

September 26, 2011

A Special Meeting of the Common Council was held on Monday, September 26, 2011 at 6:30 P.M. at City Hall, 520 Warren Street, with President Donald Moore presiding.

Upon roll call there were present: President Moore, Aldermen Cheddie, Donahue, Goetz, Miah, Pertilla, Ramsey, Sterling, Stewart, Thurston and Wagoner.

Absent: None.

The clerk announced there was a quorum present for the meeting as required by Section C12-13 of the City Charter.

On motion of **Alderman Ramsey**, seconded by **Alderman Thurston**, the following Call of the Meeting was ordered received and placed on file:

September 19, 2011

Tracy S. Delaney
City Clerk
City Hall
Hudson, NY

Dear City Clerk:

As provided by Section C12-4 of the City Charter, I hereby call a **Special Meeting** of the Common Council to be held on **Monday, September 26, 2011 at 6:30 PM** at the Hudson Central Fire Station, 77 North 7th Street to discuss and consider the Local Waterfront Revitalization Program -Generic Environmental Impact Statement (GEIS).

Very truly yours

Donald A. Moore
Common Council President

cc: Mayor
Legal Advisor Roberts
Legal Advisor Connor
Register Star

Carried.

President Moore read the following statement:

“The LWRP and its accompanying GEIS are complex documents. They are also human documents, the product of many people, involved from many points of view and responsibilities, each working to piece this pie together. Citizens, government officials, professionals – all have made their mark here.

“I have spent two years with the LWRP, studying its background and its foreground. Can it be called perfect? Of course it cannot. Can it be described as a commendable accommodation of Hudson’s aspirations for its waterfront, its communities and its economic development, the realities of law and land, of doing as much as we can, while knowing that what we want will take time, organization and money? Yes, I believe it can.

“As a City, certainly as your Common Council exercising our responsibility we have taken this process as far, and I believe as fairly as we can. We have met and exceeded what the law asks of us, listened and the document is much better with all that listening.

“We have balanced the interests of our most vulnerable neighborhoods by providing a plan to get the trucks off the street, off streets of the west end of the City. We have taken legal steps to regulate the port including hours of operation, light, noise, dust, defining, processing, completely out of the port and the causeway for as long as it’s used. We have declined to designate a preferred route and instead provided an alternative route that can allow greater public access to the waterfront.

“Is everyone happy? I think the more useful question is, can everyone be happy? LWRPs and their legislation and SEQRA provide frameworks for doing as much as we can granting the potential in hearing conflicts. It provides a check imaging that somehow, just around the corner one more piece will fall into place that will change the game and everyone will be fully satisfied with the LWRP.

“We want an LWRP that can draw enthusiasm and support and recognition for what needs to be done to balance, to integrate to the greatest extent possible the best uses of our mixed social, economic and environmental needs and opportunities. I personally believe that all the work that has been done over many years has brought us to a place where we can say this is a valuable program that we should consider approving.

“One comment: A key consideration in developing the waterfront is the current ownership of the port and the South Bay by Holcim. I would like to make it as clear as I am able, that I completely support the goal of the City and the LWRP of obtaining ownership of both but I have seen no evidence that this document, the LWRP and the GEIS, can accomplish that end to the tools available to this municipality. We have considered different strategies to obtain the port and the one that would work; I believe is a sale between a willing partner and a willing buyer. I want to see that happen and will work for it. And I also want to hear from Holcim that will move forward quickly on the easements and the land transfers that they have offered.

“Finally, a few ground rules. This is a work session for the Common Council. It is not a public hearing, we’ve had public hearings, public hearings involve taking comments and putting them on the record. If the Council approves the GEIS, there will be a 10 day period in which comments can be submitted for the record. Tonight after the presentation by City Attorney and William Sharp and they are finished and if we come to a conclusion on the vote and I will be more than happy to stay and answer as many questions as possible about the LWRP and its future. For the time being, the floor is for the Council to ask questions and I will now open the floor to Cheryl Roberts the City Attorney describe the process of where we are at this point”.

Cheryl Roberts, Legal Advisor stated she was pleased to have in attendance Bill Sharp, Senior Attorney at the New York State Department of State (DOS) and she stated Mr. Sharp had been at DOS for twenty six (26) years. Legal Advisor Roberts stated Mr. Sharp had an enormous wealth of knowledge on many useful issues including zoning. She stated the staff at DOS had “enormously contributed to this document and in particular Bill helped draft the zoning changes to the Core Riverfront Area”. Legal Advisor Roberts stated the purpose of the Special Meeting would be for the Council members to consider the Final Generic Environmental Impact Statement (FGEIS) which was part of the SEQRA Review process. She stated the SEQRA process would require the review of the environmental impacts of an action before the action would be taken. Legal Advisor Roberts stated there had been numerous people involved in the process over two decades and she stated she joined the process in 2006. She stated between the summer of 2006 and the spring of 2007, the Common Council President at the time, the Waterfront Advisory Committee, the Mayor, Legal staff and the Planners completed a lot of work including attending meetings, workshops and conference calls with DOS. Legal Advisor Roberts stated the planners had produced the first LWRP in April 2007 and she said “that draft, I have to say needed some substantial work and we worked very long and hard with DOS to revise that draft, we also took public comments on it”. She stated the next version of the LWRP which included zoning took twenty (20) months to produce. Legal Advisor Roberts stated in 2008 the Council had accepted the LWRP and determined a GEIS would be conducted. She said “it took us eleven months to put that together, the planners put that together, it’s really not long time considering the magnitude of this project”. Legal Advisor Roberts stated in December of 2009 the Council had received the Draft GEIS and determined the document was ready for public comment. She stated the Council held a Public Hearing in January 2010 and had received public comment until March 2010 and she said ‘then the planners and I got to work on responding to those public comments and DOS was also part of that process’. Legal Advisor Roberts stated it had been anticipated to release the document last year at this time “but DOS had some additional concerns, so we took another eight (8) months working with DOS and working closely with Bill to revise the zoning and some other provisions in the LWRP and GEIS”. She stated there had been a three (3) month delay after the release of the proposed Final GEIS in May 2011 due to the receipt of new and significant information which included a memo from the South Bay Task Force, the New York State Department of State’s proposal to designate the South Bay as a designated habitat and O&G’s decision to resurface the causeway. Legal Advisor Roberts said “we

took a step back and wanted to see how some of that played out especially the proposed designation”. She stated O&G had submitted an opposition to the proposed designation on August 15th and she stated a determination had been made to move forward with the process and acknowledge the proposed designation through the text of the document. Legal Advisor Roberts reviewed the edited pages of the LWRP, GEIS, Zoning and Maps with the Council members.

President Moore clarified the “not done deal” edits in relation to the O & G Causeway and he said “just because they have gotten permission to do one step doesn’t mean that we’re accepting that step as allowing them to do anything they want to do”. He stated the City acknowledged the work had been completed however it would not mean the City approved of anything further.

Legal Advisor Roberts continued to review the edited pages including edits to the zoning with the Council members.

Legal Advisor Roberts stated the Council would consider the adoption of the GEIS as final and she stated there would be a review of the SEQRA regulations “to see if these documents meet the criteria, the requirement for a GEIS”.

President Moore requested clarification of the conditional use zoning.

Bill Sharp, Senior Attorney with DOS stated there were a number of different proposed laws that would be enacted in addition to this zoning. He stated Legal Advisor Roberts had done an “extraordinary job” on the advancement of subdivision review, site plan review and sign regulations and he said “there are quite a number of beneficial changes that are part of this packet”. Mr. Sharp stated in the 1990’s New York State land use laws had been re-vamped and he stated DOS would assist municipalities “to try bring their laws up to speed and try to help them advance the different goals that they have but always making sure that at least the basics are covered and they are certainly more than covered in these laws”. Mr. Sharp stated presently the property Holcim-owned and O&G-operated was currently zoned industrial and he stated a lot of things are permissible in an Industrial Zone that would not be permissible in an “as of right” in the new proposed Core-Riverfront District. He stated the Core-Riverfront District would not allow a port use as a permitted use and he said “immediately on the change from industrial zoning to the C.R. zoning to the extent that the existing port use is a lawfully permitted use under the Industrial Zoning, it would actually become a non-conforming use under the C.R. Zone”. He stated the port use would be allowed to continue without modification of any of the structures, uses on the property and the causeway and he said “should there be any changes to either a building on the property, or a new building being constructed or changes to the roadway it will require that the owner get a conditional use permit and there is an extensive list of requirements in the conditional use permit section for an existing commercial dock operation”. Mr. Sharp stated one of the requirements would be the preservation and protection of the public view and public access to the waterfront. He stated there would be a number of items that a conditional use would have to comply with such as hours of operation, levels of noise, dust or other obnoxious

bothersome uses that would be generated on site. Mr. Sharp said “there’s a recognition that if there is going to be continued commercial dock operations down there, that it try to co-exist, and exist well with the other kinds of uses that are happening in the City of Hudson”. He stated the re-introduction to people to its’ waterfront, the revitalization of housing stock, the kinds of new vitality public and private investments had brought to Hudson and he said “this zoning attempts to create that kind of a balance”.

Legal Advisor Roberts asked “they can operate unless they make a change, what about changes in volume”?

Mr. Sharp stated zoning recognizes that uses including non-conforming use could lawfully have an intensification of use without a change in zoning.

President Moore requested clarification of non-conforming versus the conditional and he said “these extensive regulations that are triggered by, are only triggered by conditional use”?

Mr. Sharp stated the language that would trigger the need for a conditional use permit “no building shall be erected, moved, altered, rebuilt or enlarged nor shall any land or improvement thereon be constructed, altered, paved, improved or rebuilt in whole or in part for any purpose in the Core-Riverfront District except by first applying for a conditional use permit”. Mr. Sharp stated the port use would be permitted under the current industrial zoning and he said “when the zoning changes, pursuant to this change of law, if there are no changes on the property, if they continue to operate the way they’ve been operating it, they will become a lawful non-conforming use, they are not permitted under the new zoning as of right”. He stated as a lawful non-conforming use, they would not be able to enlarge or expand under the city’s zoning.

Legal Advisor Roberts stated the zoning that had been drafted was “very protective of the environment”.

In response to a question from Alderman Sterling, **Mr. Sharp** stated a conditional use would be another word in state statute for special use permit and he said “that is a use that is permitted but subject to certain conditions”.

President Moore questioned if Holcim or O&G had not changed the way their business conducts, then none of these conditions would be in effect?

Mr. Sharp said “that is correct”.

President Moore stated he needed clarification on the issue and he said “if we’re going to have a working port that there are additions and if they already exists and we haven’t pulled them together or we haven’t identified them as such, hours of operation, noise, dust”.

Legal Advisor Roberts said “there are a few like you’re suggesting, like noise maybe we could enforce, but frankly I’ve been there when they load the barge and the train is so much loader than the barge loading”.

Alderman Wagoner asked “so you’re saying legally we couldn’t control hours of operations”?

Legal Advisor Roberts said “not currently”.

Mr. Sharp said “certainly not under the industrial zoning and at the time of the change over and the need to get a conditional use permit, if Holcim/O&G do not change their use, one iota, they just continue what they’re doing, the conditional use permit requirement would not snap in”.

President Moore questioned if the City could enact similar restrictions on the current operations.

Mr. Sharp said “you could do it as a permitted use subject to certain strict conditions without any kind of review”. He stated when the zoning changes, they would become a lawful non-conforming use and he said “it doesn’t mean they are a lawful use now, so that they would not have to comply with your new zoning”. Mr. Sharp stated if the City were to omit the conditional use permit, to make it the requirements for a permitted use “they still have the option of being grandfathered”. He said “by setting it up as a conditional use permit, you actually have a board; your Planning Commission that is able to look at each of the elements and make sure that there’s good compliance”.

President Moore questioned if the only way to impose the new conditions, after the adoption of the zoning, would be if they were to have a “demonstrable” change of use.

Mr. Sharp said “yes”.

Legal Advisor Roberts said “except that, not necessarily change, if they trigger one of those events, if they do one of those events that’s outside of the law then the conditional use permit is free, they don’t have to change their use”.

Mr. Sharp stated zoning operated perspectively and he said “it operates in the future as well as present but it does not go back and say the use that you’re making now is subject to a whole series of conditions”. He stated the law presumes that eventually non-conforming uses would no longer be in existence and he said “often times they continue for a good long time”.

Alderman Thurston questioned where the “Consistency Review Board” would fit in to the process.

Mr. Sharp stated local actions were subject to consistency review and he said “that is going to be one of the laws city council will need to adopt in order to have an implacable program”. He stated a local action would be an action that adopted a zoning law, conditional use permit, site plan review or any type of discretionary decision made by a board within the city which must be consistent with its own policies.

President Moore questioned if there would be a way to impose a regulation to control hours of use regardless of the non-conforming zoned use.

Mr. Sharp stated to regulate the hours of a business would be “tricky” and he said “it’s legislated rather than handed off to an administrative board that comes up with it on its own; it has made it through the courts satisfactorily”. He cited case law that had been upheld through New York Court of Appeals. Mr. Sharp stated zoning should be able to specify the use but not able to control the internal operations of a business.

Alderman Wagoner questioned if the Council would consider the document this evening and he stated he would like to hear comment from his constituents in the Third Ward.

President Moore said ‘we’re voting on the Final GEIS”.

Alderman Thurston stated she had a lot of questions and she stated she would have a difficult time voting this evening. She questioned if the agreements between the City and O&G/Holcim were in writing.

Legal Advisor Roberts stated an attorney from DOS had advised the City that the agreements with O&G/Holcim should not be included in the LWRP and she stated DOS would not approve the LWRP until the agreements are in place.

President Moore said “I think we should vote on this tonight”. He stated he was also concerned about the agreements and he said “the Department of State is also very interested in having them, so they will happen or we won’t have an LWRP”.

Legal Advisor Roberts said “an approved LWRP”.

President Moore said “we need to show that we have taken a step forward in this agreement and then the next step is, as far as I’m concerned, let’s see the agreements on those transfers and easements”.

Legal Advisor Roberts stated if the LWRP was not approved by DOS then Federal and State actions would not be required to adhere to the city’s local waterfront program.

President Moore said “and potential sources of funding might not be coming as well” and he said “funding is something that I think is very important”.

Alderman Miah stated the process had taken a long period of time and he said “maybe my life, never see the waterfront”.

Alderman Pertilla said “I don’t see anything major that should stop the vote tonight”.

President Moore stated the GEIS had been around for four (4) months and he said “we went through particular pains to make sure it was released and made public”.

Legal Advisor Roberts stated before the Council voted upon the proposed resolution there needed to be an understanding as to the conclusion and she stated she would review the requirements in the regulations for the GEIS. She said “it looked at the causeway, we all know that, we’ve spent weeks, months, years on the causeway, but it looked at the filled out analysis”. Legal Advisor Roberts stated the document looked at the impacts from the change of zoning to traffic, water, sewer, land use, natural resources and parking. She stated if the zoning were amended there would be less traffic, less parking needs and there would be sufficient water and sewer capacity within the system. Legal Advisor Roberts stated the land use impact would benefit the community because the zoning would change an enormous amount of industrial zoned area to a mixed use commercial/residential. She stated the natural resources would also be beneficial by the adoption of the policies that would protect the environment. Legal Advisor Roberts said “they found that really there were no adverse, significant adverse environmental impacts to any of those major environmental areas that they are required to look at”. She stated in respect to the causeway, they recommended that a separate GEIS be looked at and she said “and it was supposed to look at biological surveys, hydrology drainage, work quality issues, air quality conductive impact and also look at a specific alternative, the alternative around L&B”. Legal Advisor Roberts stated she would review the regulations in SEQRA and she said “it requires that you go through the exact things the planners went through”. She referred to the Table of Contents of the November 2009 DGEIS to review the topics reviewed and she said “they looked at the existing conditions and potential impacts and they talked about mitigation if necessary”. Legal Advisor Roberts said “it does comport with the requirements in the SEQRA regulations”.

Resolution.

On motion of **Alderman Stewart**, seconded by **Alderman Miah**, the following resolution was adopted by the following vote:

RESOLUTION NO. 1 September 26, 2011

Adopting the Final Generic Environmental Impact Statement for the Final Local Waterfront Revitalization Program

WHEREAS, by unanimous vote, the Common Council passed a Resolution dated December 15, 2009, directing publication of a Notice of Completion for the Draft Generic Environmental Impact Statement (GEIS) on the Draft Local Waterfront

Revitalization Program (LWRP) and called for a public hearing on the DGEIS and Draft LWRP; and

WHEREAS, after proper notice in the Environmental Notice Bulletin (ENB) on the Department of Environmental Conservation's website and in the Register Star, the public hearing was held on January 20, 2010; and

WHEREAS, the City extended the written public comment period on the DGEIS and Draft LWRP until March 15, 2010; and

WHEREAS, in May of 2011, the Common Council released a proposed Final GEIS which addressed the public comments and also released a proposed final LWRP reflective of changes made based upon public comment and consultation with the Common Council in June and July of 2010; and

WHEREAS, on September 23, 2011, additional text related to potential new and significant information and minor edits to the proposed Final GEIS and LWRP were distributed to the Common Council; and

WHEREAS, Common Council members reviewed the proposed Final GEIS and LWRP between May and September 26, 2011; and

WHEREAS, at Special Meeting of the Common Council duly noticed and held on September 26, 2011, the Common Council members considered the Proposed Final GEIS and LWRP including additional edits distributed on September 23, 2011 and incorporated into the proposed Final GEIS and LWRP; and

WHEREAS, upon consideration of the proposed Final GEIS as edited on September 23, 2011, the Common Council determined that the proposed Final GEIS met the requirements of 6 NYCRR 617.10 and applicable provisions of 6 NYCRR 617.9; and

WHEREAS, the Common Council, will hold a public hearing on the proposed zoning amendments contained in the LWRP upon adoption of the Findings Statement on the FGEIS, pursuant to 6 NYCRR 617.11; and

WHEREAS, the Common Council will require a recommendation from the County Planning Board and City Planning Commission on the proposed zoning changes prior to holding a public hearing as set forth immediately above.

NOW, THEREFORE BE IT RESOLVED, that:

1. The Common Council finds that the proposed final GEIS is Final; and
2. Pursuant to 6 NYCRR 617.12, the Common Council directs the City Clerk to file a Notice of Completion of the GEIS with the Mayor of the City of Hudson, the following involved or interested agencies: the NY State Department of State, the U.S. Army Corps of Engineers, the NY State Department of Environmental

- Conservation, the NY State Department of Transportation, and the Columbia County Planning Commission, and publish such notice in the Environmental Notice Bulletin; and
3. The Common Council directs the City Attorney to prepare a Findings Statement pursuant to 6 NYCRR 617. 11 for consideration and adoption by the Common Council; and
 4. The Common Council directs the City Attorney to seek referrals for recommendations from the County Planning Board pursuant to General Municipal Law section 239-m, and from the City Planning Commission, pursuant to Chapter 325 of the City Zoning Code.

Ayes: President Moore, Aldermen Cheddie, Donahue, Goetz, Miah, Pertilla, Ramsey, Sterling and Stewart. (1,488)

Nays: Alderman Wagoner. (266)

Abstained: Alderman Thurston. (266)

Alderman Donahue, prior to voting on the resolution, said “remarkable document drawn up by remarkable people, aye”.

Alderman Sterling, prior to voting on the resolution, said “I want to thank everybody that’s really added to this document and say the reason that I’m voting yes is because, particularly I want to get this new zoning in place and I think the faster we can do that, the better for the City, aye ”.

Alderman Thurston said “I’m abstaining for the reasons that I’ve stated”.

On motion of **Alderman Wagoner**, seconded by **Alderman Pertilla**, the meeting was adjourned.

City Clerk