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MEMORANDUM

To: City of Poughkeepsie Common Council Southern Waterfront Site Redevelopment Task Force

From: David Gordon and Emily Svenson

Re: Background for Task Force Evaluation of DeLaval Site Redevelopment

Date: April 5, 2021 – *revised April 22, 2021*

This memo has been prepared as background for use by the Southern Waterfront Site Redevelopment Task Force in considering and recommending projects for the redevelopment of the DeLaval site. It is meant to give a basic outline of the history of the site and previous plans for redevelopment, the existing regulations and policies guiding any future improvements and redevelopment, and the City's intentions regarding the site.

SITE HISTORY

The DeLaval site takes its name from the former owner and occupant of the site, the DeLaval Separator Company. This company manufactured milk separating machines on the site from the 1890s to the 1960s and was a major employer in the region. In the 1960s, the company moved to the Town of Poughkeepsie and ceased all operations on this riverfront site.

The City took possession of the site in 1968. For many years, people would use the site for fishing and walking, including enjoyment of the expansive river views. In 1987, the city held its tricentennial celebration on the site. This event led to the birth of Riverfest, a festival that drew between 50,000 and 70,000 people from 1987 to 1992. In 1994, an event called Summerfest was held on the site.

The site was significantly contaminated with petroleum, heavy metals and semi-volatile organic compounds from years of use by the DeLaval Separator Company. As a result, it was considered a Brownfield site, and required a substantial cleanup according to standards set by the state Department of Environmental Conservation (DEC). Remediation was conducted in 2008-2012. Ultimately the City expended approximately \$17.5 million toward the cleanup, of which \$9.3 million was reimbursed by the DEC.

Since the cleanup, the site has mainly been unused, but the Hudson Valley Balloon Festival was held there in 2015. In 2016 or 2017, a chain link fence was erected and has prevented any

additional events or public access to the site since then. This task force will contemplate ways to return public access to the site.

REDEVELOPMENT PROJECT HISTORY

In June, 2001 the City released a Request for Proposals (“RFP”) for redevelopment of the DeLaval and the PURA-14 parcels (Exhibit A). The redevelopment of these parcels, along with the adjacent STP parcel, was called the “Southern Waterfront Development Project.” On September 10, 2001 of that year the City designated the companies run by Joseph Bonura, Sr. (hereafter, along with all related companies “JM Development”) as the developer, based on a concept submitted by JM Development, described below (Exhibit B).

In 2003 the Common Council prepared the required State Environmental Quality Review (SEQR) draft environmental impact statement (DEIS) as SEQR lead agency for the Southern Waterfront Development Project. That process resulted in the selection of a preferred layout (Exhibit C). In 2004 a findings statement was prepared (Exhibit D).

The Southern Waterfront Development Project was intended to provide for a mix of commercial and recreational improvements on three sites – the DeLaval site, PURA-14, and the former sewage treatment plant (STP) – all at the end of Rinaldi Blvd. As described in the DEIS, these included among other things, a restaurant/catering facility, a hotel, retail, offices, a non-motorized boat launch, a large boat dock, sculpture garden, restrooms, and a marina. On the DeLaval parcel, the proposed improvements included three two-story buildings containing:

- 15,000 SF of restaurant space
- 15,000 SF of retail space
- 32,800 SF of office space

Most of the recreational amenities were also to be located on the DeLaval site.

Because the City used state park funding to acquire the DeLaval site, a law authorizing alienation of the parkland was required to move forward on the planned development. In 2004, the state enacted legislation (L. 2004 ch. 335; “the Parkland Alienation Law”) authorizing the City to convey some of the DeLaval parkland to the City of Poughkeepsie Industrial Development Agency (IDA) for eventual lease to the Developer (Exhibit E). A supplemental SEQR review was completed in 2005 in light of the parkland alienation issues. The Parkland Alienation Law also placed restrictions on such transfer, which are discussed in more detail below.

Following the Parkland Alienation Law, the Common Council completed a supplemental SEQRA review and a supplemental findings statement in 2005.

In the years between 2005 and the present, JM Development redeveloped the STP and PURA-14 parcels. On the STP parcel along the River, JM Development constructed Shadows, a restaurant, and Grandview, an event venue. JM Development also developed the Shadows Marina in the river, with land fall and land amenities generally on the border between the STP and DeLaval parcels. The parking lot for the marina is on the DeLaval Parcel. The City granted JM Development a license to install and use the parking lot, which was succeeded by a long-term

easement.¹ On the PURA-14 parcel, JM Development constructed the Water Club, a luxury residential complex with 136 apartments.

The City undertook remediation of the DeLaval site between 2008-2012. During the remediation, JM Development was allowed to install underground utilities and grade the DeLaval site to facilitate the eventual construction of its project.

After remediation was complete, the City offered the DEC an environmental easement which the DEC accepted in November 2013 (Exhibit F). The DEC also issued a Certificate of Completion of the remediation in January 2014. The environmental easement allows the use of the site for “commercial” or “industrial” uses in accordance with certain engineering controls. The easement specifically prohibits the use of the site for residential development, because it was not cleaned up to a standard that would be safe for residences under the Brownfields regulations. The certificate of completion incorporates these controls by reference.

Since 2016 JM Development has complained of the poor economic basis for the DeLaval project, unless a substantial portion is converted to high end residential units. In November 2017 JM Development submitted a “Project Narrative” to the City to convert the DeLaval project to include 50 apartments, and in early 2018 submitted a new Environmental Assessment Form to formalize its new proposal. In May 2018 the Common Council convened a special meeting to hear a presentation from JM Development detailing its revised proposal. A number of members of the public spoke in opposition to JM Development’s proposal at the session. In the wake of the session, it was evident that JM Development’s proposed change had little support, and on June 8, 2018 Mayor Rolison wrote to JM Development to ask the company to return to its original plan.

LAND USE CONSTRAINTS AND GUIDELINES

a. Zoning

The DeLaval site is in the City’s Waterfront (“W”) zone, which is specially addressed to development along the River such as the DeLaval parcel. The W zone allows, among other things, marinas and parks and refreshment, retail stores no greater than 8,000 square feet per floor, museums and galleries, arts and crafts studios or studios for teaching or practicing performing arts, hotels, theaters, except adult motion-picture or mini-theater, restaurants, commercial recreation, including tennis, skating rinks, dance halls, billiard parlors, bowling alleys, swimming pools, health clubs, and golf, tennis or swim club. The zoning also allows, by special permit, buildings with mixed uses, residential development subject to the requirements of the Urban Density Residence District R-6 (Section 19-3.17), business and professional offices as the upstairs part of a mixed-use development, and fast-food restaurants as part of a mixed-use development.

¹ A previous version of this memo indicated that the parking lot license expired, but it has been succeeded by a long-term easement.

The maximum height of a building on the DeLaval parcel is 35 feet, based on viewshed protection requirements. The code generally allows a height of 60 feet in most of the W zone but this is shortened to 35 feet where a higher structure would adversely affect views from the following: public parks, the Poughkeepsie Railroad Station, Kaal Rock, the Mid-Hudson Bridge, Vassar Brothers Hospital, DeLaval, and the steps of Our Lady of Mount Carmel Church.

b. Local Waterfront Revitalization Plan

Under state law, municipalities have authority to enact local waterfront revitalization plans to implement the state's coastal zone policies within their jurisdiction. The City's 1998 Local Waterfront Revitalization Plan ("LWRP") specifically targets underused and vacant waterfront land, especially city owned property such as DeLaval. Among the policies, which are implemented by Waterfront Advisory Commission review of the project, are:

- Improvement of the economic base of the City, concentrating on recreational, commercial and entertainment activities that serve City and County residents, and develop tourism potential
- Public access to the river's edge and recreational opportunities
- Mixed uses
- Landscaping to improve visual attractiveness
- Use by a variety of age groups and economic levels
- Preservation of vistas of the River and the far shore (a Scenic Area of Statewide Significance)
- Linkage with other Riverfront sites

For the DeLaval site the LWRP specifically explains:

The DeLaval site is particularly well-suited to water enhanced uses [It] could support a variety of complementary public and private uses which would provide significant economic benefits to the City, as well as increase waterfront access and recreation. Water enhanced uses such as restaurants, conference facilities, entertainment venues and shops and water dependent uses such as a marina and walkway along the river would provide complementary tourist-related activities. Given the size of the DeLaval site and its length of shoreline, not all of the shoreline is necessary for water dependent uses. In developing the site plan, some uses may be located over the water provided an adequate area remains for future marina development, and all navigational and environmental effects are addressed.

The LWRP also details the how the City's goal of protecting important views should be incorporated into a DeLaval redevelopment plan:

With respect to the DeLaval site, there are significant views of the river and opposite shoreline from various spots on the property. Protection of these views is important but should not be interpreted to mean development on any or all of

this site is prohibited. This policy should be interpreted so as to encourage a development plan that provides opportunity for public access at various places on the site to the shoreline to enjoy the views and placement of buildings and other structures to minimize view obstruction without unnecessarily restricting development options. Not every portion of the riverfront has to be accessible to the public nor does every single view have to be preserved from every vantage point.

. . . . The view from Rinaldi Boulevard and Pine Street and from the foreshore of the DeLaval property . . . is of local significance because of the panoramic vistas of the River and west bank. Any development on DeLaval should be evaluated in terms of potential impact upon these important viewsheds.

c. Parkland Alienation Law

As noted above, the Parkland Alienation Law authorizes the City to transfer the DeLaval parcel to the IDA for eventual lease to the Developer, but also places restrictions on such transfer. It requires the City to retain in its own ownership 2.42 acres on the site's riverfront for the purpose of a public promenade (the "Waterfront Land"). Of the remaining 11 acres that may be conveyed, the Parkland Alienation Law requires at least 3.6 acres to be open and available to the public.

The Parkland Alienation Law lists certain uses for the site. The introduction to the law specifies that the law "authorize[d] the City of Poughkeepsie intent to discontinue and convey certain lands for waterfront parkland and commercial development." This statement was echoed by memoranda from both the Senate bill sponsor and counsel for the state Office of Parks and Recreation which specified that the bill would allow the City to lease the land for parkland activity, mixed open space, recreational and commercial development, including a kayak/canoe launch, interpretative garden, transient marina, fishing stations, public restrooms, large boat mooring facility and commercial buildings and spaces for restaurants retail shops, office space and parking. The memos further describe the project in the same terms contemplated by the parties in JM Development's response to the RFP and authorized in the 2004 findings statement.

d. Remediation/DEC environmental easement

The City granted DEC an environmental easement on the DeLaval site in October, 2013. DEC issued a Certificate of Completion for the cleanup in January, 2014.

The environmental easement that the City granted the state explicitly restricted development of the site to commercial and industrial under DEC cleanup rules. This restriction reflects the DEC Brownfield regulations, which restricts the available uses of a site based on the cleanup and cap. Per DEC regulations, "Commercial use includes passive recreational uses, which are public uses with limited potential for soil contact." 6 NYCRR § 375-1.8(g)(2)(3). The easement specifically disallows residential development.

SEQRA REVIEW

As noted above, the Common Council completed an original DEIS in 2003, a Findings Statement in 2004, and a Supplemental DEIS and Findings Statement in 2005 due to the Parkland Alienation Law. The original EIS and Findings Statement in particular provide useful guidance on the City's expectations for the redevelopment of DeLaval, from that time to the present.

The project was expected to be a mix of commercial and recreational uses for the DeLaval property. The "preferred concept plan" that emerged in the 2004 FEIS showed three buildings on the DeLaval site, each with retail/restaurant on the first floor and office space on the second. Space would be reserved for a potential museum. The outdoor public amenities would include a non-motorized boat launch, a large boat dock, historical interpretive area, restrooms, and a marina.

If future development diverges from what was already authorized through SEQR, an updated or new environmental review would be required.

2020 RESOLUTION, LITIGATION AND UTILITIES

During 2020 the Common Council grew concerned about the lack of progress toward the development of the DeLaval parcel, and the apparent impasse between JM Development and the City relating to the PILOT and JM Development's wish to convert a portion of the project to apartments. The Common Council had authorized the conveyance to the IDA for eventual lease to JM Development in 2010, and DEC had given final approval of the site cleanup in early 2014. In the intervening years JM Development had developed the 136-unit Water Club luxury apartments on the PURA-14 site, joining the Shadows/Grandview on the STP site as the 2/3 of the Southern Waterfront Development Project to be completed. By late 2020 the authority to convey the DeLaval parcel, for eventual lease to JM Development, had been unused for more than 10 years.

As a result, in October 2020 the Council adopted Resolution R-20-79, which would rescind the City's authority to convey the DeLaval parcel to the IDA on November 19, 2020. Until then, the City was still free to convey the land, and as the resolution explicitly provided, if JM Development took specific next steps forward, the Common Council would re-authorize the conveyance. With its countervailing provisions both rescinding the authority for the conveyance and committing to re-authorize it if the project was re-started, the resolution sought to either compel such re-start by JM Development or clarify that a new plan and/or developer was needed.

On November 4, JM Development sued the Council, City, and IDA, litigation which is still ongoing without a known end date. In a submittal to the City in December after the initiation of the lawsuit, JM claimed approximately \$2.5 million in compensation from the City. However, an initial review of the claims by attorneys for the Common Council indicates that they are vastly overinclusive. According to this review, the amount even eligible for reimbursement would be well below half of the claim and in any event would also be subject to several additional defenses against their validity.

POTENTIAL FOR NEAR-TERM PUBLIC AMENITY INSTALLATION

Land along the water's edge to be maintained as public parkland/promenade

The City has long planned to create a public riverfront promenade along the Southern Waterfront. To accommodate the promenade, the Parkland Alienation Law requires the City to retain approximately 2.42 acres of the DeLaval land along the waterfront. The promenade would extend to the north, and connect to the rest of the City's waterfront.

The City's intentions for the promenade are documented in the 2003-05 SEQRA review of the Southern Waterfront Redevelopment Project. The 2004 Findings Statement stated that the City planned to stabilize the shore with bulkheads and riprap and install a promenade with lighting and benches. In addition, JM Development was expected to install public amenities including a marina, a large boat mooring facility, a non-motorized boat launch, fishing stations and public restrooms.

Progress to date

During the remediation of the DeLaval site, shoreline stabilization was completed and subsurface utilities were installed. Also, a concrete sidewalk has been installed on the adjacent STP (Shadows) site, presumably as part of the construction of Shadows and/or the marina.

Options for development

Because the City has obtained state funding for the promenade (discussed below) and it will be on a separate part of the site from the main project with potentially separable engineering and design, the Task Force may consider decoupling and frontloading the development of the promenade from the rest of the site. Such consideration would likely involve investigating whether this might enable the promenade to be opened to the public sooner than the overall project and whether such prompt access would justify separating the projects.

Funding available

The City has secured three state grants totaling \$1.3 million to construct waterfront amenities. The grant deliverables include construction of the promenade along the DeLaval and STP sites, as well as some of the amenities that were intended to be constructed by the private developer, including the non-motorized boat launch, large boat mooring facility, and public restrooms.

Of the three grants, only the \$500,000 grant from NYS Department of State is under contract. Two other grants – \$500,000 from the Dormitory Authority (DASNY) and \$300,000 from the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) – have been awarded but no contract has been finalized.

Although the intent has been for these projects to be constructed in concert with development of the remainder of the site, the work is intended for City-owned land and could potentially be

implemented separately. The City would need to develop contracts for the grants reflecting an updated scope and budget. The recommendations of this task force would assist in this process.

NYS DOS Grant

A NYS Department of State grant for \$500,000 is under contract. Project components include:

- 3,000 foot Southern Waterfront Promenade (length of STP and DeLaval waterfronts)
- deep water pier (large boat dock)
- kayak launch
- public restrooms
- visitor interpretive center
- decorative lighting
- fishing stations
- benches
- fountains

The grant of \$500,000 is to be matched with \$500,000 in other funds. The intent is for the DASNY grant to provide that match.

DASNY Grant

The City was selected for funding from the Dormitory Authority of the State of New York for \$500,000. The grant application budgeted the funding as follows:

- large boat dock - \$350,000
- public restroom - \$120,000
- kayak launch - \$30,000

The DASNY grant is not under contract, but recent communication with DASNY indicates the funds are still available.

OPRHP Grant

The City may also have access to funding from NYS Office of Parks, Recreation and Historic Preservation. The City's application requested \$600,000 toward a \$1.9 million project, including a walkway built of brick pavers, railing, lighting, fishing stations, benches, kiosks, and landscaping. OPRHP awarded \$300,000, half the requested amount. The status of these funds is unclear at this time.

Practical and safety requirements

The city's engineer has reviewed the current condition on the site and is recommending some safety measures be implemented prior to allowing public access to the site. Most pressing are a safety fence along the northern bulkhead to prevent pedestrians from falling into the river and covering the utility bases where lighting had been planned but not yet installed. Additionally, safety fencing and changes to the pipes for the monitoring wells would be required. The Council

has requested a presentation by the city engineer to the task force and a site walk through for the task force members.