

Gowanus Canal Community Advisory Group – Real Estate Committee

June 7, 2011 – Meeting Summary

Attending: Nathan Elbogen, John Shapiro, Buddy Scotto, Katia Kelly, Natalie Loney, Brendan Aguayo, David Krieger, Maryann Young, Marlene Donnelly, Rita Miller, Victoria Hagman

Facilitator: Jeff Edelstein

Jeff Edelstein opened the meeting with a brief summary of the agenda, to include: outstanding questions regarding bulkheads, follow-up questions to the FS presentation, the information-gathering proposal that Michelle De La Uz has brought to the Furman Center and a presentation by John Shapiro regarding a proposed planning studio at Pratt.

DCP Questions

Jeff reported on the Department of City Planning (DCP) questions generated by the RE Committee and submitted to the agency. Last week he spoke with Jen Posner on the telephone and is writing up the answers, which will be reviewed by DCP and then circulated to the CAG. Jeff gave a general overview of the DCP comments, especially with regards to bulkheads, the design of the cleanup, and the impact that zoning may have on the level of the SF cleanup.

Remediation of Upland Sites

Natalie reminded the committee that the EPA cleanup will be based on risk, not current or future uses. The RI determined the nature and extent of the risk, and the goal of the cleanup is to reduce (not eliminate) risk, bringing the risk to an acceptable level. Further, the City and State do not have to adhere to any EPA recommendations for upland sites, outside of preventing the recontamination of the canal.

The PRPs may come up with a remedy that prevents further contamination of the canal, which is the primary goal of the EPA, though the remedy may not require total remediation of upland sites. A likely scenario will involve a combination of engineering controls (dredging, new bulkhead construction, cutoff walls, etc.) to prevent leakage that would recontaminate the waterway.

The upland portions that are the most contaminated are the former MGP sites. As an example of a possible mitigation scenario, Natalie pointed to the Public Place site. Here, the mitigation will most likely require the construction of a cutoff wall, the removal of material and the addition of recovery wells. Something that National Grid (the PRP) will want to avoid will be the possibility that contaminants will move away from the site. Though DEC is the agency with jurisdiction over the chosen remedy of the site, National Grid is at the table with EPA and working to find a remedy that will not pose a problem

in the future. Once the remedy is in place, EPA will review the sites every 5 years to ensure that the remedy has been implemented and functioning as it should.

There is still a great deal of concern about the risk to public health on sites that have already seen some form of remediation, now viewed as inadequate such as the Lowe's site.

Questions:

At what point can EPA make a claim that the upland sites are a real risk to public health?

As no company or property owner in Gowanus is going to request that EPA assess the upland sites for risk, can the State?

The development of the Public Place site seems to be moving forward, though the health risks are not known; what is the liability of the City or State in this case?

When a property owner or PRP provides a mitigation or recontamination prevention plan to EPA, what is the agency process for approving the remedy? Can the EPA weigh in on the effectiveness of proposed remedies outside of the recontamination of the canal – to take a more holistic approach?

What resources are available to communities to ensure that EPA and the other agencies stick around to monitor recontamination and other risks post-remediation?

The Public Place site remediation plan is moving along; will the community see the design plan that is prepared for EPA? Can the CAG ask National Grid and DEC to present the remediation plans for some sites along the canal – the MGPs in particular?

The community views DEC's voluntary cleanup standards to be inadequate, why are they still being used?

Rezoning of Upland Sites

Jeff shared that DCP may revisit the rezoning plan once they know more about EPA's plans. The DCP is reluctant to move ahead with independent sections of the rezoning, like the 4th Avenue piece. The agency believes that the rezoning needs to be approached as part of a comprehensive overall plan, and that individual sections need to be considered in that broader context.

The degree of Environmental Review that may or may not have occurred on specific sites that fall within the DCP rezoning footprint, sites that were given variances, or were otherwise rezoned continues to be a concern of this committee.

With regards to the state of the rezoning, the committee again voiced a need to hear from DCP about as-of-right development decisions. Without a concrete statement from DCP,

there is a fear that nothing will be developed for the next 10 years. Natalie clarified that SF only concerns the canal and not upland sites, therefore EPA could not recommend to DCP that rezoning for residential uses is a bad idea.

DEC and MGP Sites

Jeff has been in contact with Gardiner Cross, who is the DEC lead on Manufactured Gas Plant sites, and with Gary Kline who handles CSOs. Gardner is willing to come to a meeting of the full-CAG to address concerns regarding MGP sites.

With a vote before CB6 planned for June 8th, there was some discussion regarding the Whole Foods site. EPA will definitely be interested in the Whole Foods site plan, as the property meets the canal edge. EPA will be able to review the site remediation to analyze the prevention of recontamination as well as possible mobile migration from the site, but will not necessarily give formal comments.

Questions:

Without a remedy design in place for the canal, can EPA review the mitigation plan for the Whole Foods site?

Can Whole Foods do whatever it wants now, or does EPA have any say?

If new edge treatments are preferred, like the Sponge Park proposal, shouldn't Whole Foods be considering these options?

Will the Whole Foods site be impacted by the recent requirement that new waterfront development now requires a 40ft. boundary if the proposal has a change in use?

What can EPA do about the natural and expected movement of groundwater on the Whole Food site?

EPA & the Feasibility Study

The EPA expects to complete the Feasibility Study (FS) phase of the SF process by the end of 2011. The proposed remedy should follow within six months, and be made available around June 2012. A recap of the phasing and goals of the SF process:

1. Remedial Investigation – Is there a risk to public health? In Gowanus, yes.
2. Feasibility Study – What are the feasible options for addressing the risk?
3. Proposed Plan – Reduce risks to level that is “acceptable”

The feasibility options being investigated to address the pollution of the canal through groundwater, soil contamination and source areas are:

1. In situ treatment
2. Removal
3. Encapsulation

Portions of the canal will most likely require all three treatments. Among the features of the canal that EPA will be considering during the FS are the bulkheads, the water edge, and the grades in the canal that the USACE recommended be adjusted. According to Natalie, nothing is off the table, though with so many moving parts, the EPA is unable to be specific about what is considered feasible at this time.

Typically the EPA completes the RI and FS at the same time and presents the findings of each together. With the case of Gowanus, the process has been staggered to create space for more community engagement. Following the FS, the EPA will use 9 criteria to design and evaluate the preferred remedy. During the FS process, the community concerns are being heard and considered by EPA, but the public is not able to directly inform the process until the public comment period following the announcement of the preferred remedy. Once the proposed remedy is chosen, there will be a public meeting to present the plan, then a public comment period with a public meeting will follow. At this point a stenographer will create an official record.

At other sites EPA has considered bioremediation and phytoremediation, but in the case of Gowanus, these are likely to be unworkable remedies given the nature and extent of the pollution. Natalie has agreed to provide an example of a proposed remedy and to circulate the type of plan that the CAG can expect from the process.

Questions:

If the community pushes for soft edges along the waterway, will that impact the chosen remedy?

How does EPA get or even measure Community Acceptance of the plan, as this is one of the criteria used to design the preferred remedy?

Bulkheads and Filled Basins

There are sites along the canal that will require the repair, restoration and even remediation of the bulkheads. Other sites may not be contaminated, and therefore are not part of the SF. Historical significance will not protect bulkheads that are contaminated or allowing for recontamination of the waterway. EPA's approach will be to follow through with the FS, then the proposed remedy, and then to begin tackling the more unclear legal issues, like bulkhead ownership.

Some sampling has occurred at sites on the filled basins. EPA has identified that the 1st and 5th Street Basins have contamination.

Questions:

Who owns the bulkheads? Who is responsible for the repair and replacement of the bulkheads? Could money from the SF go to shoring up degraded bulkheads?

How will rising tide/flood lines changes alter ownership? Will this become a public trust issue?

Future & Current Land Use

Natalie again addressed the issue of future land use, reminding the group that the cleanup has nothing to do with land use. However, future land uses will be required to prevent recontamination of the canal. Existing land uses that require different edges, like the hard bulkheads required for marine uses, will be considered by the agency when designing the remedy.

The essence of Superfund is to identify risk through specific pathways and to remediate to a degree in which those pathways are safe. In the case of Gowanus, the risk pathways identified are eating contaminated fish/crabs, swimming and local flooding. The hazardous materials in the canal are driving the remediation, not the water quality and not the land use.

Some upland sites that may have leaching materials, but are not identified PRPs, may not become liable parties. For example, the American Can Property will not be liable, as the current owner purchased the building only, and not the company. At this time, EPA has not identified any situations in which the contamination is coming from sites not controlled by PRPs, but the agency is still looking for PRPs. Additionally, the SF law requires the PRPs to pay for the cleanup, whatever the cost, to bring about a risk-free standard.

Pratt Planning Studio Proposal

John Shapiro from Pratt Institute's Programs for Sustainable Planning and Development (PSPD) reached out to the committee proposing that the CAG be a client for a planned Gowanus studio. The PSPD studios generally have a community group as a client, with the expectation that the academic exercise will have an actual impact and be useful to community groups. The Gowanus studio will most likely generate deliverables for the client that may include a briefing book, an interim report, a final report and a powerpoint presentation. Data would be collected and analyzed by students, then turned over to the group as a resource. The CAG would not have to endorse the project or the final product, but members would represent themselves as stakeholders in interviews, etc.

There were concerns about this slowing down the work of the CAG and about requirements that it would impose on the CAG.

Most recommended using the CAG as a vehicle to getting volunteer clients as opposed to having the full-CAG as a client. John was asked to draft a proposal inviting CAG members or member organizations to serve as clients and to send it to Jeff to circulate.