

IN THE MATTER OF : *FLOOD MANAGEMENT
EXEMPTION REQUEST*

CONNECTICUT DEPARTMENT OF :
PUBLIC WORKS (Bridgeport Superior
Court, Center for Juvenile Matters) : *MAY 27, 2003*

FINAL DECISION

I

SUMMARY

The Connecticut Department of Public Works (the applicant) has applied to the Department of Environmental Protection (DEP) for an exemption from General Statutes §25-68d(b)(4). This section of the flood management statutes, §§25-68b through 25-68h, requires a state agency seeking a floodplain certification to declare that a proposal promotes long-term non-invasive floodplain uses. The applicant's request for an exemption from this requirement, submitted on behalf of the Connecticut Judicial Branch, has been filed in connection with the planned construction of a superior court and center for juvenile matters in Bridgeport (the project).

Section 25-68d(d)(1) provides in relevant part that the commissioner of environmental protection may approve an exemption from the floodplain certification requirements if, after notice and a public hearing, he determines that the state agency making the request has shown "that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical activity, [and] complies with the provisions of the National Flood Insurance Program...."

A hearing was held in Bridgeport on March 19, 2003. The applicant and DEP staff presented evidence addressing the factors of §25-68d(d)(1). Nearly all of the comments made by public speakers concerned the site chosen for the project and the process that resulted in its selection. The record closed on April 1, 2003, and briefs were filed on April 30, 2003. Stipulated facts and legal conclusions, included in this decision, were submitted on May 20, 2003.

The application satisfies the relevant factors of §25-68d(d)(1). This project is in the public interest. If constructed as proposed, this critical activity will not injure persons or damage property and will comply with the provisions of the National Flood Insurance Program. §25-68d(d)(1). The applicant's request for an exemption from the provisions of §25-68d(b)(4) is granted.

II

FINDINGS OF FACT

1. In a letter dated December 20, 2002, the applicant requested an exemption from §25-68d(b)(4), the section of the flood management statutes regarding long-term non-intensive floodplain use.¹ This request, on behalf of the Connecticut Judicial Branch, was made in connection with the applicant's proposal to build a superior court

¹ This is the applicant's second request. Its original request of April 19, 2002 was withdrawn when this new application was submitted to the DEP. (Ex. DEP-1.)

and center for juvenile matters in Bridgeport. (Exs. APP-1, 1A – 1O², 4, 12, 13; test. 3/19/03³, A. Christian, p. 114.)

2. The DEP published notice of the application and the March 19, 2003 public hearing. Notices were also sent to the mayor of Bridgeport and the appropriate state legislators as required by §22a-6(d). (Exs. DEP- 2–6.)

3. The project, located at 55 Congress Street at the corner of Congress Street and Housatonic Avenue, will involve the demolition of the existing building on the site and the construction of a new courthouse and juvenile center and parking lot. The building on the site was most recently a maintenance garage for the City of Bridgeport Department of Public Works. The site will be remediated and storm water runoff will be reduced. A “river walk” and “pocket park” will also be created on the site that will provide public access to the Pequonnock River. (Exs. APP-1, 1A, 1N, 2A, 2G, 11; ex. DEP-7; test. J. Bolton, pp. 30-33, D. Kohl, pp. 74-77, A. Christian, pp. 114, 116.)

4. The project is adjacent to and within the floodplain of the Pequonnock River. DEP approval of an exemption request is necessary because the applicant could not certify that the proposed activity “promotes long term non-intensive floodplain uses” as required by §25-68d(b)(4). Although no construction activities will be within or affect the floodway, the proposed construction of the court and juvenile center is a more intensive use of the floodplain than previously and is a critical activity as defined in §25-

² The contents of all documents introduced into evidence and marked “confidential” by the parties are not to be publicly disclosed pursuant to a *Protective Order* issued on March 5, 2003. Applicant’s exhibits 1A – 1E and 1G-1N have been marked “confidential”. (This *Order* is a public document in the files of the Office of Adjudications.)

³ All testimony was given during the hearing on March 19, 2003. Citations to testimony will therefore only list the name of the witness and the pages of the hearing transcript on which his or her testimony appears.

68b(4). This critical activity does not constitute a grant or loan, and is not a flood control project. (Exs. APP-1, 1A; exs. DEP-7, 8; test. A. Christian, pp. 111-115, 122.)

5. The cities of Bridgeport, New Haven and Hartford are under a federal consent judgment to improve the physical facilities, programs and management of their juvenile detention centers. This judgment, which is monitored each month by the federal court, resolved a lawsuit brought about due to factors at the existing facilities that include current and projected overcrowding, their age, limited accommodations, and other staffing, support space and functional deficiencies.⁴ The project is needed to support the State's efforts to meet its obligations to juvenile detainees as required by this judgment. (Ex. APP-2C; test. W. Carbone, pp. 20, 23-24.)

6. The current juvenile detention center in Bridgeport opened in 1962, with space for eleven short-term detainees. In recent years, the number of detainees held at the center has ranged from twenty-two to forty. The original building had no facilities for recreation or for education and mental health services. It also had no storage space or room for a secure central control center. Although a temporary building was constructed and the old court building was renovated in 1995 to remedy this situation, the current facility remains inefficient and substandard, particularly in the areas of security and control. Constraints on the available space have been addressed by transferring juveniles to other centers across the state. This is done to balance numbers and keep facilities within population goals set in the consent judgment, but results in some juveniles being detained far from home. (Ex. APP-2C; test. W. Carbone, pp. 18-20.)

⁴ *Emily J., et al. v. John G. Rowland, et al.*, United States District Court, District of Connecticut, Docket No. 3:93CV1944(RNC).

7. The project will relieve the current overcrowding at the existing Bridgeport facility and improve other deficiencies related to juvenile detention in the City, resulting in better recreational, medical and clinical services. The proposed facility has been designed to provide adequate space for a complete range of programs and state of the art corrections services that meet current standards for security and control in detention settings. The new center will eliminate inefficiencies and reduce operating costs. (Exs. APP-1H, 1I, 1J, 2C; test. W. Carbone, pp. 20-23.)

8. The existing building, once the site of a trolley car barn used by the Connecticut Railroad and Lighting Company, is listed on the National Register of Historic Places. The site does not contain any surrounding structures with which any new building would need to be compatible. However, because of its historic significance, the Connecticut Historic Commission (CHC) and the applicant entered into a letter of understanding under which the applicant agreed to take certain actions to mitigate the loss of the structure. These mitigation measures included the archival documentation of the site and current structure, and the preparation of a scholarly study of early twentieth century streetcar railways in Connecticut with an emphasis on Bridgeport and in a presentation package easily accessible to the public. The applicant has also designed the planned river walk and park to include signage and materials explaining the historic nature of the site. The archival documentation and the study have been completed; the materials for the river walk and park have been designed and will be part of the project. The CHC is satisfied that the applicant has fulfilled all of its obligations under the letter of understanding. (Exs. APP-1N, 2A, 2I, 6, 7, 8, 9, 11; test. J. Bolton, pp. 31-34, J. Shannahan, pp. 93-100.)

9. The shoreline of the Pequonnock River at the location of the project is currently inaccessible to the public. The river walk and park will provide access and include amenities to enhance the area such as a lawn and landscaping, benches, a bilingual information plaque, trash receptacles, and a decorative raised trolley rail. The public will have access to the River for fishing and other recreational activities. This area will extend a distance of 305 feet along the River, and is compatible with the goal of the City's River Recapture Master Plan to provide public access to the River. The area will also provide access for bikers and others using the proposed Berkshire Right-of-Way Preservation Bikeway along Housatonic Avenue. (Exs. APP-1, 1N, 2A, 3, 11; ex. DEP-16; test. J. Bolton, pp. 30-35, D. King, p. 87, M. Welch, p. 109.)

10. The proposed improvements within the public access area do not include any work, such as dredging or placement of fill, water ward of the high tide line or within tidal wetlands with the exception of manually removing non-native invasive plant species and existing debris located within the area. Any work beyond this would require the applicant to obtain appropriate permits. (Exs. APP-1N, 2A; ex. DEP-16.)

11. Extensive testing of the site⁵ revealed widespread pollution, including petroleum, metals and other contamination of the groundwater and soils, and pollution associated with chemicals and fuels stored on site and in underground tanks. The entire site has been filled with a variety of materials such as coal, coal ash, crushed asphalt, brick, concrete and other types of "urban fill". Pollutants such as light non-aqueous phase liquid were found at levels above the remediation standard regulations (RSRs) at

⁵ The applicant, through its contractor, conducted a Phase I, Phase II and Phase III Transfer Act Site Assessment. (Ex. APP-2D.)

several locations throughout the site. (Exs. APP-2D, 3; test. R. Stewart, pp. 48-54, R. Prybylo, pp. 60-65.)

12. A remedial action plan has been developed to remove the contaminated soils and remediate groundwater contamination to the RSR standards. Before the existing structure is demolished, materials contaminated with asbestos, lead pipes and other regulated hazardous materials will be removed. During site remediation, the applicant will install perimeter silt fencing to protect existing shoreline areas and will shield storm drainage structures with hay and filter fabric. Clean fill for the foundation of the buildings will replace the contaminated fill. This fill will be tested to ensure that it is clean enough to use at the site. (Ex. APP-2E; test. J. Bolton, p. 29, R. Stewart, pp. 53 - 56, R. Prybylo, pp. 60-65.)

13. The applicant will remove and properly dispose of hazardous substances contained in the existing building and other materials such as the bituminous pavement that covers the site. Waste stockpile areas will be used for the temporary storage of excavated contaminated soils pending transport to off-site disposal venues. These stockpile areas will be located above the 500-year flood-plain. (Exs. APP-1M, 2E; test. R. Stewart, pp. 56-58. R. Prybylo, pp. 62-65.)

14. The existing site is completely impervious to rainwater infiltration, resulting in runoff of untreated storm water into the adjacent Pequonnock River, either directly by sheet runoff or indirectly through an old storm water drainage system. The problem of storm water runoff will be addressed in two ways. First, the amount of impervious cover will be reduced with the addition of approximately three quarters of an acre of grass and vegetative cover. This will result in a reduction in the peak flow rate of

storm water from the site. Second, storm water quality will improve with the development of a storm water drainage system that will incorporate the construction of new catch basins, storm water treatment systems and storm sewer piping. This storm water system will protect the Pequonnock River and associated wetlands by collecting sediments and their pollutants from the site prior to discharging storm water runoff from the site. Erosion and sedimentation control measures will be employed both during and after construction. The site will be stabilized after construction to maintain control measures. (Exs. APP- 1, 1D, 1E, 1F, 2G, 2H, 3, 11; ex. DEP-16; test. J. Bolton, p. 29, D. Kohl, pp. 72- 77.)

15. The site is not subject to riverine flooding and the project would have no impact on flood elevations within the River. There is no discernable velocity or wave action associated with flooding on the site. Any flooding in this area would be the result of coastal storm events and their associated high tides. Clean fill placed in the area in connection with the project would not displace meaningful flood storage or the conveyance capacity of the River. (Exs. APP-1, 2G; exs. DEP-7, 8; test. A. Christian, pp. 116-118.)

16. The floodplain in which the project will be located is delineated as both an A-Zone (100-year flood) and B-Zone (500-year flood) on the City of Bridgeport National Flood Insurance Program (NFIP) Federal Insurance Rate Maps (FIRM). The NFIP requires that any building located in a floodplain be constructed at least one foot above the levels for a 100-year flood. The State requires protection from a 500-year flood for a critical activity. (Ex. APP-1; ex. DEP-7; test. A. Christian, pp. 113-114, 121-122.)

17. Approximately .84 acre-feet (1349 cubic yards) of clean fill will be used to place the proposed structures above the 100-year flood elevation. The base elevation of the 100-year flood at the site is 9.62 feet North American Vertical Datum of 1988⁶. The first floor of the proposed buildings will be at an elevation of 10.65 feet. The second floor of the buildings, where the detainees will be housed, will be at an elevation of 24.65 feet. Access to the new buildings requires that the existing site elevations be raised to meet current access standards to facilitate building use. Filling other portions will control surface drainage. These new elevations will meet existing grades at the property boundaries. (Exs. APP-1, 1A, 1B, 1C, 1H, 1I, 1J, 1K, 2B, 2G, 2H, 5, 11; ex. DEP-7; test. R. Meehan, pp. 43-47, D. Kohl, pp. 79-80, D. King, pp. 88-91, A. Christian, pp. 118-119, 122.)

18. The Federal Emergency Management Agency (FEMA), which administers the NFIP, has confirmed that the proposed design of the buildings would remove them from the 100-year floodplain and will therefore comply with the minimum requirements of the NFIP. The applicant obtained a “Conditional Letter of Map Revision based on Fill” (CLOMR-F) from FEMA, which will become a “Letter of Map Revision based on Fill” (LOMR-F) upon submission of the as-built plans to FEMA. The LOMR-F will effectively remove the area of proposed fill from the 100-year floodplain on a revised NFIP map. (Exs. APP-1, 2G; exs. DEP-7, 8; test. D. Kohl, pp. 77- 80, A. Christian, pp. 111, 119-121, 125-128.)

⁶ Surveyors use either of the following to record elevations: the National Geodetic Vertical Datum of 1929 (NGVD) or the North American Vertical Datum of 1988 (NAVD). Conversions of either measurement standard on a map are the same reference point or location. (Exs. APP-2B, 5; test. R. Meehan, pp. 44-47.)

19. In order to meet the requirements for a 500-year flood, the buildings' foundation will be flood-proofed. The foundation will be reinforced to withstand forces generated by such a flood. The 500-year flood plain elevation is 12.12 feet; the foundation wall will be extended past the first floor elevation to 12.65 feet. To complete the flood barrier created by the foundation, manual floodgates have been incorporated into the design at every building entrance on the ground floor. The DEP has reviewed the project to ensure that the buildings would be safe from damage due to flooding, up to and including a 500-year flood event. (Exs. APP-1A, 1B, 1C, 1K, 1L, 2B, 2H, 11; exs. DEP-7, 8; test. G. Rucci, p. 68, D. King, pp. 84-87, A. Christian, pp. 119-124.)

20. The facility's above ground oil tank, emergency generator and electrical service transformer will be located at elevation 12.25 feet, above the 500-year flood elevation. Electrical outlets and other utilities will also be above the 500-year flood elevation. These items will be protected from both 500-year and 100-year flood events. (Exs. APP- 1, 2H; test. D. King, pp. 82, 89-92.)

21. The Judicial Branch has created an emergency operations plan in case of a flood. Because there is a juvenile facility in Bridgeport, there is an active evacuation plan in place. Complementary and comprehensive procedures have been developed to ensure the safe evacuation of staff and juvenile detainees in the case of a flood. The DEP has reviewed the flood contingency plan for this project and considers it acceptable. (Ex. APP-2F; test. G. Rucci, pp. 66-69, A. Christian, pp. 118, 123-124.)

22. The Judicial Branch conducted an environmental assessment for the proposed project. The Office of Policy and Management reviewed the related materials

and, in a January 11, 2002 memorandum, provided its determination that a finding of no significant impact was appropriate. (Ex. DEP-22; test. G. Rucci, pp. 70-71.)

23. The project is located within the “coastal boundary” as that term is defined in §22a-94 of the General Statutes. This statute is part of the Coastal Management Act (CMA), §§22a-90 through 22a-112, which is intended to protect coastal resources and promote certain water dependent uses for development or re-development of waterfront sites. The four major coastal management issues or areas of concern with this project are: water dependent uses; cultural resources; protection of coastal water quality; and consistency with coastal hazard areas policies. There are no adverse coastal impacts associated with the site. (Exs. DEP-10, 12, 16; test. M. Welch, pp. 102-107.)

24. Because it abuts the Pequonnock River, the site is a waterfront site. The river walk and park will be an acceptable level of a water dependent use for this site. (Ex. DEP-12; test. M. Welch, pp. 104-105, 108-109.)

25. Mitigation measures to preserve the site’s value as a cultural resource have been completed or will be implemented. This aspect of the project is therefore not an issue for the DEP from a coastal management perspective. (Ex. DEP-12; test. M. Welch, pp. 105-106.)

26. The project will result in more permeable cover on site and will include appropriate storm water management practices. It will therefore not adversely impact coastal water quality. (Ex. DEP-12; test. M. Welch, p. 106.)

27. The design of the project will remove the buildings from the coastal hazard area, eliminating any increased risk to life or property. The remaining activities in the coastal area include parking, landscaping, and the public access area, none of which

would be considered as increasing risk to life and property. (Ex. DEP-12; test. M. Welch, pp. 106-107.)

III

CONCLUSIONS OF LAW

The commissioner has the power and duty to coordinate, monitor and analyze floodplain management in the state. General Statutes §25-68c. This responsibility includes the certification of state agency activity or critical activity within or affecting a floodplain pursuant to §25-68d(b) or the approval of an exemption from such authorization in accordance with §25-68d(d).

Section 25-68d(d)(1) provides that the commissioner, after notice and a public hearing, may approve an exemption request if he determines that the planned project is in the public interest, that persons or property in the area of the project will not be injured or damaged by the proposed activity and that the project complies with the provisions of the National Flood Insurance Program. The applicant has presented substantial evidence to demonstrate that its exemption request satisfies these criteria. As confirmed by DEP staff, there is also no coastal management issue associated with this application for an exemption from the provisions of §25-68d(b)(4).

A

THE ACTIVITY IS IN THE PUBLIC INTEREST

An applicant must first demonstrate that a project would be in the public interest. The phrase “public interest” is not defined in §25-68d(d)(1). The meaning of this term as used in this statute must therefore be interpreted in order to decide whether the evidence presented by the applicant satisfies this condition.

Section 1-1(a) of the General Statutes provides that “[i]n the construction of statutes, words and phrases shall be construed according to the commonly approved usage of the language.” It is appropriate to consult a dictionary to determine the common understanding of a term. *State v. Albert*, 252 Conn. 795 (2000), citing *State v. Payne*, 240 Conn. 766 (1997). Black’s Law Dictionary defines “public interest” as “the general welfare of the public that warrants recognition and protection” and “[s]omething in which the public as a whole has a stake...an interest that justifies governmental regulation.” Black’s Law Dictionary 1244 (7th ed. 1999). In addition, although our Supreme Court has recently reconsidered the “plain meaning rule”⁷, the Court noted that this “does not mean that [the Court] will not in any given case follow what may be regarded as the plain meaning of the language.” *State v. Courchesne*, 262 Conn. 537, 573 (2003).

This agency has used the dictionary definition of “public interest” in another application for a §25-68d(d) floodplain exemption. *In the Matter of State of Connecticut Department of Economic and Community Development on behalf of New London Development Corporation*, Final Decision, December 3, 1999. In determining the public interest in that case, the Commissioner found that an evaluation of that issue involved a “complex balancing” of a number of competing factors. The Commissioner concluded that the project in that case, the construction of a hotel, was in the public interest because the goal of the project that included the hotel was to promote economically viable development and its associated benefits in the City of New London. To ensure that the public interest was well served, the Commissioner conditioned his approval on a number of factors, including wetlands protection measures, the provision of public access to the

⁷ This rule is generally understood to mean that where statutory language is clear and unambiguous, the court will turn to that language for its interpretation of a word, term or phrase.

Thames River, and consistency with the environmental impact evaluation prepared for the site.

In this exemption request, the applicant and DEP staff presented unchallenged testimony and documentary evidence that this planned project is necessary. The new courthouse and juvenile center will improve conditions and services at the existing Bridgeport juvenile facility and improve other deficiencies related to juvenile detention in the City. These improvements are in accordance with a consent judgment ordering the state to improve its juvenile detention facilities. The applicant's response to this judgment is in the public interest.

The project will produce environmental benefits. Hazardous materials currently at the site will be removed and contaminated soils will be remediated. By increasing permeable cover and including an appropriate storm water drainage system, the project will reduce storm water runoff to the Pequonnock River and improve coastal water quality.

The project is consistent with the goals and policies of the Coastal Management Act (CMA), which recognizes that "there is a state interest in the effective management, beneficial use, protection and development of the coastal area...." §22a-91(3). The proposed river walk will provide public access to the Pequonnock River. The recreational opportunities presented by this walk make it an acceptable water-dependent use for this site as specified in the CMA. Mitigation measures approved by the Connecticut Historic Commission, including on-site signs and materials explaining the historic nature of the property, will ensure that the project is also consistent with the policy of CMA concerning cultural resources. The project will also comply with the

CMA coastal hazard policy by removing buildings from a coastal hazard area and eliminating risk to life and property.

Sworn public speakers commented on the site chosen for this project and the process that led to its selection. These speakers argued that neither the site nor the selection process is in the public interest. Although compelling, this testimony is not relevant to the issues before me. Section 25-68d(d)(1) does not ask the Commissioner to determine if a *site* of a planned project is in the public interest, rather, it calls for a decision as to whether that *project*, here the construction of a courthouse and juvenile detention center, is in the public interest.

The design specifications of a planned project, which are obviously tied to the site, are part of an exemption decision. A project site must therefore be determined at the time the exemption application is made. Thus, concerns expressed about the site location and the siting process do not apply to a decision as to whether the applicant has presented sufficient evidence to support an exemption request pursuant to §25-68d(d)(1). I must act within the bounds of my limited statutory authority; my inquiry in this proceeding is therefore limited to the parameters of the statutory standard governing a request for an exemption. See *Nizzardo v. State Traffic Commission*, 259 Conn. 131 (2002).

B

***THE ACTIVITY WILL NOT INJURE PERSONS OR DAMAGE PROPERTY
IN THE AREA OF SUCH ACTIVITY***

Section §25-68d(d)(1) requires an applicant to show that a project will not injure persons or damage property in the area of the planned activity. The applicant has provided sufficient evidence to satisfy this second criterion.

Because the Pequonnock River is not subject to riverine flooding at the location of the project, there is no significant impact associated with the loss of flood storage as a result of the proposed development within the floodplain. Regs., Conn. State Agencies §25-68h-1.⁸ The applicant has taken reasonable steps to protect persons and property from potential flood damage. The structures on the site will be placed above the 100-year flood elevation and they will be flood-proofed above the level of a 500-year flood. DEP flood warning systems will be followed and an evacuation plan is in place. The project will not result in injury to persons or damage to property in the area of the planned activity.

C

THE ACTIVITY COMPLIES WITH THE PROVISIONS OF THE NATIONAL FLOOD INSURANCE PROGRAM

The National Flood Insurance Program (NFIP) requires that any building in the floodplain be constructed at least one foot above the level of a 100-year flood. 44 CFR §60.3 (1997). The State of Connecticut requires protection from 500-year flood levels for a critical activity. Regs., Conn. State Agencies §25-68h-2.

The proposed structure has been designed with a base elevation more than one foot above the elevation of the 100-year flood. The dry floodproofing incorporated into the plans for the building will protect against a 500-year flood. This proposed project

⁸ Section 25-68h-1 defines “significant impact” as “any activity that would create: (A) A five percent increase in peak flow rates at any downstream point; (B) A twenty percent increase in flow velocities or a change that allows a stable condition to become unstable; (C) An activity that contributes to an unacceptable cumulative impact; (D) Any activity that causes flooding on developed property not currently subject to flooding; [and] (E) An activity that could cause a downstream dam to become unsafe”.

exceeds the requirements of the NFIP; it therefore meets the final statutory criterion of compliance with the minimum provisions of the NFIP. §25-68d(d)(1).

IV

CONCLUSION

The applicant has provided substantial evidence to demonstrate that the proposed project is in the public interest, will not injure persons or damage property in the area of such activity, and complies with the provisions of the National Flood Insurance Program. The applicant has satisfied the provisions of §25-68d(d)(1). There are no coastal management issues associated with this application. Accordingly, the applicant's request for an exemption from the requirements of §25-68d(b)(4) is *granted*.

May 27, 2003
Date

/s/ Janice B. Deshais
Janice B. Deshais, Hearing Officer

P A R T Y L I S T

*In the matter of Connecticut Department of Public Works /Bridgeport Superior Court,
Center for Juvenile Matters (Flood Management Exemption Request)*

PARTY

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