

Statement by Jamie Kalven June 28, 2004

On June 3, 2004, Alderman Leslie Hairston convened a meeting regarding Promontory Point. The meeting was attended by Arnold Randall and Rob Rejman of the Chicago Park District, Felicia Kirksey of the Army Corps of Engineers, William Weaver of STS Consultants, Greg Lane and Jack Spicer of the Community Task Force for Promontory Point, Valerie Jarrett and Robert Mason of the South East Chicago Commission, Alderman Toni Preckwinkle, Henry Webber of the University of Chicago, Lauren Moltz, Peter Rossi, Marcy Schlessinger, Maurice Lee of Alderman Hairston's staff, and myself.

Alderman Hairston asked me to present a summary of the "mediator's report" that Wayne Brunzell, my technical advisor, and I had issued on May 17. She then asked the City to respond. William Weaver of STS Consultants outlined the main points of the City's response. The City's critique of the mediator's report, dated June 1, was prepared by STS and was joined by the Chicago Department of Environment, the Chicago Park District, and the United States Army Corps of Engineers (Chicago District). The City rejected the conclusions of the report and characterized the analysis as "flawed."

Following these presentations and some discussion, Alderman Hairston declared that the mediation process was now concluded and announced the creation of a new group for the purpose of reaching an agreement on a design for the Promontory Point revetment.

Because I had not received a copy of the City's critique prior to the meeting, I requested an opportunity to review the document and to comment on it. The mediation process having concluded, I do so now as a private citizen, in the hope of contributing clarity to the process as it goes forward.

Little would be accomplished at this juncture by responding point by point to the City's critique as if we were engaged in an exchange of legal briefs. Rather, I want to use this occasion to clarify, in light of the City's statement, what the mediator's report says and what it does not say.

In so doing, I am not discounting or deflecting the issues raised by the City. We have posted the City's critique, as well as the earlier STS report of January 27 on the Promontory Point Working Group website (<http://thepoint.invisibleinstitute.com>), so that anyone who goes to the mediator's report will also have immediate access to the criticisms and arguments advanced by the City.

The mediator's report addresses the question: Is a "preservation approach" to the restoration of Promontory Point technically and fiscally feasible? This is the threshold question that must be answered one way or the other, if the design process is to move forward. An array of other questions can only be constructively engaged and answered once that threshold has been crossed.

The mediator's report did not propose an alternative plan. The design we called Figure 1 was intended as an analytic device to help us answer the threshold question. That is not to say that the Figure 1 design should not be subjected to critical scrutiny. Our conclusion that a preservation approach is feasible is based on analysis of Figure 1. Any effort to assess the validity of that conclusion will necessarily involve critical analysis of Figure 1.

Yet there remains a fundamental difference of orientation that has left STS and Mr. Brunzell and myself to some degree talking past each other. That difference might be characterized this way: Our approach has been to try to fashion a strategy for answering the threshold question, while leaving other questions open, in order to establish a framework within which to answer those questions. The City, by contrast, has, in effect, taken the position that every open question must be definitively answered in order to answer the threshold question.

Thus, from our perspective, various points raised by the City to impeach the conclusion that a preservation approach is feasible—e.g., the precise horizontal dimensions of the step stone structure, the requirement of a double layer of stone, etc.—are questions to be engaged on the other side of the threshold within a preservation framework.

YES OR NO

In its June 1 critique, STS states that the Figure 1 design is "no more preservation oriented than the options developed by the City." I agree. Preservation in this context is best understood as a process rather than a particular outcome. Adopting a preservation design framework does not presuppose the answers to various questions—the value of preservation does not necessarily trump other values, when they conflict—but it does establish a lens through which to approach such questions.

How would this orientation, if adopted, affect issues that have been central to the discourse with STS?

Assessment of the existing prototype. A preservation orientation would dictate close consideration of the performance of the existing structure as a source of information relevant to the design process. STS has made assertions about the existing structure, as have Mr. Brunzell and myself. Various questions regarding construction and maintenance would be clarified, were there an authoritative, independent assessment of the existing structure.

NO

Army Corps of Engineers guidance. The design standards of the Army Corps of Engineers are invoked at several points in the City's critique—most notably, with respect to the question of whether a double layer of stone is required for the step stone structure—and the Chicago District office of the Corps signed on to the critique. Army Corps design standards do not take preservation considerations into account. Were a preservation design framework adopted, the Corps would presumably interpret and apply its design standards within that context. This would demand greater sensitivity to the particularities of the site. It might also allow the engineers working on the project more space to be creative and resourceful.

Determination of construction costs. STS points out a significant error in our analysis. We used a different figure for the length of the Promontory Point shoreline than that used by STS in developing its cost estimates. We had assumed that the transitional sections to the north and south of the Point that are already in construction and hence not subject to being designed differently were not to be considered as part of the shoreline for the purpose of these costs estimates. We were wrong and appreciate the clarification provided by STS. The effect of this error is to increase the overall budget presented in the mediator's report by 20%. Similarly, STS acknowledges an error in its calculation of relative costs of different options. These errors suggest how preliminary the cost estimates are. They need to be revisited and updated. If this is done within a preservation framework, another methodology will be required than that used by STS which treats other major costs (e.g., concrete, steel) as fixed, while representing limestone costs by means of an extremely broad range and presenting the high end of that range in red ink.

Maintenance and risk. A section of the mediator's report is devoted to the issue of maintenance. In its January 27 report STS provides projections of the range of possible maintenance costs under different options. Our analysis found these estimates reasonable at the low end of the range and implausible at the high end. In its June 1 statement, STS explains:

It is our opinion that the low end of the maintenance cost range for each option is a modest assumption of a responsible maintenance program to keep the structure in a safe and stable condition. The high end of the range is a best guess of the degree of maintenance that could be required to restore and repair the structure if these non-standard structures experience significant problems. The high estimate is provided so that the Owner can evaluate the degree of risk associated with implementing a non-standard structure.

Again, approaching questions of maintenance within a preservation framework would ground analysis in what can be learned from the history and condition of the existing prototype. As we observed in our report:

While the low estimates seem to be within a reasonable range, the high estimates do not. Judging from what is known of its maintenance history, Promontory Point has not received in the entirety of its seventy year life a fraction of the maintenance attention projected by STS on an *annual* basis for the rebuilt step stone structure. Yet despite exposure to every imaginable lake condition over seven decades, despite the lack of adequate maintenance, and despite the loss of lateral support due to the failure of the substructure, the stone steps remain substantially intact.

A preservation orientation would restrain the tendency of risk assessment to become unmoored from observable realities.

SPECIAL

TAKE TO RISK

Mr. Brunzell and I see no need to alter the conclusions and recommendations of our May 17th report.

LOCAL DECISION

DIRECTIVE TO

DRAFT - NOT CERTAIN

JOMIE - YES

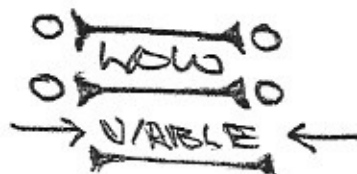
DAVID - GOLD MEDAL

ASSUMPTION

- COST ANALYSIS FOR THE ENTIRE RUN OF THE POINT RAUGHTMENT

DESIGN TEAM

- DOUBLE STACK ?



50/50

SPLIT

CROSSHAND

PRESERVATION - YES

CONCEPT -> REAL
DETAILS

- CPD - NO
- ACE - NO/YES
- IHPA -
- DOE - NO
- AD CU -

JOMIE

PRESERVATION - YES

CORPS

DATA
POSSIBLE
DIF DESIGN
COST MORE ?

THRESHOLD TO RELEASE

1993 NOA

MET IHPA

LOCAL SPONSOR

- CLEVER
- YES
-

RICH - JACKSON

ACCESSILITIES ←

WAYNE - NEW SYMPOSIUM ← CRITIQUE
- COST

Executive Summary: Kalven Mediator's Report 2004 04

Enclosed is the full text of the recent Report of the Promontory Point Mediator.

This report is the product of an agreement between the Chicago Park District, the Chicago Department of Environment, the Chicago District of the US Army Corps of Engineers, and the Community Task Force for Promontory Point. The agreement was brokered by 5th Ward Alderman Leslie Hairston. The agreement stipulated that the mediator, Jamie Kalven, would work with engineer Wayne Brunzell, to evaluate competing claims about the feasibility of the preservation of the limestone revetment at Promontory Point. All parties agreed to the legitimacy and independence of the Mr. Kalven and Mr. Brunzell. The report was commissioned and paid for by Alderman Leslie Hairston.

A note on background: Mr. Kalven acted as Mediator in the Point dispute for six months prior to his commission for this report. The formal mediation process was initiated by the South East Chicago Commission, the development arm of the University of Chicago, and willingly entered into by all those parties listed above. The goal of the mediation was to resolve competing claims about the feasibility of the preservation of the limestone revetment at Promontory Point. Mediation meetings began on August 5, and ended on January 28, 2004. Mediator's reports on the meetings, as well as a PDF version of the Mediator's Report are posted at <http://thepoint.invisibleinstitute.com>. The mediation ended when the Chicago Park District refused to continue to meet.

When mediation meetings ended, Alderman Hairston called all parties to a meeting. At that meeting, Mr. Kalven noted that the mediation process had produced an agreement by all parties to subject the competing claims about the feasibility of the preservation of the limestone revetment at Promontory Point to independent review. That review remained unfinished business. Alderman Hairston asked the parties to agree again to the review. They did. With that agreement, the Alderman commissioned Mr. Kalven.

The Report took two months to complete, and required all parties to be fully cooperative with the mediator and to open all documents for the mediator's review.

The conclusions of the report are clear:

1. Preservation is technically and fiscally feasible.

"We have concluded, on the basis of information made available to us by STS Consultants and Shabica and Associates, that a preservation approach to the restoration of Promontory Point is technically and fiscally feasible."p23.

2. Preservation is significantly less expensive than the city's concrete replacement plan.

"The plan we have reviewed conforms to the dimensions and specifications of the City plan. And it yields cost estimates, developed with conservative assumptions, that are significantly lower than the budget for the City plan..."p.23

3. The city should proceed with preservation at Promontory Point.

"We recommend that a preservation design framework be adopted by the City and that an appropriate design team be constituted for the purpose of refining that design concept ."p.24

4. Maintenance costs have been overstated by STS Consultants, LTD, consultants to the Department of Environment.

"In view of the flawed analysis on which the City has relied, we recommend that it reanalyze maintenance costs..." p24

5. STS Consultants, LTD, engineering consultants to the DOE, are found, repeatedly, to lack credibility.

"Taken on its own terms, the STS analysis yields an inexplicable result ."p11

"...pressures have seriously skewed the analysis of maintenance costs."p.14

"...this approach to quantifying it yields questionable results."p.16

"Beyond such questions about the reliability of the STS analysis on its own terms, we have several broad concerns..."p.16

"...this approach necessarily inflates the maintenance costs for the stone options." p16-17.

"The analysis makes no apparent use of the history of the existing structure as a basis for predicting maintenance costs." p.17

"STS indicated that they had not used Park District repair records in preparing their maintenance projections and that they are unsure whether such records exist." p.17

"Promontory Point has not received in the entirety of its seventy year life a fraction of the maintenance attention projected by STS on an annual basis for the rebuilt step stone structure."p.18

"...this analysis of maintenance costs is fundamentally flawed and should not be relied upon."p.19

"This cost estimate seems excessive."p.21

"In response to a query from us, STS indicated that this [\$80,000] item should not be included in the cost estimate, for it refers to another project already in progress." p. 22

"As with item #45 above, this [\$192,000] could be removed from the cost estimate because it refers to another project already in progress." p.23

The City's response to this report was to issue an attack on the report, authored by the very engineering firm whose work it reviews: STS Consultants, LTD.

The Community Task Force for Promontory Point endorses the recommendations of the report. If the recommendations are followed, the city will adopt a preservation design framework and will, working with the community, constitute an appropriate design team. That design team must not include STS Consultants, LTD, as their work has been proven unreliable. The design team must include preservation design professionals with

experience in the preservation field.

The Report does not address legal issues at Promontory Point. Federal involvement at Promontory Point is subject to the National Historic Preservation Act, which, through a Section 106 review, led to the Memorandum of Agreement (MOA) signed in 1993 by all agencies. That MOA requires "that the design and construction of the revetment will match the existing in accordance with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation." This contract and the Secretary's standards should guide the work of the design team. The Secretary's standards are posted at [http:](http://)