

KAREN A. MURPHY

February 21, 2012

Kenneth M. Collette, Esq.
Adjudication Officer
Environmental Protection – Office of Adjudications
79 Elm Street
Hartford, CT 06106-5127

Waterfront Magee LLC
Permit Application #201207377-KB
Stamford, CT

Dear Mr. Collette:

There are numerous problems with Permit Application #201207377-KB (the Project”). At this time I am submitting the following brief remarks, focusing solely on two issues raised by the Department of Energy & Environmental Protection’s (“DEEP”) Staff Direct Testimony, submitted by Kristen Bellantuono on February 14, 2013 (the “Proposed Decision”). The two issues are:

Issue 1: Whether the DEEP’s apparent Proposed Decision to grant the above reference permit constitutes an unlawful exercise of discretion or is clearly erroneous.

The standards for judicial review of agency decisions in Connecticut as to whether such decisions are made in an arbitrary or capricious manner are set forth in Connecticut General Statutes, Section 4-183(j), which states that an agency decision shall be affirmed unless, *inter alia*, there is a finding that “substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: . . . (5) **clearly erroneous** in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or **clearly unwarranted exercise of discretion.**” (emphasis added)

In assessing whether an agency has abused its discretion, the appropriate standard of review is the substantial evidence standard. Therefore, the DEEP must establish evidence to support its reasoning and the evident must be substantial.

DEEP’s apparent findings that (i) the Project would not pose a navigational hazard or conflict with any existing navigational uses in the vicinity of the Project and (ii) the Project has been found to comply with all applicable statutory policies, including the attainment of the widest range of beneficial uses without the risk to health or safety, or other undesirable and unintended consequences to Connecticut residents constitutes clear unwarranted exercise of discretion.

The DEEP did not evaluate the increased risk of direct conflicts the Project has with existing barge traffic on the East Branch of Stamford Harbor. Further, the Applicant

Kenneth M. Collette, Esq.
Waterfront Magee LLC - Permit Application #201207377-KB
February 21, 2012
Page 2 of 2

was not required to prepare a study of the needs of various users on the East Branch of Stamford Harbor. There is no evidence or expert testimony in the record from the DEEP or the Applicant to support its reasoning that the Project would not pose a navigational hazard or conflict with any existing navigational uses in the vicinity of the Project. The record does include, however, letters from, and the testimony of, navigational experts about the significant safety issues posed and the impact on the viability of the continued commercial use of the Stamford Harbor if the Project is approved.

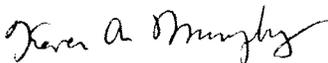
The reliability of the evidence and testimony presented by the navigational experts at the public hearing should not be in question as it is directly related to their expertise, and the evidence has not been refuted by the Applicant nor any other witness who would qualify as an expert in this matter. Thus, the DEEP has clearly failed to meet its obligation to provide substantial evidence in support of its reasoning on this issue.

Issue 2: Whether DEEP's decision that the Applicant need not have rights to the property before processing an application, however, such ownership rights are made a condition of the granted permit constitutes a regulation change that is void unless adopted in accordance with the Uniform Administrative Procedures Act.

DEEP's new procedures for accepting permit applications from other than the owner of the subject property is clearly a change in the regulations that must be adopted in accordance with the requirements for adopting a regulation in Connecticut and, therefore, I am requesting you as the hearing office to remand the Proposed Decision to the DEEP for further action in accordance with the Uniform Administrative Procedure Act.

Thank you for the opportunity to submit comments on this Permit Application.

Sincerely,



KAREN A. MURPHY