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June 3, 2004

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By: Overnight and Email
Mr Alberto Bastida, AICP
Zoning Commission
District of Columbia Office of Zoning
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re Draft Zoning Commission Order for WASA Special Exception
Zoning Commission Case No ZC-04-07

Dear Mr Bastida

Enclosed please find a copy of the proposed Draft Order for the above-referenced matter We have also included a disc with the document and forwarded it to you by electronic file

If you have any questions, please feel free to contact me

Sincerely,

LINOWES AND BLOCHER LLP

Emily J Vaias
D C Bar #441832

EJV/sec
Enclosures
cc Kenneth P Barnhart, Esquire
Mr Michael S Marcotte
Mr Bruce B Beall
Mr Martin Sultan
Mr Nathan Gross

ZONING COMMISSION
District of Columbia
CASE NO. 04-07
EXHIBIT NO. 30

L&B 369904v1/04402 0005

ZONING COMMISSION
District of Columbia
CASE NO.04-07
EXHIBIT NO.30

Applicant's Proposed Order

ZONING COMMISSION ORDER NO. 04-07
Case No. 04-07
(District of Columbia Water and Sewer Authority - Special Exception)
June 14, 2004

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on May 20, 2004, to consider an application from the District of Columbia Water and Sewer Authority ("WASA") for a special exception. The application requested approval to create an addition to the Main Pumping Station and exterior renovations to the O Street Pumping Station and minor improvements at WASA's pumping station site on the Anacostia riverfront in Southeast Washington The subject property is zoned CG/W-2 on an interim basis under the "setdown rule" of the Zoning Regulations pursuant to § 3202.5 The public hearing was conducted in accordance with the provisions of 11 DCMR 3022 For the reasons stated below the Zoning Commission hereby approves the Application

FINDINGS OF FACT

The Application, Parties and Hearing

1. On February 27, 2004, the Office of Zoning received an application from the District of Columbia Water and Sewer Authority ("WASA" or "Applicant"). Pursuant to proposed 11 DCMR § 1603 1, WASA requested approval of proposed exterior renovation and a minor addition to pumping stations located in the Capitol Gateway ("CG")/W-2 District at premises 1331 2nd Street and 125 O Street, S E (Square 744-S, Lots 800 and 805 and Reservation 248)

2 Proposed § 1603 1 of the D.C Zoning Regulations (published as Proposed Rulemaking in the August 2, 2002, *D C Register*) requires Zoning Commission approval of "any proposed exterior renovation to any existing buildings or structures in the CG/W-2 District that would result in an alteration of exterior design " The requested Zoning Commission approval involves improvements to two (2) buildings identified as the Main Pumping Station and the O Street Pumping Station

3 In addition to major operational upgrades that will be internal to the structures and will increase the operational capacity and efficiency of the pumping stations, the application requests approval for an addition on the east side of the Main Pumping Station to serve as a Load Out Facility and replacement of the exterior of the O Street Pumping Station

4 The only parties in this case are the Applicant and Advisory Neighborhood Commission ("ANC") 6D

5 A description of the proposed improvements and the Notice of Public Hearing were published in the *D C Register* on March 19, 2004 The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject property and to ANC 6D Zoning posters were placed on the property in a timely fashion

6 The public hearing was conducted and completed on May 20, 2004

The Subject Property and the Surrounding Area

7 The subject property, identified as Square 744-S, Lots 800 and 805 and Reservation 248, comprises a total area of 11 91 acres It is improved with several buildings and a storage yard to support the sanitary sewer pumping operations that have existed at the site for the past 100 years It is located along the Anacostia River in Southeast Washington

8 The Main Pumping Station is located at 1331 2nd Street, S.E , and the calculated building area is approximately 40,310 square feet The O Street Pumping Station is located at 125 O Street, S E and has a building area of approximately 13,185 square feet

9 To the east, north and west of the subject property is the 55-acre Southeast Federal Center site, which is being redeveloped with a major office complex for the U S. Department of Transportation, residential and retail uses, as well as open spaces along the Anacostia riverfront. Farther to the east along the waterfront is the Washington Navy Yard To the west along the waterfront is the five-acre Florida Rock property, which is the subject of a first-stage planned unit development order authorizing mixed-use development

10 To the west, northwest and southwest are properties in the Capitol Gateway-Buzzard Point area, a large area occupied primarily by underutilized land and declining industrial uses This area is zoned CG/W-2, CG/W3, CG/CR and CG/C-3-C in furtherance of District of Columbia plans to achieve major redevelopment of the area for a mixture of residential, retail, office, recreational and other uses.

The Project and the Applicant's Case

11 The catalyst for WASA's submission of this special exception application is a Consent Decree by the U S. District Court for the District of Columbia pursuant to the Clean Water Act This federal mandate, which was negotiated with WASA, requires that WASA optimize the functioning of the District's combined sewer system operations and thereby reduce combined sewage overflows The Consent Decree requires WASA to restore sanitary sewage pumping capacity to 240 million gallons per day for the Main Pumping Station and 45 million gallons per day for the O Street Pumping Station. The control station for all sewer-pumping operations in the District is located in the Main Pumping Station building.

12 To accomplish this mandate, WASA must upgrade existing interior pumping equipment and support infrastructure In order to improve the reliability of the pumps, WASA will replace the existing screenings handling system Screenings are solid materials that are strained from the sewage flow to prevent damage to the pumps. As part of this project, WASA will install an improved screening mechanism that will do a better job of screening out solids. The screened solids will be washed and compacted inside the pumping station and conveyed to the new Load Out Facility by conveyors that extend out a window of the station The existing vacuum truck system uses this same window. Routing the conveyors through this window allows them to exit the pumping station building without a new wall penetration. It also is the factor that determined the location of the Load Out Facility structure in the north-south direction The washed and compacted solids will be stored in dumpsters inside the Load Out Facility until they are picked up and trucked away. All areas in which screenings are handled will be ventilated through an odor control system An average of one truckload of screenings per day will be removed from the site

13. WASA also seeks approval to construct a new exterior on the O Street Pumping Station to improve its public appearance and to address problems with the existing façade This exterior work is not required by the Consent Decree, as the necessary internal work to upgrade the pumping capacity at the O Street Building could be accomplished without such renovations.

14 The Applicant stated that this multi-faceted project will enhance the site in several important ways

A. The rehabilitation and upgrades to the mechanical elements in the two pumping structures will restore capacity and therefore convey more sewage to Blue Plains for treatment in times of high flows

B The proposed Load Out Facility will be a great improvement over the vacuum truck method of handling screenings and will include special odor control measures that are currently lacking

C The façade of the O Street pumping station is severely deteriorated and will be replaced by a new façade The design modifications will be complementary to the Beaux Arts style of the Main Pumping Station and will be a significant aesthetic improvement to the property

D. The applicant will replace a section of the sea wall

E The parking areas, drives and roadways and pedestrian pavement will be re-striped and better defined This optimization of these areas, however, is almost entirely accomplished without new paved surfaces

15. Regarding compliance with the CG/W-2 special exception criteria in 11 DCMR 1603.1, the Applicant's Statements and testimony indicated the following,

A Subsection 1603 1 of the overlay zone requires special exception approval of additions and renovations and accordingly governs the proposed improvements to the subject site

B. Subsection 1603 2 provides that the project shall help achieve the desired mixture of uses in the overlay district and shall be of suitable height, bulk and design The Applicant stated that.

1) The existing buildings are of moderate height and bulk and provide openness of views to and from the waterfront,

2) There will be virtually no increase in density -- 0 268 to 0 270 FAR;

3) The Main Pumping Station is a handsome, impressive building and is considered a major historic building despite not being formally designated as a landmark The appearance of the O Street Pumping Station will be significantly improved by the new façade being constructed

16 As to the desired mixture of uses, the Applicant referenced the purpose clause of the CG overlay zone, which states, "Allow for the continuation of existing industrial uses, which are economic assets to the city, during the extended period projected for redevelopment." (§ 1600 2(c)) Moreover, Section 1605 provides that existing industrial uses permitted in the CM and M Districts shall be conforming rather than nonconforming uses. Accordingly, continuation and upgrading of the pumping stations is part of the desired mixture of uses consistent with the overlay zone

17 The *Comprehensive Plan for the National Capital* provides additional policy support for the use in several policies, including the following from the Environmental Element

> *402 2(a) Provide for adequate treatment of sewage through continuing efforts and substantial capital investments needed to ensure an adequate level of sewage treatment and to provide sufficient treatment capacity to serve future development needs and consumption patterns*

18 Subsection 1603 3 requires any building or structure to be set back 50 to 75 feet from the bulkhead along the river and requires the applicant to submit a plan for suitable open space treatment in this area to accommodate the Anacostia Riverwalk The Applicant represented that the project complies with the setback requirement, in that the Main Pumping Station is set back approximately 150 feet from the bulkhead, and the O Street Pumping Station is set back more than 50 feet

19. With regard to plans for the waterfront open space and accommodating the Anacostia Riverwalk, WASA has reached an agreement with the Office of Planning as to the timing and substance of waterfront plans as set forth in Condition No 4 in the Decision in this case In summary, the Consent Decree required WASA to proceed quickly on the renovations to the mechanical equipment in the pumping stations, so that a conditioned delay in detailed waterfront planning is a reasonable resolution Under this special exception WASA is not taking any actions that will impede future implementation of the Anacostia Riverwalk and planned open spaces along the waterfront.

20 Subsection 1603 4 states that "the building or structure shall be designed with a height, bulk and siting so as to provide for openness of views and vistas to and from the waterfront, and where practical, maintain views of federal monumental buildings " WASA represented that the moderate scale of the existing pumping station buildings, the grand Beaux Arts character of the Main Building and the extremely low density on the entire 11 9-acre site all contribute to achieving this objective.

21 WASA stated that the proposed use and design will not adversely affect the use of neighboring property for several reasons·

A This is primarily a renovation of a long-established use and property with virtually no increase in density (from 0 268 to 0 270 FAR)

B No new traffic or noise will result from the upgrades to the stations

C The appearance of the parking area will be improved by reorganizing the functional areas, striping the parking spaces and providing improved lighting

D WASA has studied the general feasibility of relocating the Load Out Facility to the west side of the structure, and has found major functional and cost problems associated with such a relocation The vast majority of trucks accessing the WASA facility will have no relationship to the Load-Out Facility. The Load-Out Facility will typically involve an average of one truckload per day while the predominant truck traffic will continue to access the site from First Street, S.E

E. The proposed Load Out Facility includes odor suppression measures

22. The Applicant stated that for the reasons set forth in Findings of Fact Nos 15 through 19, approval of the special exception will be consistent with the general intent and purpose of the Zoning Regulations

23. On May 20, 2004 the Applicant submitted a document entitled, "Joint Conditions of Approval Between the D.C. Water and Sewer Authority and the D C. Office of Planning " WASA stated that the purpose of the statement was to set forth specific areas of agreement reached between the parties regarding compliance

with the requirement in the Capitol Gateway Overlay District to submit plans for waterfront open space design, accommodating the proposed Anacostia Riverwalk and other planning and urban design policies as set forth in the District's *Anacostia Waterfront Initiative* ("AWI") and the *Near Southeast Urban Design Framework.* The agreements that relate to zoning approval of this application are included as conditions in the Decision section of this order. The areas of agreement relating to planning goals and objectives are set forth in Findings of Fact Nos 24 and 25 below

24 In furtherance of urban design objectives embodied in the *Near Southeast Urban Design Framework* and in the AWI plans, WASA testified to the following.

A. WASA will permit public access from Tingey Street, S E, to the Anacostia waterfront along the eastern edge of its property subject to the following procedures and principles

1) The precise path of this public access way will be established by appropriate District of Columbia authorities with input from WASA, Forest City/Washington, the D.C. Department of Transportation and the Office of Planning in conjunction with the development of the adjacent SEFC project

2) The access way may be established along the right-of-way of Second Street, S E , of New Jersey Avenue, S E., or at another mutually agreeable location

3) If located on WASA lands, WASA will permit pedestrians, bicyclists, emergency vehicles, and special event traffic along the entire length of the public access way In addition, WASA will permit the use of the northernmost portion of the public access way between Tingey Street and the future Water Street for vehicular traffic serving the residential development.

4) WASA's obligation to provide this public access way is predicated on Forest City/Washington also contributing an equitable share of its property to the public access way as required in accordance with the agreed upon alignment

5) WASA will retain the right to use Second Street, S E , the proposed public access way described above, or both of them for necessary access (including vehicular access) to its facilities

B WASA will permit the use of a portion of the northwest corner of the Main Pumping Station site in or near Canal Street for the improvement of the intersection of Tingey Street and New Jersey Avenue, all S.E ; provided however, that these improvements must not preclude WASA's

future use of any or all of Canal Street, 2nd Street, or Tingey Street as points of access to the WASA site

25 As a signatory to the Anacostia Waterfront Initiative, WASA testified that it recognizes the important goal of revitalizing the Anacostia waterfront. WASA committed itself to do nothing on the subject property that will preclude the establishment of the proposed river walk along the Anacostia River

Report of the Office of Planning

26 The Office of Planning ("OP") submitted reports dated May 10 and May 19, 2004. In the first report, OP indicated full support for upgrading the pumping stations and the important public benefits that would accrue to the District OP also questioned the location of the Load Out Facility, the lack of submission of plans for open space treatment and accommodation of the Anacostia Riverwalk along the waterfront and raised non-zoning issues relating to opening and modifying street segments in the vicinity

27 In its May 10, 2004 report, OP analyzed a WASA submission regarding a proposal to upgrade two adjacent sewage pumping station facilities in the Near Southeast area, the Main Pump Station, a 1900's building which has been deemed eligible for historic designation, and the more recent O Street Pump Station. OP raised concerns about the extent to which the proposal, as then described by the applicant in its submission, conformed to the goals and objectives of the CG Overlay District, the *Anacostia Waterfront Initiative* ("AWI"), and the *Near Southeast Urban Design Framework* plans.

28 Subsequent to the May 10 report, OP, DDOT, and the City Administrator had additional productive discussions with WASA officials WASA clarified its firm commitment to addressing AWI goals and objectives on this site WASA also stressed the immediate nature of the mandated and valuable technical improvements The evolving character of the Near Southeast area was also discussed, and the need for site planning for the various developments in the area to be coordinated and to proceed in conjunction with one another, in a timely manner, especially regarding transportation, green space and waterfront access

29 OP stated that normally the CG Overlay requires an applicant to fully address all review criteria and objectives at the time of application, including the referenced open space plans for the waterfront and Anacostia Riverwalk. In this case, due to the immediate nature of the required technical improvements and WASA's participation in and commitment to the AWI, the agencies agreed that it would be appropriate for WASA to be permitted to proceed with the required work at this time, with a firm commitment on the part of WASA to fully address CG Overlay and AWI objectives in the future This approach allows the mandated improvements to proceed immediately, and also permits WASA and District officials greater opportunity to coordinate further WASA site improvements with other adjacent developments

30 OP's second important concern was that the Load Out Facility would be located on the side of the Main Building facing the Southeast Federal Center site, where future residential and open space development may occur. After inter-agency meetings and further review of detailed technical analysis provided by WASA, OP stated in its May 19 report that WASA had documented the reasons why locating the Load Out Facility on the west side of the building is not possible It would be much more complicated and costly, would negatively impact the possibility of reopening Canal Street on the west side of the Main Building to future traffic, and could impact future mixed-use development west of the Main Building The agencies agreed, however, that WASA and Forest City/Washington would hold consultations to determine whether a modified design could be accomplished that would be mutually agreeable.

31 OP's major issues related to impacts of the site design on public space and accessibility to and along the waterfront. Key concerns identified were the need to accommodate the Anacostia Riverwalk along WASA's waterfront and in future, relinquishing parking spaces along the waterfront, with the understanding that alternative locations for displaced fleet parking will be found OP noted that in the short term, WASA has committed to do nothing that would impinge upon the ability to provide the future Riverwalk connection between the Florida Rock and SEFC sites. OP also acknowledged WASA's statement that the interim increase in the number of parking spaces shown on the site plan is not the result of additional pavement, but is the result of a more efficient use of existing paved area

32 The Office of Planning and the Applicant also reached working agreements on extensions or modifications of specific street segments in the immediate vicinity.

33. The reconciliation of the issues identified above in Findings of Fact Nos 31 and 32 is documented and authenticated above in Findings of Fact Nos 23 to 25 and in the conditions of the Decision

Report of the D.C. Department of Transportation

34. The D C. Department of Transportation ("DDOT") via email memo to the Office of Planning that the major new development beginning in this area of the city means that uses and traffic patterns will change substantially in the coming years. Street segments need to be opened to accommodate traffic to and from the former Southeast Federal Center and new development there The federal, District of Columbia and private parties involved should develop a shared plan for key street segments in the vicinity, such as New Jersey Avenue, Tingey Street, Canal Street, 2nd Street and N Place, S.E.

35 The Applicant should justify the proposed increase in parking spaces near the Anacostia River and should pull parking spaces back from the riverfront to allow for a continuous Riverwalk Trail along the waterfront

Report of the D.C. Department of Housing and Community Development

36 By report dated April 20, 2004 the Department of Housing and Community Development ("DCHD") recommended approval of the application for several reasons The proposed addition to the Main Pumping Station and the new exterior for the O Street Pumping Station are architecturally compatible additions The site and landscape improvements will improve onsite roads and parking, and features are included to better control erosion and sediment runoff

37 The site must be fenced and have controlled access points for security reasons and because of the heavy industrial character of the use

38 The improvements to increase the capacity and efficiency of the pumping stations are essential to the public health and quality of life in the District.

Commission of Fine Arts Recommendation

39 The project architect presented the plans to the U S Commission of Fine Arts on December 18, 2003, and the Commission granted Concept Approval

Report of Advisory Neighborhood Commission ("ANC") 6D

40. At its meeting of April 12, 2004, ANC 6D considered the application and unanimously voted to support the zoning application The ANC's written report was dated April 15, 2004 and stated in part· "The Commission is pleased that these outdated facilities will be upgraded, and that the plan calls for systems that will held reduce the odor emanating from the current site " The ANC urged expedited construction if possible

Public Testimony

41 There was no public testimony in support of or in opposition to the application

CONCLUSIONS OF LAW

1 Section 5-413 of the D C Code establishes the authority of the Zoning Commission to "promote the health, safety, morals, convenience, order, prosperity or general welfare of the District of Columbia "

2. The Commission finds that the Applicant has met its burden of proof in demonstrating that the project complies with the special exception criteria in 11 DCMR §§ 1603 and 3104. Approval of the special exception in conjunction with the CG/W-2 zoning of the property will promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map and will impose no adverse effects on neighboring property or the public good.

3 Approval of the project will help achieve numerous public policy and public benefits relating especially to the efficiency and effectiveness of sewage treatment in the District of Columbia and the region and improving water quality in the Anacostia and Potomac Rivers

4 Approval of this Application is not inconsistent with the Comprehensive Plan for the National Capital

5. The Commission has accorded to Advisory Neighborhood Commission 6D the "great weight" to which it is entitled

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission orders **APPROVAL** of the Application for a special exception to renovate and upgrade the mechanical equipment and functions in the Main Pumping Station and the O Street Pumping Station; to construct a Load Out Facility addition to the Main Pumping Station and a new exterior on the O Street Pumping Station; and to make other improvements to the subject site in the CG/W-2 District This special exception approval is subject to the following guidelines, conditions and standards.

1 The project shall be completed in accordance with the plans submitted as Exhibit 5 in the record of this case and as approved by the U S Commission of Fine Arts, subject to the additional conditions set forth below

2 If WASA and Forest City/Washington, the developer of abutting property to the east of the WASA site, agree to a modified design of the proposed Load Out Facility to the Main Pumping Station, that modified design may be constructed, provided that its design has been approved by the U S Commission of Fine Arts and as refined, the design modifications do not change the exterior materials or increase the height, building footprint or gross floor area of the Main Pumping Station.

3 The Applicant may install appropriate, interim security measures, including a fence, to protect its site. A permanent fence may be installed as part of the detailed redevelopment plan referenced in Condition No. 4 below, so long as it is designed in similar style as the brick and iron security fence proposed for the nearby Washington Navy Yard Permanent security measures other than the fence described herein will be subject to Zoning Commission approval as a special exception or may be submitted as part of the plans referenced in Condition No. 4

4 Within eight (8) years of Zoning Commission approval of this application, WASA will prepare and submit a detailed proposal for the redevelopment of the subject property, including the following elements.

A. A comprehensive site plan, including streetscape design, parking redesign, open space treatment along the waterfront, permanent security measures, and a park-like setting near the southern end of the Main Pumping Station,

B The plan will accommodate the continuation of the proposed river walk at an appropriate location on or adjacent to the entire southern edge of the WASA site

C The plan will delineate the removal by WASA of specified waterfront parking spaces on its site, provided that at the time of submission of the redevelopment plan to the Zoning Commission, the District Government has provided alternate locations to replace any displaced parking; and

D. The redevelopment plan may be submitted in a coordinated application with an adjacent landowner such as Florida Rock or Forest City/Washington or as a separate submission to the Commission by WASA