BEACH PROTECTION PLAN RECENT HISTORY

SEPTEMBER 4, 2014

1. Charles Rooney Senior VP of T&M toured the beach with Frank Ricciotti Wednesday. He has been in touch with Special Legal Counsel Rob Andrews with respect to his preliminary findings based on that physical review and his plan review.

2. Mr. Rooney has requested from the Army Corps a number of items missing from the plan documents provided.

3. Title 12 requires a filing if a taking as well as a 14 day notice within which time the property owner may respond.

4. No filing appears to be imminent and will not likely take place until the Corps is ready to go to bid.

5. The Corps does not appear ready to go to bid because the drainage engineering is not finished.

6. Our Attorney has conversed with Commissioner Martin.

7. Commissioner Martin will be receptive to another meeting when we have completed our engineering analysis.

8. Should we have to act because of an unexpected filing we will be ready immediately to respond legally to seek relief.

SEPTEMBER 18, 2014

1. Margate has received revised engineering plans for the Army Corps projects but we still have some serious questions about those plans. Our consultant engineer has forwarded his comments on the City engineer who is in the final stages of review and will notify the DEP of Margate's continuing concerns and questions this week.

2. Our consultant engineer prepared a report for our special counsel and they and I met on Friday September12. Among the findings based on the review of the 18 year old Army Corp report that led to this project are the following: (a) the study apparently did not account for Margate's pre-existing bulkhead system in its analysis; (b) the study failed to consider the possibility of widening and heightening the beach berm with the same amount of sand instead of using that sand to construct dunes; and (c) the study did not appear to account for potential street-end drainage consequences.

3. Meetings are being scheduled with appropriate state representatives to express our ideas for an alternative solution.

4. We have obtained information that the project has been placed out to bid by the Army Corps with a bid opening scheduled for October 21, 2014.

5. No notice has been received from the DEP regarding legal action involving city owned beach property.

6. In the event the DEP or any other party takes legal action to invoke its powers of eminent domain over the portions of the beach owned by the city, we are prepared to meet immediately to consider an action plan that is conceptually in place.

OCTOBER 2, 2014

1. As noted previously, the Army Corp of Engineers has put the Absecon Island Protection Project out to bid, with bids to be opened on October 21, 2014. Despite that fact, it does not appear that project commencement will occur within the next 30 days.

2. On September 22, 2014, the Mayor received correspondence from Commissioner Martin of the Department of Environmental Protection, again requesting that the City voluntarily grant easements where required for the project. That letter also stated that, in the absence of voluntarily granted easements, the State would begin the statutorily required condemnation process which it would initiate by contacting the City through its appraiser within the next 30-60 days. Following that initial contact, the City and appraiser would arrange mutually convenient times for inspection and appraisal of affected lands. Sometime after, the State would issue a written offer stating a specific amount of compensation available for the to-be condemned lands. After this written offer is received by the City, the State and City are required to negotiate for 14 days before the State can commence formal condemnation proceedings. Therefore, it appears as though it will be a minimum of 45 days before the negotiation process is completed.

3. On September 22, 2014, we received a final report from our consultant engineer. In that report, our engineer confirmed the following: (a) the study apparently did not account for Margate's pre-existing bulkhead system in its analysis; (b) the study failed to consider the possibility of widening and heightening the beach berm with the same amount of sand instead of using that sand to construct dunes; (c) the study did not appear to account for potential street-end drainage consequences; and (d) the study has underestimated ongoing operations and maintenance costs associated with the project that would be the responsibility of Margate.

4. Meetings with county and state level officials began this morning. During the meetings, we have begun the process of presenting the findings of our engineer in an effort to gain consideration of alternatives to the project. These meetings will continue over the next several weeks.

5. As noted previously, we are prepared to meet immediately if necessary to consider strategies to respond to any unanticipated or earlier-than-anticipated action by the State.

OCTOBER 16, 2014

Consistent with the plan as outlined over the previous six weeks, we have sought and received the support of state and county officials in order to ask the DEP and Army Corps of Engineers to consider reasonable alternatives to the planned dunes on Margate beaches while not jeopardizing federal funding for the State or other Absecon Island communities. We thank Senator Whelan, Assemblymen Brown and Mazzeo and Atlantic County Executive Levenson for assisting us in approaching the DEP and the Army Corps.

As we prepared to engage with the Army Corps and the DEP, we became aware of the filing by DEP of Administrative Orders which purported to effectuate a taking of city-owned beach property for the dunes project. It is our position, that these Orders have no legal effect whatsoever because DEP did not follow the statutory process to take our land. Through the skill of our counsel, we have secured from DEP an agreement that if litigation ever occurs over the issue of taking any of our land, the City has retained all of its substantive and procedural rights to object to the taking, and has not consented to any legal action by DEP.

Our next step will be to engage, along with our elected representatives, with the DEP and Army Corps in order to discuss reasonable alternatives to the dunes project as designed which will protect our citizens while not jeopardizing any federal funding. We will continue to make bi-weekly reports on our progress.

NOVEMBER 6, 2014

Consistent with our ongoing strategy we have through special Legal Counsel notified the Army Corps of Engineers that we will not voluntarily give beach easements to them or the NJDEP for beach fill and dune construction as per current plans. In addition, we have discussed with the Army Corp our desire for a meeting to present alternate options for the project as constructed through Margate considering our 8,400 feet of ocean bulkhead. We indicated to them we not only represent Margate in this request but we are supported by elected leaders at the county and state level who wish to attend as well. The Army Corps has been receptive to our inquiry. A meeting is likely to be arranged at the highest Army Corps levels through our legal counsel.

We have asked that the technical meeting arranged by the DEP to discuss engineering issues be postponed and scheduled to a time when we can have legal representation. This will offer us continuity in all phases as we pursue alternatives as well as our legal options if necessary. DEP has agreed to reschedule this meeting.

Finally, we have arranged a closed legal strategy update meeting with our Special Legal Counsel for Monday morning November 10. Each Commissioner is expected to attend. The non-binding referendum on November 4 confirms the desire of the voters to have us continue to pursue the legal and engineering strategies thus far undertaken and gives us renewed encouragement to explore all avenues including legal action at crucial steps in the path as necessary. We are convinced that this united front of citizens, professional staff and Commissioners gives us the best chance for success. Solidarity conveys strength, determination and conviction.

NOVEMBER 20, 2014

A legal strategy session was held on Monday November 4, 2014 at which time the Commissioners were briefed on the status of communications with attorneys for the State of New Jersey and the Army Corps of Engineers. Future project meetings involving the City of Margate will be attended by lawyers representing Margate. It is still our preference that a negotiated solution can be achieved but there are a number of legal avenues that may be pursued should the state press forward and represent to the Army Corps of Engineers that it has acquired the necessary easements and met all of its obligations. There is reason to believe that the state is taking the position that they have emergency powers to take through eminent domain the easements they need to undertake the beach fill without going through the statutory procedures otherwise required for eminent domain. This is a position that likely affects hundreds of properties up and down the coast for it is our understanding that the state needs easements from many oceanfront property holders, both public and private entities.

Since November 6th we have spoken to Congressman LoBiondo about our position and he is attempting to arrange a meeting with the Army Corps. It is likely that such a meeting will have to be arranged through Commissioner Martin and the NJDEP as the state is the contracted local agent with the Army Corps.

On November 18 Business Administrator Richard Deaney met with representatives of a citizens group (MCQBP) who shared information they gathered. This information has been shared with attorneys for the city. Information sharing supports the concept of consensus and solidarity with respect to common outcome expectations while still allowing for individual differences of favored results.

The City of Margate still has significant drainage issues with the plans as presented and to date these issues remain unresolved.

Another meeting with our attorney is expected to take place in a closed session meeting as part of the regularly scheduled Commission meeting today.

NOVEMBER 24, 2014

The City of Margate today filed suit in the United States District Court of New Jersey to enjoin the US Army Corps of Engineers and the New Jersey Department of Environmental Protection from proceeding with the proposed dune construction project on the city's beaches. This afternoon the Federal Court entered a Temporary Restraining Order prohibiting the Army Corps of Engineers and the NJDEP from proceeding with awarding any contracts or beginning any construction until the underlying legal issues are resolved.
As stewards of the public trust, the Commissioners seek to achieve the strongest and best means to protect life and property in future storms. The proposed dune construction is not the best option to protect Margate. The dune project is based on an eighteen year old study that failed to consider meaningfully any alternative to dune construction. Despite these deficiencies in the proposed project, the Army Corps and DEP have taken actions that indicate that construction is imminent. The City stands ready to negotiate in good faith with the Army Corps and the DEP in order to explore better alternatives. Those negotiations, however, have no meaning if they are drowned out by the sound of bulldozers disrupting our beaches without our consent. Accordingly, consistent with the will of the citizens expressed at the polls on two occasions, we have initiated these proceedings.

December 4, 2014

On this day the parties appeared in US District Court before Judge Renee Bumb according to the Temporary Restraining Order signed on November 24 by Judge Bumb. After hearing the parties, Judge Bumb approved an interim resolution of our litigation to stop the construction of dunes on the beaches of Margate. We are pleased with the result because it accomplishes two objectives: first, the DEP and Army Corps of Engineers were strongly encouraged to engage in good faith negotiations with the City of Margate over the nature and timing of the beach protection project. Second, there will be no contract awarded for construction of the dunes and construction activity of any nature on our beaches while our negotiations proceed in the next few weeks. We stand ready to negotiate in good faith towards a beach protection solution for the city of Margate that respects our city's unique circumstances and the will of our people as expressed at the polls on two occasions.

We anticipate as negotiations ensue, there may be legal proceedings in a variety of forums and at numerous times. In any of those instances, we are prepared to defend vigorously the rights of the people of Margate, including their right to protection against unreasonable use of eminent domain powers. We are respectful of and pleased with today's decision. We will continue to fully inform the people of the City of Margate as the process continues.

DECEMBER 9, 2014

On this day Judge Bumb of US District Court of New Jersey issued an order postponing the hearing scheduled for December 17 until mid -January 2015 to give the parties time for meaningful negations. This order was based on an agreement among the parties suggesting this process. The former Temporary Restraining Order continues in the form of a Preliminary Injunction.

DECEMBER 18, 2014

Margate has been asked by the Army Corps of Engineers and the NJDEP to prepare a written engineering summary of any modifications to the proposed beach protection plan. Based on an earlier report previously prepared for us by Charles Rooney of T@M Associates a new summary is currently being prepared to be reviewed and given to the Army Corps and DEP prior to actual negotiations. It is expected that the report will be forwarded before the end of the month. In addition, the City Engineer has been asked to summarize specific concerns with drainage and access provisions of the current Army Corps plan.

Margate asked the Army Corps and DEP to permit us to include our county, state, and federal elected representatives into the negotiation conference. That request has twice been denied but we fully intend to keep our elected representatives informed as we move forward. We appreciate their continuing interest and their assistance on behalf of the citizens of Margate. While a specific date for actual negotiations has not been scheduled, it is likely that it will take place during the first full week of January.

FEBRUARY 5, 2015

Finally on January 9, 2015 after a year of stalling the Army Corps agreed to meet with representatives of the City of Margate for the perceived purpose of negotiating meaningful changes to the beach protection plan in Margate. There were about 30 people present at the meeting in the Philadelphia Regional Headquarters of the Army Corps of Engineers including technical and legal representatives of the Army Corps of Engineers, the US Attorney General and equivalent staff and legal representatives of the Department of Environmental Protection, State of New Jersey and the State Assistant Attorney General. Representing Margate were Mayor Becker, Administrator Richard Deaney, Solicitor Scott Abbott Special Counsels Rob Andrews and Jordan Rand as well Coastal Engineer Charles Rooney.

After three hours of posturing it was apparent that there was no intention by the hosts to meaningfully modify their plans regarding the dunes nor was there any movement from the DEP other than a willingness to further discuss drainage issues. The meeting ended at 12:30 PM with the expectation by all that the continuing differences would be addressed next in Federal Court on January 15.

On January 15 United States District Court Judge Baum convened the parties who argued their case before her. Representing Margate were lawyers Thomas Biemer and Jordan Rand from the law firm Dilworth Paxson LLP. Commissioner Maury Blumberg appeared as a witness for Margate as did Coastal Engineer Charles Rooney from T@M Associates. Also present were Administrator Deaney and Attorney Rob Andrews.

The matter came before the Court because Margate sought an order to "preliminary enjoin the defendants... from constructing dunes on Margate's beach." On November 24, 2014 the Court

temporarily restrained Defendants from taking any action to construct the dunes, including the Corp's award of a construction contract." In her 29 page written report Judge Baum denied the motion for preliminary injunction without prejudice.

While the technical motion was denied the court in its wisdom effectively granted the relief sought by Margate. It pointed out "As the Third Circuit, interpreting established Supreme Court precedent, held "in the eminent domain context, the federal constitution's due process clause is satisfied so long as property owners [have] reasonable notice and [the] opportunity to be heard before the final determination of judicial questions that may be involved in the condemnation proceedings – e.g. … whether the taking is for a public purpose [as well as the issue of just compensation]."

The key here is "to be heard". That is simply what Margate has been seeking since the beginning. We and all citizens of this country are afforded "due process" which in this case is the right to be heard by the state court before there is a taking of property.

On page 28 of the decision Judge Baum says "this case is not about whether the Project serves a public purpose. That dispute will occur in state court. This case is about a m
ore narrow, but vitally important, issue: have Plaintiffs been denied their rights to procedural due process under the Constitution. As discussed at length above, a state's power to take property from a private person is not without constitutional limitations. A property owner must have an opportunity to be heard before the final determination of whether the taking was for a public purpose. NJDEP has agreed that it will afford Plaintiffs such opportunity by filing a condemnation proceeding. Before then, the parties do not anticipate that any construction will occur. Hence, Plaintiffs will be afforded their due process rights without fear of imminent construction. Accordingly, this factor does not weigh in favor of an injunction <u>at this time</u>. However, in the event the corps is prepared to proceed with construction and the condemnation proceeding has not been filed Defendants shall provide Plaintiffs with ten days' notice of such construction so that Plaintiffs, if they choose, may seek this Court's reconsideration of this factor."

On January 26 the Army Corps was faced with a deadline of whether to award the bid for the project, the bid having been extended for 30 days from December 27. Margate officials had to hear from a reporter on February 3 that the Corps received another extension from the bidders for an additional 30 days. While not forbidden by the Court from executing a contract, it is abundantly clear that they are reluctant to do so without the guarantee that they have the property that was previously erroneously guaranteed to them by the NJDEP. They cannot be guaranteed again without Margate being heard in State Court. Therefore without granting the request for the preliminary injunction we sought, we have what we wished for anyway; a future opportunity for due process-our right to be heard if the state wishes to take our beach property. In the meantime the Project cannot proceed.

MARCH 5, 2015

The Army Corps of Engineers announced through the media on February 25 that they were abandoning the bid process and would not be awarding a contract for beach replenishment on Absecon Island based on the advertised proposals and opened bids from November 2014. They acknowledged that there were property ownership issues that prevented them from awarding the contract. They announced an intention to resume the request for bids anew when the ownership issues were resolved.

What this means for Margate is that the process can only move forward when and if the DEP acquires city property through eminent domain in state court unless there is a negotiated settlement in the meantime. Margate continues to seek a satisfactory resolution through negotiation.

The agenda of the March 5 Commission meeting contains a resolution extending the contract with Dilworth Paxson to work toward a settlement. If this contract is authorized, the total authorized to date for opposing this project as it is designed presently is $146, 912. As of February 19, $92,506 had been paid to three vendors as follows: Dilworth Paxson $80,000, T&M Associates $4,594 and Scott Abbott $7,912.

OCTOBER 15, 2015

On behalf of the NJDEP, the law firm of Hill Wallack LLP sent Margate a certified letter dated September 22, 2015 which stated in part "NJDEP has determined that the acquisition of Perpetual Storm Damage Reduction Easements (the perpetual Easements) and Temporary Work Area Easements (the Temporary Easements) on the City's properties is necessary in order for ACOE to proceed with the Project."

The letter went on to say "Based upon the enclosed appraisal, the amount of NJDEP's offer of just compensation to you for the Temporary Easements needed on your property is $29,600 and the NJDEP's offer of just compensation to you for the Perpetual Easements needed on your property is $0."

Despite the fact that the City of Margate responded through its attorney on October 6, 2015 and within the 14 day period for negotiations, the NJDEP filed suit on October 8, 2015. The City response included these words" The City is very much interested in pursuing good faith negotiations in an attempt to avoid litigation". Good faith negotiations are required prior to filing for eminent domain.

The City of Margate continues to believe that there are reasonable alternatives to the project design choice of the State of New Jersey and the Army Corps of Engineers for beach protection. Together with the natural beach, the Margate bulkhead system within inches in height of the proposed dune height is a far superior barrier from storm water than piles of sand. Furthermore, storm damage historically in Margate is from the bay side of the community where bulkhead heights are typically 5 feet shorter than along the ocean.

Margate is prepared to vigorously defend itself from this unnecessary use of the power of eminent domain and is assembling a team of experts to do so. To date the costs of defense are below the limits suggested by a referendum.

NOVEMBER 05, 2015

On November 3, 2015 Dilworth Paxson filed with the Court two documents: The City of Margate's Answer and Affirmative Defenses, with Certifications; and The City of Margate's Notice of Motion, Proposed Order, Memorandum of Law with Exhibits attached thereto A-F.

The State's eminent domain powers are considerable, but not unlimited. We believe that as in this case where that power causes substantial harm to the community and where there are reasonable alternatives the Court should allow Margate a reasonable challenge. A hearing is scheduled for November 18 before the Honorable Julio Mendez.

The several hundred page submission by our attorney's includes three affidavits: one by Commissioner Blumberg on behalf of the Commissioners; one by Charles Rooney Senior Vice President of T@M Associates, a licensed professional Engineer with a lifetime of coastal engineering experience and a former Army Corps employee serving as Chief, Civil Projects Management Branch; and one by Dr. Robert Young a Professor of Geology at Western Carolina University and Director of the program for the study of Developed Shorelines at Western Carolina University. Dr. Young's program specializes in evaluating the design and implementation of coastal engineering and restoration projects, and in helping communities develop coastal adaptation strategies. His program maintains a data base of beach and dune construction projects for the entire country.

Our submission also includes a 115 page technical memorandum analyzing the shore protection conditions along the entire Margate oceanfront with complete descriptions of the type, height and relative condition of each section of bulkhead for the entire 1.9 miles as prepared as of September 11, 2015 by Arthur W. Ponzio Co and Associates, Inc. of Atlantic City.

JUNE 2, 2016

After a three day trial in Superior Court in February 2016, Judge Julio Mendez reserved judgement in the case of State of New Jersey, by the Department of Environmental Protection, Plaintiff V. The City of Margate, Defendant. The State was represented by Stephen Eisdorfer, Esq. and Henry Chou, Esq of Hill Wallack LLP and The City of Margate was represented by Thomas S. Biemer, Esq., Jordan M. Rand, Esq., and Marie-Therese DiFillippo, Esq. of Dilworth Paxson LLP.

On April 11, 2016 Judge Julio L. Mendez issued a 66 page written opinion. The order dated that date stated; "The Court holds that the State's condemnation of necessary easements in order to implement the Absecon Island Project is not arbitrary and capricious nor is it manifest abuse of the State's eminent domain power;" The order went on to say " The Court SHALL enter a judgement in favor of the Plaintiff and appoint commissioners. Plaintiff to submit an order to the Court."

On May 5, 2016 Judge Mendez issued a 6 page order which among other things said
"A final judgement is hereby entered that the State of New Jersey...is authorized to and has duly exercised its powers of eminent domain as to the property and rights described and depicted in the verified complaint".
"Michael Fusco, Benjamin Podolnick and Michael Jacobson... are hereby appointed commissioners to examine the land and premises... and to fix the compensation to be paid for the rights and interests acquired under the Declaration of Taking..."
"Said Commissioners shall file their report with the Superior Court on or before the 7th day of September 2016..."
"Failure to appear at the commissioners hearing, personally, or through counsel, will preclude appeal from the commissioner' report, which will then become final".

On Tuesday May 31, 2016 after a long exchange with staff members of the New Jersey Department of Environmental Protection and the Army Corps of Engineers regarding engineering issues and access concerns the Board of Commissioners considered the question of appeal of the decision and order of Judge Mendez. After discussion the Board of Commissioners voted unanimously to not pursue an appeal of the eminent domain order. While issues remain relative to drainage concerns and access concerns there is a stated desire by the NJDEP coastal engineering staff to address those concerns. Among the concerns of the City of Margate are these:

1. Sea water getting behind the dune line at places where the design in non-continuous.
2. Street water no being able to flow through the scuppers to the beach.
3. The capacity of the sand behind the dune line to absorb the street water flow from rain storm events.
4. The maintenance requirements to keep this sand detention area functional.
5. The ability to keep adequately the area between the bulkheads. and the dune free of accumulating sand
6. The specific design and cost of construction of required street storm pipe construction modification at points where it currently terminates at the bulkhead and with assistance disperses to the ocean.
7. The specific design of the street end crossovers
8. The slope of the crossovers not designated as handicap accessible.
9. The number of handicap access points
10. The type fence to be used along the crossovers.
11. The design as it relates to existing natural dunes.
12. The type of grass to be planted on the dunes
13. The upkeep, durability and appearance of the dune plant material.

The issues as summarized above are material to the whole premise behind the city appeal.

On page 55 of his opinion Judge Mendez writes "At the hearing Mr. Watson indicated the Army Corps could not construct a project that would cause additional problems without addressing that problem. In other words, the Army Corps is committed to resolving the drainage issue and to work with the City of Margate to find an acceptable solution."

On page 56 of his opinion, Judge Mendez writes "The Court acknowledges that there is a drainage issue to be resolved. The Court is satisfied that the Army Corps is committed to work with Margate in correcting the drainage problems."

Margate intends to hold the Army Corps and the NJDEP and the Court to the meaning and the intent of these words in the continuing interest of public safety. While* the project has not been deemed to be arbitrary and capricious the Army Corps satisfied the Court that it will not construct a project that will "cause additional problems without addressing that problem".

SEPTEMBER 1, 2016

On Tuesday August 23, 2016 four city officials (Commissioner John Amodeo, Solicitor Scott Abbott, Engineer Ed Walberg and PW Director Frank Ricciotti) met with a dozen representatives of the Army Corps of Engineers and the NJDEP at the Army Corps Headquarters in Philadelphia. DEP representatives' included Assistant Commissioner David Reosenblatt, Engineer William Dixon State Deputy Attorney General Bill Belzy and Project Manager Kelly Steffieri. Kieth Watson, Ken Goldberg and William Wilcox esq were among the Army Corps personnel present.

Ed presented his conceptual plan for what Margate believes is necessary to alleviate potential drainage problems in the Army Corp plan. The total cost is estimated to exceed 9 million dollars. The plan calls for gravity fed storm water lines from the bulkhead to the ocean. The current Army Corp plan depends on percolation of storm water into the sand between the bulkhead and the proposed landward toe of the dunes. The Army Corps insists their plan will work but they agreed to review the city plan. The DEP Assistant Commissioner took a wait and see position but repeatedly assured Margate officials that if there is a problem the DEP will address it.

A more positive response came by assurance that our present beach patrol headquarters building would be raised or relocated as part of the project. Margate was again assured that it would not be required to enter into any future beach fill agreement or to make any unwanted dollar contributions for beach fill. Any project involving the beach going forward would be voluntary and likely be financed 75% by the state and 25% by the City.

A final request for funds for equipment to maintain the beach and particularly areas around the dune line will be considered although heretofore that type assistance has not been given by the

state We believe that in order to have any chance for water to continue over time to percolate, the sand will have to be continuously churned up to break up any crusts that will likely form.

Bill Dixon and Ed Walberg will continue to communicate regarding drainage issues as well as possible relocation of the beach patrol building. Margate was asked to provide a photographic record to show how the current drainage functions along the bulkhead line. Margate made it clear that we do not believe the Army Corp plan will adequate address drainage issues. In fact we believe they will be made worse because accumulated ponding for even short periods may result in serious safety and health issues. We reminded the Army Corps and NJDEP that pursuant to the court ruling they each must make a good faith effort to work with Margate to address drainage concerns. Each participating agency agreed.

The Army Corp made it clear that they are about ready to advertise for bids once again for this project. In fact the announcement is expected early in September.