

**ALEXANDRIA WATERFRONT COMMISSION
Special Meeting re: Waterfront Plan Implementation
Old Dominion Boat Club Parking Lot & Adjacent Area
Thursday, November 7, 2013
Alexandria City Hall, Sister Cities Conference Room
5:30 P.M.**

Members

Present: Dennis Auld, Citizen Park Planning District II
Gina Baum, Alexandria Park and Recreation Commission
Christine Bernstein, Founders Park Community Association (FPCA)
Suzanne Bethel, Old Town Business and Professional Association (OTBPA)
John Bordner, Citizen West of Washington St.
Stewart Dunn, Alexandria Planning Commission
Doug Gosnell, Alexandria Marina pleasure boat leaseholder
Charlotte Hall, Alexandria Chamber of Commerce and Chair
Jacob Hoogland, Alexandria Archaeological Commission
Mari Lou Livingood, Alexandria Seaport Foundation)
Jody Manor, Alexandria Convention and Visitors Association (ACVA)
Stephen Mutty, Citizen Park Planning District I
David Speck, Citizen Park Planning District III
Christa Watters, Citizen East of Washington St. and North of Pendleton St.
Ryan Wojtanowski, Alexandria Environmental Policy Commission

Excused: Paul Smedberg, Member, Alexandria City Council
Townsend A. (Van) Van Fleet, Old Town Civic Association

Absent: Morgan Delaney, Historic Alexandria Foundation

Vacancies: Citizen, East of Washington St., North of King St.
Representative, Alexandria Commission for the Arts

City Staff: Emily Baker, Director, Department of Project Implementation
Jack Browand, Division Chief, Marketing, Special Events and Waterfront
Operations, Recreation, Parks, and Cultural Activities (RPCA)
Faroll Hamer, Director, Planning & Zoning (P&Z)
Mark Jinks, Deputy City Manager
Karl Moritz, Deputy Director, P&Z
Iris Portny, Commission Recording Secretary, RPCA

Guests: List on File

Welcome & Purpose

Hall called the meeting to order at 5:30 P.M., and welcomed attendees and speakers. She said the Commission had scheduled the special meeting to hear from representatives of both sides in the longstanding dispute between the City and the Old Dominion Boat Club (ODBC) about the

ODBC parking lot and adjacent area, a site the City wants to acquire from ODBC to facilitate implementation of the next phase of the Waterfront Small Area Plan (Waterfront Plan).

Hall said the next Commission meeting will be November 19, 2013 7:30 A.M. She said at that time Commissioners will consider a recommendation to be submitted to Council for its 6 P.M. meeting on November 19, 2013 being held for a discussion and public hearing on options, including eminent domain, to implement the next phase of the Waterfront Small Area Plan (Waterfront Plan) and resolve a longstanding dispute over the Old Dominion Boat Club's parking lot and adjacent area. Hall said public comments and questions would follow Commissioners' comments.

Note re meeting presentations

The full City presentation at the meeting ("The Public Interest at the Foot of King Street") is posted to the City website at www.alexandriava.gov/Waterfront. The City will post ODBC's presentation at the meeting once it is received from ODBC.

City Remarks – Mark Jinks, Deputy City Manager and Faroll Hamer, Director of Planning and Zoning

Waterfront Revitalization History

Jinks said Waterfront revitalization has been a "hugely important issue for the City" since the 1970s and, as background to the City-ODBC negotiations, reviewed highlights of actions related to Waterfront revitalization planning since that time. Highlights included (a) City acquisition of the Torpedo Factory (1970), (b) Federal land ownership lawsuit filed (1973), (c) City Waterfront planning (1970's), (d) City acquisition of Waterfront Park (1976), (e) City Council adoption of Waterfront planning principles (1977), (f) City's reclaiming of King Street Park (1979), and (g) the Street Ends Agreement between National Park Service and the City and approved by a federal judge (1981), including King Street, Fayette Alley and Wales Alley.

Jinks said creating convenient public access along the Waterfront and a continuous pedestrian promenade were key elements of the City's 1977 set of Waterfront planning principles. He said the City's current Waterfront Plan restates the goal of creating uninterrupted public access along the Waterfront and expands parks and public spaces within the Waterfront's core area. Jinks said the ODBC parking lot and adjacent area is central to the Waterfront Plan's creation of this continuous public access.

***City – ODBC negotiations since 1998
1998 and 2004-2008***

Jinks reviewed highlights of the City-ODBC negotiations since 1998, when the two parties had almost reached an agreement, and the timeline of key actions between 2004-2008, including: (a) release of the Draft Open Space Plan released (2004), (b) a City Council decision to take eminent domain off the table as an option while City-ODBC negotiations took place (2005); (c) City-ODBC negotiations (2005-2008); and (d) a negotiating impasse reached over ODBC's off-site boat storage (2008). He reviewed several options for the site that were developed by an outside land use planning firm and used as a basis for detailed City-ODBC discussions between 2005 and 2008.

2008-2012 actions related to City-ODBC negotiations

Jinks reviewed highlights of actions related to the City-ODBC negotiations between 2008 and 2012. He said key actions over the time included: (a) negotiations restart (2009); (b) US Court of Appeals mediation failure (2011); (c) City start of Waterfront planning (2009); (d) resumption of City-ODBC negotiations (2011); (e) City-ODBC agreement reached on 8 of 9 points (2011); and (f) City adoption of the Waterfront Plan (2012/13). He said in September 2011 negotiations had ended when ODBC had said ‘no’ to a public walkway along the river.

Most recent City proposal made to ODBC (June 13, 2013)

Jinks reviewed the Mayor’s June 13, 2013 letter to ODBC and said that even though the City prefers having an open plaza at the foot of King Street, its willingness to compromise is reflected by its proposal to ODBC that its parking lot can be kept at the reduced size of 11,500 square feet.

Jinks said that even though ODBC’s October 2013 letter responding to the Mayor’s June 2013 letter said ODBC thought agreement could be reached, some drawings were included that the City thinks implicitly implied that ODBC rejected the City’s proposal.

He said the basics of the ODBC and City positions over the years have remained generally similar over time and reflect “two organizations that have different visions, different desired directions and different endpoints... two organizations in relatively fixed positions that have not been able to find a solution acceptable to both.” He said the City now needs to decide how to proceed to move forward with implementing the Waterfront Plan.

Hamer reviewed the ODBC parking lot site’s central role in implementing Waterfront Plan’s vision for open space

Hamer reviewed the open space and history portions of the Waterfront Plan. She said that throughout the public hearings on the draft Waterfront Plan it was its proposed open space elements about which there was the most public agreement. She said the ODBC parking lot area is the only remaining barrier to the City’s ability to create uninterrupted public access along the Waterfront now that the Robinson Terminal North and Robinson Terminal South sites are moving towards development.

The foot of King Street: an historic gateway to the City and planned outstanding public space.

Hamer reviewed the foot of King Street’s historic role as a port and gateway into the City and the City’s plans to recreate the area as a gateway transportation hub, including the pier for water taxis and boats, the King Street Trolley, and a public plaza as a gathering place for Alexandrians that reflects the City’s identify. She said it is the Waterfront Plan’s goal to “create an outstanding public space at foot of King Street”.

Hamer said that as the City moves forward with its flood mitigation planning that will include the King Street/Strand flood mitigation project, it is important that the ODBC parking lot area be incorporated into the City planning being coordinated with its designs for Waterfront open space and park areas.

Hamer said the City's three years of community meetings about the Waterfront Plan were "in many ways a form of negotiation about the ODBC parking lot on the public's behalf and it would be shame to have a parking lot at the foot of King Street."

Jinks said elements of the 1998 and 2011 negotiations that were close to an agreement that were included in the City's June 2013 offer.

Old Dominion Boat Club Remarks – Eric Desoto, Chairman, Board of Governors, ODBC
Note: The City will post ODBC's presentation to the City website once it received.

DeSoto said ODBC had not be able to respond formally to the City's June 13, 2013 compromise proposal from Mayor Euille because, as a volunteer organization, people were not available during the summer to develop an agreed upon response. He said he had met twice with the City Manager and Assistant Manager to informally discuss the possibility of meeting further to narrow the difference but no such meetings were scheduled. He said ODBC had "kept an open mind, but failed to reach agreement for a lot of different reasons."

DeSoto said ODBC hopes the Commission will recommend to Council that a framework of an agreement has been agreed to and eminent domain should not be used at this time. He said ODBC would like to update the Commission monthly on the status of their negotiations with the City.

DeSoto said ODBC wants to reach a global settlement with the City, reviewed ODBC's positions on the various issues, said Wales Alley had not been discussed, the 1979 King Street litigation remains open, and the City's proposal would let them keep only half of their parking lot. He said ODBC considered his October 2013 letter to the City as an effort to convey they would like to work out an agreement and ODBC has always been interested in cooperating with the City on flood mitigation.

DeSoto said keeping the ODBC parking lot is a key component of boat club membership and lets its members avoid taking parking away from its neighbors.

DeSoto said the ODBC's request to the Commission is that it recommend to the City that the framework of a solution has been agreed to, that it is in the best interests of the City, the ODBC and its taxpayers that further good faith negotiations be pursued as soon as possible and that eminent domain not be pursued at this time.

Jinks said he considers the two sides' positions to be very far apart and he explained why, including the ODBC proposal for a parking lot of almost 19,000 square feet versus the City's proposal for an 11,500 square foot parking lot.

Discussion & Questions – Waterfront Commission

Hall invited Commissioners' questions.

*Compromise for each side's proposed parking lot size?
 Setting a defined timeframe for agreement?*

Binding arbitration as an option?

Speck said during his 40 years of public service he could not remember a time when the ODBC parking lot was not a contentious issue and everyone would like the issue to be finally resolved. He asked the City and ODBC why, since the City has proposed an 11,500 square foot parking area and ODBC has proposed an 18,659 square feet parking area, a compromise for a 15,000 square foot parking area could not be agreed upon by the parties, splitting the difference between ODBC's and the City's proposed sizes.

Jinks said the Waterfront Plan's long-term plan is to have a public plaza at the foot of King Street that takes up the entire area now covered by the ODBC parking lot, and the City's proposed 11,500 parking lot already cuts the size of the planned public plaza by about half. DeSoto said ODBC would prefer a global settlement to covers all outstanding issues but the idea of splitting the proposed size difference was a good one, and he would present the question to the ODBC Board for an answer.

Dunn said both sides' positions are reasonable. He said ODBC has done many good things for the City, it owns the land and wants to stay there, while the City has approved its Waterfront Plan and the disputed area is on the Waterfront site where the City plans to create a significant public plaza. Dunn said splitting the proposed parking lot sizes down the middle is always a good idea when trying to reach an agreement. . He said he thought the option of eminent domain should not be taken off the table and kept as a last resort but said the City and ODBC should first seek ways to develop a consensus. He said that, for example, the two sides could begin by meeting privately to identify areas of possible agreement and commit to a time table of perhaps six or eight months to work something out.

Dunn said another option, one requiring "a certain amount of guts", might be for the City to agree to binding arbitration to resolve the dispute. He said this alternative to eminent domain would let the City avoid the consequences and stigma of eminent domain. **Bernstein** said she agreed with the compromise idea suggested by **Speck** and **Dunn** and asked why the City might object to it. Hamer said that to provide adequate public access to the water side, there needs to be a generous path along the water, for safety and other reasons, and a generous path along The Strand side.

Bernstein said that if the choice is between having a generous path and having a more utilitarian property like a park perhaps a compromise could be negotiated that could include moving those lines closer to The Strand or giving up some of the Strand property.

Hamer said that although the proposed park for the site would be relatively small it would open up onto the adjacent Waterfront Park. She said the City's concern is less about the parking lot size than about the inability to negotiate an agreement with ODBC over the past 30 years. **Bernstein** said that, "as a taxpayer, resident, and Commission member," she thought there should be a way to resolve the dispute that would be "more fiscally responsible than using eminent domain."

Wojtanowski said, speaking for himself not the EPC, the City should seek a compromise that splits the proposed parking lot size difference and the City should ask the Olin Studio team, now working on a comprehensive Waterfront landscape design for the public spaces, to propose additional options for public space within the disputed area that could fit within smaller, 15,000 square feet area. In response to **Gosnell's** point that people don't negotiate well when they are fearful of, for example, the City bulldozing their fence. **Jinks** said that was why the City took eminent domain off the table in 2005 during the negotiations at that time.

Gosnell said he is interested in the City's idea of relocating the parking lot to, for example, Waterfront Park. **Miles Holtzman**, ODBC president, said ODBC was open to that idea. **Hamer** said the "community consensus" during the Waterfront planning process opposed using the Waterfront Park area for parking because it would reduce Waterfront green space. **Jinks** said the community consensus was that the ODBC parking lot should not be put at the Waterfront Park site. He said any change to the City's use of Waterfront Park's area would require an amendment to the City's settlement agreement between the City and the National Park Service. **Gosnell** said he supports creating more green space at the foot of King Street for use as a plaza and gateway and thinks the City should consider trading some City property to ODBC that could be used as a parking lot.

DeSoto said the idea should be considered and was discussed earlier with ODBC but "outside factors" such as the 1981 settlement agreement caused it to be rejected. He said some other ideas ODBC has discussed with the City included creating bigger walkways, moving the parking lot to King Street Park or Waterfront Park, and exchanging the City pier for a walkway.

DeSoto said ODBC is not willing to give up trying to reach an agreement with the City and wants to continue discussions. ODBC has wants to reach a global agreement that would resolves all remaining issues, including Wales Alley.

Mutty asked why the City did not propose creating a deck for a park that would cover the ODBC parking lot since the City had at one point proposed building a restaurant over the ODBC lot. **Jinks** said the public consensus opposing a parking lot at the foot of King Street. **Mutty** said the idea should be revisited since the Olin team is working on a comprehensive public space design.

Precedents of a municipality using eminent domain to create a centerpiece public space?

Mutty asked the City to investigate whether there is a precedent of another municipality that has used eminent domain to acquire private property for the purpose of creating a City gateway or centerpiece space, perhaps other seaport or riverfront areas,

Manor said he : agrees with **Mutty's** request.

Baum asked who owns the south fence that abuts Waterfront Park. **DeSoto** said ODBC erected the concrete fence and would love to replace it.

Environmental factors: Changing the impervious parking surface to pervious

Wojtanowski said the environmental costs of the battle continuing – considering just the paper used up – are ridiculous.

Wojtanowski said the City should consider converting the impervious parking lot surface to a pervious surface, an action that would give the City Chesapeake Bay credits for an action that avoids creating run-off into the Potomac River. DeSoto agreed.

Bordner said having the threat of eminent domain hanging over the heads of negotiating parties could undermine the negotiations but the Commission first needs to be assured by ODBC that new negotiations will not simply repeat past stalemates. He asked DeSoto if ODBC would agree to measures such as a pre-set negotiating timeline and briefing the Commission monthly on the status of negotiations.

DeSoto said he could not predict the outcome in advance but he thought it would be possible to move the discussions forward if negotiations resume. He said years of unsuccessful efforts to reach an agreement might be making it difficult for both sides' representatives to recognize some relatively straightforward opportunities for compromise that might now be available.

Hall reminded people the Commission would take no action that evening but at its November 17, 2013 meeting

Eminent domain option as an incentive for reaching agreement.

Watters and **Baum** said the City should keep the eminent domain option available as an incentive for reaching an agreement. Watters said a time limit to reach an agreement should also be set.

In response to **Livingood's** question whether the ramp in ODBC's diagram of a proposed settlement would be a public or private access ramp, **DeSoto** said it is a private ODBC ramp.

Requesting additional lower King Street public space options from the Olin Studio's Waterfront landscape design team

Hoogland said there should be an "aggressive negotiation schedule set , and within that timeframe, consider how to incorporate into an "equitable solution" aspects of alternative designs that the Olin Studio might propose, including more suitable fencing to delineate the parking area, **DeSoto** said ODBC has asked the City to commit a negotiator to meet with ODBC.

Moving the boat ramp to Prince Street?

In response to **Baum's** question whether the City saw any obstacles to relocating the boat ramp to the end of Prince Street, **Hamer** said it was one of a number of options considered by the City, but a private boat ramp on Prince Street would need to be screened off, preventing public access to the Waterfront and that discussions about how that might be done would be needed.

(Dunn and Moritz left for the Planning Commission meeting.)

Public Questions:

Bert Ely asked if a compromise agreement that might be reached would be regarded by the City as an interim agreement that could be revisited by the City at some point later in the future to

pursue its vision of having no parking lot at the end of King Street. Jinks said that under State law a future City Council could not be bound by the decisions of a current City Council.

Waterfront Plan Work Group supported a “significant public space”

Bob Wood said the December 20, 2011 report recommendations to Council from the Waterfront Plan Work Group (WPWG), on which he served, had been accepted without change by Council and three elements were especially relevant to the ODBC parking lot discussion: (a) staff had “repeatedly” advised the WPWG that the Waterfront Plan’s drawings were “conceptual drawings”, and as such **Wood** said it would be incorrect to interpret Council’s approval of the Waterfront Plan as requiring the public plaza to be created “exactly” as it was depicted in the Waterfront Plan’s conceptual drawing for the foot of King Street; (b) the WPWG report recommended there be a “significant public space at the foot of King Street” but did not endorse the public plaza as presented in the Waterfront Plan’s conceptual drawing for that location; and (c) the WPWG report to Council “discouraged the use of eminent domain to accomplish the recommendations of the Plan” and recommended “negotiation with private propertyowners as the preferred land acquisition strategy”.

Helen Marie Corcoran asked the City to ensure the principle of eminent domain is fully explained at the November 19, 2013 Commission meeting so people can make an informed decision about whether using eminent domain to acquire the ODBC parking lot and surrounding area would be appropriate.

Add Waterfront Commission members to the next round of City-ODBC negotiations?

Frank Fannon said an aggressive series of ODBC-City meetings designed to reach an agreement should be set up. He said it is important to remember that City staff and ODBC representatives in the negotiations cannot make final decisions but can only recommend proposed actions, respectively to Council and the ODBC members whom they represent. Fannon said having a few members of the Waterfront Commission included in the City-ODBC meetings might help move discussions forward. **Fannon** said that because a future Council could override any compromise agreement that the City and ODBC might reach now about the parking lot property, he thinks ODBC should provide public access to the disputed land by using long-term leases rather than selling a portion of it to the City.

Is a solution possible in which ODBC maintains ownership of the property?

Beal Lowen asked if the City can “envision a solution in which the City does not take ownership of the property” from ODBC. **Jinks** said Council is interested in receiving public ideas inputs about how the City should proceed regarding eminent domain but he could not predict how or if Council might change its position from the compromise it approved in June 2013.

Howard Bergman asked why the City is not interested in securing an easement for use of the ODBC property as a park rather than by fee simple? Jinks said it is a matter of dispute what complications the City might face without a fee simple acquisition, but that a permanent fee simple would be closer to an easement.

Katy Cannady asked who decides the ODBC property's value if the City acquires the property by eminent domain. **Jinks** said the process is complicated, including Virginia law's requirement that a bona fide offer be made which would entail that a professional appraisal be obtained, with ultimately the courts having the ultimate decision-making authority on value.

Adding an outside negotiator to the City-ODBC discussions?

Kathryn Papp said an committed outside negotiator is needed to facilitate the negotiations because trust in the process on both sides has been diminished by decades of trying without success to reach an agreement. She said the legalities are "pretty much settled" but from the land use perspective, the City should ask Olin Studio to propose some ideas for how to use the land where the parking lot is located as a public space. **DeSoto** said ODBC is committed to continuing the negotiations until an agreement can be reached.

In response to **Charlie Huettner's** question whether the City shares ODBC's interest in a global agreement, **Jinks** said the City is also interested in reaching agreement on all outstanding issues. **John Keegan** asked who would have liability if a Wales Alley agreement were reached in which the City could use the land but not own it. **Jinks** said issues related to Wales Alley have always been among the issues being discussed.

Harry Harrington reviewed the various attempts to resolve the City-ODBC dispute since 1997, including his own support for the varying parking lot size idea. He said ODBC has over 900 members and they need to have space to park. He said ODBC has been very generous over the years in making its parking lot available for various city activities sponsored by organizations such as the Red Cross, the Alexandria Fire Department and others and the City should try to work this out with ODBC.

Margaret Wood said the City should avoid eminent domain and develop a creative to work with ODBC to provide public access to the Waterfront here as the City had done with Harborside and Ford's Landing. **Jinks** said his personal opinion was that resolving the difference between using an easement or fee simple approach would be easier than resolving the question of whether to use this land for a parking lot or public space.

DeSoto said he had not come to the Waterfront Commission because of the threat posed by eminent domain's potential use and said ODBC had, since January 2013, reached out to the Mayor and other City officials to continue negotiations and this was before the City's proposal to use eminent domain had been raised.

Jim Lavrey and **Brian Kirk** said they were concerned about the continuing costs to the City and its taxpayers from legal fees generated by this continuing dispute. **Kirk** asked if the City would consider setting a cap on the maximum amount of funds it is willing to spend on legal fees related to the ODBC parking lot dispute. **Jinks** said it is in both sides' interests to resolve the outstanding issues as soon as is practical but that it would be impractical for the City to set a cap on its legal costs without knowing the legal matters that might arise.

Jennifer Laird: asked why a compromise between the City and ODBC proposals for parking lot sizes is difficult since the two positions don't seem to be that far apart.

DeSoto said ODBC had arrived at the proposed walkway dimensions in its diagram by using the City's established 15 foot-wide walkways along the Waterfront north to south.

Laird asked why the City is so insistent on keeping its 11,500 square foot parking lot space. Jinks said the figure responds to the maximum compromise possible related to the City's plan to create a public square at this location that will be a centerpiece for the Waterfront Plan.

Jeannie Theissman asked why the City could not use Waterfront Park as a centerpiece location instead since the City already owns it? Jinks said the ODBC parking lot is right at the foot of King Street whereas Waterfront Park is not.

Adjournment

Hall said the Waterfront Commission's next regular monthly meeting is November 19, 2013 at 7:30 A.M. at City Hall and invited people to attend the meeting and/or submit their thoughts to the Commission beforehand on agenda items. Hall adjourned the meeting at 7:53 PM