ODBC's assertions that its continued use of Wales Alley and the submerged lands off of Fayette Alley are proper, plaintiff has decided against pursuing these issues any further in the context of this litigation.

Again, the City -- a party to the litigation -- filed nothing.

In a subsequent Order (May 7, 2009), Judge Kennedy, hoping to end the litigation in his Court once and for all, set a hearing for June 9, 2009, to resolve what he saw as the only two remaining issues, the ODBC encroachment beyond the 1939 bulkhead line, and the issue of compensation under the 1912 Act should the United States be found to be entitled to possession of any lands held by the defendants.

The Order concluded with this strong language:

This court wishes to bring closure to this 36 year old litigation.

Accordingly, it is this 5th day of May 2009, hereby ORDERED that any party that disputes the status of this case as set forth above, including the existence of any ostensibly pending motion that is not moot, shall so indicate by a submission that shall be filed by no later than May 29, 2009; and it is further

ORDERED that a status hearing will be held on June 9, 2009 at 4:00 p.m. at which time any party with any unresolved claim or defense encompassed by this litigation shall appear, including the City of Alexandria, the estate of Frank Mann, and Robert Sweeney.

At that hearing, counsel for the United States, the ODBC, and the City appeared. ODBC took the position that it would remove the encroachment beyond the 1939 bulkhead line, and that that removal would eliminate any issue for compensation under the 1912 Act. Counsel for the City spoke, but took no position on any issue, in effect saying that he was appearing simply as a courtesy to the Court.

Now that the litigation has ended with the Court's order favorable to the ODBC, the doctrine of res judicata provides that, when a final judgment has been entered on the merits of a case,

"[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." [Cromwell v. County of Sac, 94 U. S. 351, 94 U. S. 352 (1877)]

Thus, ODBC is entitled to perpetual possession of the 30-foot strip your draft joint Commission letter and Mr. May erroneously refer to as "Wales Alley" east of the Strand."

In response to a Commissioner's question, DeSoto clarified that the concluding assertion in his prepared statement regarding ODBC's being "entitled to perpetual possession of the 30-foot strip" was ODBC's judgment and not that of the court.

Macek said the Commission would consider only the limited question of whether to support the P&RC and EPC letter asking that the City take action to return this portion of Wales Alley Extended to public use because the Commission's jurisdiction does not include consideration of questions related to legal claims of ownership for a parcel. He said following discussions with the Office of the City Attorney he provided an email dated December 13, 2012 to Commissioners with documents and information related to the ownership issue as background information to provide context for the Commission's discussion of whether to sign the draft letter.

Macek read the email, stating it is the City's position that the City owns Wales Alley Extended [the 30-foot strip] and that the Old Dominion Boat Club parking lot at 2 King Street encroaches upon this public right-of-way. The City position is based on the following facts:

- The deed for the Old Dominion Boat Club parking lot at 2 King Street excludes Wales Alley Extended. This is reflected in the City's GIS map of the area, which shows the boundary of Wales Alley Extended across the southern third of the ODBC parking lot.
- The 1981 agreement between the City and the U.S. Department of the Interior (to settle title disputes for several City-owned parcels along the Potomac River Waterfront states that the City agrees to maintain street ends and public rights-of-way as dedicated streets and alleys, and agreed that Wales Alley would be reserved for pedestrian and non-motorized traffic only and shall be closed to use by motor vehicles except for maintenance or emergency vehicles. This agreement in particular references Wales Alley on page 16 and displays a map of Wales Alley on page 30 (adjacent to Parcel B governed by this agreement, which is today's Waterfront Park).
- The recent Alexandria Circuit Court ruling regarding Wales Alley adjacent to the restaurant Virtue Feed & Grain (west of The Strand) states that "the City has the authority to lay out, open, extend, widen, or close the alleys of the City," citing in particular a May 2012 Supreme Court of Virginia opinion regarding this case.

Van Fleet moved, and Fox seconded, that the Commission not sign on to the P&RC and EPC letter to Council.

Dunn said the Commission should choose between taking no position on the issue; or saying that 'If the City position is correct, it would be reasonable to take the EPC/ P&RC position.' Thayer said that, although the 1981 agreement is the basis for the proposed EPC/P&RC letter, the underlying question of who owns this property is more appropriate for a court to consider and asked whether a more general Commission position could be crafted to address all parcels covered by the 1981 Settlement Agreement rather than only Wales Alley Extended. Macek said public access to the other such parcels had already been resolved through settlement agreements with other property owners.

Baum said the objective of the P&RC's draft letter was to ask the City to act to ensure that City-owned land is open to the public and not to support the City's taking land it did not own. Commissioners disagreed about whether the EPC/P&RC letter as drafted implied the Wales Alley Extended property is in the public domain. Macek and Thayer said the Commission should urge the parties to the dispute to engage in good faith negotiations to resolve it. DeSoto said the ODBC is willing to negotiate a settlement and that the ODBC Board has reiterated this position annually. He asked Smedberg to convey that ODBC position to Council. Bernstein said she supported a Commission

letter that recognized the P&RC/EPC letter to Council, that ODBC had offered to negotiate with the City, and that urged the City to act upon this ODBC offer to negotiate

DeSoto said, in response to a question about fencing around the parking lot, that ODBC and Virginia Concrete had installed the concrete fence on the site and the City had erected the chain link fence surrounding the parking lot.

Following a question from Buzzell, members stated for the record that among voting Commissioners, Fox, Auld and Van Fleet were ODBC members, and Baum is the Park and Recreation Commission representative and Wojtanowski is the Environmental Policy Commission representative to the Waterfront Commission.

The Van Fleet/Fox motion to not sign P&RC/EPC letter regarding Wales Alley Extended was approved by a vote 11 in favor, four opposed (Baum, Bethel, Dunn, Wojtanowski), and two abstaining (Macek, Smedberg).

Moved by Dunn, seconded by Manor, that (1) the Waterfront Commission cannot at this time "endorse the positions as set forth in the letter from the P&RC and EPC to Council because it presumes the City has an ownership interest in this property, a matter which is in dispute; and that (2) If it is determined the City owns Wales Alley Extended, the Waterfront Commission is generally in support of the positions set forth in the P&RC and EPC letter.

Thayer offered, and Dunn accepted, the following friendly amendment to the motion: that the Commission encourages the parties to negotiate in good faith to resolve ownership and use issues related to this property.

DeSoto said that if the Court were to decide that the City does not own this property, ownership of the property would revert back to the United States per the 1981 decision. Baum said Commissioners should recognize this possibility exists. Van Fleet and Bernstein said they opposed a Commission statement referring to the City's owning the property but supported a statement encouraging parties to the dispute to enter into good faith negotiations to resolve the ownership issue. Wojtanowski said the question is about ownership and if it were determined the City owns the property, then the Commission should support the City acting to open it up to the public.

The Manor/Dunn motion was approved on a vote of 12 in favor, 4 opposed (Delaney, Fox, Thayer, Van Fleet) and one abstaining (Smedberg). Macek said he would convey the Commission's position to the City by letter.

Report from Police Department

Macek reported that the new APD liaison to the Commission, Lt. Don Hayes, was out of town, and planned to attend the Commission's January 2013 meeting. Macek said that, prior to the January meeting, he and staff would provide Lt. Hayes information about APD-related Waterfront issues that have been raised by the Commission.

Report from Department of Recreation, Parks, and Cultural Activities

Marina Facilities Assessment Study

Browand reported the contract for a consultant to conduct the assessment would likely be awarded in early 2013 and the assessment should then be completed within 60 days. He said staff would then discuss with the Marina Committee options identified by the study to address maintenance issues.

Windmill Hill Park Bulkhead Update

Browand said staff prepared a staff memo as requested by City Council recommending approved funding for the bulkhead's complete replacement in the Capital Improvement Plan (CIP) be moved from the FY2016 and FY2017 budgets up to FY2015. He said RPCA and T&ES staff outlined a project schedule identifying that staff estimated site work could potentially begin within 18 to 24 months, after staff had finished preparatory tasks such as consulting with the permit-issuing authorities whose approval is needed for the work, identifying available replacement options and soliciting public comments on those options. Commissioners thanked staff for their efforts to accelerate the availability of CIP funding for the project. Browand said actions are proceeding to procure the interim safety fence for the bulkhead that Council had approved.

Waterfront Parks Project Updates

Browand said work was expected to begin in early January 2013 on the Founders Park Erosion Control project, including resurfacing the trail adjacent to the Potomac River with Flexi-Pave. He reported that installation of improvements approved for Founders Park near the dog exercise area had begun, and maintenance and restoration work was proceeding in Point Lumley Park and Roberdeau Park.

First Night Alexandria

Browand reviewed plans for the celebration events, including planned street closures, and said APD would actively monitor event-related activities, including traffic. Commissioners said they continued to be concerned about the need for a more comprehensive and active police presence to direct traffic during special events. Macek said when he had conveyed Commission support for the Union Street Corridor Study's recommendations to Council at its December 15, 2012 meeting he had highlighted the need to improve traffic management at the intersection of King and Union Streets, including adding active APD traffic management as warranted. Commissioners discussed the possibility of inviting a senior APD representative to discuss traffic management issues. Manor said it would be useful to create a stand in the King/Union Street area that APD could use to monitor events and provide information to the public. Van Fleet and Lyle suggested the Sheriff's Department assist with traffic management.

Browand said RPCA is moving forward, in advance of the FY2014 budget process, with approval of the new Marina Fee Schedule as recommended by the Commission and asked that the new fee schedule be docketed for Council's January 8, 2013 legislative meeting and January 12, 2013 public hearing. He said Council had previously authorized RPCA to increase the non-resident leaseholder fee to \$11 per foot and RPCA would include that increase as part of the proposed fee schedule submitted to Council. He also reported that the City expects delivery of its new fireboat in early 2013.

Waterfront Plan Implementation

Union Street Corridor Study

Macek reported that at its December 15, 2012 meeting Council had approved the Union Street Corridor Study's short-term recommendations by a 7-0 vote, supported further study of how the proposed shared street concept might be designed and engineered to be incorporated within the City's flood mitigation plans, and directed that a traffic study be conducted for the street grid east of Washington Street. Williams said Council had requested additional examples of how a shared street concept had been implemented in areas comparable to the Union Street Corridor and had asked that part of the curb bump-out proposed for Union Street at Windmill Hill Park be eliminated. Van Fleet said Council Members Donley and Smedberg had been especially effective advocates for the modifications approved by Council.

Smedberg said Council supports the concept of implementing a pilot to test the impact of imposing restrictions on left turns at King/Union but also wants to ensure that proposed changes are not decided without considering potential secondary impacts. Macek said the Commission should actively review how pilots are designed and implemented to maximize the success of concepts such as the pedestrian area proposed for the foot of King Street. He said it is important the City avoid repeating its experience of several years earlier when a poorly designed and implemented pilot project had undermined the validity of the pilot's results.

Request for Proposals (RFPs) Updates

Williams reported the City had chosen URS as the consultant to conduct the flood mitigation study. She reported the City expects to choose a consultant in early 2013 to provide Waterfront landscape architectural design services.

Development Updates

Williams reported the Commission's walk-through to view the Brandt Company's restoration of 204-206 South Union Street has been scheduled for Thursday January 24, 2013 at 5:00 PM. She also said work continues on The Oronoco to convert that property from office to 60 condominium units by the end of 2013/early 2014.

Torpedo Factory and Food Pavilion Update

Williams reported that City officials met November 15, 2013 with representatives of the Realco Group, holders of the site's long-term master lease, and updated them on the progress of Waterfront SAP implementation activities designed to help enhance the area surrounding the Food Pavilion and other parts of the Waterfront. In that regard, Williams shared progress with the landscape and flood mitigation request for proposals, Wayfinding Program, Union Street Corridor Study, implementation of parking recommendations, etc; she also mentioned that the City will follow-up by forwarding Realco some additional related information. Macek said that once the City had provided Realco that information, he would convey to Realco by letter the urgency that the Commission attaches to finding a new Food Pavilion tenant.

Williams said the City is moving ahead with actions to create a process that further

enhances the process for coordinating implementation of the Waterfront Small Area Plan's elements, including community outreach to help facilitate continued community involvement through the Waterfront Commission and other continued outreach activities to keep stakeholders informed. She said the City will soon hire a director for its new Office of Implementation as well as a civil engineer to serve on that staff. She said that, for example, the consultants for the City's Waterfront landscape architecture design and flood mitigation engineering contracts will likely report to the Implementation Office.

Williams reported that The Beachcombers redevelopment RFP is expected to be issued in early 2013 and that Planning and Zoning had asked General Services to include in the RFP language inviting proposed uses that are not limited to restaurants.

Report from Commissioners

Marina Committee

Thayer reported that the Committee is following four major issues: (1) the planned Marina Facilities Assessment Study; (2) the flood mitigation study; the (3) Torpedo Factory Food Pavilion's leasing efforts, including interim uses; and (4) a plans for a Marina leaseholders meeting in early 2013. Williams said City Engineer Emily Baker is compiling information requested by Commissioners about the range of flood mitigation techniques that might be relevant to the City's needs. Macek said the next Marina Committee meeting is expected to be February 14, 2013.

Art/History Waterfront Plan Implementation Committee

McCall reported the Art/History Committee plans to meet in January 2013 to create a road map (work program) to reconcile the recommendations in the Art and History plans. It was indicated that several of the Commissions will be acting on the Naming Policy in December 2012, along with the associated criteria and form. After that, Lance Mallamo will determine through the City Manager's Office when the matter can be docketed for City Council consideration. McCall said that once Council has adopted the Committee's proposed Naming Process, the Committee would begin to review the proposal to rename Waterfront Park Fitzgerald Park that has been submitted.

Macek asked that the stakeholders included in the proposed Naming Process begin vetting the Fitzgerald Park proposal informally rather than waiting for Council to approve the process first. Commissioners requested that records be kept to document how long stakeholder vetting of the Fitzgerald Park proposal takes under the new process.

Announcements/Public Discussion

Macek provided an update on the schedule of upcoming meetings.

Adjournment

The meeting was adjourned at 9:13 a.m.