

Waterfront Revitalization Subgroup

Meeting #4 Minutes

May 12, 2014 | 1-3pm

Radisson Racine Harborwalk

223 Gaslight Circle, Racine, WI

or Call-In at (888) 291-0310 passcode 7526216#

ATTENDEES

Bruce Keyes, Foley & Lardner (Waterfront Revitalization Subgroup Co-Chair)

David Misky, City of Milwaukee (Waterfront Revitalization Subgroup Co-Chair)

Laurie Parsons, NRT

Margaret Brunette, DNR

Tom German, BCPL

Mike Friis, DOA

Jesse Jensen, DNR

Sharon Gayan, DNR

Eric Nitschke, DNR

Charles "Buck" Sweeney, Axley Brynelson

Mark Thimke, Foley & Lardner

Brad Basten, WisDOT

Darsi Foss, DNR

Ken Potrykus, Foth Infrastructure & Environment

Sheri Walz, WisDOT

Benjamin Benninghoff, DNR

Kathryn Berger, WEDC

Mat Reimer, DNR

Frank Dombrowski, We Energies

Jason Scott, WEDC

State Representative Cory Mason

Rick Fox, NRT

Josh Neudorfer, The Sigma Group

Allen Davis, City of Oshkosh

Tina Reese, Avantti Environmental Group

Christine Haag, DNR (Waterfront Subgroup "Buddy")

AGENDA ITEM #1: Reminder to Sign In

Relevant Attachments: None

Discussion: None

AGENDA ITEM #2: Waterfront Initiative – Summary of March 31, 2014 Meeting

Relevant Attachments: March 31, 2014 meeting notes

Discussion: Co-Chairs Misky and Keyes provided an overview of the March 31 meeting, where the group discussed topics of concern and organized them into four sub-topics: Aging Infrastructure and Legacy Issues; Regulatory Process; Financial; and Contamination Issues.

Action Item	Decision/Recommendation	Dissenting Opinions
None		

Assignments	Timeframe	Person(s) Responsible
None		

AGENDA ITEM #3: Topic – Aging Infrastructure and Legacy Issues

Relevant Attachments:

- March 31, 2014 Meeting Minutes – Agenda Item #3

Discussion: Co-Chairs Misky and Keyes opened the discussion by suggesting that the group discuss the list of aging infrastructure and legacy issues identified by the subgroup at the 3/31 meeting and consider how these issues could be further separated into two categories:

1. Immediate opportunities for Brownfield Study Group Action
2. Larger issues for Brownfield Study Group Action

Discussion occurred on the following:

Seawalls, Breakwaters

- Have received a variety of opinions from DNR on whether a new seawall can replace an old one that has been removed. This is a consistency issue – wall demo and sediment.
- There are conflicts with how DNR wants to approach soft edges: vegetative wall or cover.
- Breakwaters and wave attenuation structures: how to accommodate natural coastal processes but protect capital investment?
- There are secondary uses for some of these structures (pedestrian, fishing) but in some cases the structures are no longer safe enough to make accessible. There was public investment made in these structures at the same time and the check in coming due. The Port Washington breakwater is an example – estimated \$16m to rehab. In other cases, the structure may still be functioning for the original intended purpose but there is a larger cultural need. This is a resource triage issue.

Coordination with Army Corp of Engineers

- There are resource issues with this infrastructure, but timing issues as well. Corp won't schedule work and must do their own studies.
- Package together the big picture issues – delays, assessment of infrastructure needs – for Congressional consideration. (Discovery World - \$6 million delays). Key questions: Is the Corp timely in scheduling work in conjunction with redevelopment? Will the Corp accept non-Corp assessments?
- What is the agency within state government that coordinates work with the Corp? DOA, DOT, Sea Grant, DNR all work with the Corp. Is there some way for the state to speak as a single voice for infrastructure needs and permitting? Does it make sense to create a clearinghouse of projects and sit down with the Corp on an annual basis? How do the communities fit into this process?
- The process of getting funding from the Corp and meeting the match requirement takes years. It takes years to find out if a project is even eligible. Takes a long time to get their attention and once you have it funds are very competitive.

- There are communications issues with the Corp. Should there be a state ombudsman to be the single point of contact?
- This is also an education issue with communities. How does the Corp function? What is available to communities? Maybe we can work with the League of Municipalities.
- Navigability issues: capping depth may not be depth in fact. With the cap the depth may be above navigability depth, so there could be a need to dredge lower. Could go back to Congress to lower the navigability depth. The Corp is not going to maintain these depths, but this limits ability to deal with contamination and other issues. (On the Fox, the footprint was changed as well as the depth. Superfund cap has to be 2 feet below.) This is an issue with changing lake levels – functional depth is not the same. Adaptive management is needed. Increased depth is also necessary to accommodate larger vessels that can cut ice because ice roads are no longer feasible. Waterfront redevelopment is harmed by holding out for the Corp to fund dredging to meet navigability depths for recreational harbors.

Regulatory Process

- DNR metrics are monitored on a quarterly basis. Delays may happen if application is not complete. Any large project requires a pre-application meeting.
- There is a need for a checklist in other parts of the state. (SE has the “Big 4”.) Multiple agency programs or agencies have sign off and this isn’t always coordinated. May not always be delays, but there is a lack of coordination and integration.
- Should we have an application that ensures that program requests come in at the same time? One application that integrates programs? The info, once submitted, may go to different programs but it all comes in as one application. We need a waterfront form across programs. Look at big issues – Public Trust Doctrine – at the beginning.
- Are we doing a good job of educating customers before or as they come in? Do we set expectations?
- SE does a critical timeline for customers with permit dates so everyone knows what the expectations are.

Public Trust Doctrine

- Manage expectations. ID early “What can be put where?” It can’t be “What do I want where?”
- Title companies are realizing there is an issue with omitted lands. State holds in trust the waters of Wisconsin. When the federal government sent surveyors out, the surveyors weren’t always accurate or things changed. The area of land between the OHWM and original meander is omitted land. Title companies won’t underwrite a policy for these lands. One option is to find out where the OHWM is and then go to BLM to have federal interests waived. Other issue is that title to lakebed can’t be privately held.
- OHWM determination by DNR is not necessarily binding.
- Historical determination on permitted uses has been handled on an ad hoc basis. Does this need clarity? Can DNR give some clarity (even though the courts could challenge)?
- Considering the Gillen case, DNR could make no guarantees but DNR could issue a comfort letter stating DNR won’t challenge the use based on an assessment that there are no conflicts with the Public Trust Doctrine. Public Trust Doctrine evaluation process is needed. A landowner could not come in claiming reliance, but there would have assurance that DNR has made the review and found no conflicts (e.g. DNR will not take action but recognizes there could be a public challenge). Process and resources needed.
- There is a hazard in getting an initial answer from DNR – no Public Trust issues – but the answer could change over time. At what point is there a “clean bill of health”?
- Should there be a public comment period for a DNR Public Trust opinion to minimize risk of later public challenge?
- How are Public Trust decisions and data documented for future use so that future projects in same location or adjacent don’t have to go through the same exercise?
- There is no tax parcel number for filled land, so it very hard to find these parcels through register of deeds. Do we need a statewide registry of these “parcels”? We need to ask for consistency.

- Lots of times we don't even know who the riparian owner is. BCPL is asked for an opinion from people who aren't sure if they are the riparian. This is critical information.
- Need to understand the process – who is involved, what are the steps.
- A one-pager would be helpful. People have been working for nine years at Machinery Row (Racine) and at no point did anyone suggest that public trust should be considered. Build this into the DNR of a project. Ask at the beginning not once started.
- The message should be distilled down to the common person.

Dams

- Cross-program issue: when is a dam a dam and when is it a containment structure for contamination?
- Categorization of material: is the material behind the dam sediment or is it soil if it's dry?
- River Alliance has a "how to" guide to dam removal.
- Clarify early the dam safety issues – "here are all the challenges of trying to maintain the dam".
- If dam is part of the redevelopment DNR should make the hazard clarification binding. Changes cost money to the development. We're asking for clarity.

Action Item	Decision/Recommendation	Dissenting Opinions
None		

Assignments	Timeframe	Person(s) Responsible
None		

AGENDA ITEM #45: Next Steps

Relevant Attachments: None

Discussion: Keyes and Misky will take the information presented at the previous three subgroup meetings and will begin to formulate issues statements and recommendations. The full Brownfields Study Group will meet May 23 to discuss findings from all six subgroups.

NEXT MEETING

Date: TBA

Time: TBA

Location or Call-in Info: TBA