

THE FAN PIERS DEVELOPMENT: AN ANALYSIS OF NEGOTIATED
DEVELOPMENT REVIEW IN BOSTON

by

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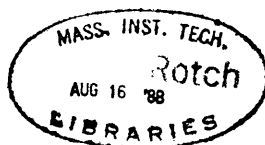
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ABSTRACT

An analysis of the Fan Piers project's three years of development review (1985-1988) was undertaken in order to have a better understanding of Boston's negotiated development review for large-scale development projects. Newspaper and journal articles, materials submitted for Boston Redevelopment Authority and Zoning Commission approval, and key participants in the review process were consulted for the evaluation of the development review for this megaproject. A number of economic, political, and project-specific factors that affected the review process were explored, and the nature of policy linkages, procedural guidelines, and citizen participation served as the criteria for determining the fairness and efficiency of the process.

This analysis found that a variety of factors had an effect on the outcomes of the negotiations for the Fan Piers. These factors include: Boston's booming, office economy; the perceptions of developer profits; the City's reliance on property taxes; the Mayoral elections; the high degree of citizen organization; tensions between state and local levels of government; the scale and density of the project; the developers' marketing techniques; and the timing of the project. It was also clear that in Boston, both policy-making and procedures for development review are in a state of transition and subject to continual change. The development review process was found to be unfair and inefficient due to a general lack of well-defined policies and poorly-articulated development review procedures. Citizen participation appeared to be strong, but questions of whether citizens were truly empowered by the process remain unanswered. The Fan Piers Development review is an example of an unpredictable, time-consuming process in which the regulating agency had most of the power concentrated in its own hands.

Thesis Supervisor: Dr. Michael Wheeler
Professor of Urban Studies and Planning

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INTRODUCTION

On January 20, 1988, readers of the Boston Globe were confronted with the bold headlines. After six years of planning and intense negotiations, the owner and the developers of the massive Fan Piers Development in Boston's Fort Point Channel area were taking each other to court for what would surely turn out to be a grueling, controversial, and acrimonious confrontation. To most observers, the bad blood between Anthony Athanas, the owner of the site, and HBC Associates, the developers of the Fan Pier, most likely signals the end to what has often been touted as Boston's largest development project ever.

For five years, the Fan Piers, a proposed 4.8 million square foot, mixed-use development of hotel, office, retail, and residential uses on the waterfront was Boston's most visible and controversial development proposal. Between 1985 and 1988, the project's developers, city and state officials, and a citizen advisory committee participated in a complex series of negotiations to assess the costs and benefits of this complex project. These players also attempted to hammer out agreements on appropriate developer exactions, contributions, and mitigation measures for the project. The three years of negotiated development review that preceded the developers' lawsuits are the subject of this thesis.

The Fan Pier's elaborate negotiated development review process is a reflection of cities' increased concern over the potential social, economic, and environmental impacts of large-scale developments. Planners and

the development review process continually seek to balance the economic and fiscal benefits that a project brings to the city with the social costs and negative environmental impacts that it may also have. This is a particularly difficult task for such megaprojects as the Fan Piers Development because large-scale projects differ significantly from their smaller, more routine counterparts in terms of scale, impacts, players and policy issues. Some of the key differences are outlined below:

1) Scale: Most development projects, are large and complex. They often involve a number of different types of uses and are generally located in urban areas, in close proximity to industrial, commercial, and residential zones. These large-scale projects take years to plan, and can change considerably in both design and concept over that time.

2) Impacts: Most development projects have a wide variety of impacts, ranging from increased traffic to the displacement of adjacent low-income neighbors. The exactions and conditions placed on such developments are also numerous. It often becomes difficult to clearly draw a link between impacts and exactions.

3) The Players: A variety of local, regional, state, and federal agencies may be involved in the regulatory review process of a large scale development project. Community groups, non-profit groups such as the Sierra Club or Fair Share, and other interested parties such as local businessmen, also often become involved in the development review process.

4) Policy Issues: A large-scale development project in a tightly-knit metropolitan area cannot be considered in isolation of the overall, comprehensive policies and visions for the city. Furthermore, in a complex urban environment, many policy issues overlap with one another and are not easily disentangled.

Given that most large-scale development projects in metropolitan areas involve this multiplicity of issues, impacts, regulation, and interested

parties, as well as considerable uncertainty, it is clear that they require a special development review process. Over the past two decades, a number of techniques have been employed across the country as cities seek to develop a fair and efficient process to assess the costs and benefits of large-scale development. Many localities have concluded that traditional, Euclidean zoning techniques are too rigid and hence, ineffective. Instead, they have turned to more flexible techniques of negotiated development review, planned urban development (PUD) zonings, and exactions as they seek to avoid, minimize, reduce, rectify or compensate for the adverse impacts of development. More and more often, planners are negotiating with developers over mitigation techniques, impact fees, public amenities, exactions and linkage formulas that will minimize the costs of development while still allowing communities and developers to reap their benefits. These negotiated development review techniques have been praised for the flexibility and creativity that they brings to land-use regulations. They have also been alternately criticized for either promoting arbitrary and unreasonable development exactions or for allowing developers to "get away with murder".

The goal of this thesis is to assess how well such a negotiated development review process worked for one highly complex, large-scale development project in Boston: the Fan Piers Development. Two questions shall guide the analysis of the Fan Piers development review process: 1) What external and project-specific factors affected the outcomes of the negotiations?

2) Was the negotiated development review of the Fan Piers development fair and efficient? In order to answer the first question, this thesis explores the economic, political, and project-specific factors that had a significant impact on the three years of development negotiations. The questions of fairness and efficiency are addressed by a careful analysis of the policy linkages, procedural guidelines, and the role of citizen participation in the development review process.

The first three chapters of this thesis are descriptive. **Chapter One, Negotiated Development Review**, explores the nature of development review in the United States over the past century. The first half of this chapter describes the evolution of land-use controls from the traditional Euclidean zoning regulations of the 1920s to the negotiated development reviews and developer exaction techniques in existence today. This section also explores why negotiated development review is so commonly used nowadays and what its strengths and weaknesses are. The second half of the chapter discusses two criteria that can be used to evaluate development review processes: fairness and efficiency.

Chapter Two, The Fan Piers Development, introduces the reader to the controversial Fan Piers Development. This chapter describes the development proposal and provides us with a historical and geographical background to the Fort Point Channel area of Boston, where the Fan Pier is located. The costs and benefits of the development project itself are also described here. The chapter concludes with a description of the multiple parties involved in this

negotiated development review process. These include the BRA, the Citizen Advisory Committee, numerous private interest coalitions, the Mayor, the Governor, and the President of the State Senate. These players have different interests and amounts of power in the planning and development review process, but in sum total they create the unique political context of the Fan Pier Development.

Chapter Three, Development Review of the Fan Piers, turns to development review processes in Boston in general and for the Fan Pier in particular. This chapter begins with a description of Boston's planning context and then turns to three critical components of the Fan Pier's development review process: policy linkages, procedures, and citizen participation. The second half of the chapter documents four of the most critical issues--density of development, waterfront access, traffic mitigations and affordable housing--negotiated between the development team, government agencies, and area residents. These four issues were chosen in order highlight some critical points concerning development review and developer exactions in Boston.

Chapters four and five are analytical in nature. **Chapter Four, Factors Affecting the Development Review Process**, explores the impact that Boston's development market, perceived developer profits, local politics, citizen organization, project-size and marketing techniques had on the nature of the development review process and the exactions obtained from the developers. These political, economic, and project-specific factors have a tremendous impact on negotiations and yet, they

are rarely formally recognized for the role that they play in development review.

Chapter Five, An Analysis of the Fan Pier Development Review Process, assesses the development review process to which the Fan Pier was subjected by exploring the policy linkages, procedural guidelines and role of citizen participation in the process. The first section of this chapter focuses on Boston's transition in policy-making, why policies existed in some areas and not others, and what implications this had for the development review of the Fan Piers. The second section discusses the procedural guidelines for development review and assesses the implications of unpredictable procedures and undefined rules for the scoping of issues, choice of impact studies, and determination of time horizons. The third section of this chapter turns to citizen participation and explores its implications for process. Issues such as public scrutiny, thoroughness, and lengthiness of the review process are discussed here. The chapter concludes with some observations of the fairness and efficiency of the Fan Pier's negotiated development review process.

Chapter Six, Recommendations to Planners and Policy-Makers, is primarily prescriptive in nature. Based on the findings in Chapters Four and Five, this chapter presents various recommendations for improving the fairness and efficiency of policy linkages, procedures, and citizen participation within the negotiated development review process. Finally, Chapter Six seeks to demonstrate that development

review processes that allow for flexibility and negotiation need not be arbitrary and unreasonable.

Today, the Fan Piers Development has been put on hold because its owner and one of its developers are in court, battling over a contractual disagreement. The outcome of this litigation and the consequences for the development project are presently unknown. Thus, this thesis focuses only on the three year period between 1985, when the master plan was first unveiled, to January of 1988 when the lawsuits were publicly announced. Whether or not the development project goes ahead as planned, it is important for public officials, citizen groups, and developers to assess the development review process in order to correct its flaws and build upon its strong points.

Planning in Boston is, in many ways, unique. After years of stagnation, this Northeastern city has undergone an unprecedented development boom over the past eight years. With the exception, perhaps, of San Francisco, few other planning agencies in large cities have as much discretionary administrative power and control over urban development projects. Furthermore, planned urban developments are rarely found in most American cities today. Nonetheless, a number of critical variables of the Fan Pier can also be found in similar developments throughout the United States. Thus, it is hoped that the findings of this thesis will not only aid Boston officials in their development review process, but may also be applicable to other large-scale development reviews around the country.

CHAPTER ONE

NEGOTIATED DEVELOPMENT REVIEW

Land-use issues have always been a source of heated debate in the United States. In this country, wealth and power are intimately linked to how we use our land: the development of a piece of land can produce windfall profits to the individual landowner, enormous benefits to the community, and/or tangible costs to the surrounding neighbors. Over the years, Americans have grown to believe that local government should regulate development in order to achieve outcomes that are in the interest of the general health, safety and welfare of the community (Kayden and Pollard, 1987, p.7). However, the individual's freedom to do what he pleases with his land has also long been a basic tenet of American doctrine and thus, our regulation of land-use is laden with ideological and symbolic meanings (de Neufville, 1981) as well as considerable controversy.

The ways in which we regulate land-use and development have changed considerably over the past two decades as localities have moved away from traditional, Euclidean zoning techniques and towards more flexible and innovative forms of negotiated development review. These new flexible techniques have been used in Boston for some years now, and characterized the development review of the Fan Piers. The first half of this chapter documents the evolution of these development review processes over the past century. The chapter then seeks to establish two criteria upon which we can judge both the development review process and their substantive outcomes.

Traditional Development Review: Zoning

Two events are often regarded as the beginning of formal land-use planning in the United States. In the 1920s the U.S. Supreme Court validated the use of zoning in the now famous, *Euclid vs. Ambler* case and in 1928, the U.S. Commerce Department published the Standard Planning Enabling Act, which served as the model for state statutes for local government and planning across the country. Euclidean zoning essentially divided the urban landscape into separate and distinct geographic areas of a particular land use. Inconsistent uses such as industrial and residential activities were separated from one another and building and site characteristics such as height, bulk, and setbacks had to meet specific, enumerated minimum standards. Together with, the Standard Planning Enabling Act, which required the provision of streets, water mains, sewer lines and other utilities as conditions for building approval (Frank and Downing, 1988 p. 1), euclidean zoning formed the basis for almost all municipal development review between 1920 and 1960.

The lot by lot regulations imposed by zoning were well-received by many landowners and the public because people could know in advance what was or was not permitted. Despite their design rigidity, the zoning ordinances also provided a degree of certainty and efficiency to the regulatory process as they theoretically allowed for little discretion by municipal authorities. Over the years, however, a number of additional variations were added to the traditional zoning review including variances, exceptions and rezoning amendments. These allowed for

increasing flexibility and discretionary administrative review within the old framework of rigid zoning standard

Negotiated Development Review: PUDs, Negotiations & Exactions

As land development became increasingly complex, our perceptions of land regulation began to change. Between 1920 and the 1960s, it was an unquestioned civic responsibility in this country that local government should facilitate growth, and hence build the facilities and infrastructure to support that growth (Frank and Downing, 1988, p.1). In the 1960s, however, after more than forty years of the status quo, the environmental movement spurred a quiet revolution, shattering America's faith in the benefits of growth (Frank and Downing, 1988, p.1). The problems of traffic congestion, air and water pollution, and inadequate services were beginning to mount, and booming growth no longer seemed to provide all of the answers to America's problems. The fiscal crunch of the 1970s and 1980s reinforced the changes in planning outlook which had already begun in the sixties. The growing power of grassroots community groups and no-growth forces, the increased use of state tax caps limiting local government's capacity to raise new revenues, the legislation of the Environmental Quality Act requiring the mitigation of adverse impacts in the 1970s, and the the new federalism of the Reagan administration in the 1980s forced governments to take an even closer look at how they weighed the costs and benefits of growth.

Increasingly, governments shifted from the perspective that land was a private commodity resource to be used up by those who pay the most,

to a position that land was a common good to be protected by local government (DeNeufville, 1981). This emphasis on the collective good over the the individual' s freedom to choose was accompanied by a movement away from traditional zoning and towards project-by-project review. Development review processes, characterized by bargaining between the city and a developer over project character and the nature of the compensatory payments, began to replace the traditional, Euclidean zoning process that had reigned for more than forty years in most of the United States. This new flexible development review included a wide variety of techniques including planned unit developments, negotiated development review, and exactions. These techniques are described below:

Planned Unit Developments (PUDs)

Planned unit developments, commonly referred to as PUDs, were created in response to the "wait and see" zoning which had evolved over the years in many American cities. Wait and see zoning was essentially a way to indirectly give municipal authorities more discretionary power in the review process. According to this technique, a city would prepare a map classifying most undeveloped land in a relatively restrictive category, thus forcing a developer to seek an amendment from the legislative body (Frank and Rhodes, 1987, p. 83). This roundabout technique continues to be widely-used cities such as Boston.

PUDs emerged in the 1960s when suburban developers and planners agreed to the the concept of a unified master plan new residential communities. As an alternative to traditional zoning, a PUD is both a

physical plan and a legal concept for it allows for development that differs both in product and in process from as-of-right zoning regulations. PUD designations allow the traditional yard, lot, and bulk regulations of Euclidean zoning to be relaxed so that development projects of a substantial size can be evaluated on the basis of their own merits. Very little is required in the way of specific standards for site layout, and instead, an open-ended process of negotiated review takes place in order to create a master plan for the site. Extensive bargaining between the developers, who seek special zoning allowances for the site, and local officials, who seek added amenities from the large-scale project, is not unusual in such a process.

Negotiations

Today, negotiations occur between developers and government officials not only for PUDs but in all areas of development review including project benefits, exactions, phasing of development, types of land-uses, design and zoning standards, and impacts assessment. Such negotiations often are informal with considerable room for bargaining. Over time, however, many of the informal bargaining processes become formalized as a culture of negotiation is developed that binds both the developer and the municipality into a highly predictable process (Frank and Rhodes, 1987, p. 29). This movement away from conventional zoning and toward administrative review has occurred because both municipalities and developers are seeking increased flexibility and a development review process that is sensitive to the unique circumstances of each project's timing, physical details, and location.

Negotiated development review, which originated with growth control measures and PUDs in the suburbs and with urban renewal projects in large cities, has served to legitimize the legislative discretion of municipalities to discourage development or exact large contributions from developers (Frank and Rhodes, 1987, p.83). It also provides a legal opportunity for open-ended bargaining between developers in the city. A lack of accountability arises in many cases as there is no clear decision point and the negotiations suffer from a lack of closure (Cowart and Kesmodel, 1985, p. 37). Some municipalities have attempted to resolve the uncertainty of the negotiation process by creating development agreements, "contracts between local governments and developers that suspend the ability of the local government to change the land use regulations applicable to the project for the length of the agreement" (Cowart and Kesmodel, 1985, p. 1).

Exactions

A significant component of the negotiated development review process has been the use of a number of new tools designed to mitigate and compensate for the negative impacts of development. These come under a variety of names including exactions, mitigations, impact fees, and linkage payments, each with their own subtle variation in meaning. All of these tools can be grouped under the heading of exactions. In this broad sense, we can define exactions as conditions required by government authorities for the carrying forward of a project. In other words, an exactions is "a contribution by a developer to a municipality which is ordinarily a condition precedent to the issuance of a special

permit, a conditional use permit, a subdivision approval, or an amendment to a zoning map" (Connors, 1987, p. 1).

Subdivision exactions, such as the dedication of land for streets, sewer lines, schools, and recreational facilities, have routinely been used for decades. The increasing use of off-site exactions, designed to mitigate a development's negative impacts on the surrounding community have been much more controversial. These off-site exactions, which include impact fees, mitigation measures, and linkage payments, are described below.

Impact Fees

"Impact fees are charges levied by local governments against developers in order to generate the revenues for capital funding necessitated by the new development" (Connors et al., 1987, p. 9). General impact fees generally consist of single payment to be made by the developer or builder at the time of development approval. They are usually calculated by a formula which seeks to measure the development's proportionate share of the capital cost of providing major facilities such as roads, sewage treatment plants, and regional parks which will be necessitated by growth (Frank and Downing, 1988, p. 2). Studies by Downing and Frank found that communities prefer not to leave the determination of impact fees to negotiation, with 80% of the communities surveyed nationally using either a formula or a published schedule to determine the fees (Frank and Downing, 1988, p.16).

The use of development impact fees has increased dramatically, and is now commonly found outside of the states of Florida and California where the fees originated. For municipalities, impact fees tend to be a relatively easy tool to implement and although developers would rather do without the added payments altogether, they favor the fees' predictable formula which provides them with some certainty of impending exactions. Unlike, negotiated exactions and mitigation measures, statutory impact fees allow a developer to work the added costs into a pro forma before he is well into the development review process.

Mitigation Measures

Mitigations are actions that are required of a developer to avoid, minimize, reduce, rectify, or compensate for the adverse impacts of his or her proposed development (Phillips, 1987, p. 36). The most controversial mitigation measures are those which are off-site and out of kind such as when a local government requires a developer to build a park three miles away in order to compensate for the increased congestion which his or her development will create.

Linkage Payments

Linkage fees, introduced in Boston and San Francisco in the early 1980s, are the most recent and controversial types of exactions. In order to obtain development approval, developers in cities with linkage programs must either build low and moderate income units themselves or contribute linkage payments based on square footage of development to a special affordable housing fund. The underlying logic for linkage

formulas is that commercial and office developments attract new workers, who increase the demand for housing, pushing up rents and housing costs, and reducing the affordability of urban housing. This indirect causal connection between new office development and affordable housing has been deemed sufficient by a number of governments to justify the request for linkage from developers.

Negotiated Development Review: EIRs & Citizen Participation

The advent of flexible development review techniques was accompanied by a new role for both state governments and citizens in local development review. This state and citizen involvement was fomented by federal NEPA and CDBG regulations, which encouraged both a regional perspective and increased citizen participation in governmental decisions.

State Environmental Impact Reviews (EIRs)

Rapid growth and development in the 1950s and 1960s prompted public interest in conservation and environmental protection, and by the late 1960s considerable pressure was being exerted in Congress for reform. Hence, in 1969 the National Environmental Policy Act (NEPA) established nationwide procedures and standards for the environmental impact review (EIR) of large scale development projects. Since that time, many states, including Massachusetts, have set up similar EIR programs. The EIR process applies to most large-scale development projects in need of state permits and requires that developers and local officials meet with the citizenry to scope out the relevant issues, measure the impacts of different project alternatives,

and propose mitigation measures for negative impacts. These analyses and recommendations are then incorporated into draft and final environmental impact reports, which are often used to supplement the local development review process.

Although the EIR has no authority to demand that the mitigation proposals be implemented, it has added a new layer of scrutiny to local development review. Proponents claim that environmental reviews help ensure that the environmental consequences of a project will be accounted for by decisionmakers. They also note that the reviews help foment greater environmental awareness among developers and city officials, and generally result in better, more environmentally-sensitive projects.

Critics, however, argue that the environmental review regulations are unfair and promote no-growth policies designed to exclude newcomers from communities rather than mitigate environmental impacts. Protracted disputes paralysing lawsuits, and other blocking tactics by special interest groups result in costly delays and oftentimes, development deadlocks. Many observers now believe that environmental reviews have been abused and do not fulfill their initial intent of balancing the costs and benefits of development. Bernard Frieden in his book *"The Environmental Protection Hustle"* notes: "Development reviews in practice seldom generate meaningful new information for decision-makers. Their main function is political: to give the opposition time to organize and repeated chances to block construction" (Frieden, 1979, p. 177).

Citizen Participation

The grassroots mobilization of citizen groups in the 1970s has had a significant impact on development review processes. Residents no longer trust that planners will speak on their behalf. Nor are they willing to have their opinions relegated to the public hearing which traditionally comes at the end of the development review process. In response to this increasingly vocal segment of the population, a number of cities have established citizen or neighborhood advisory councils that review development proposals and provide their recommendations to the municipality. In some cases, residents are even demanding that they be able to sit at the negotiating table with developers and government officials.

Grassroots activism has changed the nature of community involvement in the development review process considerably. This increased public participation in development review has been applauded by many. Others, however, note that representational issues still plague the process and that many citizen groups have their own self-interest and exclusionary desires at heart rather than the interests of the community as a whole. Furthermore, in most cities, citizen participation in the development review process continues to be on a reactive, rather than pro-active basis. Citizen participation or not, the final decision-making continues to lie in the hands of local government administrators.

An Evaluation of Negotiated Development Review

Negotiated Development Review: The Pros and Cons

Over the past two decades, flexible development review techniques such as PUDs, negotiated development review, and exactions have become increasingly popular. There is considerable debate, however, over the merits of such techniques. Critics argue that the open-ended bargaining for development approvals makes the developer hostage to voluntary payments, arbitrarily determined by the regulatory agency. Many developers would agree, arguing that the negotiation process amounts to extortion. A question of accountability also exists since it is not always clear who has the authority to make final, binding decisions and when the review has reached closure. Proponents, however, note that the new negotiated development foments increased flexibility in the review process. Negotiations allow planners to respond thoughtfully to the individual merits and costs of each project , rather than relying on overly broad, rigid regulations. This argument holds that negotiated development review encourages creativity and innovative solutions by developers and designers rather than the traditional "just meet the minimum standards" approach.

Which argument is correct? Clearly, both proponents and critics of flexible development reviews have some valid points. Since every negotiated development review process is different, it is difficult to generalize across cities and sometimes, even across cases. For this reason, this thesis examines only one particular case, that of the Fan Piers Development in order to draw lessons for the City of Boston. What can we learn from the Fan Piers case about the use of flexible zoning

techniques in Boston today? Is Boston's model of negotiated development review a good one? How could it be improved?

In order to answer these questions, this thesis undertakes different types of analysis of the Fan Piers development review process. Chapter Four explores some the external and project-specific factors that we believe influenced the negotiated review process in order to have a better understanding of why the review proceeded as it did. Chapter Five then evaluates the development review process in terms of its fairness and efficiency. The assumptions for this analysis are described below.

Criteria for Evaluation: Fairness and Efficiency

This thesis asserts that the development review process should be both fair and efficient from all parties' perspectives. Fairness and efficiency of the Fan Piers development review process can be evaluated by focusing on three key components of any development review process: policy linkages, procedural guidelines, and citizen participation.

A fair development review process allows for similar projects to be treated similarly, regardless of who is proposing them (U.S. Department of Housing and Urban Development, 1980). This includes equal access to well-defined policies, procedures that allow for a thorough review of project costs and benefits, and for opportunities for all relevant parties to express their concerns. A fair review process includes the following characteristics:

Policy Linkages: Policy linkages are clear. Plans and policies are clear to all parties. The criteria and standards which serve as the basis for

decisions are well known to all ahead of time. There is a consistent treatment of developments over time and across projects.

Procedures: Procedures for review are predictable. The rules of the game are clearly established ahead of time or at the beginning of the process so that all of the players know and understand the procedures as well as each party's roles in the process. Each party is responsible and accountable for its actions. The procedures should also establish a review process which is thorough and addresses all of the issues. A balance is achieved in reviewing project costs and benefits and the total benefits to all parties outweigh the total costs.

Participation: Participation is equitable. All relevant stakeholders are given an equal chance to participate in the process. The people who manage the process are open and responsive to the views and concerns of these participants. (Susskind, 1987, p. 27). All individuals involved in the process should also have adequate access to information. Finally, a fair process is open to public scrutiny and those involved are accountable to the constituencies they ostensibly represent.

An efficient development review process, on the other hand, is one which analyzes problems in light of the municipality's development objectives and proposes solutions that waste the fewest resources in attaining them. An efficient exaction process is one which does not take an inordinately long time, which does not have excessive monetary costs to one or more parties, and which can achieve "elegant outcomes". Elegant trades are those exchanges that benefit all parties without penalizing any (Susskind, 1987, p. 32). An efficient process includes the following characteristics:

Policy Linkages: Policies are clearly stated and are designed to remedy the actual problem, rather than indirectly solving other unstated problems. In other words, large lots are not required when people are actually concerned about automobile traffic or racial integration.

Procedures: Clear-cut procedures for review reduce uncertainty for all parties and avoid a long, drawn out process. Procedures should not be so rigid, however, as to result in unnecessary reviews. Procedures are

designed so that resources are not wasted. Only as many studies or as many meetings as are necessary are held. Data and technical studies should equally available to all parties so that well-informed choices can be made be made the first time round.

Participation: Those parties who are directly affected by the development impact under consideration provide input at the appropriate moment in the process. Outspoken, special interest groups are not allowed to dominate the negotiation of impacts. Negotiations only extend as long as is necessary.

Clearly, certain tensions exist between the goals of fairness and efficiency. A fair process which allows for the most thorough review possible of all impacts, for example, may not be very efficient. Or an efficient review process which ignores the voice of certain extreme outlier groups, may be unfair. Planners must always weigh these trade-offs against one another, however, and seek a review process which maximizes both fairness and efficiency. It should also be noted that a process that seems to maximize efficiency in the short-run, may indeed be less efficient in the long run. Hence, this thesis' assertion that an efficient review process includes citizen participation. By including the affected players early on in the negotiations, delays due to litigation and public hearings protests can be avoided. Efficiency and fairness in the long term will create stable outcomes, that all parties can accept.

Conclusions

In many ways the development review of Boston's Fan Piers Development, was typical of the flexible review processes commonly used today. The Fan Pier was Boston's first planned urban development (referred to as a Master Plan, Planned Development Area or MPDA in Boston). The project was also subject to extensive negotiated development review, and a wide range of exactions were demanded of

the developers. Furthermore, a state environmental impact review was conducted simultaneously with the local PDA review of the Fan Piers. Finally, citizen participation was an integral component of the Fan Piers' review process. These features of the review process are discussed in greater detail in Chapters Two and Three.

CHAPTER TWO

THE FAN PIERS DEVELOPMENT

This chapter provides a brief description of the Pier Four/Fan Pier developments and their geographic, historical, and political context. The geography and historical evolution of the Fort Point Channel area and the greater South Boston neighborhood provide important clues as to why Pier Four/Fan Pier projects are so desirable to developers, yet controversial among residents and government agencies. A project of this magnitude generates a wide variety of costs and benefits. Not surprisingly, a number of interest groups have coalesced around the different issues. The perspectives and interests of these different players are described in the political context section of this chapter.

Project Description

What is commonly known as the Fan Piers Development, is actually two adjacent development projects: the Fan Pier and Pier Four. South Boston's Fan Pier is a 19 acre site (2.6 acres of which are under water) that is being developed by HBC Associates, a joint-venture, limited partnership affiliated with the Hyatt Corporation. A portion of the site is actually owned by HBC Associates while the remainder is ground-leased from Anthony Athanas, who also owns Pier Four. HBC Associates proposes to build a hotel, various office buildings, retail uses, luxury residential units, and possibly a public cultural facility on the Fan Pier. The Boston Mariner Company, Inc., owned by the Athanas family, is developing the adjacent Pier Four site. This 16.4 acre parcel consists of 8.9 acres of piers and upland area, with the remaining 7.5 acres lying

below water. The Pier Four project is also a mixed-use development, which includes office, hotel, and retail space, residential units, below-grade parking and recreational open space. Together, these two projects are expected to add a total of 4.8 million square feet of mixed-use development to the City of Boston (Figures 1 and 2) The developers estimate that their total development costs will be 1.1 billion dollars. Although these two projects have separate developers, Anthony Athanas owns both sites and both the local and state level development reviews have focused on the proposals in conjunction with one another. This thesis shall also address both projects jointly, and will refer to them as the Fan Piers Development.

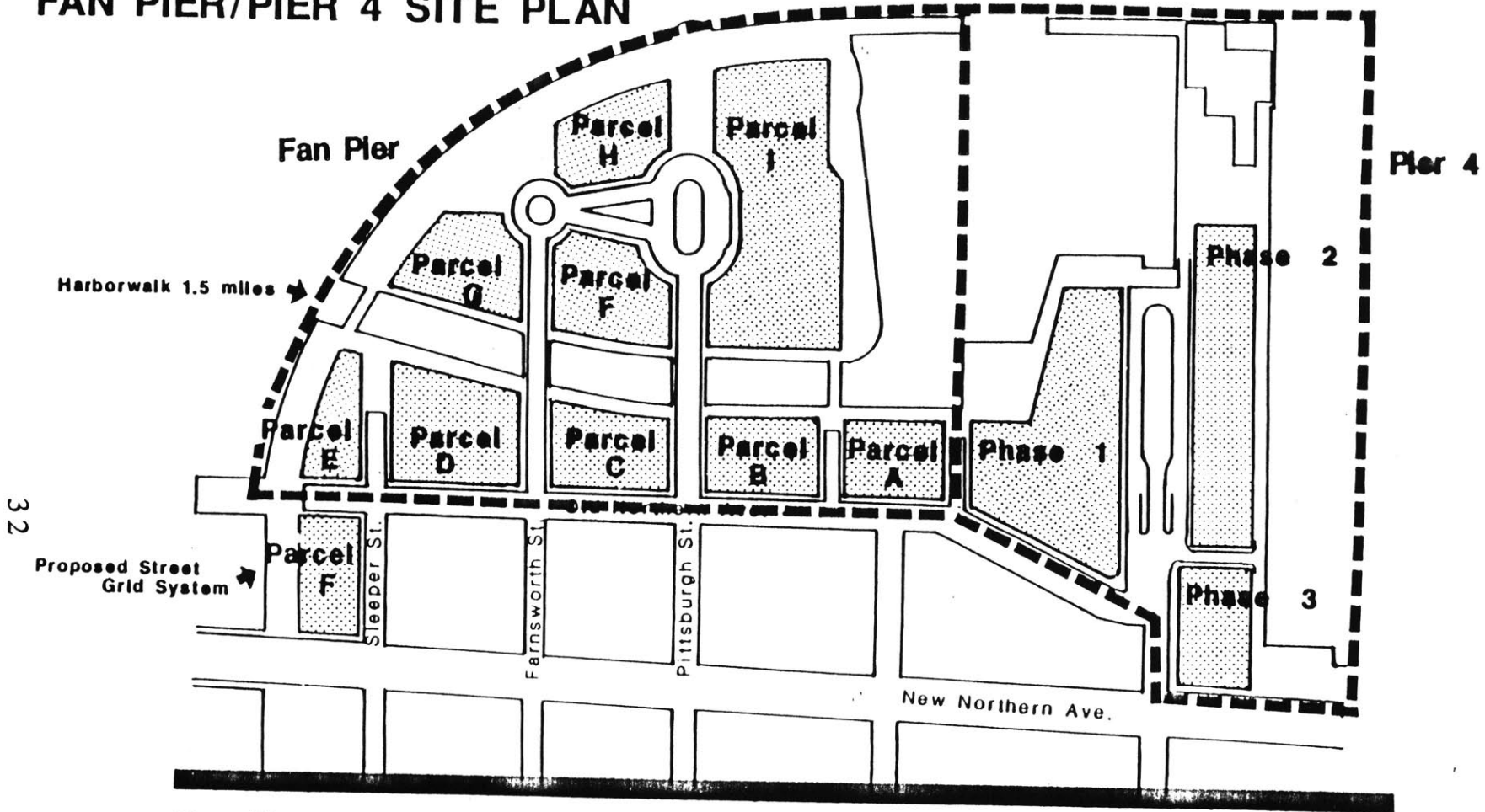
Geographic Context

The proposed Fan Piers Development lies along the northern shore of the South Boston in the vicinity of the Fort Point Channel (Figure 3). A number of bridges span the channel and link the predominantly blue-collar South Boston community with downtown Boston's financial district. The immediate area surrounding the Fan Pier is industrially-zoned and is composed of 300 acres of warehouses, offices, light manufacturing, exhibition space, large parking lots, piers, and underutilized railroad yards. A majority of the area's jobs are related to the printing and publishing, food processing, and leather and apparel industries or are in Gillette Park (Boston Redevelopment Authority, 1985). In addition to the warehouses and retail fishing businesses, one can also find a number of restaurants and such popular attractions as the Boston Tea Party Ship and the Children's Museum in this area.

While the Fan Piers Development is located in the commercial and industrial northern portion of South Boston, the southern half of the neighborhood is mostly residential. Affectionately referred to as "Southie", South Boston has traditionally been a solid, stable working class neighborhood. The predominantly white (97%) and Irish residents of South Boston are primarily employed in manufacturing and the construction industry. A large elderly population can also be found in this area. Below average housing conditions prevail, and more than 75% of the residents are renters, most of whom live in triple deckers or small apartment buildings (Brown and Hafrey, 1985). For many, this neighborhood has always been home: an astounding 63% of the residents have lived in South Boston for at least thirty years (Boston Globe, June 30, 1986).

Like many other Boston neighborhoods, however, Southie has undergone considerable social and economic change over the past decade. Young and affluent downtown professionals have begun to move into the area, renovating the existing housing and building townhouses on small infill lots. According to the BRA, this neighborhood has experienced stronger than average growth of residential market values over the last twenty years, particularly in the northern half of the community (Arault and Seko, 1985), yet vacancy rates continue to be less than 3% annually (Brown and Haffrey, 1987). Unable to afford the skyrocketing prices, many long time residents live in homes that were handed down to them by their families and do not have the resources to improve housing conditions or pay higher rents.

FAN PIER/PIER 4 SITE PLAN



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Fan Pier

- Parcel A Office & Retail
- Parcel B Office & Retail
- Parcel C Office & Retail
- Parcel D Office & Retail
- Parcel E Public/Cultural
- Parcel F Residential & Retail
- Parcel G Residential & Retail
- Parcel H Residential & Retail
- Parcel I Hotel & Retail

Pier 4

- Phase 1 Hotel, Office, Retail & Residential
- Phase 2 Residential & Retail
- Phase 3 Office, Retail & Residential

First-Time Home Buyers

- Parcel F Affordable Housing-150 Units

FIGURE 1: Proposed Site Plan for the Fan Pier/Pier Four

FIGURE 2: Model Photograph of the Fan Piers Development

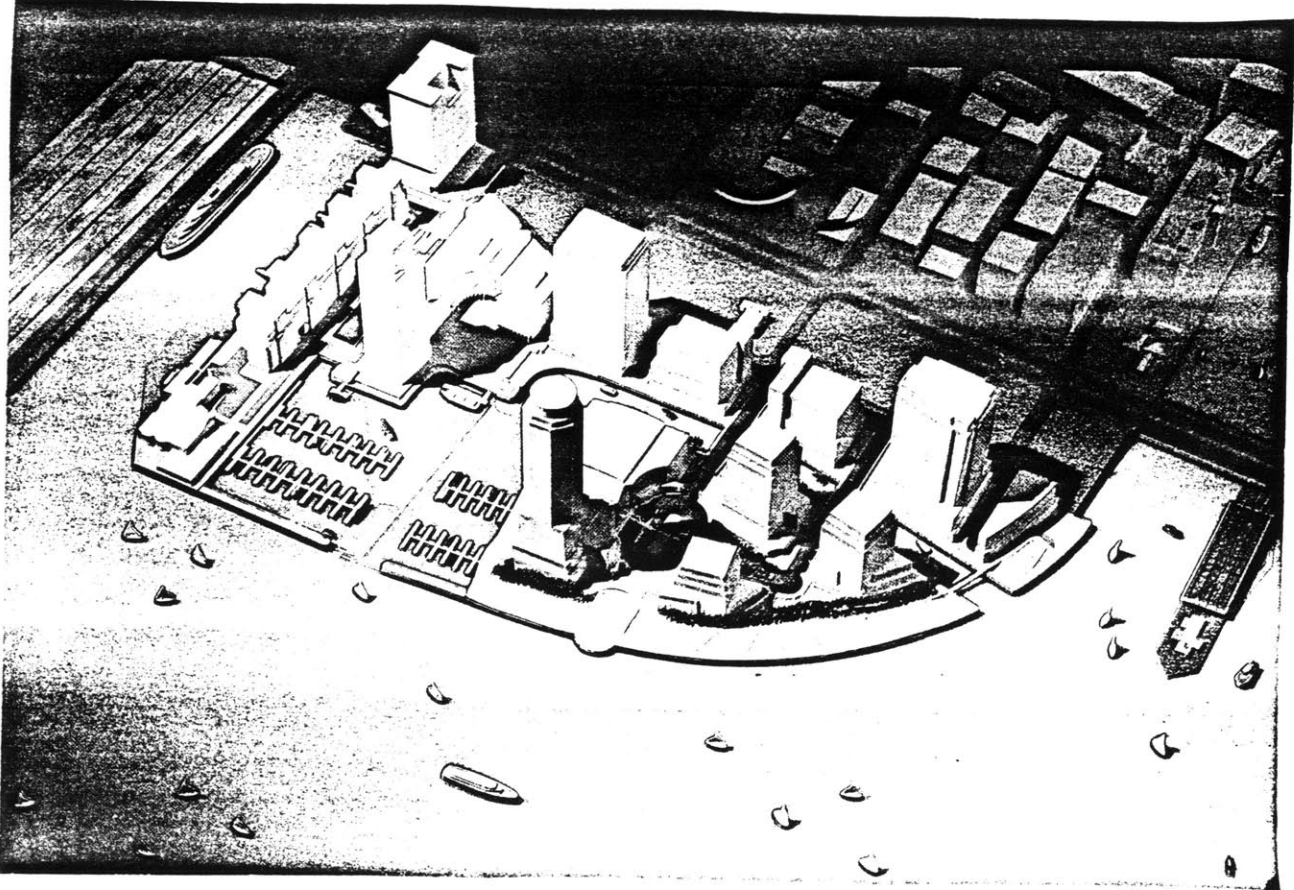
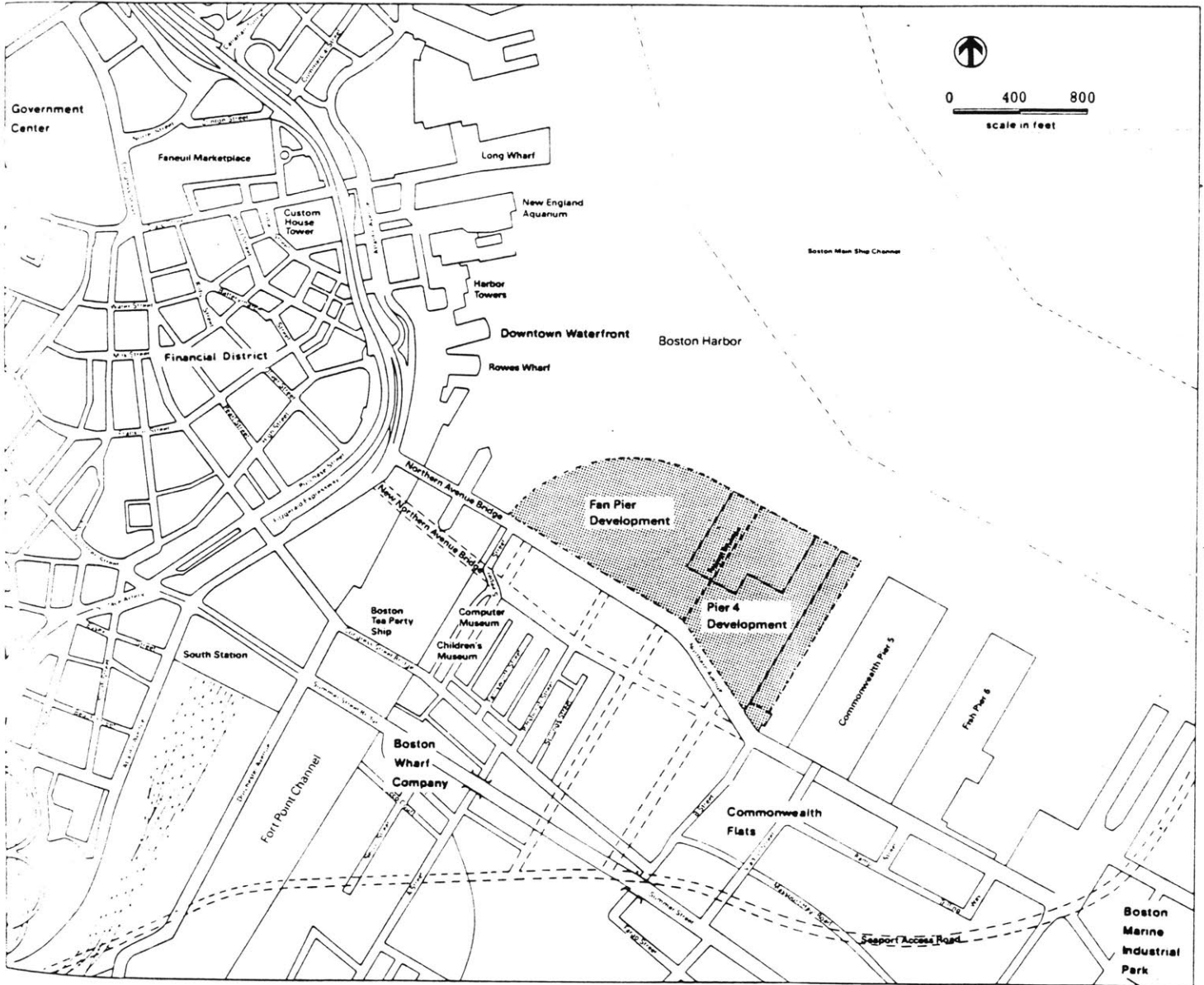


FIGURE 3: The Fan Piers Site and Surrounding Urban Area



The influx of newcomers has met with resistance from the close-knit, South Boston community, which has a "tradition of proud parochialism" (Boston Globe, July 30, 1986) stemming from its grounding in conservative, Irish Catholic culture. This is a community known for both its insularity and profound mistrust of outsiders, as well as its strong instinct towards self-reliance. City Councillor James Kelly (South Boston) once noted: "if we don't protect ourselves no one else will...the Irish sense of us and them will always be here" (Seiden Hayes, 1986 p. 70). Indeed, throughout the Fan Pier Development review process, South Boston has made it clear that it is the type of neighborhood that will fight to control its own destiny.

Historical Context

Fort Point Channel: 1800-1988

The Fan Piers' neighborhood was not always characterized by brick warehouses and triple deckers, however. The Fort Point Channel, originally marsh land and tidal flats, was created through land filling which began as early as 1835. Land filling continued throughout the early twentieth century as the fishing and wool processing industries and the importation of lumber, steel, pig iron, rubber, and sugar spurred Boston's ports into a flurry of activity. These record years of port activity continued well into the 1920s. Following World War II, however, technological changes in the industry led to considerable erosion of the shipping and railroad industries in the region, and New England lost its predominant role as a manufacturing center. Boston's waterfront and the Fort Point Channel area began to experience

considerable decline as warehouses were abandoned and the piers deteriorated. Today, approximately 30% of the land is vacant, and the remaining land-use consists of underutilized commercial and industrial loft structures (Boston Redevelopment Authority, 1977).

Despite its array of parking lots, weeds, and piles of gravel, the Fort Point Channel is considered to be an area of enormous potential (Boston Redevelopment Authority, 1977). The City has recognized that this area is in need of considerable revitalization, and has announced plans to rezone and create a master plan for the Fort Point Channel and South Boston waterfront (Boston Globe, January, 24, 1988). BRA director, Steven Coyle, suggests that the Fort Point Channel area is the city's most vital development frontier, and an area that will be the Government Center of the 1990s (Boston Tab, January 26, 1988). State and local plans for major, public infrastructure improvements such as the construction of the Third Harbor Tunnel, the Seaport Access Road, improvements to the Northern Avenue Bridge, and repaving of roads also exist, and an extension of the Red Line to Northern Avenue is under consideration. Most important, this area is blessed with close proximity to Boston's financial district. The Fan Piers Development, for instance, would be within walking distance and visibly accessible to financial and corporate towers that now characterize downtown Boston.

These renewed local planning efforts, state-initiated infrastructure improvements, the proximity to downtown, and the lack of available land elsewhere in the city have sparked developers' interest in the Fort Point Channel area. A number of development firms have been buying

up large parcels of land and positioning themselves for future development in the area (Boston Globe, January 24, 1988). The upbeat outlook for the Fort Point Channel is summarized by one forward-looking developer who has noted: "If things fall right, this could become the toniest area of the city in 15 years." (Boston Globe, March 24, 1987).

The Fan Piers Site: 1960-1985

One person, who appears to have spotted the area's potential early on, is Anthony Athanas. In 1960, Athanas, an Albanian immigrant, bought three acres of what is now Pier Four. By 1972, he had added an additional 35 acres of land to his initial purchase. Athanas built a restaurant on the Pier Four site and used another large portion of the land as a parking lot. Today, the 35-acre Fan Pier/Pier Four site is the largest, single, vacant parcel of land in the City of Boston.

In 1981, the Athanas' owned Boston Mariner Company and its joint-venture partners, HBC Associates, presented a plan for mixed-use development on the site to the BRA. The plan had little relation to the existing street grid and was ringed by tall buildings at the harbor's edge. The development team abandoned this master plan after it met with considerable criticism from the public and the BRA.

Soon afterwards, a new architect was chosen for the site. Considerable planning went into the new development proposals and the developers did not present another Master Plan until 1985. The new plan consisted of uses similar to those in the original plan, but the design was altered to encourage more active use of the waterfront. The initial response

from the public was positive, kicking off the project's development review. The past three years have been characterized by extensive negotiations as the development teams, city and state agencies, and citizen groups try to redefine the Fan Piers proposal into a project that is acceptable to all.

The Fan Piers Proposal Today: Costs and Benefits

Today, "the Fan Pier Development is viewed by many as the flagship operation that would lead the way and serve as a catalyst for development" (Boston Globe, January 24, 1988) in the entire Fort Point Channel area. It is expected to provide a number of benefits to the city of Boston, including 17.6 million dollars in annual real estate taxes (Allen, April 23, 1987) and approximately 10,000 permanent jobs. The project is expected to provide 3400 person years of construction jobs, half of which the developer has guaranteed will go to Boston residents, and one-fourth of which, will go to minority residents (BRA Board Public Hearing, March 24, 1987). The developers also propose to build 1000 residential units as part of the mixed-use development.

The developers have also agreed to provide a number of additional benefits to the City in the areas of housing, employment, and cultural facilities (Appendix B). Given the enormous scale of the project, approximately 15 million dollars in housing linkage funds will be generated by the project. Part of these funds will be used to create 120 to 150 affordable housing units on a nearby off-site location (BRA Board Public Hearing, March 24, 1987). Another 100 units of affordable housing will be included on-site. The developers have also agreed to

commit two million dollars to a fund for South Boston home improvement loans and another 20,000 dollars towards a study of methods for creating artist housing in the area (BRA Board Public Hearing, March 24, 1987). With regard to employment benefits, the developers will contribute an additional 3 million dollars to a job-training fund as required by development impact project linkage regulations (Allen, April 23, 1987). Finally, the developers will pay between 146,000 and 200,000 dollars (figures vary) in voluntary funds for a special job clearance office in South Boston (Boston Globe, April 23, 1987). This South Boston Job Stop program (Allen, April 23, 1987) is part of a larger plan of the Mayors Office of Jobs and Community Services to train and link community residents with new jobs available due to new downtown construction (Boston Globe, April 23, 1987).

A proposed public cultural facility for the Fan Pier Development is another possible benefit of this project. Massachusetts governor, Michael Dukakis and senate president, William Bulger, hope that a 23 million dollar home for the Institute of Contemporary Art, containing two theaters and several galleries, will be built on a portion of the Fan Pier site. Media reports suggest, however, that the State planned much of the cultural facility without consulting local officials, and that Mayor Flynn envisions a park or more affordable housing on that portion of the site (Boston Globe October 15, 1987). Both the Mayor and the BRA prefer to see a cultural center in Boston's newly-created Midtown Cultural District.

The Fan Piers Development is unique, both in its scale and its 25

million dollars of proposed benefits. Most observers agree that "In the pier area and in the Fort Point Channel area in general, there hasn't been such a natural site for a public-private tug of war since the New Boston was conjured up in the late fifties, primarily because there has not been a chance for urban planners and developers to work at such a grand scale."(Boston Globe, March 9, 1986). Boston is torn over whether the public benefits of 18 million dollars in tax revenues, 3400 construction jobs, 10,000 permanent jobs, 15 million dollars in housing linkage funds, 3 million dollars in employment training linkage funds and a public cultural facility, can indeed offset the traffic, housing, and design problems that will be created by this massive development (Boston Globe, March 25, 1987). A number of observers contend that the project's monetary benefits will not offset the public funding that will be necessary to provide public facilities for the project (Boston Globe March 25, 1987), while others see the the 5 million square foot development project as a tremendous opportunity for the City. These differences of opinion have plagued the project since the beginning. The different parties who have participated in the Fan Piers Development review and their respective interests in the project are described below.

Political Context

A wide variety of government agencies, citizen groups, private interests and politicians have been involved in the three year tug of war over the Fan Piers Development. Government agencies and the officially-designated citizen advisory committee have had a formal role in the process, while coalitions have emerged informally as individuals and organizations rallied around particular issues. These informal coalitions

can broadly be divided into two groups: the construction industry, local businesses, and neighboring commercial developments, who generally favor the project; and housing and arts activists, environmental groups, and other port activities, who generally oppose the project. Finally, Mayor Flynn and, to a lesser extent, Governor Dukakis and State Senate President Bulger have also played a role in the review of this project.

Governmental Players

Any development project the size, scale, and complexity of the Fan Piers Development is subject to the approval of a wide number of local and state agencies before it is granted a building permit. This case is no exception. Agencies officially participating in the development review of the Fan Pier include: the Boston Redevelopment Authority (BRA), Boston Office of Arts and Humanities, the Mayor's Office of Jobs and Community Services, the Mayor's Committee on Handicapped Affairs, the Boston Transportation Department, the Public Facilities Department, Logan Airport officials, the Metropolitan Boston Transit Authority (MBTA), the state Department of Environmental Quality and Engineering (DEQE) and the state Department of Transportation (DOT). Among these, however, the BRA has emerged as the most pivotal agency within the development review process.

Much of Boston's growth and change over the past three decades has been related to the activities of one agency, the BRA. The BRA was created in the late 1950s to order to undertake the urban renewal of Boston's blighted downtown. Today, the BRA's role is twofold. As the

city's planning agency, its goal is to improve the social, economic, and environmental welfare of the city as a whole. As a redevelopment agency, it brokers virtually all large-scale development projects in the city. It is in this latter role, that the BRA is most comfortable.

The BRA is an increasingly powerful player in the Boston's development arena due to its growing independence within the municipal governmental structure and its active role in negotiations with developers. Although the Mayor can appoint the BRA's director as well as one member of the BRA board, the agency is essentially autonomous. In 1987, the BRA became financially independent of the City budget which further enhanced its bargaining power in the development review process. The BRA also negotiates the planning guidelines for almost all Boston development projects because the current zoning, dating back to the sixties allows very little that can be done as of right and still be economically feasible.

The BRA's role as a development broker has come under criticism from all sectors. Developers often criticize the BRA's negotiating process for its lack of formalized rules and an underlying plan, while neighborhoods, architectural critics, and environmentalists have blamed the BRA's ad hoc approach for allowing large, unsightly structures to dominate Boston's skyline. Under the leadership of a new director, Steven Coyle, the BRA has been trying to change its image as an all-powerful, development broker that knows no limits. The agency has begun to create some new procedures for development review, planning districts and citizen advisory committees to help review large scale

development projects.

For the BRA, the highly visible Fan Pier development review is a means of establishing some important precedents for future developers. The agency does not want to be perceived as favoring developers or being ad hoc in its review procedures, but it still desires to retain a considerable degree of control over the process. In the process of solidifying its control, the BRA wishes to avoid scaring off the development community, on whom it relies for its funds and existence. At the same time, it is also facing increasing pressure from both the mayor and the community to be more responsive to citizen groups. The Fan Piers Development requires the BRA to maneuver very carefully if it is to achieve all of its goals.

Citizen Groups

Two citizen groups, appointed by the Mayor, are also formally involved in the development review process. These are the Citizens Advisory Committee (CAC), which was specifically created to review the Fan Piers Development, and the Harborpark Plan Advisory Committee, a group involved in the planning and development review of Boston's harborfront land. Both of these committees, particularly the former, have engaged in extensive negotiations with the Fan Pier developers over the past three years.

The CAC was created in August of 1984 and is comprised of members of most of South Boston's leading civic associations and representatives of special interest groups (Appendix C). Lawrence Dwyer, the Director of

Boston Community Schools and a South Boston resident, was appointed by the Mayor as chairman of the committee. The CAC's original eleven members include representatives of South Boston's artist community, a number of harbor and shipping associations, the chamber of commerce, members of the Harborpark Advisory Group and the leaders of South Boston neighborhood groups. A number of new members have also been added since the CAC's creation in 1984.

Like the CAC, the HPAC is a heterogeneous group, composed of a variety of interest groups from the Boston community. The HPAC was created in 1985 and has overseen the creation of Harborpark design guidelines and interim zoning standards for Boston's waterfront. The HPAC has fifteen members--five government representatives, one representative from each of five waterfront neighborhoods (including South Boston) and five representatives from private and non-profit organizations with an interest in waterfront and harbor issues. This committee's scope is geographically broader and more planning-oriented than that of the CAC.

These two citizen committees have met on a regular basis with the developers. The CAC, in particular, has negotiated considerably with the developers and is generally less hostile and more well-informed of project details than other interest groups. Both the CAC and the HPAC have cautiously endorsed the Fan Pier Development, but have consistently asked for further refinement and more detail on issues of design and traffic. The CAC's primary concern is traffic congestion, both during the construction period and in the long run. HPAC's main

focus is the design of the site. HPAC hopes to ensure that there is adequate public access and pedestrian comfort in the area which will eventually become a new link in Boston's rapidly evolving Harborwalk Park. HPAC has also noted that it would like to see the site 's scale reduced by 25 to 30 percent so that it would be more compatible with Harborpark design guidelines (Comment Letters for the Draft Environmental Impact Report, 1987).

Favorable Coalitions

The Construction Industry

Among the informal coalitions, business and construction interests have responded most favorably to the proposed Fan Pier Development. The construction industry has emerged as the coalition most clearly in favor of the project. Such groups as the Boston Building Trades, the Building and Construction Trades Council of the Metropolitan District, the Carpenters' Union, and the Plasterers' Union could be included in this coalition. Members of the construction coalition point out that the 3400 manpower years of labor generated by the Fan Pier proposal would not only boost the construction industry but would also stimulate further economic development in the area. . Many construction laborers reside in the South Boston neighborhood, however, thus while expressing enthusiastic support for the project, these groups would also like to see more traffic mitigation measures for the area..

Business Interests

Businessmen and trade councils see the Fan Pier Development as an opportunity for extended retail participation and market growth of the

City. One such group, the Alliance for The Fan Pier Project, is composed of business, labor, and civic leaders who back the development based on its provision of jobs, housing, tax revenues, and convention space to the City (Boston Globe, April 11, 87, p. 22) Groups such as the South Boston Port of Trade, which represents merchants and local businesses in the area, AC Cruise Line, the adjacent World Trade Center, Boston Harbor Associates, and the Children's Museum have also supported the project (BRA Board Public Hearing, March 24, 1987) in light of the additional clientele it will generate for their organizations.

Neighboring Commercial Developments

The commercial neighbors of the Fan Pier presently find themselves in a somewhat awkward position of both favoring the project, but also lobbying strongly for certain design and transportation changes. On the one hand, neighbors such as the World Trade Center and the Boston Wharf Company support development because the construction of the Fan Pier will set an important precedent for development in the area and will generate a sufficiently large employee and resident base to support projects on adjacent sites. On the other hand, the site's neighbors are concerned that excessively large project will result in overly congested roads and a depleted infrastructure system, severely hampering their own developments. And, while they like the idea that the density of the Fan Pier will set a yardstick by which subsequent developments can be measured, they are also concerned that the large Fan Pier Towers may obstruct their valuable views of the Boston skyline (Comment Letters for the Draft Environmental Impact Report, 1986).

Opposition Coalitions

Housing and Arts Advocates

The Fan Pier Development has met with more resistance from affordable housing and environmental groups. Numerous housing groups and arts organizations, including the Massachusetts Tenant Organization, The Boston Linkage Action Coalition, Massachusetts Fair Share, Fort Point Channel Arts Community, and Friends of Boston Art, have expressed displeasure with the proposed project. Housing advocates have argued that the luxury residential units and hotels of the Fan Piers and the influx of new workers will indirectly push up housing prices in the area. These groups argue that insufficient affordable housing has been provided by the project's developers and in some cases are seeking as much as 50% on-site affordable housing (BRA Board Public Hearing, March 24, 1987). The arts community is particularly concerned that young, struggling artists who reside in the nearby warehouses will be displaced by rising rents and gentrification in the area. One exception within the Arts community is the Institute of Contemporary Art which supports the project. The Fan Pier Developers have seriously considered Kitty Dukakis' (the Governor's wife) proposal to build a public arts facility for the Institute of Contemporary Art on the site.

Environmental Groups

Watchdog groups such as the Massachusetts Audobon Society, Sierra Club, the Conservation Law Foundation and the Boston Preservation Alliance also oppose the project and charge that the Fort Point Channel

area's infrastructure--including roads, public transit facilities, water and sewer systems--cannot handle such a massive development as the Fan Piers (Boston Tab January 26, 1988). The environmental groups have noted that all of the development's traffic plans to date are dependent on traffic improvements which have yet to be completed, such as the construction of the Third Harbor Tunnel and the Seaport Access Road (BRA Board Public Hearing, March 24, 1987 p. 140). They seek more specific commitments on traffic mitigations and have requested that the project be conditioned upon such contingencies as new tunnel construction actually occurring.

The environmental groups criticize the City as much as the development project itself. John Lewis of the Sierra Club notes that there is a need for the city to provide a complete overview of planned developments throughout Boston in order to make traffic and construction planning possible (Boston Tab, January 26, 1988, p. 14). Hamilton of the Conservation Law Foundation also places an emphasis on the need for more comprehensive planning. He notes that "places must be identified where the city can absorb further construction before such massive development is allowed to continue" (Boston Tab January 26, 1988).

Other Port Activities

A number of ports and harbor-oriented groups have also expressed concerns about the impact of the proposed development on waterfront character. Groups such as the Boston Shipping Association and the New England Seafood Center emphasize that Boston's harbor has traditionally been the City's lifeline. They suggest that Boston needs to

re-evaluate the rapid transformation which the waterfront is experiencing from a place of warehouses, fishing and trade enterprises, and major port activities to a high-income enclave of hotels, convention centers and luxury condominiums.. These port groups would like to see more focus on the maritime future of the city, blue-collar worker activities, and the import/export port activities which have traditionally been a source of Boston's waterfront growth. Harborside, maritime businesses are also concerned about the negative impact that traffic congestion and hence, reduced access to the sea ports will have on their businesses and the life of the harbor (BRA Board Public Hearing, March 24, 1987). Interestingly enough, the concerns of the harborfront coalitions have received much less attention from the press than those of environmental and housing advocates.

Politicians

The Mayor

Mayor Flynn stands in the midst of these political interest groups who are vying for a say in the Fan Pier tug of war. He must seek to balance both the welfare of the city as a whole and the individual needs of its various neighborhoods. In the Fan Pier case, Flynn finds himself caught between a rock and a hard place: the fiscal and economic benefits to the City are enormous, but the environmental and social costs have also met with vociferous citizen criticism. A number of observers have noted that the Mayor would find it hard to turn down the housing and jobs benefits as well as enormous tax revenues which a project of this scale could offer to the City. Michael Goldman, a Boston political consultant has commented, for instance that the enormous political

pressure which has supported the project could only be stopped if Flynn could make the case that the impacts would be devastating to Boston's quality of life (Boston Globe, March 25, 1987). From other quarters, however, there has been a steady flow of criticism of the project. Boston's strong-armed housing groups, many residents, and a number of environmental organizations are concerned with the traffic impacts and the inordinate scale of the project. These groups have become an increasingly sophisticated, vocal, and powerful force in local development politics over the past few years (Susskind et al., 1986, p. 6). The Mayor is highly aware of the citizens' and housing activists influence, as it was these same groups that brought him to power in 1983 when he campaigned as the neighborhood mayor who would seek to ensure that downtown's wealth was shared with the community. (Boston Globe April 7, 1987).

The Mayor has a political self-interest in maintaining his constituents happy and thus, supportive of him. But, with the labor unions and developers vociferously favoring the project on the one hand, and groups such as Massachusetts Fair Share and Massachusetts Tenants Organizations opposing it on the other, the Mayor has found his old coalition split right down the middle (Boston Globe, March 25, 1987). The short term costs, and long term benefits of this development project are another consideration for the Mayor. The costs and construction of the development project would manifest themselves early in the projects, while the Mayor was still in office. The benefits, however, are long term and may not be readily apparent for a number of years, long after the Mayor is gone. In his own political self-interest, the Mayor's

goal is to make present conditions as positive as possible.

Although the Mayor's official approval only comes at the end of the development review process, he has had an indirect role and very strong influence on the proceedings throughout the development review (Warner, 1987). During the first two years of development review, the Mayor appeared to be supportive of the Fan Pier Development. But, he has also approached the project cautiously, particularly since it is located in South Boston, his own neighborhood and political base (Boston Globe, March 25, 1987). In 1987, he surprised many observers when he sharply criticized the project and made hardline transportation and design demands. Others, however, were not so surprised: an avid follower of opinion polls, the Mayor has a record of reversing his position on large development projects following sustained criticism (Boston Globe, October 23, 1987).

The Governor and the Senate Leader

Two state politicians have also been involved to some extent in the Fan Pier Development review: Massachusetts Governor Dukakis and State Senate President Bulger. Governor Dukakis' involvement has been primarily through his control over the Departments of Environmental Quality and Transportation, which have been highly supportive of the project throughout the review period. The State's obvious desire to see the project completed, combined with the Governor's national presidential campaign, have at times placed the Governor at the mercy of City leaders who hope to obtain as much State fiscal support as possible. Dukakis' desire to minimize public squabbling and political

controversy during his national campaign suggest that the State will go along quietly with any hardline demands that the City makes.

Senator Bulger, who controls state legislation and funding, has played a very different role in the review process. The outspoken senator and Mayor Flynn, both native sons of South Boston, have been locked in a series of antagonistic and well-publicized battles over the past few years including disputes over a solid waste energy cogeneration plant, the Boston Garden/North Station renovation plans, and the Fan Pier Development. Senator Bulger is also very friendly with Anthony Athanas, whose Pier Four restaurant is a popular location for political fundraisers and dinner. Unlike the Mayor, the Senator strongly supports the Fan Pier Development, and the public arts facility in particular.

Conclusions

The Fan Piers' prime location within minutes of the downtown and its close proximity to the close-knit, politically savvy South Boston neighborhood have played an influential role in the development review of this project. The Fan Piers Development is a large and complex project which will provide the City of Boston and the South Boston neighborhood with enormous housing and economic benefits, but it will also have a number of traffic and environmental costs. Over the past three years, numerous parties have provided the developers with their criticisms and recommendations for change of the Fan Piers Development. The lengthy and complex development review process to which this project was subjected is described in Chapter Three.

CHAPTER THREE

THE DEVELOPMENT REVIEW PROCESS

This chapter seeks to document the three year period (1985-1988) of intensive, well-publicized, and often controversial development review of the Fan Piers Development. The chapter begins with a description of the planning context within which this development review took place. It then turns to three key components of the development review process: policies, procedures, and citizen participation. The chapter concludes with a detailed examination of the actual Fan Pier negotiations. Four key areas of negotiation--density, waterfront access, traffic impacts, and affordable housing--are explored in order to provide a better understanding of Boston's development review process for large-scale projects. Different lessons emerge from each of these four areas of negotiation. As the first project to undergo review under the BRA's planned development area regulations, the Fan Pier may set some precedents for future large-scale development reviews. A wealth of valuable lessons for planners emerge from this case.

Boston's Planning Context

Evolution of Planning in Boston

Planning in Boston has undergone significant changes over the past six decades. Between 1920 and 1960, Boston experienced only minimal growth and development activity and planners had no role in development review. In the 1960s however, the creation of the BRA and federal policies led to a period of urban renewal during which the

1962 master plan was created, the zoning code was substantially revised and large developers were actively recruited by the City. Developers continued to be welcomed with open arms throughout the 1970s and early 1980s. However, most of the City's growth and change during this period occurred without the benefit of a formal plan. Case by case negotiation became the norm as the BRA preferred to rely on a strong bargaining stance rather than rigid and outdated zoning regulations when undertaking development review. This negotiated development review process continues to be widely-used today.

Negotiated Development Review

Proponents of this ad hoc process of negotiated development review argue that it has brought increased flexibility and sensitivity to the unique character of each development project to the review process. Negotiations also allow development proposal to evolve through the joint efforts of the city, citizens, and the developers, rather than being rigidly pre-determined.. The BRA can point to the recently unveiled Rhowes Wharf project, a well-planned, sensitively designed profitable mixed-use waterfront development, as evidence that the process does indeed work.

Nonetheless, a number of criticisms have also been levelled at this process of negotiated development review. Some observers fear that the lack of far-sighted, coordinated planning by the BRA will one day cause the city to choke on its own ambition. Webb Nichols, architectural critic for the Boston Globe, bitterly observes that: "Boston is building projects that stand as monuments to accommodation,

political pressure, avoidance, fear, arrogance, and the power of money...the city allows development to enhance narrow special interests in exchange for modest contributions to the public good" (Boston Globe, April 22, 1987). Another concern is that the lack of an official, comprehensive plan has inhibited the public from scrutinizing the agreements made between developers and the City. Finally, a number of critics suggest that the BRA has become an all-powerful agency, which controls development with an iron fist, giving developers little leeway during negotiations, and extracts exorbitant concessions from them. The Wall Street Journal recently noted, for instance that: "Finishing a major project in Boston takes time and sheer persistence. In Boston a lack of written rules--not an excess--make building so frustrating. Zoning is so outdated that every large-scale project is treated as an exception. This opens the door for what can seem like endless reviews by the BRA and local residents" (The Wall Street Journal, March 21, 1986, p. 24).

The City is well aware of these concerns. Shortly after Mayor Flynn was first elected to office in 1983, he designated twelve task forces to review City programs and policies and make recommendations for change. The Task Forces' findings were published in 1984 in a document entitled "Boston in Transition, A Program and Policy Analysis" and were particularly critical of the BRA. The task force noted that development in Boston had been quantitative and not qualitative. It admonished the BRA for the lack of clear and well-communicated goals for shaping development and standards for assessing development proposals. The report also faulted the BRA for not having a clear

process or policy for public involvement in the project review process. Clearly, it was time for some changes in the development review process.

Planning in Transition

New Policies

Soon after the report was published, Mayor Flynn hired a new director for the agency, Steven Coyle in the hope of rectifying some of the Agency's problems. Coyle also set out to steer the BRA in a new direction that was consistent with the Mayor's policy of linking downtown development and wealth with the City's neighborhoods. Under Coyle, the BRA continues to rely primarily on negotiations rather than regulations as the method for development review, however the agency has begun to develop some formal policies and plans for the physical growth of Boston. After years of reactive planning through case by case negotiation, the BRA has increased its planning staff resources and has begun to concentrate on the creation of a vision for Boston's growth and development. Neighborhood district plans and interim planning overlay districts (IPODs) have begun to emerge on staff drawing boards and new review procedures are also being developed. Steven Coyle has stated that his goal is to have a future defined by clean, simple, visible rules (Boston Business Journal, December 30, 1985).

Increased Citizen Participation

In response to increased community demands, the BRA has also begun to allow a more active role for neighborhoods in the development

review process. In a recent interview with the Boston Tab, BRA Director Steven Coyle, stated his intention to take a pluralistic approach to planning and to seek a better distribution of the benefits of downtown development to the neighborhoods (BostonTab January 26, 1988, p. 10). Pam McDermott, a consultant to developers, notes that such changes in the process are already apparent: in today's Boston, the BRA board seeks to approve projects which have a lot of community support, no opposition, and an aggressive public benefits program (Boston Tab, January 26, 1988). Gone are the days of megaprojects that provided jobs and taxes, but not much else, to the City's neighborhoods. Today, Boston's developers know that they must approach residents at an early stage to test an idea because the balance of power is no longer in the developer's favor (Boston Globe, January 26, 1988).

It was within this planning context, characterized by case by case negotiations, evolving policies and procedures, and increasing citizen participation, that the Fan Piers Development review took place. The policy context, procedures for both the local planned development area review and the state environmental impact review, and nature of citizen participation for this controversial, large-scale development project are described below.

Policy Linkages for Development Review

Policy-Making in Transition

In 1984 when the Fan Pier developers introduced their proposal for the site, the lack of formal plans and policies, as well as standards and

criteria, for development review was readily apparent. The BRA had conducted a number of studies of the Fort Point Channel area ("Fort Point Channel Planning Area Study" and "Boston Harbor--Challenges and Opportunities for the 1980s", for example) which discussed goals such as renovating existing buildings and increasing access to the waterfront, but no formal development guidelines comprehensive plan existed for the area. Policies evolved simultaneously with the review of the Fan Piers Development, however. Many times of the plans or policies were based on the actual developer proposals for the site. Other times the BRA was trying to keep just one step ahead of the development project itself. In either case, the policies were clearly in the evolutionary phase and it was difficult for any of the parties to the negotiations to clearly distinguish which policies were in effect and which were not.

Types of Policies

The policies that guided the Fan Pier through this unusual period of development review can be divided into four broad categories: 1) formal, written policies and regulations, 2) informal policies, 3) plans for the general area, but excluding the actual site, and 4) no apparent existing plans.

Formal Policies

The development review of the Fan Pier was characterized by a general lack of formal, written policies to guide decisionmakers in their review of the project. The only written regulation for the four issues discussed later in this concerned affordable housing linkage payments. In 1986,

the BRA established a Development Impact overlay district citywide that required every new project over 100,000 square feet in size to contribute \$5.00 for every square foot over 100,000 square feet to a Neighborhood Housing Trust Fund. These linkage requirements were incorporated into the City Code and have been exacted from a number of large-scale developments over the past five years. The City and developers also included specific terms of the linkage payments in their Cooperation Agreement. The BRA wanted the linkage agreements to be contractually, as well as legally, bound because other developers were challenging the legality of linkage payments in court. Thus, from the beginning, it was well-known to the Fan Pier developers, the BRA and the CAC that the project would have to contribute over 15 million dollars to the fund.

Informal Policies

Although there were no other written regulations for the Fan Pier, over the years, the BRA had devised a number of informal policies which were well-known to most developers and citizen groups who keep abreast of development review in Boston. The inclusionary housing requirement was a clear example of such informal policies. This unstated, and often unenforced, policy pressured private developers to incorporate low and moderate income dwelling units into all projects that include market rate housing. In 1986, Mayor Flynn suggested that a 10% inclusionary housing requirement in exchange for density bonuses be incorporated into the zoning code, but his recommendations were not followed up on. Today, the 10% inclusionary housing requirement continues to have no legal basis, but this informal BRA

policy continues to be thrust upon most large-scale projects and is easily anticipated by developers. The Mayor's favorable stance towards affordable housing and downtown-neighborhood linkage also suggests that other informal housing policies were emerging regarding the designation of affordable housing for special groups such as the elderly, neighborhood residents, or minorities.

Another set of informal BRA policies can be found in a document known as "Downtown Guidelines and Growth Policies for Central Boston (1985-96)". While not a part of the City's official planning policy, these development guidelines were still heavily promulgated by the BRA which made it a point to hand out copies to prospective developers. This document included such informal policies as the BRA's broad planning goals of channeling the direction and impact of new growth away from downtown and into adjacent vacant and underutilized areas surrounding North and South Stations and along the Charlestown Naval Yard and Northern Avenue in the Fort Point Channel quarter.

Plans for the Surrounding Area

The third type of policy context for the Fan Pier concerned the existence of a plan and policies for the surrounding area, but not for Fan Pier site itself. The clearest example of such "selective plans" were the Harborpark Guidelines, which later were converted into an interim planning overlay district (IPOD). The Harborpark guidelines and IPOD were designed to provide all parties with a shared vision of what constituted acceptable land-uses, densities, and public access for Boston's waterfront. Although the original Harborpark planning area

included all waterfront properties extending from Charlestown to South Boston, the Fan Pier was designated a special study area in the final official IPOD, and thus exempt from the planning district's policies and regulations.

Land-use, height, and density standards were also established in the Boston zoning code for the surrounding Fort Point Channel properties. Most of the properties in this area were zoned for waterfront industry (W-2), general industry (I-2) or light manufacturing (M-1, M-2, M-4, M-8), with an average FAR of two and no height restrictions. The Fort Point Channel area is characterized by numerous vacant lots, two to five story warehouse industrial structures, and a few buildings 70 to 90 feet high. The Fan Pier's master plan planned development area (MPDA) designation, however, exempts it from the zoning regulations applicable to the remaining Fort Point Channel area.

Non-existent Policies

For many of the issues, such as traffic and environmental impacts there simply were no existing policy guidelines for the Fan Piers or Fort Point Channel area. The developers and citizen groups could look to past cases in order to get a sense of what might be required, but knew that in the course of the negotiations standards and criteria could easily change. This was particularly true for the Fan Piers Development, because in this area of the city, general traffic policies were often highly dependent on the State's transportation agenda for improvements of roadways such as the Central Artery and the Seaport Access Road.

In summary, the policy context for the development review of the Fan Piers was in a state of flux. Formal and informal policies existed in some areas, but not others. Furthermore, policies were being formulated simultaneously with the development review of the project itself. Eventually, some of these policies served as a framework for the negotiations while others did not.

Procedural Guidelines for Development Review

The developers of the Fan Piers calculated that a total of 27 different approvals had to be obtained from various federal, state, and local government agencies in order to break ground for their mixed-use project. Two of the most critical review processes were the local planned development area review and the state environmental impact review (Figure 4).

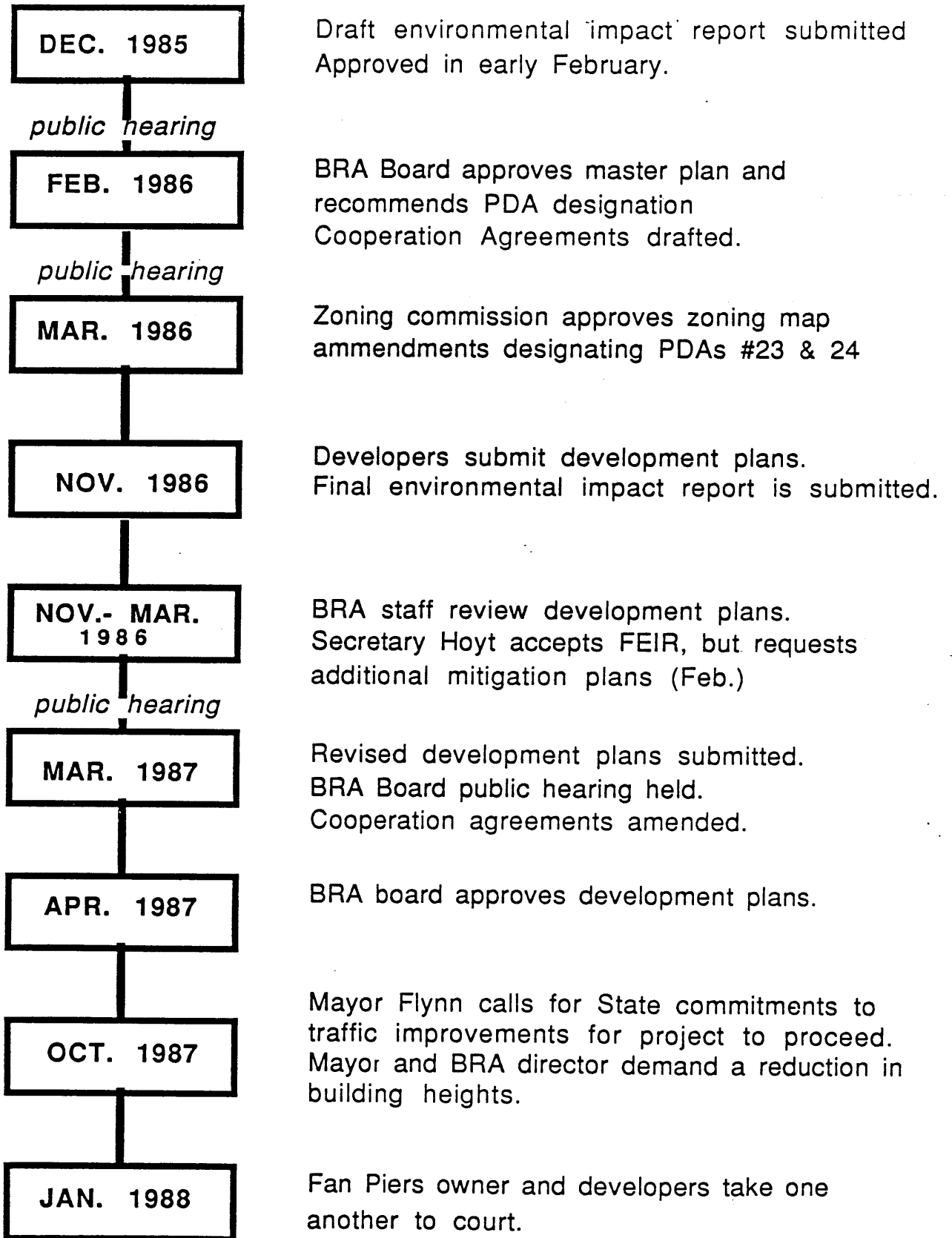
Local Planned Development Area (PDA) Review

In order to develop a mixed-use megaproject on the Fan Piers site, which was zoned W-2 for waterfront industrial uses, the developers required a Planned Development Area (PDA) special zoning designation (Appendix D). PDA designation allows a developer to obtain zoning exceptions without proving hardship. In exchange for this added flexibility, the PDA zoning process requires that a master plan and/or development plan be created for the site, and that each and every plan of the proposed development be subject to full BRA design and development review.

During the early 1980s, Boston processed close to two dozen PDA zoning requests for sites between one and five acres. Sites greater than five acres, however, require a Master Plan PDA, a zoning designation that requires the creation of a master plan in addition to the PDA development plan. The Fan Pier Development was the first proposal to ever apply for Master Plan PDA status and, thus it was in many ways a guinea pig for the review process. Both the development community and city officials were keenly aware that this series of negotiations would set a precedent for future Master Plan PDA reviews in the Boston. Throughout the remainder of this thesis the Master Plan PDA process shall be referred to simply as the PDA process.

A project applying for Master Plan PDA approval must submit to three major phases of development review: planned development area designation, review of the development plan, and BRA design review. All three phases require the submittal of physical plans and project documentation, extensive BRA and public review, and public hearings before either the Zoning Commission or the Board of Appeals. The Fan Pier Development completed the first two phases of the process--PDA designation and the submittal of the development plan--, which are unique to the PDA review process. According to the BRA, these PDA procedures must be completed before development rights are vested and construction can begin (Boston Redevelopment Authority, Zoning Procedures for Master Plan/Planned Development Areas, 1985). The key steps of these two phases of development review for the Fan Piers are outlined below.

FIGURE 4. Chronology of the Fan Piers Development Review Process



Phase I: PDA Designation

During the first phase of the PDA review process the developers sought designations of the sites as master plan planned development areas. According to the BRA's development review procedures the developers had to submit an application for PDA designation together with a master plan for the site. The development team consulted with the BRA, abutters, and various community organizations for their response to the proposal. Based on these public hearings and BRA criteria, the BRA staff then submitted its own analysis and recommendations to the BRA Board.

On February 12, 1986, following a prior public hearing, the BRA Board approved the Fan Pier developers' master plan for the two sites. This signified tentative approval of the development concept, land-uses and density allowances for the site (March 20, 1986 Cooperation Agreement, 1986). Cooperation Agreements, which addressed employment and traffic access plans, were signed at this time. The staff also began to draft exaction agreements for Development Impact Projects with the developer. These exaction agreements addressed housing and job linkage payments required by City law of all Development Impact Projects (DIPs), office developments exceeding 100,000 square feet. A little more than a month later, on March 21, 1986, the Boston Zoning Commission held a public hearing and voted to approve map amendments to the Boston zoning code, which designated the sites as PDAs 23 and 24. Shortly thereafter, the Mayor approved the master plans and PDA designations for the sites.

Because the Fan Pier Development was the test case for the PDA review process, no past cases could be looked to for guidance which left a number of the regulations and steps in the review process open to various interpretations. One such conflict of interpretations involved the role of the master plan. All parties agreed that the master plan approval and PDA designation established a general development concept that locked in density and usage restrictions for the properties, but did not address issues such as specific design considerations, housing, and transportation (Boston Globe, March 15, 1987). The development team held, however, that once the master plan was approved, it signalled subsequent BRA approval for all development components as long as these were consistent with the master plan. BRA director Steven Coyle disagreed, noting that master plan approval did not signify approval of a specific development concept. According to Coyle, the master plan simply allowed general conceptual approval of changes in land-use and density, but did not constitute approval of building footprints, mass, heights and dimensions (Boston Globe, February 4, 1986). Eventually, the developers reluctantly accepted Coyle's interpretation.

Phase II: The Development Plan

During the second phase of the Master Plan PDA review, the development plans for the two adjacent sites were submitted to the BRA (November, 1986). Over the course of the next four months, BRA staff members reviewed the development plans and suggested revisions. Meanwhile, the developer, government officials and CAC worked out a series of additional benefits packages regarding jobs and

procurement, public access to the waterfront, transportation mitigations and affordable housing to be provided by the developers of the Fan Piers Project. These were incorporated into the development plan or as amendments to the Cooperation Agreements. These amendments were revised in late March due to concerns of the CAC which are described later in this thesis.

In March of 1987, the revised development plans were submitted for BRA Board approval. These development plans documented the location and appearance of structures and open space, the proposed uses and densities for the site, traffic circulation, parking and loading facilities, and the dimensions of the structures, including footprints and heights (Allen, April 23, 1987, p1). The BRA Board public hearing on the development plans for the PDAs was held on March 24, 1987. A month later, on April 23, 1987, the Board unanimously approved the project allowing it to move into the final phase of the BRA's development and design review process (Boston Globe, April 11, 1987).

Recent Events in the Fan Piers Review Process

The April 1987 approval of the development plan signalled BRA tentative approval of the Fan Pier Planned Development Area. The project then disappeared from public view until October of 1987, when Mayor Flynn suddenly called for significant design changes and a major commitment by the State towards public transportation facilities before the Fan Piers Development would be allowed to continue (Boston Globe, January 20, 1988). A few months later, in January of 1988, after six years of increasingly tense private negotiations, the partnership

between HBC Associates and the Boston Mariner Corporation fell apart as the developers filed double lawsuits against each other. Each party charged that the other had held up the project and development review process, jeopardizing the project and making the agreed-upon December 1988 groundbreaking date impossible.

Today, the Fan Piers Development still lacks several design and environmental approvals. The project must also still go through the standard BRA design review process that most Boston projects are subjected to. During this third phase, the BRA and Inspectional Services Department (ISD) will review the development concept, schematic design, final design and contract documents (Boston Redevelopment Authority, Development Review Procedures, 1986) of the proposed development according to selected design, environmental, and socio-economic criteria. These final designs must be consistent with the limitations and provisions established in the Development Plan. Once the project has been approved by the BRA, the developers must petition the Board of Appeals for a zoning exception. Meanwhile, the Fan Pier portion of the development has been stalled as the developers sue one another in court and the outlook for the projects does not appear promising. William Whelan, of the Boston development firm Spaulding and Sly Co. has noted that: "The odds of this fight being peacefully resolved are virtually non-existent" (Boston Globe January, 20, 1988).

State Environmental Impact Review

The state environmental impact review took place simultaneously with Boston's PDA review, often providing valuable studies and information to the local decisionmakers responsible for PDA approvals. Unlike the new PDA review process, the EIR procedures were clearly laid out by the Massachusetts Environmental Protection Agency (MEPA) and had been applied to a large number of cases prior to the Fan Piers proposal.

The Environmental Review Process required the developers to submit a draft environmental impact report (DEIR) describing the probable impacts of the projects and proposed mitigation measures. The firm of Skidmore, Owings and Merrill was hired by the developer for this task and the DEIR was submitted in December of 1985. Citizens, government agencies, and other interested groups were given 30 days to review the DEIR and provide written comments to the Secretary of Environmental Affairs. The Secretary of Environmental Affairs, Hoyt, upon reviewing this document, issued a certificate of completion. In it he praised the DEIR as a "truly useful planning document" and a "high quality piece of work, which is extensive in breadth and provides creative and thoughtful mitigation measures" (January 30, 1986 Certificate of the Secretary of Environmental Affairs on the DEIR, 1986). There were also a number of criticisms and concerns regarding the proposed project, which are described later in this chapter.

In November of 1986, the consultants completed the Final Environmental Impact Report (FEIR) which sought to incorporate or respond to many of the comments issued following the DEIR. Again, a

30 day review period allowed concerned individuals and groups to provide their input to the Secretary. The BRA, the CAC, and the HPAC met weekly to review the environmental impacts and mitigation measures proposed in the FEIR. At the request of both the CAC and the BRA, the deadline for submitting comments on the FEIR was extended twice. In February, 1987 Hoyt issued a Certificate of Adequacy for the Fan Piers Development. However, he made the unusual move of requesting that the developer provide initial mitigation analyses and measures in five key areas: transportation, infrastructure (water supply, sewage, utility lines), public waterfront access, visual impacts, and public benefits. Today, these mitigation plans are still incomplete.

In summary, the Fan Piers Development was subjected two major development review processes--the local PDA review and the state EIR review. Both processes established a set of procedures included an assessment of project costs and benefits, mitigation measures and public opinion. The local PDA review, however, was a new and untested process with a number of different procedural interpretations, while the state EIR process had been used for a number of years for projects across the state and was fairly predictable.

Citizen Participation in the Development Review Process

Throughout the three year review process, the CAC worked closely with both the BRA and the developers, and was actively involved in both the local negotiations and the state EIR process. From the beginning, the members of the CAC sensed that the City intended to allow the Fan Piers

Development to be built. Hence, they focused not on stopping the project but on mitigating its negative impacts and obtaining as many benefits as possible for the community (Butler, April 25, 1988). The CAC members were dedicated to their work and diligently reviewed all proposals, studies and relevant documentation on the Fan Piers Development. Within a year, the committee had acquired considerable credibility and was assuming an increasingly active role in the process.

The developers held over 200 meetings with the community, public agencies, and various interest groups, including 70 that were open to the general public (BRA Board Public Hearing, March 24, 1987). At the peak of activity, CAC meetings were held as often as twice a week and could last up to five or six hours. Typically, the developers sent the CAC their proposals and plans before a meeting so that the members could review them. More often than not, the committee put the proposal under a microscope and scrutinized its every detail (Butler, April 25, 1988). Then, at the meetings, members asked the developers or the BRA questions and expressed their objections and recommendations for the project. As these meetings were open to the public, other non-CAC members often participated in the discussions as well. The developers were usually cooperative, but sometimes the discussions over exactions turned heated. There was a general sense among members of both the BRA and the development community that the CAC was overstepping its bounds, but once its members became heavily involved in the development review process, little room was left for retreat.

The CAC also played a role in the drafting of the cooperation agreements which contractually bound the BRA and the developers to the terms agreed upon in the negotiations. The BRA lawyers actually negotiated the terminology of the Cooperation Agreements with the development team's lawyers, but all of the drafts for these agreements were sent to the CAC for comments and desired revisions.

The CAC also actively pursued a broader community outreach and information dissemination program by holding large, South Boston meetings once every few months. These meetings were well attended. Over 2000 people attended the first such session, and others averaged 500 or 600 people. These meetings were not only designed to provide the community with informational updates on the Fan Pier, but also to obtain people's feedback. Questions were fielded by CAC members, the BRA or the developers, and the CAC often held follow-up meetings to get back to people on the unresolved questions or issues (Butler, April 25, 1988).

The citizen participation process, like many of the policies and procedures for the Fan Piers Development, was new and in a state of transition. Nonetheless, the CAC committed itself whole-heartedly to despite this time-consuming and complex development review process. Most of its members felt that their efforts were a success: after three years of negotiations, the CAC managed to obtain over 25 million dollars in benefits and mitigation measures from the Fan Piers Development. Some of the most critical benefits and mitigation measures are described below.

The Fan Piers Negotiations: Four Critical Issues

A project as large and as complex as the Fan Pier Development inevitably raises wide number of sensitive issues that can become the source of heated controversy. The Fan Pier negotiations focused on a range of issues including sewerage, wind, air and water pollution, changing character of the area, and pedestrian environment. Four of the most critical issues, however were density, waterfront access, traffic, and affordable housing. Time and time again, different government agencies, the appointed citizen advisory committees, and the various coalition groups found themselves returning to these four critical issues, which are described below in order to illustrate the complexity and controversies of this particular review process.

Density of Development and Building Heights

With twelve major buildings and close to five million square feet of development, the Fan Pier Development is one of the largest, most densely built projects that the City of Boston has ever had. The density of the development and the actual heights of the buildings, particularly the waterfront structures, were prominent issues throughout the review process.

The overall density of development was a concern because of its direct relationship to the demand for services and infrastructure such as water and sewage lines and roads. Large-scale projects such as the Fan Pier place an added burden on an already severely-stressed

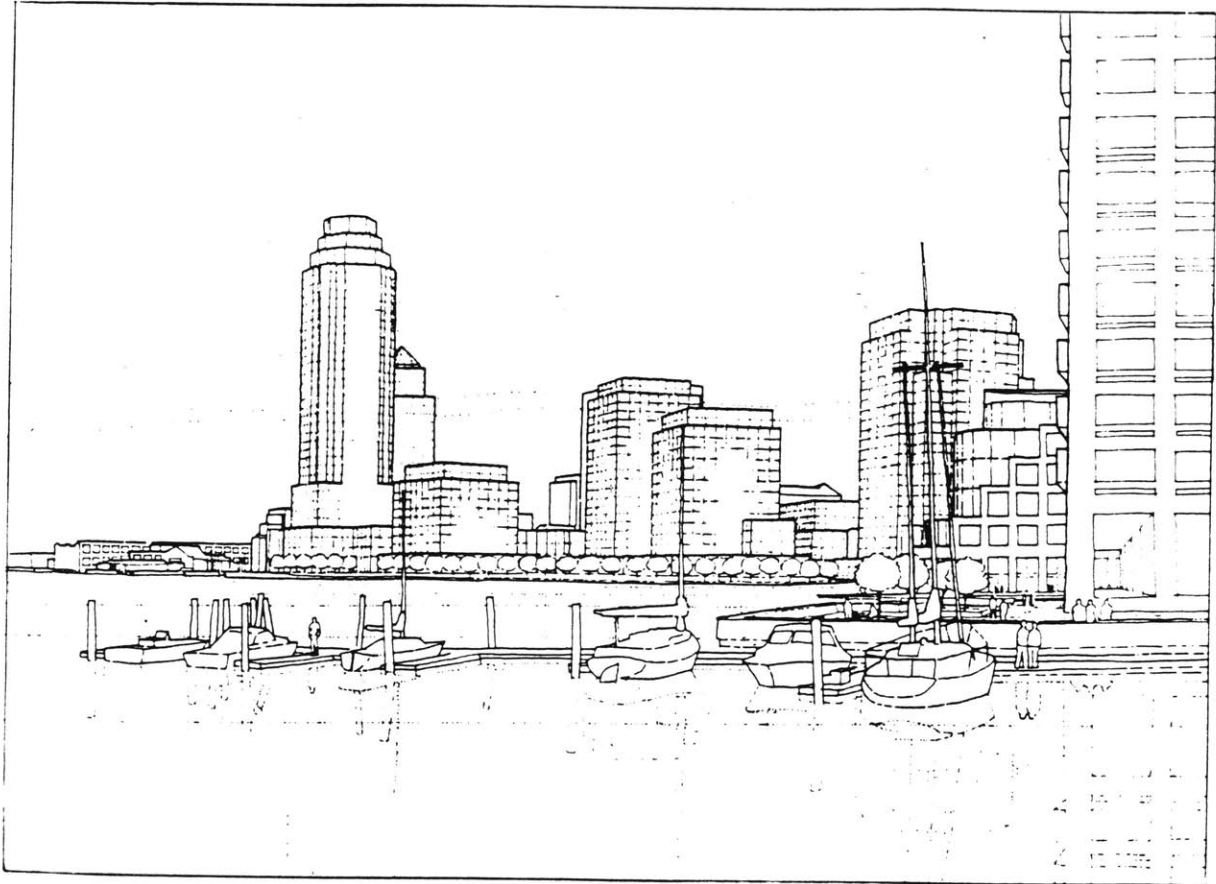
infrastructure network. In response to these concerns, developers' consultants included a new, "lesser scale alternative" in the DEIR. However, this new "lesser scale alternative" was only 2.7% smaller than the total square footage of the initial proposal, and sought to "accommodate the same uses and total square footage as the initial proposal" (January 30, 1986 Certificate of the Secretary of Environmental Affairs on the Draft Environmental Impact Report, 1986, p. 2). Critics pointed out that this hardly appeared to be a lessening of scale and in fact, many of the buildings appeared to be taller than in the initial proposal (the Draft EIR did not specify actual building heights (January 30, 1986 Certificate of the Secretary of Environmental Affairs on the Draft Environmental Impact Report, 1986, p.2). The public continued to express concerns about the overall density of the project. Eventually, through negotiations, the floor-area ratio (FAR) for the sites was reduced from 4.7 to 4.25, with the Fan Pier's office FAR capped at 2.25 and Pier Four's at 2.0 in the PDA master plans and development plans.

Building heights were even more controversial than the density of the development for three reasons. First, there had been a general movement towards discouraging very tall towers in Boston in recent years. Structures such as International Place in the financial district had been severely criticized for being out of proportion with Boston's historical architectural scale. Similarly, the proposed Fan Piers' building heights significantly exceeded existing heights in the nearby Boston Wharf district. Second, the BRA was concerned about the presence of the Fan Pier high rise towers on the waterfront, a critical element of

Boston's visual landscape (Figure 5). The towers would reduce views of the downtown skyline and were out of scale with Boston's waterfront. Steven Coyle, director of the BRA had noted that the Fan Pier tower should not exceed the height of the landmark Custom House Tower, which rose 496 feet above the waterfront. The height and mass of the two hotel buildings of the Fan Piers Development would clearly rival the Custom House as the focus of the waterfront so the question was whether they would overwhelm it (Boston Globe, April 24, 1987). Third, there were concerns about the impact of the tall, high-rise buildings on pedestrian comfort. Building height can influence on the degree of cold, shade, and windiness felt at ground level by pedestrians (Boston Globe, April 24, 87), particularly in Boston. These concerns led to extensive negotiations over the heights of the proposed Fan Piers buildings.

The negotiations between the developers and the BRA, HPAC, and CAC resulted in height reductions for a number of the buildings. For instance, the original development plan, which contained a total of twelve buildings with heights exceeding 150 feet, was revised so that finally only seven of the proposed structures in the PDA development plan were over 150 feet in height (BRA

FIGURE 5: Views of the Proposed Fan Piers Development from the Water



Board Public Hearing, March 24, 1987). One of the most criticized structures was the 550 foot hotel tower on the Fan Pier waterfront. Although the BRA did require that its height be reduced to approximately 450 feet, it did not seek to detract from the landmark stature of the hotel. The PDA development plan approved in April of 1987 specifically capped this structure at 450 feet. After the April 23, 1987 BRA Board vote to approve the development plan, BRA spokesman Ralph Menolo noted: "There can be design changes involving the height but it is unlikely they'd be drastic" (BG April 24, 1987).

In October, 1987, however, the developers and the public were greeted by a surprise decision from the BRA and Mayor Flynn when the Mayor ordered that this tallest building of the Fan Pier project be sliced by 250 feet. The proposed 450 foot envelope of the waterside hotel was thus, effectively reduced to a 200 foot high building (Boston Globe, October 15, 1987). The BRA also established new design standards, which reduced proposed building heights of 150-250 feet to only 80-150 feet. The rationale for this sudden move was that there was a need to reduce the shadow on public spaces as well as the windy downshifts. The Mayor noted that he was seeking a scale of development similar to that of Rhowes Wharf (Boston Globe, October 15, 1987).

The demand for such a drastic reduction in height surprised many as the development had already received master plan and development plan approval for a design that included the 450 foot waterfront hotel tower. Coyle noted: "We didn't see that as a final approval. The developers were merely expressing their preferences for height and

density, not ours." (Boston Globe, October 16, 1987). Privately, member of the Citizen Advisory Committee questioned Coyle's statements. Coyle had written to the Secretary of Environmental Affairs, eight months previously, that the tower needed to be between 400 and 450 feet, but that its prominence should continue to be reinforced (Boston Globe October 16, 1987).

The sudden change of heart with regard to building height highlighted one of the CAC's concerns with the development review process: no specific height standards existed for the City of Boston. Nine months before the BRA and Mayor's surprise decision, the CAC had noted in its commentary on the FEIR that "it is incumbent on the BRA to state their overall development policy and master plan for the (*Fort Point Channel*) area, defining such parameters as FAR, scale, density, heights and permitted uses if the developer is to adequately respond to the development review process" (Comment Letters for the FEIR, 1987). The Mayor's announcement also led many observers to believe that the project would come to a complete halt, but the developers appeared prepared to deal with any turn of events that came their way.

Public Access to the Waterfront

During the environmental review process, it became clear that a large number of individuals and organizations were also concerned about the Fan Piers Development's level of invitation to the general public. With a wall of buildings along Northern Avenue and a small number of pedestrian walkways, the public's physical and visual access to the waterfront were minimal. There were also concerns that the general

public would never feel welcome in an exclusive, upper income development such as the Fan Pier (Boston Globe, October 22, 1987). In response to these criticisms, the designers sought to improve the site's plan to include more useable public space. The BRA's Harborpark design standards for waterfront development served as guidelines for subsequent negotiations between the designers, the BRA and the CAC.

Harborpark was the result of BRA efforts in the early 1980s to create a "planning program for balanced development and continued revitalization of Boston's waterfront" (Kloster, 1987. p. 53). In October of 1984, the agency released "Harborpark: A Framework for Planning", which discussed goals and design standards to promote public access and balanced growth of Boston's waterfront. This document also designated a citizen committee, the HPAC, to assist in the planning and zoning review of parcels along the waterfront. The standards and review criteria of the Harborpark guidelines were to form the basis for an IPOD which would stretch along Boston's waterfront from Charlestown to South Boston. The creation of the IPOD took close to three years, however, during which time the Harborpark design guidelines served only as an informal policy to guide the BRA's negotiations with waterfront developers.

In March of 1987, the Harborpark Plan finally acquired IPOD status and became legally enforceable. The Fan Pier Development, was designated a "special study area" and exempt from the IPOD regulations. A number of waterfront activists criticized the IPOD for excluding such sensitive sites as the Fan Pier and noted that such exemptions missed

the point of the original plan which was to address the entire Boston waterfront as a unique resource that required a unified planning approach and a common set of development goals (Boston Globe, May 15, 1986). The BRA asserted that the Fan Pier site was subject to a different planning process which was also addressing many of the same waterfront access issues. At a public meeting concerning the waterfront IPOD in June of 1986, changes were being made on the zoning document up until the last minute. This resulted in confusion and mixed messages from BRA director Steven Coyle, who assured the audience that the Fan Pier fell within the height restrictions of the IPOD. Later review of the IPOD regulations revealed that this was not the case, and the Fan Pier was indeed exempt. Despite this exemption, the Harborpark guidelines played an influential role in determining the character and design of the final site plan for the Fan Piers.

Extensive negotiations took place between the BRA, the CAC, HPAC and the developers concerning public access to the site and the waterfront. In the final development plan, sixty percent of the site's area consisted of publicly accessible areas including an extension of the Harborwalk linear waterfront park, an entry court with a landscaped boulevard and reflective pool, a large public waterfront plaza overlooking a nine acre marina, and a public breakwater for fishing and other activities (Figures 6 and 7). The development plan design also included a dramatic, curving canal lined with public promenades on either side and crossed by four bridges. In response to BRA, HPAC, and CAC concerns, waterside promenades were expanded from 15 feet in width to 27 feet in width, and building footprints were redistributed to improve access to the

FIGURE 6: The Fan Piers Development Public Open Space

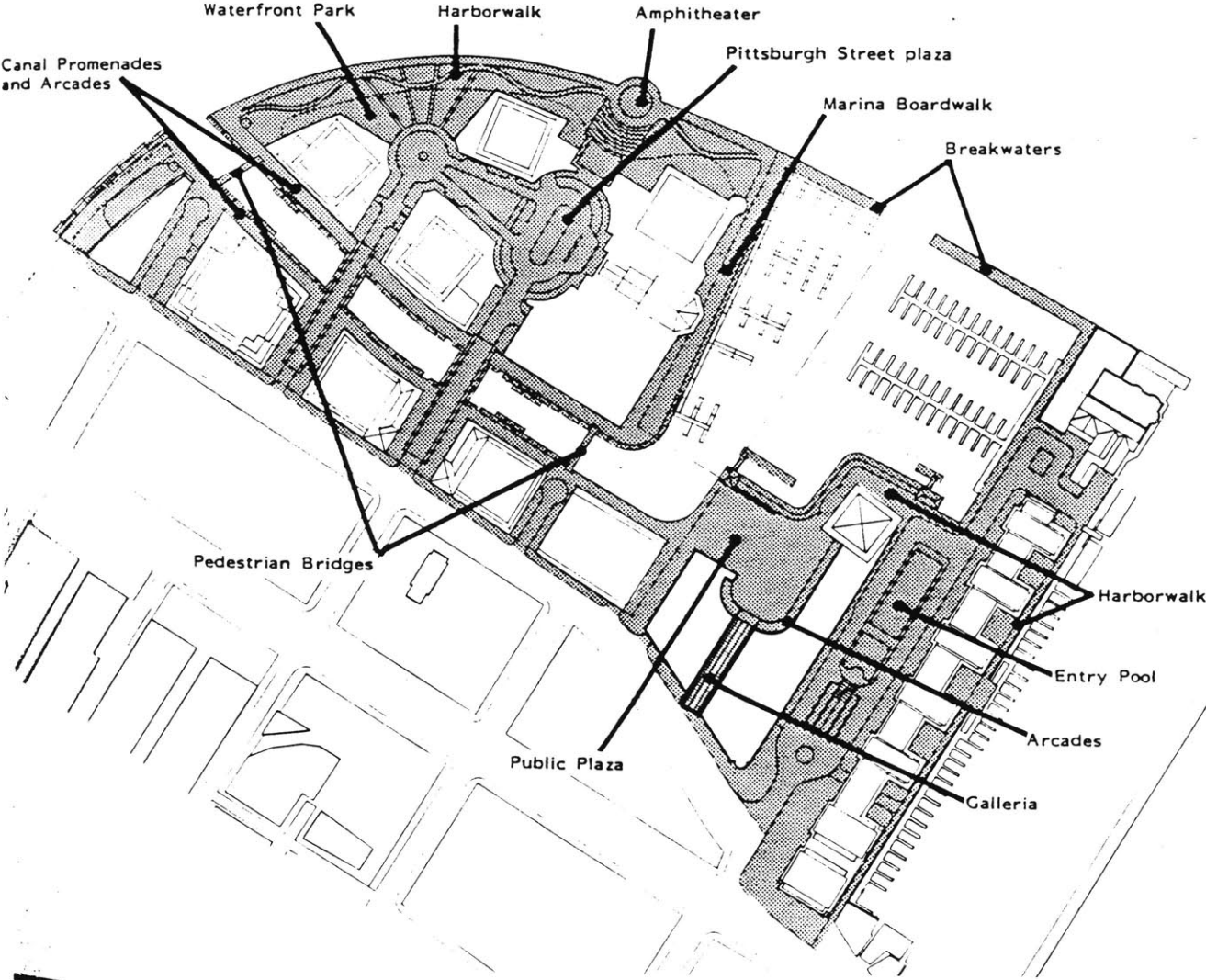
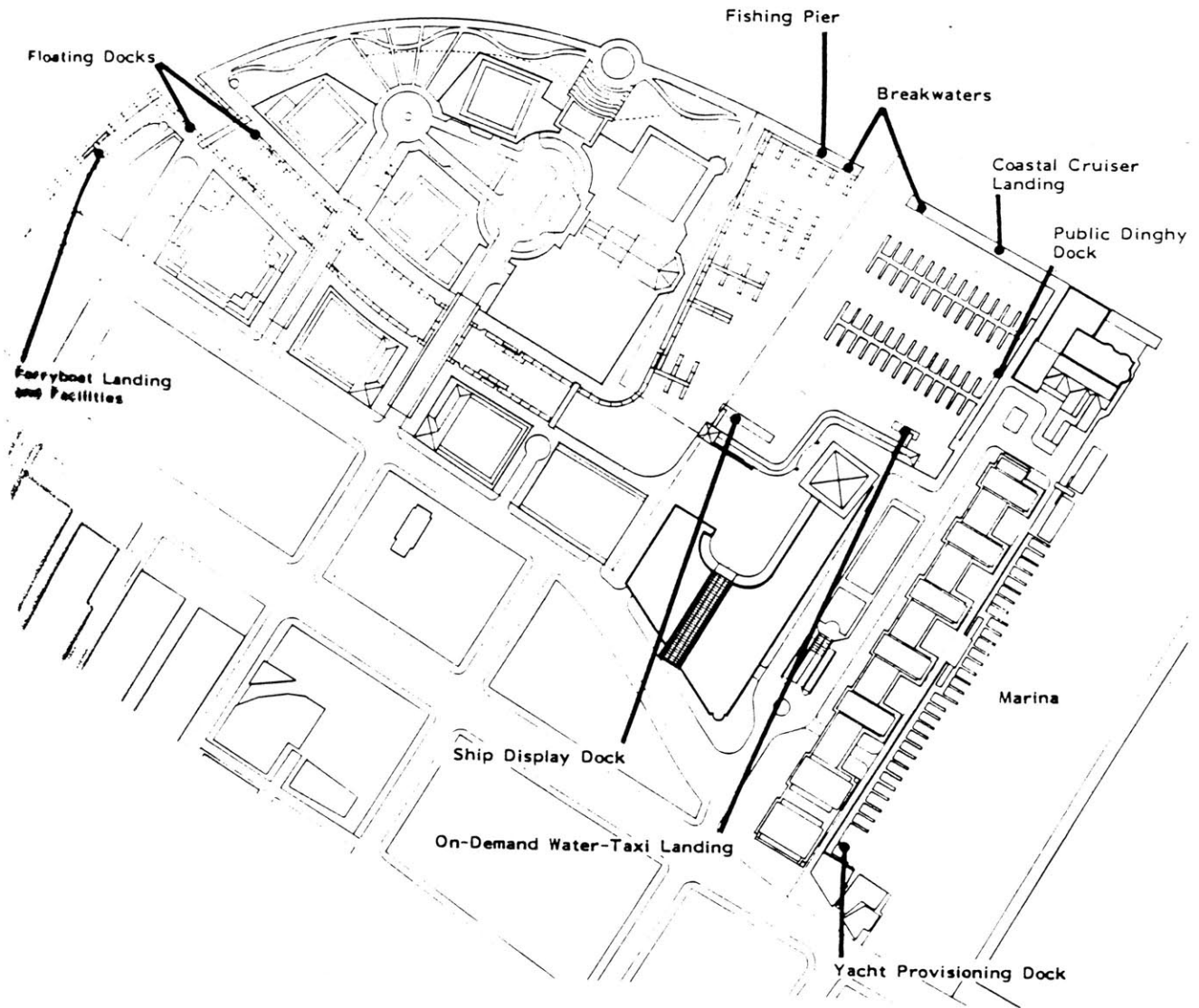


FIGURE 7: The Fan Piers Development Water-Related Activities



waterfront. The final designs were considered by many to be vast improvements over the initial 1985 master plan proposals.

Traffic Impacts

Traffic impacts were believed by many to be the most acute problem of the proposed Fan Piers Development and were discussed extensively throughout the review process. Residents, government agencies, and environmental groups expressed numerous concerns regarding the capacity of the existing roads and bridges to bear the increase in traffic that would be generated by this large scale development. Among critics, there was also little doubt that the area was in need of additional public transportation facilities to accommodate the new Fan Pier Development.

Traffic Issues in the EIR Process

The issue of traffic impacts was first addressed extensively in the Draft Environmental Impact Report (DEIR) prepared by the consultants hired by the Fan Pier Developers. In the DEIR, the consultants estimated that at full-build, the Fan Pier would generate 27,420 transit trips daily (DEIR, p. iv-1-82) and that 18,000 automobile trips a day would be generated by the development (December 1986 Draft Environmental Impact Report, 1986). The consultants based their analysis on the modal split found in most downtown Boston offices, and also assumed that only as many cars as there were legal parking spaces would travel to the Fan Pier. The consultants concluded that frequent shuttle bus service and area parking restrictions would attract a high percentage of

commuters and thus, result in minimal traffic impacts by the Fan Pier Development (Warner, 1987).

The findings of the DEIR generated considerable controversy among state and local officials. The gap between assumptions and outcomes in the DEIR was heavily criticized by a number of state transportation officials (MassPort and Massachusetts Executive Office of Transportation) for three reasons. First, a number of government officials noted that assuming a modal split similar to that of the downtown was unrealistic. The Fan Pier site is at least a half mile from the closest Red Line (South Station) and Blue Line (Aquarium) stations, and only two MBTA buses directly serve the site. Although the closest Red Line public transit stop at South Station would be a pleasant walk in the summertime, most of the officials noted that it was highly unlikely that pedestrians would walk that far during the more inhospitable weather from November through March. Second, rather than using a demand-based model, the consultants worked backwards from existing parking spaces to calculate the number of automobile commuters. This approach also seemed highly unrealistic to the critics. Third, government officials and residents were concerned because the project and the consultant's forecasts relied heavily on future infrastructure improvements such as the Depression of the Central Artery, construction of a Seaport Access Road and the Third Harbor Tunnel, and major improvements to the Northern Avenue Bridge, as mitigation measures for transportation impacts. If, these public projects did not come to fruition, the traffic impacts of the Fan Piers Development would be be significant.

Upon completion of the draft environmental impact review, the Secretary of Environmental Affairs noted that considerable work remained to be done on the issue of traffic impacts. He pointed out that public transportation facilities barely exist in the vicinity of the Fan Pier Development and the proposed Third Harbor Tunnel and Depressed Central Artery projects were not enough to eliminate the traffic impacts of the proposed project. The Secretary requested a more detailed analysis of the traffic impacts and considerably more assurance of the feasibility, funding, and timing of the proposed mitigation measures in the Final EIR (January 30, 1986 Certificate of the Secretary of Environmental Affairs on the Draft Environmental Impact Report, 1986, p. 5). Furthermore, he requested more extensive consideration of the possibilities of a public transit system and water-based transportation in the area (January 30, 1986 Certificate of the Secretary of Environmental Affairs on the Draft Environmental Impact Report, 1986, p.5). In accordance with the recommendations of a number of the participants in the environmental review process, the Secretary suggested that reduced project density and a change in the mix of uses also be considered as possible means of solving or mitigating the traffic problems (January 30, 1986 Certificate of the Secretary of Environmental Affairs on the Draft Environmental Impact Report, 1986,, p. 5).

In November of 1986, the Final EIR concluded that 10,000 vehicle trips and 27,1000 public transit trips would be generated daily by the Fan Pier Development once it had reached full-build capacity. This estimate

was derived assuming a 70-30 modal split with public transit accounting for 70% of all commuters to the Fan Piers Development. The consultants concluded that strict parking regulations, shuttle bus service and a number of measures designed to promote public transit ridership were adequate traffic mitigation measures. The CAC and a number of other observers continued to be skeptical about such assumptions.

Traffic Issues in the Local PDA Review Process

While the EIR process required the developers and government authorities to assess the impacts and propose mitigation measures for problems such as traffic, it did not have any statutory power to require that these measures be implemented. Local level reviews, however, did address the issue of implementing the traffic mitigation measures. According to Ellen Watts three weeks of grueling negotiations were held between the developers, the BRA, the Boston Transportation Department and the CAC (Warner, 1987). Despite doubts about its methodology and assumptions, the EIR formed the basis for these negotiations (Warner, 1987). The negotiations took longer than expected as the CAC's wording for some of the traffic mitigations and developer penalties for non-compliance was unacceptable to the developers' lawyers (Boston Globe, March 20, 1987).

By the time the Fan Pier Development was presented to the BRA Board for development plan approval in March of 1987, a number of negotiated agreements had been reached between the neighborhood, City and the developers. City officials were seeking developer guarantees that 5 million dollars in transportation-related

improvements and services would be implemented before the development was completed (Boston Globe, March 19, 1987). The developers agreed to devise a transportation access plan that would assess project traffic impacts, establish performance goals, identify mitigations measures, and create a monitoring system. They also agreed to annually submit for BRA approval a Supplementary Traffic Access Plan which would update this plan on a yearly basis. Furthermore, the developers stated that they would help establish Boston's first Transportation Management Association, provide shuttle bus service on an interim basis, and provide dock space for an inner Harbor and Logan Airport water shuttle service (Allen, April 23, 1987). The only developer funding called for was a charge of up to 50 cents a square foot (2.9 million dollars) less the costs incurred for other transit and car-pooling promotion measures, which would be payable if traffic continued to exceed tolerable levels despite the mitigation measures described above (Warner, 1987). All of these traffic mitigation measures were incorporated as amendments into the PDA cooperation agreements signed by the BRA and the developers.

Despite state and local assurances, the CAC continued to have concerns about the proposed mitigation measures. So they pushed for a revised amendment to the agreement by which the developers would delay the last 25% of the project for up to four years if the road capacity and public transit facilities were found to remain inadequate for the Fan Pier traffic (Boston Globe, April 24, 1987). The development team accepted this proposed revision. According to Steven Coyle, director of the BRA, the final votes of approval for the project were contingent on

the plan achieving a modal split of 50% automobile users and 50% public transit users (Boston Tab, January 26, 1988). This modal split condition, however, was never formally incorporated into the Cooperation Agreements.

Traffic Planning Issues

The negotiations over traffic impacts and mitigations raised some important questions regarding the nature of transportation planning and policies in both the City of Boston and the State. Residents found that few City traffic plans had been created for the South Boston/Fort Point Channel area and that considerable uncertainty existed concerning the timing of proposed roadway improvements. Some community leaders suggested that more was being done to facilitate the travel to the Fan Pier than to reduce congestion in South Boston. They noted with irony, that little commitment had been made to the much-needed 15 million dollar Northern Avenue Bridge improvements until the Fan Pier Development came along (Warner, 1987). In January of 1987 at a CAC meeting, the City committed \$150,000 dollars to a traffic engineering study that would address South Boston's traffic concerns stemming from the Fan Pier Development, Central Artery and Third Harbor Tunnel projects (Boston Globe, January 9, 1987). The scope of the study was determined by the CAC, South Boston residents, the City and the State, and its goal was to consider a number of public transit and road alternatives for the area. A South Boston Traffic Advisory Committee, composed of government officials and concerned residents, was also established.

Funding for Public Transit

The state MBTA was also engaged in a number of transportation studies for the Fort Point Channel area. In the fall of 1987, the State-sponsored study found that the Fan Pier Development would bring an extra 17,000 commuters a day into the Fort Point Channel area (Boston Tab, January 26, 1988) and concluded that the Central Artery would not be sufficient to bear the extra traffic generated by the Fan Pier Development. The study recommended that the Red Line be extended from the existing Broadway Station to the Fan Pier waterfront area and then rejoined at South Station in order to provide the area with better public transit facilities (Tab, January 26, 1988). Traffic planners further recommended that different private funding alternatives should be considered for the public transit extension which was estimated to cost between 250 and 500 million dollars.

Private financing mechanisms were never actively pursued by the City, however. Despite recommendations from Boston Department of Transportation Commissioner Richard Dimino that 5 million dollars in developer contributions be required for traffic mitigations, the development agreements drafted never included any Fan Pier commitments to underwrite bus service or provide funds for a Red Line extension (Warner, 1987). Andy McClurg of the BTB has suggested that all parties were aware of the possible use of private financing, but the issue was never put on the negotiating table. He suggests that one reason for this may be because the BRA "may have been in developer mode rather than planner mode during the negotiations" (Warner, 1987).

Indeed, throughout the review process, the City, assumed a pro-development stance, and suggested that the State and not the developers, should be responsible for funding the necessary traffic improvements. BRA director Steven Coyle, for instance, sent a letter to Secretary of Transportation, Salvucci in December 1986 stating that the BRA would not approve the project until the State provided a definitive, verified schedule, cost estimates and a funding commitment for transportation improvements that would facilitate the Fan Pier Development" (Warner). In August of 1987, Coyle again publicly lashed out at the the State for not taking steps to implement the improvements promised for South Boston (Boston Globe, August 12, 1987, p. 17). In October of 1987, around the same time that substantial changes in project density and reduction in building heights were requested, Mayor Flynn also threatened to torpedo the 1 billion dollar Fan Pier Development Project unless the Red Line was reconfigured to serve the area. Flynn noted that mass transit was necessary to accommodate the 17,000 commuters expected on a daily basis at the complex. According to the Boston Globe, Flynn had decided that without an ultimatum there would be not assurance that the State would take the lead in tackling the problem of traffic in Boston's waterfront area (Boston Globe October 15, 1987).

Affordable Housing

Because of its size, the Fan Pier Development fell under Boston's relatively new development impact projects (DIP) regulations, and thus, the developers were required to pay \$5.00 for each square foot of gross

floor area in excess of the first 100,000 square feet to a special fund for the construction of low and moderate income housing. This amounted to 15.4 million dollars in housing linkage payments for the Fan Pier developers.

According to the DIP regulations for housing linkage, the developers had the option of constructing some affordable housing on-site or simply contributing money to Boston's linkage fund which the City would use to build housing elsewhere. The developers originally proposed to shelve the affordable housing or to have others build it off-site (BRA Board Public Hearing, March 24, 1987, p. 22). The CAC whose major concern was housing for the local elderly population, agreed that off-site affordable housing was the best solution because South Boston's elderly had no desire to live in the exclusive Fan Piers Development (Butler, April 25, 1988). Affordable housing groups and some state officials, however, expressed their concern over the high degree of homogeneity and exclusivity of the project. Local artists, who used Fort Point Channel's warehouse lofts as cheap, roomy studios for their work, were also concerned that they would be displaced due to pressures on the rental market from Fan Pier residents and employees. A number of very outspoken representatives of the local artist community began to attend the CAC meetings and so joined city housing advocates in their demands for affordable housing on-site.

In response to these pressures from local artists and housing advocates, as well as the media, the BRA and the CAC called for less exclusivity and a greater mix of residential types (Boston Globe, October 22, 1987).

After lengthy negotiations, the developers agreed to upgrade the housing benefit package to include 100 units of on-site affordable housing, including family as well as elderly housing. They also agreed to build the affordable housing units during the early phases of construction (Boston Globe, March 11, 1987) and to give South Boston residents first options on the affordable housing. Twenty percent of the on-site housing units would be rental units, while the remainder would be equity ownership (BRA Board Public Hearing, March 24, 1987). The developers also agreed to use part of the linkage funds to build some 150 units of affordable housing on a nearby, off-site parcel. Another forty units would be provided as artist's work and living space (BRA Board Public Hearing, March 24, 1987). Finally, the developers agreed to contribute 2 million dollars to a Neighborhood Stabilization Fund which would grant low-interest loans to South Boston residents for renovation and conservation of the existing housing stock. These housing packages were incorporated into the PDA Cooperation Agreements or amendments as the negotiations progressed.

A number of participants in the development review process were not satisfied with the negotiated agreements for affordable housing. Janice Fine, head of Boston Fair Share, criticized the agreement and pushed for a benefits package in which at least 50% of the Fan Pier's 1000 units would be affordable. Her proposal was not accepted. Mayor Flynn also encouraged more affordable housing, noting that he preferred to see more affordable residential units rather than the proposed public cultural facility on the Fan Pier site. Most members of the CAC and the BRA were satisfied with the negotiations, however.

Conclusions

This chapter has attempted to summarize some of the key steps and actions of the very unique and complex development review process for the Fan Piers Development. Each of the four areas of negotiation described in this chapter provides important lessons for Boston's development review process. In the case of density and heights, we find a clear example of autonomous decision-making, where the rules of the review process were changed late in the game. The waterfront access negotiations are an example of the success and satisfaction that can be achieved by all parties when negotiations take place within a clearly-stated, policy framework. The issue of traffic highlights many of the difficulties that occur when a highly technical issue is in both the hands of state and local authorities. Finally, the affordable housing negotiations covered a wide range of exaction techniques including linkage, inclusionary housing, and developer contributions.

For more than two years, the Mayor's people guided the Fan Pier Development through a maze of regulatory and citizen review processes (Boston Globe, October 15, 1987). When the BRA gave the project tentative approval in April of 1987, the project was clearly on the fast track and appeared to have unstoppable momentum. In the fall of 1987, however, the City's early enthusiasm for the project appeared to dwindle. In October, the Fan Pier Development was dealt twin blows when Mayor Flynn called for public transportation guarantees as a precondition for development permission and Coyle suddenly announced drastic height reductions of up to 250 feet for some of the Fan Pier towers. Combined with the crash of the stock market, the

future of the project appeared dismal at best. In January, 1988 the developers of the two adjacent sites took each other to court suggesting that the Fan Piers Development had indeed seen its last days.

Did the City kill this project or did it die on its own? Many observers suggest that political motivations still drive project approvals in this city. For instance, shortly after the Mayor's change of heart in late 1987, the Boston Globe observed the following: "Last week's mayoral ambush of the Fan Pier is a stark reminder that the development game isn't over until the very end...despite new layers guidelines and commissions, development in Boston is still a game where City Hall makes the rules and changes them at will" (Boston Globe, October 1987). Earl Flansburgh, a Boston architect, appeared to agree, noting that the Fan Pier review process was arbitrary and had gone well beyond the normal design review process for a development project (Boston Globe, October, 1987). Others, however, suggest that the City has the right to change its vision for an area, particularly if the public has made its opposition to the development clear. Steven Coyle admitted that the City's approach was an aggressive one, but made no excuses for this policy. The controversy over the redesign of the New England Life Complex and International Place, both large-scale developments in Boston, is evidence that it was not the first time that the Mayor and his BRA director had reversed their positions on a large development project following sustained criticism (Boston Globe, October 15, 1987).

The rise and fall of the Fan Piers Development raises some intriguing questions about the development review process in Boston. Although it

is still too early to understand why the Mayor and the BRA had "sudden" change of heart, we can begin to hypothesize about certain factors external to the development review process itself, that affected the nature of the negotiations. Chapter Four describes a variety of factors external to the development review process, as well as project-specific factors, that we believe had a major impact on the Fan Piers negotiations.

CHAPTER FOUR

FACTORS THAT AFFECTED THE DEVELOPMENT REVIEW PROCESS

Development review, particularly that involving extensive negotiations, does not occur in a vacuum. Most practicing planners across the country would agree that the same project subject to the same development review process would experience substantially different outcomes in another time or place. Similar to other large-scale projects across the country, the outcomes of the Fan Piers' negotiated development review process were influenced by a number of factors external to the review process itself. These include economic factors such as the strength of the office market, the perception of developer profits, and local fiscal dependence on property taxes; and political factors such as the Boston's mayoral race, tensions between state and local officials and the strength of citizens' and special interest groups. Certain project-specific qualities also may have influenced the outcome of this particular development review. These include the mere size and scale of the project, its exposure to the media, and the timing of the development. This chapter briefly describes the economic, political, and project-specific factors that influenced the nature and outcomes of the development review process for the Fan Piers.

Economic Factors

Boston's Development Boom.

The strength of the local development market has a tremendous impact on the nature of negotiated development review. Generally, cities

experiencing slow-growth and downtown deterioration or abandonment will allow numerous concessions and even offer incentives to developers who are willing to build in the area. This was the case in Boston in the 1960s when the local government provided all necessary infrastructure improvements and substantial property tax benefits to developers of such projects as the the Prudential Center and Faneuil Hall Marketplace. On the other hand, when the market is strong and development is booming, cities generally are in a position to demand much larger concessions and significant exactions from developers. Boston, today, is going through such a development boom with low vacancy rates, extensive hotel, office, and retail construction, and steady employment and population growth over the past decade.

The Fan Pier developers introduced their proposal for a 5 million square foot mixed-use development along the Fort Point Channel at a time when the City of Boston was experiencing unprecedented growth and prosperity. After decades of declining employment and population, Boston experienced a 12.2% increase in population between 1970 and 1980, and an 18% increase in employment from 511,000 jobs in 1976 to 605,000 jobs in 1986 (Brown, 1987). Boston's outstanding growth economy was accompanied by an unprecedented boom of private development activity as a surge of foreign investment flowed into the market and builders scrambled to meet the increased demand for office, commercial and hotel space. Office construction accelerated to a record pace with approximately 8 million square feet and 5 billion dollars of new development during the first half of this decade (Boston Redevelopment Authority, Boston's Growth Economy and the

Megaprojects Dimension, p. 2). in 1984, Boston was ranked first among the twenty largest American cities for square feet of construction per capita (Brown and Perkins, 1985). In 1985, it commanded the highest rental rates for Class A office space in the country (Brown and Perkins, 1985), yet vacancy rates remained a healthy 6.1% in mid-1987 (Boston Redevelopment Authority, Boston's Growth Economy and the Megaprojects Dimension, p. 3). Hotel construction also responded to the thriving economy with more than 5000 hotel rooms added between 1975 and 1986 (Brown, 1987). Business visitors, conventions, and tourists were generating a continual demand for rooms allowing the city's hotels to charge high rates and still maintain high occupancy. BRA forecasts, asserting that Boston's booming growth would continue over two more decades further fueled the optimism in the market.

Boston's unabated construction and development growth not only generated an estimated 142,792 construction jobs and 223,720 permanent jobs between 1975 and 1989 (Arault and Johnson, 1987), but also strengthened the City's negotiating stance with developers eager to build in this hot Northeastern market. No longer desperate for any development project that came along, the city could afford to be selective and very demanding in terms of the project benefits, design criteria, and mitigations required of the developer. The market was perceived to be so strong that most developers would concede to the City's demands even when they personally believe that they are excessive. This clearly was the case with the Fan Piers Development.

Perceptions of Developer Profits.

The inflationary 1970s, booming office market, and the large influx of foreign investment into the local economy were precisely the factors that led the public, as well as a number of public officials, to believe that Boston's developers were reaping tremendous profits from their development projects. The development community itself would often protest that the public's perceptions of developers' profits were greatly exaggerated. What profits existed, they reasoned, were just compensation for the enormous risks that a developer had to undertake.

This perception that the developers would reap an enormous profit from the Fan Pier development clearly prevailed among residents and a number of governmental agencies throughout the development review negotiations. It was well-known that Anthony Athanas had bought the 35 acres of land along Northern Avenue many years earlier for a fairly small sum of money, and the future profit potential of the Fort Point Channel area had been touted by the media and other developers for a number of years. Like most business enterprises, few dollar figures were actually published regarding the Fan Piers' developer profits, which further fueled speculation

What is important, however, is not *actual* profits, but the public's and government's *perception* of developer profits. The BRA, a sophisticated planning agency, well-versed in the use of development pro-formas and real estate financial analysis, could make accurate assessments of the potential profits available to different developers. The public and many other government agencies, however, had a tendency to exaggerate the

potential profits. These perceptions, whether true or not, encouraged the CAC, housing advocates, environmentalists, and others to take a hard line in the negotiations, demanding considerable exactions from the developers. Most of these groups assumed that the developers could easily afford the added costs of mitigation measures and special benefits.

City Reliance on Property Taxes.

Unlike the Boston's development boom and perceptions of profits, Boston's strong reliance on property taxes for municipal funds strengthened the developers' hand in the negotiations. Property taxes are a major source of fiscal revenues in many cities, which is one reason why new development is often keenly sought by city officials. Property taxes play a particularly important role in maintaining the City of Boston fiscally sound. In 1981, Boston's total general revenues amounted to 984.1 million dollars; 361.6 million of these funds were intergovernmental transfers and the remaining 495.8 million were funded through local taxes (Brown and Perkins, 1985, p. 53). Property taxes accounted for 98.8% of the City's tax revenues (Brown and Perkins, 1985, p. 53) as compared to 55% in Dallas, 64% in Denver, and 48.4% in San Francisco. Thus, in Boston property taxes are the main source of fiscal revenues for the City, supporting supporting schools, police and emergency services, infrastructure improvements, and other government expenditures.

The enactment of Proposition 2-1/2 by the Massachusetts legislature in 1980 severely limited the State and localities ability to increase existing

taxes, hence new construction took on a more important role than ever before. In Boston, the tax base was expected to grow by more than 60 million dollars due to new construction activity between 1977 and 1991 (Arault and Johnson, 1987). Over 20 million dollars in property taxes were expected annually from the Fan Pier development alone. Boston could not ignore its reliance on new developments like the Fan Pier to generate much-needed additional funds for the municipal coffers. This fiscal dependence on new development, strengthened the Fan Piers developers' bargaining position considerably, as it was clear that the City needed them as much as they needed the City.

In summary, the economic factors described above suggest that while the development boom in Boston and perceptions of large developer profits encouraged government officials and citizen groups to demand significant exactions, the City's reliance on property tax revenues gave the developer a strong hand in the negotiations as well. This combination of economic conditions suggests that the City would push for as many exactions as it could possibly achieve without killing the project. As the negotiations continued over time the developers had increasing sums of equity invested in the project, thus improving the City's bargaining position and allowing it to request more and more exactions. Political and project-specific factors, however, also affected the outcomes of the negotiations. These are described below.

Political Factors

Planning is essentially a political process, and Boston is no exception. Traditionally, politics in Boston have been colorful and openly

controversial, with mayors wielding considerable power in the development review process. Although less flamboyant than some of his predecessors, Mayor Flynn clearly had an interest in closely monitoring the development review process. While the Mayor favored the Fan Pier Development and helped move it along in its early years, in 1987 he exhibited a change of heart and on a number of occasions made surprise announcements regarding the project. A number of political factors may explain these and other surprising turns of events. These include the mayoral race in Boston in 1987, tensions between state and local officials, and the political activism of interest group coalitions.

Mayoral Elections.

Mayor Flynn, the "neighborhood mayor" first came to office in 1983. Boston's neighborhood groups had charged in the 1970s that Mayor Kevin White had actively promoted downtown development at the expense of neighborhood revitalization (Susskind et al., 1986, p. 6) and Flynn used this issue as his major campaign platform during the 1983 mayoral elections. Throughout the campaign, he promoted himself as a populist candidate and the neighborhood mayor who would seek to ensure that downtown's wealth was shared with the community. Flynn won the elections and during his first term was widely perceived as a mayor who gave the public easy access to City Hall. In the 1987 mayoral race, the popular Mayor was expected to win the elections handily. The Boston Globe noted: "There is a strong feeling in the city that it is being run with fairness and equity to all neighborhoods, and with a sensitivity to various interests" (Boston Globe, July 4, 1987).

During the 1987 mayoral race, however, opponent Joseph Tierney, turned the tables on the "neighborhood mayor" when he attacked Flynn for not scaling down the Fan Pier towers, which resided in his own political backyard, South Boston (Boston Globe, October 16, 1987). Tierney's criticisms that Flynn's policies favored downtown development clearly stung the Mayor. In October, shortly before the elections, Flynn made his surprise announcement requesting building height reductions of up to two hundred feet for the Fan Piers' buildings. The announcement came as a complete surprise to both the developers and the CAC, as well as contradicting previous BRA positions regarding the project's density, which would suggest that the decision was primarily a political one, prompted by last minute jitters before the mayoral elections. Flynn's demand for reduced building heights can be viewed as primarily a symbolic action, designed to show that was still indeed the "neighborhood's man". His unexpected public announcement, however, gave the developers little room to maneuver in. All they could do was hope that once the elections were over, Flynn could be reasoned with.

The Organization of Citizen and Special Interest Groups

Mayor Flynn's stance throughout the negotiations was undoubtedly influenced by the outspoken special interest groups, particularly housing advocates, and neighborhood organizations that monitored the Fan Pier review process. Boston has always been an ethnically segregated city with close-knit neighborhoods such as the Italian North End, Irish South Boston, Chinatown, and black Roxbury. While this has caused divisions on a larger citywide scale, such homogeneity serves to

reinforce neighborhood unity and collective action. Threatened by rising housing prices, gentrification and displacement, new office development, and deteriorating services over the past decade, Boston's neighborhood began to organize. Today, these groups have become a force to be reckoned with. They are well-organized, diligent, and quickly learn all of the intricacies of the development review process.

Mayor Flynn's election in 1983 and 1986 could be attributed to his platform as the neighborhood mayor who would seek to share downtown's wealth with the neighborhood groups. He actively courted the neighborhood groups and relied on them for his support. The media and local housing activists also supported the grassroots movement, further legitimating citizens' role in the development review of the Fan Piers. By placing citizen participation in the limelight, not only the developers but also the BRA had to be wary of not stepping on toes throughout the negotiations. Citizen groups and the media were seeking proof that the City would indeed live up to its promises of letting the neighborhoods have a piece of the development pie.

State-Local Tensions

Tensions between the local and state level agencies involved in the review process also had an impact on the development negotiations. The City was aware of the State's enthusiasm for the proposed Fan Piers Project and sensed that it could pressure the State by holding back on project approvals. Hence, in 1987, the Mayor and the BRA assumed a tough stance on the traffic mitigation measures for the Fan Piers Development, demanding that the State guarantee certain road and

public transit improvements before the project could proceed any further. The Boston Globe suggested that Flynn's hardline on public transportation might have been an attempt to force Governor Dukakis into accelerating the release of state funds to the city (Boston Globe, October 15, 1987). Governor Dukakis, who was running for President of the United States would surely seek to avoid the negative publicity which a discontented Mayor of the state's largest city could generate.

Dukakis was also put in the position of having to keep a close eye on the growing rivalry between Boston's Mayor Flynn and State Senate President, Bulger, who were at odds with one another over a number of Boston projects. Bulger openly supported the Fan Piers Project pressing for the completion of the development review process, while the Mayor increasingly opposed the proposed cultural facility (a pet project of Bulger and Dukakis' wife, Kitty) and expressed concerns about the impacts of the development. The friction between the two leaders became increasingly public, making it difficult for either one to back down from his stated positions gracefully and without a loss of power. The Fan Piers, thus, became caught in the middle of these conflicts between state and local political figures and had little choice but to wait for them to settle their differences.

In summary, a series of political situations ranging from the Mayor's re-election campaign to tensions between the Mayor and the State Senate President, added a complicated new dimension to the Fan Piers negotiations. Neither the BRA nor the developers nor the citizens groups had any control over these situations, and thus were forced to

adjust to the circumstances as they arose. The highly charged political atmosphere tended to strengthen the hand of the CAC, which came from South Boston, the Flynn, the and Bulger's home turf, but weaken the hand of the developers, who found the process riddled with continual uncertainty.

Project-Specific Factors

A number of factors specific to the Fan Piers Development also influenced the development review process. These include the scale and density of the project, the way in which the development was marketed, and the unique timing of the proposal with regards to planning and development politics in Boston.

Project Scale and Density

With a proposed 5 million square feet of development and twelve structures, the sheer size and scale of the Fan Pier Development placed the project in a vulnerable negotiating position. The Fan Pier Development was in the media continually from 1984 through 1988, and received extensive scrutiny from all parties. Numerous studies and analyses were demanded by the impact assessment process. Given its large scale and potential for profit, the Fan Pier clearly had sufficient up-front cash and a large enough staff to undertake these studies. The developers ended up spending millions of dollars preparing impact studies and mitigation analyses in one of the most thorough development review procedures Boston had ever seen. Such intense scrutiny and detailed analysis opened the door at every turn for

criticism of the project. It is doubtful that a smaller project would have been subject to such a thorough analysis.

As a large and relatively isolated project, the Fan Piers were also a vulnerable target for heavy handed tactics by the City. As the negotiations proceeded, the developers' investment in the project became more and more costly, making it progressively more difficult for them to withdraw from the deal when the City increased its demands. Negative perceptions of developers in general made it unlikely that any of the Mayor and BRA's increased demands would trigger negative backlash from the public. It was in this context that the City was able to take a surprising hard line on both building heights and traffic mitigations in 1987.

Although it is not entirely clear why the City changed its stance towards the Fan Pier, it is that Flynn and Coyle probably would not have launched their attack on the Fan Pier Project unless the prey had appeared vulnerable (Boston Globe, October 1987). There had been rumors for some while among development circles that the project was facing financial trouble and that a rift had developed between the owner Anthony Athanas, Hyatt, and Friedman (Boston Globe, October 21, 1987). Friedman had agreed to have substantial construction underway by June 30, 1988 or Athanas could retain his development rights. As development permits were delayed and accumulated, the tension appeared to be mounting among the developers. If the Fan Piers Development had been a less prominent, smaller-scale development, it probably would have had less media exposure, a less

thorough impacts analysis, and less vulnerability to sudden political maneuvers by the Mayor.

Marketing Techniques

The marketing and advertising of this project also had an impact on the nature and outcomes of the development review process. In marketing the Fan Pier Project, the developers faced a double-edged sword as they attempted to deal with private-sector land interests and community-wide concerns simultaneously. The developers of the Fan Pier portion of the project tended to espouse one marketing approach, while the Pier Four developers favored the other.

The first marketing strategy sought to inspire private sector interest and financial institution confidence in the project by demonstrating that the development would not be an isolated luxury structure amidst a declining industrial district. Proper marketing called for glitzy brochures which would illustrate the excitement and glamor of the one-of-a-kind Fan Piers Developers. Investors and potential tenants would have to be convinced that the the "mini-city of twelve buildings" would be a successful, exciting project that would turn the whole Fort Point Channel area around. This approach was espoused by the Fan Pier developers, HBC Associates.

The flip side of the coin was that given the recent development boom and growth of downtown Boston, the community was increasingly wary of the advent of new, large-scale developments. Sensitivity to community perceptions suggested a more subdued marketing strategy

in which the phasing of the project over a ten year period and the enormous benefits to the public would be emphasized. Less publicity, according to this marketing strategy, would be better, especially during the development review phase. This approach was espoused by the Pier Four developers, the Boston Mariner Corporation.

Not surprisingly, the more colorful and controversial of the two approaches was most widely publicized. Repeatedly, the Fan Pier was touted as "a golden city by the sea ", a "wondrous new city", a "glorious new creation" and "Boston's largest project ever" (Boston Globe, January 15, 1988). Rather than emphasizing that the project would be phased over 10 years, there was an obsession with the size and scale of the project (Boston Globe, January 15, 1988). This packaging of the Fan Piers was all wrong given the political context of the City at that moment. While this approach might have been appropriate in the sixties and early seventies when Boston was hungrily trying to attract development to the downtown, it resulted in a negative image for the Fan Pier in the environmentally-conscious 1980s. Thus, "despite generous community benefits and famous architects, the Fan Pier Project was criticized for trying to parachute a mini-Miami into South Boston" (Boston Globe, January 15, 1988).

Project Timing

Finally, the timing of the Fan Piers Development also influenced the development review process. The master plans for the Fan Piers Development were submitted in 1985 at a time when the BRA and development politics in Boston were beginning to undergo substantial

change. Thus, the Fan Piers Development ended up serving as the guinea pig for many of the BRA's new policies and also played an important role as a precedent-setting project.

The BRA's newly formed policies did not seem to carry as much weight as the actual precedent that would be set by the developer exactions and project benefits. As the first project to undergo master plan planned development approval, the BRA may have believed that the development community would turn to the Fan Piers as a trendsetter, thus the entire process was designed to set a good example for future development review. The Fan Piers were subjected to a thorough and extensive environmental impact assessment review, which went the extra step of requiring that the developers provide five special mitigation studies after final EIR approval had been given. The development was also subject to in-depth scrutiny by two designated citizen groups, the CAC and the HPAC, part of an overall effort by the BRA to include citizen participation as a formal component of the development review process. Finally, exactions were also negotiated in a wide range of areas suggesting that such public amenities, housing provisions and developer contributions destined to become a predictable component of all development negotiations in Boston. The message being sent was clear--the BRA meant to do business--and the Fan Piers Development was meant to set an example for others.

The Fan Piers Development was also reviewed concurrently with two well-publicized and highly visible projects--International Place and Rhowes Wharf--had received development approval. International

Place, a one million square foot, granite and glass complex of office buildings designed by Philip Johnson, was highly criticized by the press, architects, and environmentalists as a monstrosity. The complex's large scale and height, design, and lack of amenities were upheld by many in the community as an example of poor planning and a development review process which was not sensitive to the needs of the City of Boston. Rhowes Wharf, on the other hand, was highly acclaimed as an example of good planning and a the product of a fair and efficient negotiated review process. This sixteen story, waterfront, mixed-use development incorporated such details as a colonnaded public wald through the development, a domed entrance courtyard, and 65% open space. The success of the Rhowes Wharf development led BRA planners to look to this project as an example of what could be done on the Fan Piers site. The poor press that International Place recieved also encouraged the BRA to begin to modify its standards and be more stringent with density and height allowances. Thus, halfway through the development review of the Fan Piers planners began to tailor their design requirements to be more in line with the Rhowes Wharf project. If the Fan Piers had been reviewed three years earlier, the developers would not been dealing with the aftermath of the highly criticized International Place nor the popularity of the new Rhowes Wharf development.

Although the large-scale and timing of the Fan Piers development made it vulnerable due to the intense public scrutiny and precedent-setting nature of the case, there were also a few benefits for the development team. The thoroughness with which the project was reviewed gave the

developers' facts to back up their assertions and legitimacy at the bargaining table. Furthermore, the thoroughness of the review process made it difficult to accuse the developers of trying to cover up facts about the project.

Conclusions

The negotiated development review of the Fan Piers did not occur in a vacuum. Instead, a series of economic and political factors appear to have had varying degrees of influence over the negotiations. Initially, the City's dependence on new, large-scale construction for property tax revenues, jobs, and linkage payments favored the developers' stance in the negotiations. Thus, the City moved the project along fairly quickly, despite concerns about its significant traffic impacts. As the developers become increasingly financially entrenched in the project, however, Boston's booming office economy, the public's perception of large developer profits, the Mayor's campaign for re-election, and the growing strength of citizen groups in the city, and the project's role as a precedent-setter, encouraged both the BRA and the CAC to demand more and more exactions from the developers. Furthermore, the large scale, extensive media coverage, and flamboyant marketing of the Fan Piers Development, combined with the visible tensions between the two development teams, placed the project in the limelight. This intense public scrutiny increased the developers' vulnerability in the negotiations.

Although the thorough review process enhanced the developers' legitimacy at the bargaining table and would certainly strengthen their

hand in a court of law, it also created costly setbacks for the developers. Presently, the project is on hold as the developers sue one another in court, therefore it is impossible to tell what the outcome of this lengthy development review will be. This hiatus in the review process, however, provides an opportunity for some serious reflection on the nature of development review in Boston in general and for the Fan Pier specifically. Was the negotiated development review of the Fan Piers a fair and efficient process for both the developers, the City and citizens? What was the nature of policy linkages, procedural guidelines and citizen participation for this case? Finally, how could Boston's development review process for large-scale projects be improved? Chapters Five and Six attempt to address these questions.

Chapter Five

An Assessment of the Development Review Process

The three year development review of the Fan Pier Development has been a complex and lengthy process, which has yet to reach a final verdict. It is not too early, however, to begin to assess the development review process and its tentative negotiated outcomes. The Fan Pier was reviewed in the midst of a major transition period in planning and development in Boston. Over the past five years policy and plan-making have been emphasized, more orderly development review procedures have been created, and citizen groups have become increasingly involved in the development review process. What are the implications of these changes for development review? Was the development review of the Fan Pier a fair and efficient process? What type of a precedent will this project set for other large-scale development proposed for downtown Boston and the waterfront area? This chapter turns to three important components of development review--policy linkages, review procedures, and citizen participation--in order to answer these questions.

Policy Linkages

A Transition Period for Policy-making

The Fan Pier Development appears to have been caught in the midst of a transition in planning policy and hence, its developers and reviewers found themselves in a unique situation. On the one hand, few formal

written policies existed to guide the review of the site and so negotiations between the BRA, CAC, and the developers were common. On the other hand, the large scale and intense publicity of the Fan Pier Development prompted the City to start creating formal plans and policies for the area. Thus, we find that as the Fan Pier was undergoing development review, policies and plans were simultaneously being developed for the area.

These new policies evolved and changed as the negotiations were taking place. Such a reactive planning process complicated the Fan Pier's development review process considerably. The lack of existing plans and policies for the site forced the City to play a constant game of catch-up with the developers and to use delaying tactics in order to keep one step ahead of them. When new policies and plans were devised, it was never entirely clear which ones applied to the Fan Pier and which did not. Hence, we find that the Fan Piers development review was characterized by unstable exactions decisions and a highly unpredictable review process. The developers and CAC had little recourse for addressing the variable exactions because no official policies existed to serve as a framework for decisions.

Why Policies Exist in Some Areas and Not Others

In assessing the Fan Piers development review, it is apparent that policies were evolving more rapidly in some areas than in others. The Fan Pier case tends to suggest that formal, clearly defined policies and plans were most likely to exist for those issues which were a priority of

the Flynn administration and in those cases where little controversy existed.

Mayor Flynn, long touted as the "neighborhood mayor", has clearly stated that social and economic equity are priority issues for his administration. The Mayor and his planning director had a well-formulated vision of Boston as a city where socio-economic redistribution was possible. These visions of growth management and economic equity began to take shape in the form of written and informal affordable housing policies during Flynn's first administration. Examples of this include the DIP linkage regulations and the informal inclusionary housing policies. The City, however, was not able to convert these socio-economic visions into a concrete physical plan for growth management and development.

Some policy areas, such as waterfront access, were also more easily addressed and less controversial than others, such as building height and densities. Waterfront regulations had been provided with considerable legitimacy during the early 1980s due to a decision by the Massachusetts Supreme Judicial Court favoring public purpose uses for the waterfront, the increased enforcement of Chapter 91 waterways licensing procedures, and the establishment of the first permanent office of Massachusetts Coastal Zone Management program (Kloster, 1986). In addition to this strong State support for waterfront regulation, both citizens and the development community appeared to agree that well-designed, waterfront developments with extensive provision of public open space and maritime uses could be beneficial.

Developers found such development projects lucrative, while the public favored the increased amenities. This common agreement among state and local authorities, citizen groups and activists, and the development community made it relatively easy to create the strong set of Harborpark guidelines for Boston's waterfront.

On the other hand, policy areas such as density and building heights, were particularly controversial. Proponents of generous height limits argued that large-scale projects were necessary to retain Boston's strong market base and provide jobs for both construction workers and permanent employees. Higher density projects are also more profitable to the developer, tend to make significant contributions to the tax base, and provide considerable linkage funds to the City's Neighborhood Improvement Fund. Critics argued, however, that Boston's uncontrolled growth was strangling the city, resulting in traffic congestion, monstrous structures that were out of scale with Boston's historical character, and displacement of lower income families. Torn between both the numerous costs and benefits of high density projects, the City appears to have avoided taking a firm stand on land-use and zoning for the downtown and waterfront. Instead, the BRA preferred to rely on its strong bargaining stance, due primarily to the booming office market, to exact as many mitigations as possible from the developers of large-scale projects.

Consequences of Mixed Policy Types

The reactive policy-making process of the BRA resulted in mixture of formal, informal, and non-existent policies for the Fan Pier. This

mixture of evolving policies had significant implications for the way decisions were made for the Fan Pier. The developers and the CAC, for instance, were uncertain about which policies were in effect and had to be adhered to, and which were not.

Formal, written policies, which should have been clear and easy to implement, were often as unpredictable as informal or non-existent policies. For instance, in the case of affordable housing, the DIP regulations clearly mandated that the developer had to contribute a fee of five dollars per square foot to a fund for affordable housing. Nonetheless, the negotiations were not closed on the topic of affordable housing. Instead, a wide variety of additional affordable housing concessions, ranging from additional monetary contributions to inclusionary housing, were wrangled from the developers. In this case, the existence of a clearly articulated policy apparently did not preclude additional negotiations.

The creation of plans for the surrounding areas that excluded the Fan Piers site also complicated the negotiations. By exempting the Fan Pier site from plans, the BRA could use waterfront or Fort Point Channel policies at its own convenience. Comprehensive area plans served as rules of thumb for site-specific development review decisions if the outcomes favored the BRA's position. However, the BRA could also easily choose to ignore the area plans because they were not legally binding on the Fan Piers site. The Harborpark guidelines, for example, were used extensively when determining waterfront access benefits, but played no role in the determination of building heights.

In determining appropriate building heights, the BRA could have turned to either the Harborpark guidelines or existing zoning regulations to set a standard for the allowable heights on the Fan Piers site. Instead, the BRA initially favored the developers' high density approach, and allowed structures of up to 450 feet. Such heights are typical of downtown Boston, where FARs of 10 and heights exceeding 400 feet are not unusual. In late 1987, however, the City altered its course and demanded a 200 foot reduction in building heights to 250 feet, resulting in building heights similar to those of the popular Rhowes Wharf waterfront development. Thus, we find that not only were well-defined policies non-existent, but there were also continual changes in what was acceptable. Informal policies such as the 10% inclusionary housing requirement were also selectively enforced by the BRA. Such selective use of plans resulted in unpredictable and unstable negotiated outcomes.

In those cases where policies simply did not exist (and there were many), there the players lacked a shared vision and a common ground from which to begin the negotiations. In some cases, such as affordable housing, this prolonged the negotiations as it was first necessary to agree on what was an appropriate vision for the site before exactions could be negotiated. Although the review of this very complex case certainly would have been time-consuming under any circumstances, the lack of a policy framework to begin with complicated and lengthened the negotiations considerably.

In other situations, such as the traffic impacts mitigations negotiations, the lack of shared information and definitive standards placed groups with little technical expertise, such as the CAC, at a disadvantage at the negotiations. The CAC had to rely on the developers' technical studies and the expertise of Transportation Commissioner Dimino because they had few written standards and performance measures to guide them. The developers, on the other hand, hired the traffic consultants and thus, were able to control the number and types of traffic studies that were performed. This unequal access to information favored the developers in this case, but disempowered the CAC. Furthermore, traffic impact issues were particularly complicated due to the City's dependence on the State's transportation agenda.

Implications for the Different Players

Boston's reactive, "catch-up" planning, characterized by a mixture of formal, informal, exclusive plan, and non-existent policies, has a number of implications for the different participants in the development review process. In the case of the Fan Pier Development, the lack of formal plans and the context of constantly evolving policies, provided the BRA with substantial flexibility and power in the development review process. Both the developers and CAC, however, faced uncertainty and an considerable future.

The Mayor and the BRA

In the short run, such uncertainty enhanced the bargaining power of the BRA, because it allowed the Mayor and the agency to control the negotiations. The BRA could change policies at will, and this served as a

very strong incentive for the other parties to agree with its terms or face even less favorable policies. In the long run, however, these tactics may return to haunt the agency. The recent Supreme Court ruling in *Nollan vs. California Coastal Commission* has made it clear that exactions must be well-linked to the negative impacts that they supposedly mitigate. *Nollan* and other cases suggest that the courts are paying closer attention to the rights of property owners and now expect municipalities to make decisions that are firmly grounded in existing policies. Under present conditions, the BRA's basis for decisions is unclear and the agency would find it difficult to defend its actions in court. Negotiated agreements based on precedent and community standards or a strong policy-framework would be more stable and less vulnerable to future litigation measures by the different parties. The BRA also runs the risk, in the long-run, of creating a bad image for itself and the city of Boston with regards to development. If developers find the BRA's policies to be too arbitrary and unpredictable, they will leave and the BRA will have lost its main source of business.

The Developers

For the developers of the Fan Piers, the tremendous uncertainty and unpredictable nature of the development review process led to costly delays and unfair treatment in a number of cases. The lack of objective and fair standards defined ahead of time, combined with the continual evolution of new policies, forced the developers to negotiate in a virtual policy vacuum, a very risky endeavor that resulted in numerous setbacks between 1985 and 1988. Such poorly-articulated policies suggest that only deep-pocketed developers, who are in favorable grace

with the BRA and the Mayor will take the risk of going through the development process. By limiting the development market to such an exclusive group the city runs the risk of encouraging expensive development projects and cronyism, while excluding smaller, start-up firms from the market.

The CAC

The poorly-articulated policy framework both helped and hindered the CAC in the Fan Piers negotiations. In certain areas, such as affordable housing, the CAC found that the ambiguity of BRA policy-making, allowed the citizens' group itself to take an active role in shaping policies for the site. The Mayor's strong support and the CAC's proactive approach to development review made this strong policy-making role possible. The general lack of policies, however, also frustrated the CAC. Its members had very little objective criteria to guide them in their decisionmaking which was particularly disadvantageous in technical areas such as traffic mitigation. This lack of standards, a policy-framework, and a common ground to start from served to disempower the CAC.

The City of Boston

Poorly-defined policies impacted not only the Fan Pier negotiations, but also, in the long-run, have overall planning and development review for the City of Boston. When project review is based solely on the individual costs and benefits of the development at hand, the city runs the risk of ignoring the larger picture and pandering to special interest groups whose interests do not necessarily reflect the overall needs of

the community. Without a comprehensive, far-sighted vision for an area, there is no overall understanding of how development projects will work together. Policy-making should be a pluralistic process which includes developers, citizens, non-profit groups and government officials, but it should be comprehensive in nature and take place before projects are set in motion rather than simultaneously with the development review.

Today, after three years of concurrent negotiations and planning, there are still no official BRA guidelines for the development of the Fan Pier. However, the CAC, originally created as a citizen advisory council for the Fan Pier, has now undertaken the task of creating a master plan and IPOD for the Fort Point Channel area, including the Fan Pier site. The changing role of the Fan Pier CAC from a purely reactive, site-specific, advisory council to a committee with a pro-active role is one clear sign that someone has realized that there is a need for a stronger policy framework for development review. It is not clear to any of the parties what impact, if any, this new IPOD will have on the future development review of the Fan Pier.

Development Review Procedures

A Transition Period for Development Review Procedures

Like policy-making, procedures for local development review, were in a state of transition when the Fan Pier negotiations took place. After years of ad hoc reviews on a case by case basis, the BRA had begun to attempt to codify the development review process. New zoning tools such as PDAs and DIPs were added to the traditional menu of zoning

variances and exceptions. These special zoning designations still allowed for considerable discretionary administrative review, but were an attempt at creating a more orderly and predictable procedures for development review. Thus, in many ways, these tools were a hybrid between the traditional rigid regulations of Euclidean zoning and the flexible and ad hoc techniques of negotiated development review.

The Fan Pier Development was the test case for one of these new zoning techniques: the Master Plan Planned Development Area. As a new way of doing business, the development review procedures for the Fan Pier were characterized by tension between the traditional BRA process of ad hoc, site-specific negotiations and the Steven Coyle's expressed desire to create an orderly, well-documented development review process in which all of the rules of the game were known in advance. In attempting to balance this tension between flexibility and predictability, the BRA created a set of procedures which were at times unpredictable and unclear to the participants. The open-ended nature of these procedures had both positive and negative consequences for the development review of the Fan Pier.

Predictability of the Review Process

The MPDA procedures outlined in BRA documents appeared to clearly outline a development review process where the approval of the master plan locked in uses and density, while the development plan vested developer rights to the approved building footprints, heights, and setbacks. However, the sudden reduction in building heights of the Fan Pier in October of 1987, following prior approval of the developer's

development plan, suggests that the City did not believe that development rights were vested until much later in the review process. By reducing building heights after the PDA development plan had been approved, the City was suggesting that development rights would not vest until the Mayor gave his final approval to the Fan Pier after all other reviews had been completed. Under these open-ended circumstances, the developers and CAC had no assurance that mutually agreed-upon exactions in the Cooperation Agreements or design standards in the development plans were permanently guaranteed. The City was able to get away with such inconsistency because all players well knew that the city could hold up the process for years.

In the case of the Fan Pier because both the developers and the CAC were led to believe that firm procedural guidelines had indeed been established. The parties negotiated under the assumptions that the rules of the game were well known to all, only to later discover that new rules could be (and were) added to the review process. The Fan Pier is only one of a number of recent development projects in Boston to experience sudden changes in standards and procedures long after the development review process has gotten underway. In 1987, for instance, a large-scaled plan for the expansion of the Prudential Center, initially supported by the City, was sent back to the drawing board after loud neighborhood protests. Recently, a project on 116 Huntington Avenue was also approved by the City and then sent back to the drawing board, again due to vocal opposition by neighbors. Similarly, Phase II of International Place, a large-scale office development in Boston's financial district, was recently reopened for discussion.

Through such actions, the BRA has sent a message that despite new, more orderly review procedures, changing the rules of the game after the process is underway is still considered an acceptable practices.

Legal Issues

The BRA and the Mayor's change in direction halfway through the negotiations raises serious legal questions with regard to vested rights. Over the past few decades, American courts have addressed the issue of vested rights on numerous occasions. Until the rights vest to develop land, developers are subject to the legitimate police power qualifications of the local governmental planning agency. Both developers and neighborhood groups should know ahead of time when rights will vest so that they can plan their negotiating strategies accordingly. Developers desire the security of knowing that their rights to develop are secured and recognized early in the process. Citizen groups prefer to delay the vesting of rights as long as possible, but also desire the security of knowing that once a regulation or exaction has been imposed, it will be adhered to. Planning agencies such as the BRA attempt to maintain control over the review process for as long as possible by delaying the vesting of rights. In the case of the Fan Piers, it would appear that the BRA not only delayed vesting the developers' rights, but it actually misled the developers into believing that their rights would vest with development plan approval, when they did not.

Issues of Fairness and Efficiency

The BRA's ability to unilaterally modify decisions long after agreements have been hammered out by multiple parties also raises serious

questions about the fairness and the efficiency of the current development review process. The Fan Piers development review process allowed for different standards and procedures to be applied over time to the case. For example, the initial phases of development review suggested that a three step process based on the master plan, development plan, and design review would form the basis for review. These review procedures would include substantial CAC participation, submission of specific plans for approval, and public hearings. However, Mayor Flynn's surprise decision in October of 1987 demonstrated that ad hoc, administrative discretionary decisions had also become acceptable procedures. Such unexpected changes in procedure imposed from above by the BRA also created long and costly delays to the review process, thereby reducing its efficiency.

In Boston, review procedures have also varied across developments at the discretion of the BRA. The role of citizen participation in recent projects has varied considerably, for example. This is not to say that the Fan Piers development should have had the same exact development review negotiations as other projects in Boston, however, general procedural guidelines should have served as a framework for the project so that all of the players could have known what to expect. The treatment of the Fan Pier developers should have been consistent over time and with other large-scale projects in Boston.

Accountability

Finally, in the case of the Fan Pier, the lack of predictable procedures resulted in very little accountability among the players. The BRA, for

instance, never approved or rejected the proposed Fan Pier Project. Instead, the agency and the CAC simply made more and more demands of the developers as they became increasingly financially entrenched. It is possible that they were trying to raise the ante for a long enough period of time, to slowly strangle the Fan Piers project rather than directly kill it. Such a slow death would have been far more politically palatable to the Mayor and the BRA than a direct disapproval, since the public's perception then would be that the project had died because the developer could not agree to the agency's terms. Thus, unpredictable procedures may shift the perceived responsibility for decisions to the developer's shoulders, thus absolving the municipality of any responsibility for its decisions..

Clarity of Procedures

Although the steps to be undertaken in the development review were clearly established in the PDA guidelines, a number of procedural issues remained undefined throughout the development review of the Fan Pier. In initiating the Fan Piers development review process in 1985, no one was sure which issues would be explored, what studies would be made, or how long the process would take. The role of citizen participation was not described in writing at all, although the leaders of the CAC had verbally been given a hazily-defined mission. The first three issues are discussed below, while the role of the CAC is explored in the later "citizen participation" section of this chapter.

Selection of Issues

Both the state MEPA and the local PDA review processes established a broad framework for the issues to be addressed, but left the choice of specific topics up to the participants in the development review process. The state level MEPA process focused on these issues through scoping sessions, whereas the CAC played an influential role in choosing issues for the local PDA process. Both processes allowed the developer to work closely with the neighborhood association and the BRA to identify important issues and focus on those of most concern to the parties. In the local PDA review, however, there was no explicit process for how or when the group would go about choosing the relevant issues. This less clearly-defined local process ran a greater risk of certain outspoken, special interest groups dominating the review sessions by focusing all of the attention on their specific cause. This occurred to some extent in the Fan Pier as a small contingent of Fort Point Channel artists managed to make their plight a central concern of the CAC. A similar situation arose when the media and housing activists pushed to have affordable housing included on the site, even though both the CAC and the developers did not desire this alternative.

Impact Studies

In the state EIR process, report formats and methodologies were established ahead of time the developers assumed responsibility for all studies and technical analyses necessary for completion of the draft and final environmental impact reports. This task was never clearly assigned in the local PDA review process. There were no guidelines establishing how many or what type of studies were appropriate. No

were there any procedural guidelines establishing a process by which these issues could be determined. Instead, as the need for studies arose over time, they were assumed by consultants according to the developers' standards.

This lack of clarity regarding impact studies had a number of implications for the negotiations. First, the developers' studies formed the basis for all negotiations and thus, left little room for joint information gathering. Assumptions and methodologies employed in these studies were heavily debated, particularly with regards to traffic impacts. This created numerous delays in the process and may have also been unfair as the BRA and the CAC never had the opportunity to undertake their own analyses of the case. Second, the developer was responsible for financing all of the studies and was subjected to new delays each time a new study was demanded. As there was no limit on the number or type of studies, the BRA and CAC continued to ask to analysis after analysis in order to obtain a detailed understanding of development impacts. While allowing for a thorough review of the Fan Piers' costs and benefits, these additional studies also resulted in costly delays for the project.

Time Horizons

While the state-level review process clearly-specified time limitations for development review, the PDA process had few specific deadlines to meet. One process was limited significantly by rigid time horizons while the other was open to abuse due to the lack of any deadlines. The specific limitations which the MEPA process imposed on the Fan Pier's

development review encouraged an efficient and speedy review of project. Time limitations made the review process predictable and ensured the developer and other parties that the review would not drag on endlessly and without resolution of key issues. However, some cases, such as the Fan Piers, are far too large and complex to be neatly placed into such a specific time framework. In the case of the state level review of the Fan Piers, many groups lacked sufficient time to review the large, complex and technical impact reports, thus the pre-established deadlines had to be extended in order to allow for a more thorough review of the issues.

In the local review process, on the other hand, few specific deadlines existed. Thus, the parties were able to thoroughly explore the issues. Without any time framework, however, the developers argued that the review process was excessively thorough and demanded more information than was necessary. Such requests for additional studies may have been used as delaying mechanisms in order to allow the City to work on policies or responses to the plans.

As can be seen by the above discussion of issues, impact studies, and time horizons, the PDA review process was fairly flexible and thus allowed the participating parties to tailor the negotiations to the specific case at hand, the Fan Piers Development. This allowed for a more efficient and fair process because the specific issues, studies, and deadlines were not arbitrarily determined ahead of time. However, the lack of any definition of a procedure for deciding on these issues would be determined also allowed certain parties, such as the CAC, to dominate

the negotiations and encourage an excessively thorough and time-consuming review. In another development project, it could easily be the developer who would dominate, and hence, push for a minimal number of studies for efficiency's sake. In this case, a process should have been clearly established ahead of time in which all parties could agree upon these trade-offs between efficiency and thoroughness of review.

The Role of Citizen Participation

Citizen Participation in Transition

As was true with policy issues and procedural guidelines, the role of the Fan Piers CAC was never clearly established beforehand. No written or verbal guidelines were ever provided to the CAC concerning its degree of involvement in the review process, ability to negotiate with the developers, role in the EIR process or its authority to speak for the community. Thus, provided with little guidance, the CAC set out to shape its own role in the review process and assumed a very active and vocal stance in the negotiations.

CAC's aggressive approach to development review greatly influenced the degree of public scrutiny, thoroughness and length of the public review process. The CAC was also more influential in some areas than others, which raises a number of questions regarding the committee's legitimacy. These issues are discussed below.

Public Scrutiny

The active involvement of the CAC in the development review served to publicize the bargaining process and make it open to intense public scrutiny. On the one hand, such media exposure and publicity protected the bargaining process from secret deals and maneuvers by the BRA and the developers. The public negotiations gave the developers added legitimacy later in the process as they could honestly claim to have revealed their intentions. On the other hand, this exposure put all of the players under intense pressure to perform according to certain public expectations. Being in the limelight, made it much more difficult for the CAC to compromise on issues that the media portrayed as being critical. The BRA also sought to put its best foot forward, and saw the Fan Pier as a precedent setting project by which it could set a new tone for development in the City. Thus, it too was under public scrutiny and pressured to ensure that the developers were responsive to the neighborhood's demands.

Thorough Review of the Issues

The new emphasis on citizen participation increases the fairness of the process by exposing the development project to the opinion and input of all relevant stakeholders. Issues that might never have been addressed through a traditional review process--housing for artists and South Boston residents, for example--were satisfactorily incorporated into the development agreements. By incorporating the citizens' voice into the process early on, before crucial decisions were made, the likelihood of future litigation by irate citizen groups was also minimized. Others suggest, however, that the citizen participation element was excessive

and allowed every group imaginable to express its own specific interests with little concern for the overall costs or benefits to the community or the developer. The intense publicity given to the Fan Piers Development review process also made it easy for some of the more vocal groups to hold the developers hostage to their demands. Furthermore, the CAC appeared at times to have no limits and explored every possible issue of interest with regard to the Fan Piers.

Length of the Review Process

While the involvement of the CAC prompted a very thorough development review both at the state and local levels, it also lengthened the review process considerably, resulting in time-consuming and costly delays to the developers, whose upfront costs were enormous. The CAC was eager to get to the matters at hand, particularly in the early stage of the process, and expected to complete the development review in five months. Even under Larry Dwyer's able hand, this speedy review was not possible. The initial rapid pace of development review began to diminish as the CAC's scrutiny became more thorough and eventually, the citizens who had time on their side, learned that the threat to slow the review process down was a very powerful one. These short-term delays, however, may pay off for the developers in the future. In the long-run, an early consensual approach suggests that future litigation is less likely.

Why the CAC Had More Impact in Some Areas than Others

The CAC made its biggest dent on the review process in the area of waterfront access and affordable housing benefits. The first issue had

considerable policy-backing and existing standards from the Harborpark guidelines. Housing was a favorite project of the Mayor and an issue that received considerable attention from the press. There were also a number of very vocal members or regular attendees of the CAC meetings who served to bring the issue of affordable housing to the forefront of the negotiations.

The CAC appears to have had less direct input in the negotiation of issues demanding more technical expertise and quantitative analysis, such as traffic mitigations. Although this was the issue of greatest concern to the South Boston community, Commissioner Dimino of the Boston Transportation Department took control, leaving the CAC in a reactive rather than a pro-active role. Although the CAC expressed concerns about the density of the project on numerous occasions, they again were not directly responsible for the final major reduction in heights in 1987. The issue of heights and densities appears to have been squarely under the control of the BRA and the Mayor.

Questions of Legitimacy and Empowerment

It is clear that the support of Mayor Flynn, who appointed the CAC's members, was critical to the committee's success. Thus, the question arises as to how much power the CAC actually had. Did it influence the process on its own right or did its power base essentially flow from the Mayor? Some evidence suggests that the CAC's legitimacy did indeed stem from the Mayor's support. The Mayor designated all of the members of the CAC and hand-picked its chairman, Larry Dwyer, who was considered by many to be a rising star in the Flynn administration.

This alone, gave the Mayor considerable control over the committee. Furthermore, the Mayor's sudden decision in October 1987 to reduce the height of the Fan Pier hotel after the CAC, BRA, and developers had agreed to the conditions of the PDA development plan, sharply undercut the perceived legitimacy and power of the citizen group.

Members of the CAC, however, strongly feel that the citizen participation process empowered them and their committee. Although the Mayor appointed them, they note that the committee was so diligent, hard-working, and well-informed that within a year it had won its own credibility and legitimacy. One member asserted that the CAC's strength came from its thorough knowledge of the Fan Piers case and ability to address both the BRA and the developers on any of the project's details. Regardless of where their power came from, it is clear that the CAC played a significant role in the development review of the Fan Piers Development.

Conclusions

The Fan Piers Development underwent its three-year review during a major transition period for planning in Boston. New policies were being devised, new review procedures were appearing on the books, and citizen advisory committees were increasingly active in project review. In Boston, the character of development review is still evolving, but this case study of the Fan Piers has provided some insights on both the strong and the weak points of the process as it currently exists.

Some elements of the development review process suggest that the Fan Piers had the potential to be a fair and efficient review process with stable outcomes. The flexible nature of the review process for the Fan Pier allowed for pluralist decision-making. Many players participated in the development review, shaping the final exactions and mitigation techniques and achieving creative outcomes through consensus-building. Satisfactory trade-offs appear to have been reached for the PDA development plan phase of review, with the developer providing extensive housing and public waterfront access benefits in exchange for increased density of development on the site and minimal traffic mitigations. Furthermore, the state level environmental impact review process was well-integrated with the local PDA review process with the extensive findings of the EIR process serving as a springboard for negotiations between the developers, the CAC and the BRA. The EIR process was designed to inform decisionmakers of the different costs, benefits, and impacts of different project alternatives. In this case it appears to have worked well.

Unfortunately, the lack of a policy framework, well-defined procedural rules, and a clear definition of the role of the CAC robbed the development review process of its legitimacy. A comprehensive approach to development was missing, and the few policies that existed were applied haphazardly to this project. Sudden changes in procedural rules in mid-stream created an unpredictable and uncertain process. Catch-up policy-making, and unclear rules resulted in costly delays which wielded little valuable information to the players.. The

BRA wielded excessive administrative discretion exists, while the CAC was left to its own devices to proceed essentially as it saw fit.

The lack of a policy framework, clearly defined procedures and the well-articulated role for the CAC left the outcome of the Fan Pier review process strictly to the bargaining power of the parties to the negotiations. In Chapter Four, we noted that as economic conditions, political circumstances, and project specifics varied over time, bargaining strength shifted from one party to another. Thus, we find that the trade-offs made during the Fan Piers' negotiations directly reflect the relative power of the CAC, the developers, and the BRA at different points in the three year development review process. In the case of the Fan Pier, we find that the developers moved from a position of strength in the early stages of development review to one of relative weakness towards the end. The CAC, on the other hand, moved from relatively little power to an increasingly influential role, but then towards the end appeared to have been robbed of its credibility. The BRA was able to retain its strong bargaining position throughout the negotiations because of the boom in office development in Boston and its control over policy-making and development review procedures.

For years, the BRA has been criticized by developers, architectural critics, environmentalists, and other advocates for its ad hoc development review process, where rules are rarely defined and discretionary power is retained until the end by the powerful planning agency. Today, the BRA has begun to implement plans and policies, new review procedures, and increased citizen participation efforts in order

to counter such allegations. The evidence of the Fan Pier case, suggests, however, that with the exception of increased citizen participation, little has changed. Without a well-defined policy and procedural framework, negotiated development review in Boston still remains an unfair and inefficient process with unstable outcomes. It is unclear whether the current situation is merely the reflection of a transition period from ad hoc review to a more orderly process, or whether the BRA intentionally plans on maintaining its powerful role under the guise of new policies and procedures. The next five years should provide some answers to this question. Recommendations for improving this process are provided in Chapter Six.

Conclusion Recommendations

The following recommendations suggest ways to modify Boston's development review process so that both the process and its outcomes will be more fair and efficient for all of the players.

1) Boston needs to create a development review process that combines flexibility with consistency and predictability.

Boston needs to create a balanced development review process in which there is neither total flexibility with a free license for ad hoc administrative rule-making nor rigid classifications and specifications that restrict innovation and lead to drabness. Flexible techniques are necessary in a large project like the Fan Pier, but both the public and developers need assurance that flexible review techniques will be designed and administered fairly, competently, and visibly. In order to assure some predictability and consistency across cases, administrative review needs to be based on a publicly adopted plan which details a shared understanding of a vision for the development of the city .

2) Boston needs to create a policy framework for its planning and development decisions.

Too few plans and policies are created in Boston ahead of time. The BRA's emphasis should be shifted away from individual project reviews, which are too often based on variable policies and assumptions, and towards the creation of community plan that can serve as a foundation for growth management. Such comprehensive

policies would embody an assessment and prioritization of community needs. The creation of departmental or systems plans, capital improvement programs, clear facility and service standards, inventories of existing facilities, population forecasts, and studies of anticipated community growth would form the basis for a more comprehensive community plan.

Policies play an important role in negotiated development by establishing a framework within which to negotiate. By establishing goals and objectives, policies can help the players to identify possible trade-offs in the negotiations. Good policies provide for consistency of the general rules, while allowing exactions to vary according to the specific nature of the case. Such a planning policies may enable or prohibit certain ranges of activities, but they do not need to go as far as to tell developers specific actions that must be taken. These details are left to the negotiations so that consensual, creative solutions can be developed. Thus, the existence of a policy framework allows the BRA, CAC, and developers to consider exactions and mitigations in light of the fundamental underlying problems, rather than being led astray by political and profit motivations.

Such a policy framework will enable planners to make fairer and more efficient decisions. Well-articulated policies can provide uniformity among different cases and also reduce the number of surprises in the bargaining process. A strengthened policy base will also provide planning decisions with greater legitimacy and credibility. Explicit, comprehensive policies allow the courts to judge the validity of

municipal decisions as the rationale for exactions and mitigations is clearly stated.

3) The public should be involved in the creation of planning policies for the city of Boston.

One of the aspects of the Fan Pier development review process that appealed to many of its participants was that it was a pluralistic process that allowed for the input of many different parties. This democratic process is important as no one person or agency can correctly identify what the future holds or what use and density are best for different areas of the City. The public should be actively involved in and publicly debate policy-making for the planning and development of Boston. However, policy-making should be undertaken separately and distinctly from the development review process. This is now beginning to occur in the Fort Point Channel area as the CAC has shifted its focus from project-specific, reactive planning to a more comprehensive and pro-active role in planning for future development in all of Fort Point Channel. A model exists here for other neighborhood policy and plan making the the city.

4) The broad rules of development review in Boston should be clearly laid out ahead of time in a written document. The specific procedures to be followed should be jointly determined at the beginning of the process by the BRA, the developers, and the citizen advisory committee. Once established, the broad rules and specific procedures should be adhered to unless all parties agree to a change.

The BRA has begun to outline some broad rules for development review in its PDA and MPDA guidelines as well as the more recent Chapter 31

process which parallels the steps of the state and national EPA processes. These broad procedural guidelines are an improvement over past ad hoc reviews, but should be expanded to include a definition of the parties to be involved and their roles in the process. However, specific procedural issues such as the agenda of specific issues, studies to be undertaken, and the timeline and groundrules for negotiations may vary across cases in response to the specific circumstances of the development project. These specifics should be discussed and agreed upon by the relevant parties at the beginning of the review process.

5) Boston's development review procedures should clearly establish when development rights become vested.

A greater element of certainty and predictability needs to be built into Boston's review process. Written development review guidelines should specifically establish when development rights become vested (upon approval of the PDA development plan, for instance), how agreements will be publicly ratified, and how the exactions will be transformed into legally enforceable guarantees. Neither the developers, the citizen group, nor the BRA should be allowed to modify the exactions after development rights have been vested unless all parties agree to the changes.

6) Citizen advisory committees should be incorporated into the written guidelines for the development review process as a legitimate and active participant in the process. The citizen advisory committee should then meet with the developers and the BRA early in the process to clarify its role in the review process.

The CAC played a key role in the development review of the Fan Pier, but legally had no status in the review process as its legitimacy stemmed solely from their appointment and support by the Mayor. The PDA procedures should acknowledge the existence and the validity of a citizen advisory committee in the review process, but leave the determination of the CAC's specific role up to the players in the negotiations. The players will want to tailor the CAC's role according to the nature and objectives of its members, the scale and complexity of the development project, and the specific concerns of its constituency. The determination of the CAC's role should be made early in the process, however, in order to reduce the opportunity for abuses by any of the parties.

The CAC should be composed of a mixture of mayorally-appointed members representing special interest groups and the community (environmental, housing, etc.) and neighborhood elected members. This will help to ensure that the CAC is not dominated by political appointees or radical elements with a very narrow focus.

7) The citizen advisory committee should be obligated to hold regular public meetings with the larger community.

The citizen advisory committees play an key role in this process, but raise an important question regarding who indeed speaks for the community. It is essential that large, community-wide public meetings be held on a regular basis in order to provide both the public and the CAC with information and feedback on the development project. The role of the CAC is to speak for the community and unless, the select committee is in continual contact with its constituents, it may lose the neighborhood's perspective on the project.

Concluding Remarks

Today, Anthony Athanas and the Fan Pier developers, HBC Associates, are still in court, locked in a bitter and fierce battle over the rights and responsibilities of each party. Many observers suggest that the demise of the Fan Piers Development is imminent. If the project does fall apart, however, there is little doubt that sooner or later someone will choose to build on these very desirable 35 acre site adjacent to downtown Boston. Would such future developers of the Fan Piers experience a similar development review process? This thesis suggests that they would not. Negotiated development review in Boston is highly susceptible to the prevailing economic and political conditions of the moment, as well as certain project-specific characteristics. Development review in Boston is also undergoing an apparent transitions stage. Presently, the BRA's planning policies are in a state of continual change and development review procedures are highly unpredictable. Finally,

citizen participation is only as significant as the advisory committees themselves make it. In conclusion, the potential developers of the Fan Piers site face an uncertain future. The only thing that is clear is that development review still remains very much under the control of the BRA.

APPENDIX A

Acronyms

- BRA: Boston Redevelopment Authority, Boston's planning and development agency
- CAC: Citizen Advisory Committee, citizens committee designated by the Mayor to review the Fan Piers Development
- DEIR: Draft Environmental Impact Report, first step of the state and federal environmental impact review process
- EIR: Environmental Impact Review, mandated by federal and state regulations
- FEIR: Final Environmental Impact Report, second step of the state and federal environmental review process
- HPAC: Harborpark Advisory Council, citizens council designated by the Mayor to plan for waterfront areas
- PDA: Planned Development Area, Boston zoning designation for a planned-unit development
- PUD: Planned Unit Development, a large-scale, master planned development project

APPENDIX B

Public Benefits

The public benefits generated by the Fan Pier/Pier 4 project are substantial. This project creates important job opportunities for Boston residents in both construction and permanent jobs.

HOUSING

- o Housing Linkage: \$15 million
The City's goal is to maximize affordable housing in the project. Programs to create or rehabilitate units in South Boston could be implemented to achieve this goal.
- o The developers have proposed 100 units affordable/elderly housing in Building F
- o The arts community has proposed 30-40 units artists housing
- o The BRA has proposed 150 units of first-time affordable housing for home buyers between old and new Northern Avenue

JOBS

- o Jobs linkage: \$3 million
- o 10,000 permanent jobs created
- o 3,400 construction jobs created
- o Commitment to Boston Residents Construction Employment Plan which requires 50% Boston resident employment, 25% minority employment and 10% women employment.
- o Commitment to Employment Opportunity Plan on permanent jobs

PUBLIC/CULTURAL FACILITY

- o 85,000 SF cultural facility located on Fort Point Channel could house the Institute of Contemporary Art, a restaurant, and possibly performing space. Developers should contribute land for this project.

TAXES

- o \$17,614,000 expected property tax yield (expressed in dollars of constant value at 1986 prices with stabilized yield commencing in 1994)

PUBLIC AMENITIES

- o 1½ mile Harborwalk
- o 11 acres public open space *
- o 185 marina slips (25% short term)
- o fishing pier
- o water transportation docking facilities; on-demand water taxi
- o outdoor amphitheatre
- o public dinghy dock
- o childrens play area
- o sculpture garden
- *includes paths, sidewalks, pedestrian ways, landscaped area, and the pool; excludes roads, service areas, lagoon, and other open water.

APPENDIX C

Community Process

The Citizens Advisory Committee

- o To advise the Authority on design issues, community benefits, and the impacts of the proposed development, the Mayor established a Fan Pier and Pier 4 Citizens Advisory Committee in August 1985 to work with the Harborpark Advisory Committee.
- o The CAC has been in the process of reviewing the proposed development for almost two and a half years. The CAC has held over 50 committee and sub-committee meetings and have been represented at several other community meetings.
- o The following organizations and individuals participate in the CAC:
 - o Tom Butler, South Boston Citizens Association
 - o Gerry Vierbickas, South Boston Residents Group
 - o Dan Yotts, South Boston Community Development Corporation
 - o Representative Flaherty; Martin Nee, alternate
 - o Father Walter Martin
 - o Larry Bluestone; Felicia Clark, alternate, Boston Society of Architects
 - o James Sullivan; Simone Auster, alternate, Chamber of Commerce
 - o Tom Ennen, Boston Harbor Associates
 - o Adel Foz, Massport
 - o Al Raine, Governor's Office of Economic Development
 - o Bob Costello, St. Vincents Neighborhood Association
 - o Robin Peach, Fort Point Arts Community
 - o The members of the Harborpark Advisory Committee; Lorraine Downey, Chairperson,
 - o Larry Dwyer, Chairman

APPENDIX D

‡ARTICLE 6A

OTHER EXCEPTIONS

(‡Article inserted on April 30, 1968)

‡SECTION 6A-1. **Authorization for exceptions in Planned Development and Urban Renewal Areas.** As provided for in Section 10 of Chapter 665 of the Acts of 1956, as now in force or hereafter amended, and subject to the provisions of Sections 6A-2, 6A-3 and 6A-4, the Board of Appeal may, in a specific case after public notice and hearing, allow an exception from the provisions of this code. Such exception shall lapse and become null and void unless (a) such exception is used within two years after the record of said Board's proceedings pertaining thereto is filed with the Building Commissioner pursuant to Section 8 of said Chapter 665, or (b) such exception relates to work in a planned development area of not less than 5 acres, or to the use thereof, and within such two year period the Boston Redevelopment Authority files with the Building Commissioner a certificate that work within said planned development area has been commenced and is diligently proceeding in which case such exception shall not lapse unless thereafter said Authority files with the Building Commissioner a certificate that such work is not diligently proceeding.

(‡As amended on December 29, 1982)

‡SECTION 6A-2. **Procedure for Appeal.** Each appeal for an exception shall be filed in quadruplicate with the Building Commissioner, who shall retain one copy for his files and transmit the other copies as follows: one to the Board of Appeal, one to the Boston Redevelopment Authority, and the other to the Zoning Commission. Said Authority shall, within thirty days after the date of such transmittal, file with the Board of Appeal a report with recommendations, together with material, maps, or plans to aid the Board of Appeal in judging the appeal and determining what conditions and safeguards may be necessary or appropriate. The Board of Appeal shall not

hold a hearing nor render a decision on an appeal for an exception until such report with recommendations has been received and considered, provided that if no such report is received within said thirty days, the Board of Appeal may hold a hearing and render its decision without such report.

(‡As amended on May 26, 1970)

‡SECTION 6A-3. **Conditions Required for Exception.** The Board of Appeal shall allow an exception only if it finds:

- (a) That such exception is in harmony with the general purpose and intent of this code;
- (b) The exception requested is in conformity with (i) the development plan for the planned development area or (ii) the land assembly and redevelopment or urban renewal plan, or the low rent housing project or housing project for elderly persons of low income for the urban renewal area, and such conformity has been certified to by the Boston Redevelopment Authority; and
- (c) If such exception relates to a Development Impact Project, as defined in Section 26-2, the applicant shall have complied with the Development Impact Project Requirements set forth in Section 26-3.

(‡As amended on December 29, 1983)

The boundaries of these districts are hereby originally established as shown on a series of maps entitled "Zoning Districts City of Boston," dated August 15, 1962, on file in the office of the City Clerk, which maps, with all explanatory matter thereon, and all maps which, by amendment of this code, may be substituted therefor or made supplemental thereto shall be deemed to be, and are hereby made, a part of this code.

(‡As amended on February 17, 1971, March 20 and May 26, 1972, July 9 and September 27, 1973, October 22, 1974, February 28, 1979, October 31, 1980, and June 16, 1982)

‡SECTION 3-1A. **Special Purpose Overlay Districts.** A subdistrict or part thereof or a contiguous group of subdistricts or parts thereof may be designated as a special purpose overlay district as follows: (a) planned development area (distinguished by the addition of the letter "D" to the designation of the subdistrict or subdistricts); (b) urban renewal area (distinguished by the addition of the letter "U" to the designation of the subdistrict or subdistricts); (c) adult entertainment district (distinguished by the addition of the letter "E" to the designation of the subdistrict or subdistricts); (d) restricted and limited parking districts; (e) flood hazard district; (f) institutional district; (g) restricted roof structure district (distinguished by the addition of an asterisk or small circle to the designation of the subdistrict or subdistricts; or (h) interim planning overlay district. In an overlay district the regulations specified for the base subdistrict or subdistricts shall apply, insofar as they are not in conflict with special regulations specified for a particular overlay district.

(‡This section, inserted March 24, 1977, incorporates districts formerly described in Section 3-1. The first paragraph was subsequently amended on June 8, 1977, August 20, 1981, December 30, 1983, and November 23, 1984.)

‡a. **Planned Development Areas.** The whole or any part of a subdistrict may be established as a planned development area if such area contains not less than one acre and the commission has received from the Boston Redevelopment Authority, and has approved, a development plan or, if the area contains not less than five acres and is not located in a residential zoning district, a master plan for the development of the planned development area. Before transmittal to the commission, such development plan or master plan shall have been approved by said Authority after a public hearing, provided, however, that no development plan or master plan shall be approved by said Authority unless said

Authority finds that such plan conforms to the general plan for the city as a whole and that nothing in such plan will be injurious to the neighborhood or otherwise detrimental to the public welfare. A development plan shall set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the area, densities, proposed traffic circulation, parking and loading facilities, access to public transportation, proposed dimensions of structures, and may include proposed building elevations, schematic layout drawings and exterior building materials, and such other matters as said Authority deems appropriate to its consideration of the proposed development of the area.

If the area contains not less than 5 acres and is not located in a residential zoning district, a master plan may be submitted setting forth only a statement of the development concept, including the planning objectives and character of the development, the proposed uses of the area, the range of dimensional requirements contemplated for each of the proposed uses, the proposed phasing of construction of the development and such of the other items set forth above as said Authority may request in order to make its required finding. No work shall proceed in any planned development area established by the commission on the basis of an approved master plan until a development plan for the area, or portion thereof in which work is to proceed, conforming to the foregoing requirements has been approved by the Authority and the commission, in each case after a public hearing.

To insure that no work proceeds other than in accordance with an approved development plan, no structure shall be erected, reconstructed, or structurally changed or extended in a planned development area, whether or not a master plan has been approved for such area, unless all drawings and specifications therefor shall have been subjected to design review and approved by said Authority. The Building Commissioner shall not issue any building or use permit with respect to any building, structure, or land within a planned development area unless the Director of said Authority has certified on the application therefor and on each and every plan filed with the Building Commissioner in connection therewith that the same is consistent with the development plan for such planned development area or the portion thereof to which said permit relates. Except as otherwise provided in Article 6A, planned development areas shall be subject to all the provisions of this code applicable to the subdistrict in which the area is located.

(As inserted on July 2, 1968, and amended on December 29, 1982)

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