PUBLIC ACCESS TO URBAN WATERFRONT DEVELOPMENTS

by

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ABSTRACT

After years of lying idle, waterfronts, and their inherent potential as a recreational resource and an asset to urban living, are being rediscovered by cities all over the world. Unfortunately, in the race to revitalize their urban waterfronts many cities have overlooked the importance of providing meaningful public access and have allowed stretches of their waterfront to be privatized. In this thesis I develop a typology of barriers to psychological access to determine what constitutes more meaningful public access to urban waterfronts. Using this typology I evaluate the quality of public access along the North End waterfront in Boston generally, and in two case studies specifically.

The first case study, Union Wharf, was redeveloped in the late 1970's and is an excellent example of the most privatized and least publicly accessible stretch of waterfront in the North End/Downtown area. I look at who the actors in the development process were to see how they influenced the public access components. I go on to look at the changes that have taken place in the thinking on public access in Boston in the past decade, including the new array of actors and planning processes. As a way of seeing what results these changes have brought about in terms of securing meaningful public access, my second case study looks at the planning of the Lewis Wharf redevelopment as this is the first waterfront development in Boston to go through all the rigours of the new planning processes. I conclude that there is a new awareness regarding public access in Boston but that all the actors are not equally empowered to effect the outcome.

Drawing upon the experience garnered from the two case studies I discuss constraining factors in the provision of public access in general -- both from the point of view of the developer and city/community. My typology is a useful framework to determine what constitutes meaningful public access but, apart from the more universal constraints faced by the developer, the burden of implementing meaningful public access will inevitably fall upon the city with the involvement of the community. Thus, to bring about good public access to urban waterfront developments the city/community must play an active role.

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# TABLE OF CONTENTS

**INTRODUCTION**

**CHAPTER 1 -- THE WATERFRONT REVISITED**

The Waterfront Revisited

The Evolution of Urban Waterfronts

Public Access Revisited

- The phenomenology of water in the city
- Waterfronts as recreational spaces
- Waterfronts as "sidewalks"
- The Public Trust Doctrine

**CHAPTER 2 -- THE COMPONENTS OF PUBLIC ACCESS**

Defining Public Access

- Physical Access
- Visual Access
- Interpretive Access
- Psychological Access

Typology of Potential Barriers to Psychological Access

- Physical Barriers
- Institutional Barriers
- Aura of Privacy
- Homogeneity
- Quality of Space

**CHAPTER 3 -- BOSTON'S NORTH END WATERFRONT**

Public Access to the North End Waterfront

- Physical Barriers
- Institutional Barriers
- Aura of Privacy
- Homogeneity
- Quality of Space

**CHAPTER 4 -- UNION WHARF**

Public Access at Union Wharf

- Physical Barriers
- Aura of Privacy
- Quality of Space

Actors in the Rehabilitation Process

- The BRA and Public Access

What Happened?

- Internal Uses
- External Uses and Layout
- Conclusions

**CHAPTER 5 -- BOSTON'S CHANGING ATTITUDE TO PUBLIC ACCESS**

Changes at State Level

- Revival of the Public Trust Doctrine
- Chapter 91
- Massachusetts Coastal Zone Management Office
CHANGES AT THE LOCAL LEVEL 53
BRA Harborpark
The North End/Waterfront Neighborhood Council
THE MEPA PROCESS 55

CHAPTER 6 -- LEWIS WHARF PHASE II 57
THE EVOLUTION OF THE PUBLIC ACCESS COMPONENTS 57
Existing Public Access Situation
Public Access in the Draft EIR
Public Access on the Re-shaped Project
THE ACTORS AND THE PROCESSES 68
The MEPA Process - A Comprehensive Development Approach
Massachusetts Coastal Zone Management Office
The BRA
The Harborpark Advisory Committee
The North End/Waterfront Council
REVIEWING THE PROCESS 73

CHAPTER 7 -- CONSTRAINING FACTORS IN THE PROVISION OF PUBLIC ACCESS 75
DEVELOPERS'S PERSPECTIVE 75
Physical/Structural Constraints
Financial Constraints
Societal/Regulatory Constraints
THE CITY AND COMMUNITY'S PERSPECTIVE 80

CHAPTER 8 -- CONCLUSIONS 82
RECOMMENDATIONS 83

BIBLIOGRAPHY 86
INTRODUCTION

Chain link fences, taut barbed wire, guardhouses, gates, no-trespassing signs -- this may sound like a top secret facility but in fact it describes a typical waterfront scenario in many of our cities today. The fact this is experienced in just a few minutes walk from the bustle of a downtown may seem surprising but it demonstrates that the urban waterfront has been greatly overlooked as a valuable asset to urban living.

The access to the use of urban waterfronts as a recreational resource has often been neglected in the race to develop these areas, once abandoned and in sorry states of disrepair. The promise of a larger tax base tempted many cities to allow developers to privatize stretches of their urban waterfronts. For example, I. M. Pei's Harbor Towers complex in Boston totally walled off the residences, impeding all access to and along the water's edge. Many of these early waterfront developments have faced increasing criticism for their lack of sensitivity to the needs of the general public. This has resulted in a heightened public awareness and a more active community involvement in the waterfront planning process.

There are many issues at stake in the redevelopment of urban waterfronts. Large projects such as Battery Park City in New York and the proposed Fan Pier development in Boston highlight problems associated with traffic, transportation, the provision of public infrastructure, and conflicts over density, the massing of buildings, the types of land uses, etc. While these issues have been the subject of numerous reports and discussions, the provision of meaningful public access is often overlooked. Public access and the provision of public spaces along the waterfront has unfortunately been viewed by many as being a "luxury", and of secondary importance to many of the more politically volatile concerns mentioned above. Cities that have established requirements and/or guidelines for the provision of public access to their waterfronts often face uncooperative or grudging developers and may encounter problems with implementation. If, as a result, the final
product is one that remains unused or underutilised the public has not gained much in terms of meaningful public access to this valuable amenity.

The purpose of this thesis is to address the issue of public access to urban waterfronts and, particularly, the issue of meaningful public access. By this, I mean access where people are encouraged to use the waterfront and feel comfortable doing so. As a way of addressing this I look at barriers to psychological access and how they can be overcome. Although permitting processes and regulations vary widely from city to city I focus on the evolution of public access awareness in one city to see if it incorporates psychological access concerns. Boston has come far in its waterfront planning process compared to other cities in the U.S. and, as a result, provides interesting case studies to see who the actors are, how the issue of public access has been addressed, how governmental permitting processes can enhance or detract from meaningful public access, and finally, what some of the constraints are in terms of breaking down barriers to psychological access.

The thesis is organized as follows. In the first chapter I set the context for a discussion on public access. I trace the general evolution of urban waterfronts to show how the focus on these "edge" areas has changed over time. I examine why public access has become an issue today, including how public access to waterfronts can enhance the urban quality of life. I end the first chapter by looking at the legal basis for people's right to access to parts of the shoreline, namely the Public Trust Doctrine.

In the second chapter I define four types of public access: physical, visual, interpretive, and psychological access. I then develop a typology of psychological barriers to access which become the basis for the analysis of public access in my case studies.

The case studies focus on two wharves along the North End waterfront close to downtown Boston. The third chapter, therefore, provides a brief context in which to present the case studies, including an analysis of the North End waterfront in terms of psychological access. The fourth chapter introduces Union Wharf as the first case study.
Developed in the late 1970's this case illustrates how private development can impede public access to the waterfront. I analyze the public access afforded by the development using the "barrier" typology from chapter two. I then examine both the actors and process that shaped this outcome.

Since Union Wharf was redeveloped the setting or arena for waterfront development has changed significantly. The fifth chapter therefore outlines the actors and review procedures of this new development climate and looks at how the issue of public access has come to be addressed quite specifically. This forms the basis for my discussion of the second case study in chapter six. Lewis Wharf (phase II) is the most recent North End waterfront development to enter Boston's planning process and has undergone radical design changes to accommodate public concerns under the new planning process. I examine the evolution of the public access components in that project, evaluating the different stages using the "barrier" typology. I then look at the actors influencing these changes.

My discussion in Chapter 7 looks at the constraints for providing meaningful public access to urban waterfronts. From the developers perspective these include physical, financial, and societal constraints, and from our society's perspective some of the constraints include our lack of awareness of psychological access issues and the political power of the actors involved in the planning process.

My conclusions in Chapter 8 focus on general lessons learned from the Boston case studies, including the need for an actively involved city and community to implement meaningful public access.
CHAPTER 1 -- THE WATERFRONT REVISITED

Until the turn of the century, public access to downtown waterfronts in the United States was taken for granted, as waterfronts were the hub of activity and the focus for all contact with the rest of the world. While public access to the waterfront remained an integral part of many European cities during the revolution in transportation and commerce -- for example, the popular promenades and esplanades of Amsterdam, Paris, and Stockholm -- many U.S. urban waterfronts were, until recently, barren, desolate landscapes where public access was neither encouraged nor desired. To set the stage for a discussion of public access in the U.S., it is helpful to outline the events that led to the deterioration and abandonment of American urban waterfronts.

THE EVOLUTION OF URBAN WATERFRONTS

For centuries waterfronts have mirrored changes in urban form. From the earliest cities in civilization, located at the confluence of the Tigris and Euphrates rivers, to the bustling ports of the New World, humans have settled close to bodies of water. In fact, the location of cities was often dictated by their proximity to rivers, lakes or oceans as these provided vital transportation links and, in the case of fresh water bodies, primary sources of drinking water.

The decline of many waterfronts over the centuries can be linked to changes in transportation technology which favored ports with certain attributes. Initially, ports at geographically strategic locations with suitable harbours attained regional importance and prospered. With the advent of gradually larger sailing ships, cities with deep harbours could expand even further while cities whose harbors could not accommodate larger vessels stagnated as trade went elsewhere. The result was that many cities could no longer sustain major maritime activities.
The waterfront areas of the port cities were traditionally devoted to transportation as these areas were convenient locations for break-in-bulk and served large hinterlands. With the harnessing of steam power, industries needed water and cheap, convenient dumping grounds for their wastes. As a result waterfronts also became a prime location for industry. The arrival of the railroads demanded even more space adjacent to the waterfront. Crowded cities could no longer compete with cities where space was more abundant -- again leading to the consolidation of major port activities in fewer cities.

As cities expanded and became more congested, as new assembly-line technologies demanded plentiful horizontal space, and as trucking became competitive with rail transport, industries that were not water-dependent moved to open land outside the cities where they were better served by the highway system. In addition, external factors like the globalization of trade led to the demise of many traditionally water-related activities. For example, ship-building yards could no longer compete with the cheaper foreign labour, particularly in the Far-East. Even major European ports that had once been centers for world trade fell into a gradual decline paralleling the decline of their colonial empires. The stage was set for the abandonment of many urban waterfronts.

Now, after lying idle for decades, waterfronts, and their inherent potential, are being rediscovered by cities all over the world. Waterfront lands in many cities have been revitalized in the past decade into exclusive residential developments, retail market-places, boat marinas, or mixed use developments containing hotels and offices. Cities in the United States originally welcomed these developments, since the reuse of abandoned land provided desperately needed tax revenues, as well as aesthetic benefits. In retrospect, it is obvious that many of the earlier waterfront projects did not exploit their waterfront location to the benefit of the public.

At a time when waterfront properties are rapidly being developed it is important to address the issue of public access as a part of the total benefit package that the developer can offer city dwellers in exchange for the privilege of using this scarce resource.
Accordingly, it is necessary to understand why access to the waterfront can be so significant for a city dweller and what rights she has to the waterfront.

**PUBLIC ACCESS REVISITED**

In an attempt to focus on the usefulness and validity of the public access concept, I first address how public access can affect the urban quality of life. I look at some of the inspirational qualities of water which leads into a discussion of waterfront areas as valuable recreational spaces. I then examine an argument for the validity of public access which likens the waterfront to the sidewalk of a public road, which is public by nature. Finally, I look at the Public Trust Doctrine which establishes certain legal rights to public access.

**The Phenomenology of water in the city**

What makes waterfront access different from access to parks and green public spaces elsewhere? The answer seems to lie in part with the magnetic power of water and its connection to our subconscious, about which much has been written.

Water has always been part of peoplekind. It’s been in our religions throughout all of history. It’s been part of our ancestral memory throughout all of evolution. It’s been the place to seek refuge and find adventure (Ostrowski, 1975:1).

Water provides an important image of the subconscious -- of home, of birth and of death. Water is where we came from -- via evolution and via the womb... Water... acts as a door to the unconscious. It’s hidden sources and destinations, it’s immensity and continuity, its mysterious depths impenetrable to light and its surface reflection of that which surrounds it, inspire us to stare and transforms our staring into daydream and meditation (Slater, 1974:36,38).

Yet, it could be argued that people in search of these inherent qualities of water could find them in places other than the central city. What is it that makes waterfronts in the urban context such a special amenity?

There is a quality about water which calls to the most deep-rooted and atavistic part of our nature. In the deep canyons of our cities water, along with fire, trees and the almost hidden sky, are the elements which can still tie us to our primitive past (Halprin).

At the most superficial level, water in the city provides open space relief. The tight urban fabric is cut and -- if the waterway is broad -- a whole panorama may be exposed ... People are attracted by a grand vista or prospect, and by the contrast of
nature with the surrounding environment. In the midst of the city, water offers a refuge...[to] dream and face [oneself] (Slater, 1974:35,38).

These quotes address the psychological connection we have to water and the welcome contrast that water can provide in an urban setting, but the waterfront can also be an outlet for our recreational needs.

**Waterfronts as recreational spaces**

A national study by the Urban Waterfront Lands Committee points out that, "the demand for recreational opportunities is increasing rapidly in response to increases in population, disposable income, leisure time, and mobility" (National Research Council 1980:199). The study also addresses the shift in the type of recreational spaces that are in demand:

The growth in recreational activity is not just in the traditional physical sports, but in a broader range of programs concerned with the total fulfillment of the individual. City waterfronts offer opportunities for such fulfillment for millions of city dwellers (1980:10).

With the renewed emphasis on city living and the concern over quality of life in the urban context, it seems a natural consequence to try to provide for this fulfillment of the city dwellers. In fact, a major study on the role of recreation and heritage in urban waterfront revitalization reports that "most of the urban need for water-oriented recreation can be met by increasing access to and making better use of existing waterfronts and waterways" (Heritage Conservation and Recreation Service, 1980:12). Unfortunately, as the study goes on to point out, important opportunities, in terms of social, economic, and environmental benefits, have been lost because the recreation and heritage potential of our urban waterfronts has been made secondary to commercial, industrial, and transportation uses (1980:13).

I have tried to identify the psychological and physical needs that contribute to the "total fulfillment" of the city dweller and how the waterfront can play a vital role in this. What follows is a discussion of why the public could have a valid claim to the access and use of these waterfront lands.
Waterfronts as "sidewalks"

After centuries of using oceans, lakes, and rivers as dumping grounds for industrial and residential wastes, the water quality along most urban shorelines was very poor. As a result that there was little clamour for public access to these "smelly" and often unpleasant waterfronts. In recent years, however, major public investments have been made in waterways, including the cleaning up of rivers and bays, and the development of navigation aids and dams.

The question this public action begs is, who should reap the benefits of these improved waterways -- should it be the private development interests who own waterfront properties, the public at large, or some mixture of the two? (U.S. Dep't. of Commerce, 1980:12). A participant in a panel discussion on access at the national Urban Waterfronts '83 conference summed it up as follows:

The rising chorus of demand for public access (to the waterfront) derives from a simple proposition: if the rivers themselves belong to the public domain, as they do, and if these rivers can be conceived of as public throughfares, then the edges of the rivers must also be under some kind of public control. That is to say, they are kind of sidewalks of the public corridor, of the river, and the public has as much right to be on these streets and along these sidewalks as it does any other public right of way" (Breen and Rigby, 1984:92).

This concept of the public having a right to the waterfront as a "sidewalk" has been hotly disputed. Many owners of waterfront land feel it is a public intrusion on their property rights, but there is actually an historic and legal precedent that confirms the public's right to certain types of waterfront access, namely the Public Trust Doctrine.

The Public Trust Doctrine

The legal basis for people's right to parts of the shoreline stems from the Public Trust Doctrine. This common law doctrine finds its origins in ancient Roman Law where it was codified by Justinian in 529 A.D. in the following language: "By natural law itself these things are the common property of all: air, running water, the sea, and with it the shores of the sea" (Brautigam and Robin, 1986:4). The concept was that these common
properties were to be held by government in trusteeship for the free and unimpeded use of the general public.

With the arrival of the Colonists in the New World, the English system of laws, including the 1215 Magna Carta which guaranteed tidelands as being in the public domain, was introduced to the United States. The Massachusetts Bay Colony became the first colony to codify this trust doctrine through the Colonial Ordinance in 1641 which guaranteed public access to great ponds and tidelands. This ordinance was amended in 1647, however, to extend private property ownership to the low tide line. "The inferred purpose of this enactment was to encourage private wharf construction and maritime commerce in light of the Colony's inability to afford these undertakings" (Lahey, 1985:55). This did not mean that the Colonialists gave up on all rights in the private tidelands (the area between the extreme high and low water marks): the public rights to fish, fowl, and navigation, which were the only significant public activities at the foreshore at the time, were expressly reserved. Thus, as the first state to recognize the Public Trust Doctrine, Massachusetts is also one of the few states today which extends private rights below the high water mark. This means that the public in Massachusetts only has legal right to access in the Commonwealth tidelands, which is below the extreme low water mark. I will discuss the implications of this legislation in more detail when I focus on the waterfront development in the North End of Boston in my case study.

Although the Public Trust Doctrine is a European contribution to U.S. and Massachusetts law, there are counter trends in this country which seem less prevalent in Europe. Pervading the Northern American land ethic is the idea that private property transcends social values -- once ownership of the land is attained, the owner can do with it what she wishes. This attitude can clearly be seen today in the challenges that are brought to court regarding zoning and other mechanisms which place controls on a piece of property.
These conflicts become even more sharply defined when the piece of property in question is highly desirable urban property, for example along an attractive waterfront. Developers may perceive the economic viability of their projects as being jeopardized by giving the public access to their properties, and may try to resist. Thus, the type of public access to urban waterfronts which emerges will, to a great extent, vary with the degree of control exercised by individual cities.
CHAPTER 2 -- THE COMPONENTS OF PUBLIC ACCESS

DEFINING PUBLIC ACCESS

Before delving into the case studies and a discussion of the quality of public access being provided, it is essential that we have a common understanding of what public access is. The more obvious concept of physical and visual access to the waterfront include activities such as a promenade along the water’s edge, a scenic drive along the water, looking at the moored boats, catching a ferry or maybe even fishing. But there are other types of public access.

I briefly define four types of public access: physical, visual, interpretive, and psychological. Meaningful public access on a waterfront should ideally contain some components of all the first three types of access but, most importantly, great attention should be placed on psychological access as this is the key to the public’s use and enjoyment of the waterfront. Unfortunately, this aspect of public access is often neglected. I have, therefore, devised a typology of barriers to psychological access which I introduce after defining the types of access.

Physical Access

The actual pathways leading to and along the water, and public spaces such as waterfront parks are obvious manifestations of physical access. This aspect of public access is clearly visible, easily definable, and can be accommodated without too much difficulty in zoning codes and other city ordinances. The provision of physical access along the water can be seen as a good starting point for providing meaningful public access to the waterfront, but it is not necessarily a goal in itself: an esplanade along the water’s edge means little if it is not well integrated and connected to the rest of the city. For example, there is only one major access point in the northern part of the Battery Park City project in New York that allows the general public (i.e. the people who cannot afford to
live in the exclusive condominiums or who do not work there) to get to the pleasant waterfront esplanade.

**Visual Access**

Physical access, however, may not always be feasible or desirable. Breen and Rigby, in their discussion on opening up the working waterfront to the public, point out that uses like container ports and shipping facilities are not necessarily very conducive to public access. A way of circumventing this problem is to provide visual access. Breen and Rigby talk of building observation decks, towers, overlooks, rooftop restaurants, lounges, and highrise observation areas to "enable people to see the waterfront" (1985:53).

Visual access can also consist of preserving visual links or corridors between the water and the surrounding area, for example by regulating the types of buildings along the shoreline to prevent the construction of an impenetrable wall. This can allow for the enjoyment of the water view by a motorist on a shoreline drive or enhance a pedestrian's experience of the water's edge.

**Interpretive Access**

Breen and Rigby view interpretive access as seeking to inform people about the working waterfront. Through the use of such public education projects as signs, exhibits, brochures, lectures, films, books, and tours, interpretive access gives the public "the ability to understand, appreciate, and enjoy what is happening along the waterfront" (Breen + Rigby, 1985:53). Although their discussion is aimed primarily at opening up industrial waterfronts to the public where physical access may be impossible, I believe that interpretive access can also have great validity as applied to non-industrial waterfronts.

The same form of public education could be equally successful when applied to Boston and other cities with rich maritime histories. Exhibits, tours, brochures, etc., could bring alive events of past centuries when the waterfront was the hub of activity and a city's face to the world. In addition, festivals and special events using themes from the
waterfront could contribute to placing the waterfront in people’s minds and put them in touch with the city’s heritage.

**Psychological Access**

Although this is a somewhat more abstract concept, within it lies the key to the provision of meaningful public access. Psychological access concerns how people relate to the waterfront. If people do not feel comfortable within an area, whether psychologically (because one is led to feel like an intruder) or physically (because it is too windy or shady) one can presume that they will not stay for long and probably will choose not to return.

In many ways, psychological access can encompass all three previously mentioned categories of physical, visual, and interpretive access. A walkway, although a form of physical access, may never be used if it seems uninviting -- which is a manifestation of poor psychological access. Poor visual access can translate into poor psychological access: a blocked view corridor may result in people never knowing that there is a waterfront right beyond the building. Thus they may never consider going there. Likewise, poor interpretive access can translate into poor psychological access: city dwellers who live away from the water may never consider the waterfront as a destination unless they are made aware of its existence through information and/or special events. People should be able to make an informed choice -- they may not use the waterfront on a regular basis, but they should feel that they could do so whenever they wish.

One of the problems associated with waterfront development and public access is the type of residences being built. Primarily upscale, these enclaves of luxury housing often stand in marked contrast to the surrounding neighborhoods -- as is the case in the North End in Boston. This is also the case of Battery Park City mentioned earlier -- not only is there a problem of physical access but once people get there they may feel uncomfortable. The waterfront is not integrated with the neighborhood; it has a separate
entity which may contribute to feelings of resentment on behalf of the original community. This socioeconomic split translates into poor psychological access.

A TYPOLOGY OF POTENTIAL BARRIERS TO PSYCHOLOGICAL ACCESS

The typology I have devised focuses on impediments to psychological access and ways of overcoming them. The less barriers that exist, the more meaningful the public access will be. I use this typology to analyze the public access components in my case studies.

Physical Barriers

Urban waterfronts are often characterized by their isolation from the central city, not necessarily in real distance but by physical barriers such as railroads, elevated highways, bridges, tunnels, and major streets. Examples can be cited from all over the world: 94% of the waterfront in Manhattan is lined with major highways, the Gardiner Expressway in Toronto effectively separates the "heart of the city from the lake" (Wrenn, 1983:32), railroad tracks sever the Old Port from downtown Montreal, the heavily trafficked Dokkveien forms a formidable barrier to Oslo's downtown waterfront, and similar roads along the Thames in London hamper access. Particularly in the case of North America, the existence of these barriers can be attributed to the low real estate values that characterized these areas just a few decades ago: "the placement of highways along urban waterfronts was not accidental -- waterfront land was available and underutilized" (Wrenn, 1983:32).

These physical barriers make for poor linkages to the city or neighborhood in the minds of the residents. First, they may contribute to a lack of visual contact -- with the result "out of sight, out of mind". Second, physical barriers may contribute to the feeling of the waterfront being far away, particularly if they "block direct routes to the shore, darken the area with huge shadows, or render the scenery unattractive" (Buttenweiser, 1986:42). In addition, "streets and transit systems frequently fail to extend as far as the
waterfront, leaving long, unappealing walks as the only connections between the water and civilization" (Buttenweiser, 1986:42).

To overcome the limitations that physical barriers can impose on getting to the waterfront, the paths or ways leading to the waterfront have to be strengthened. There are many interesting ways of tackling this problem, including physical structures and signage. For example, the developers of Aker Brygge, a waterfront development in Oslo, built a tubular plexiglass and steel structure over Dokkveien, the main artery that connects the west and east side of the Oslo fjord, at their own expense. This not only facilitates pedestrians crossing the road and getting to the waterfront but it has become a structure to be viewed and experienced in its own right (see fig. 2-1). Another example is the construction of a glass-enclosed sidewalk through a tunnel to minimize the unpleasantness of a pedestrian's task of getting to Toronto's waterfront.

Much can also be done through the clever use of signage. Toronto has a recreational pathway along a stretch of its waterfront which is clearly marked with comprehensive coloured maps at intersections where streets feed into the waterfront (see fig. 2-2). In addition, the city has adopted the name "Harborside" which it uses in publicity both on and off the waterfront to build an awareness of its existence among residents. In Boston, a private group called the Boston Harborwalk Committee has, on its own initiative, painted a blue line on the pavement tracing Kevin Lynch's "Walk to the Sea". The walking tour begins in the financial district and follows a substantial part of the downtown waterfront. Walking tour maps are also provided. Although this is a relatively modest effort it does attempt to put the waterfront back in people's cognitive maps of the city.

**Institutional Barriers**

Institutional barriers can be viewed as a variation on physical barriers. Utility structures and waste treatment facilities form physical point barriers hindering public access
The tubular plexiglass and steel structure bridging the heavily trafficked Dokkveien in Oslo, Norway to facilitate public access to the Aker Brygge waterfront development.

Fig. 2-1

A sign informing of the Martin Goodman Trail along the waterfront in Toronto, Canada.

Fig. 2-2
to urban waterfronts. The use of waterfront lands for such structures and facilities is widespread worldwide.

Wren defines institutional barriers to waterfront access as "obstacles created by legal, political, and economic conditions...in other words, access is physically possible but not allowable for various reasons" (1983:33). He cites military installations and government research facilities as two prevalent examples of this exclusionary and self-contained use of the waterfront. Fortunately, these particular uses are limited in number.

For many planners and architects, the provision of public access to the waterfront has been seen primarily as a task of overcoming these physical and institutional barriers. For example, in addressing the issue of psychological access, Wrenn states that "psychological barriers can only be totally removed by changing the public's image of the waterfront as a difficult place to get to" (author's emphasis) (1983:33). I agree that this is an important first step but barriers to psychological access can also exist right on the waterfront itself.

**Aura of Privacy**

Privacy can manifest itself in two ways: first, through physical declaration in the form of signs, gates, fences, and guardhouses, and second, in the type of uses that take place within the buildings and/or surrounding areas. Physical declarations of privacy can be real or perceived barriers to access. Obviously fences keep the public out but they also clearly signal that the public is unwanted. Gates designed to keep cars from parking illegally by the waterfront are not necessarily a physical barrier to pedestrian access but it gives pedestrians a feeling of intruding on someone else's property. The type of uses also give people strong impulses with respect to where they can and cannot go. Outdoor uses such as swimming pools, tennis courts, and bowling lawns, particularly when they are fenced in, are strong connotations of privacy. With respect to indoor uses, residential
developments are by nature much more private than offices, which in turn are a more private use than a commercial or retail establishment.

The waterfront as an attraction should cater to all ages and socioeconomic groups, including families with children. To accommodate these groups there should be a mixture of public and private uses to avoid feelings of intruding on private property. To address this issue in part, the Boston Harborpark Interim Design Guidelines call for retail, public, and marine-related uses in waterfront developments. Planners in Toronto have reached similar conclusions: "retail uses are a key to designing for the pedestrian. The two have a mutually supporting relation: the retail uses provide interest and attraction in the pedestrian area, while the pedestrians provide activity and trade" (Freedman, 1985:9,10). Attention should be paid, however, to the type of retail establishments that are provided. If only the same genre of exclusive, upscale stores are located on the waterfront, lower income groups may feel uncomfortable going there. This is a complex issue as it ties in with the level of rents that must be charged to realize the rate of return required to make the developments work, but cities might be able to work out a form of subsidy that allow a wider variety of stores.

A mixture of public and private uses in itself does not necessarily distinguish the waterfront as a place to be from other downtown places. It is important to keep in mind that to create an interesting diversity, one which will encourage public access, cities should strive for a mixture of water dependent and non-water dependent uses. This is easier said than done. With high real estate values on waterfront properties, owners of existing water dependent facilities can declare a "taking" if they are unable to sell to the highest bidder because of use restrictions placed by a city's zoning ordinance. A possible solution could lie in the formation of municipal land trusts that would buy the development rights of properties that were viewed as highly desirable, so that existing uses could be maintained.

Finally, an attempt can be made to break down the socioeconomic barriers between the residents of the luxury condominiums rimming the harbor and local community residents by introducing affordable housing in waterfront developments. Inclusionary
zoning could require every developer to provide a certain percentage of the total units to be built as affordable units, as defined by the particular state or city. A measure like this could integrate different socioeconomic groups and bring in a more diverse group of people as waterfront residents.

**Homogeneity**

The push-carts, food-stands and festive atmosphere of the Rouse marketplace prototype made popular in Boston's Faneuil Hall, Baltimore's Harborplace, and New York's South Street Seaport, just to mention a few, have been recreated in cities all over the world. If all urban waterfronts are to provide the same type of mixed-use developments and commercial activities, a degree of homogeneity may be achieved that might act as a psychological barrier as people adopt the attitude of "well, we have already seen that!".

To capitalize on the concept of variety each city should use its own unique history and heritage to its advantage. Cities should beware of falling into the trap of copying successes elsewhere. The "boiler-plate" approach can lead to a boring sameness. To counteract this, the identity and traditions of the waterfront should be emphasized and highlighted through the use of things like historical markers and design elements that reflect the maritime heritage of a place.

Boston has Harborpark Day and the annual Harborfest, and Chicago has its annual jazz festival on the esplanade; like many cities all over the world these cities celebrate their waterfront and bring people in touch with this valuable resource in their "backyard" through the hosting of special events. In Montreal, festivals were arranged, temporary structures erected, and activities encouraged throughout the summer before the planning process for the Old Port area by the river was even begun. The intent was to allow residents to become acquainted with the waterfront and, as a result, become more involved with the planning of this urban resource that had lain idle for so long. These are all examples of special events, but the waterfront can also attract people on a more regular
basis through activities like sailing, fishing, and boating if the facilities are there for the use of the general public.

**Quality of space**

As with any open public or private space, poorly designed, windswept, shady areas will not encourage people to return. Poor urban design can therefore act as a psychological barrier to public access to the waterfront. To encourage increased use of the waterfront, not only do the paths leading there have to be conducive to pedestrian movement, the spaces on the waterfront itself have to be as comfortable and attractive as possible.

Northern climates can pose severe limitations on the use of outdoor spaces but innovative design solutions can extend the period of use of outdoor spaces significantly. Strategically placed heat retaining walls and vegetation planted as wind barriers can be extremely effective measures for improving microclimatic conditions. The outdoor spaces should be capable of accommodating all kinds of uses, ranging from seating arrangements that are conducive to favourite pastimes such as people-watching and active socializing, to innovative and exciting children's playgrounds, bike paths, and jogging routes. Ideally some of these waterfront spaces could also be used for winter activities such as skating. The key to meaningful spaces is to provide an interesting variety in the landscape.

Thus, my typology consists of five potential barriers to psychological access: physical barriers, institutional barriers, aura of privacy, homogeneity, and the quality of the public spaces. I will use this typology in my discussion of public access at Boston's North End waterfront and in the two case studies.
CHAPTER 3 -- INTRODUCTION TO THE NORTH END WATERFRONT

The two case studies are both wharves located along the historic North End waterfront in Boston. After centuries of alterations in the size and shape of Boston's waterfront through filling of tidelands, the North End waterfront remains the most unchanged waterfront geographically (see fig. 3-1 and 3-2). As a neighborhood, the North End has played an important role as a receiving place for newly arrived immigrants. Accordingly, the neighborhood has successively been dominated by Irish and Jews, and is today an ethnically Italian neighborhood. In the fifties the neighborhood was effectively severed from the rest of the city by the Central Artery, an elevated highway constructed under the urban renewal projects of the time. The resulting isolation served to preserve a lot of the character and community ties from forces which might otherwise have disrupted the neighborhood at an earlier point.

Today, the neighborhood is threatened by gentrification. Condominium conversions and escalating rents are forcing lower income residents to seek housing elsewhere. In addition, the neighborhood's high density is the source of numerous other problems including lack of parking, trash removal, and basic infrastructure deterioration.

PUBLIC ACCESS TO THE NORTH END WATERFRONT

As a way of setting the context for the case studies I give an overview of the North End waterfront using the barrier typology developed in the previous chapter. The North End waterfront as a whole has many good examples of barriers to psychological access.

Physical barriers - Atlantic Avenue/Commercial Street is a wide, amorphous street that separates the North End neighborhood from the waterfront (see fig. 3-3). In addition there is the imposing, elevated Central Artery which not only separates the neighborhood from the downtown but which severs the downtown area from the
Fig. 3-1  Boston's downtown and North End waterfront.
waterfront (see fig. 3-4). There used to be a point barrier when the Lincoln Power Station was operating but this has now been rehabilitated into a residential complex.

**Institutional barriers** - the major institutional barrier is the Coast Guard facility which, for security reasons, is closed to the public during working hours. However, the facility is open for viewing of the boats and outdoor facilities on weekends and after working hours.

**Aura of privacy** - many of the wharves redeveloped in the past decade have effectively secluded themselves by guardhouses, parking gates, and private first floor uses (see fig. 3-5). The first case study is an excellent example of this phenomena. The only really public space is the Waterfront Park which is heavily used during the warmer season. There is currently no subsidized housing directly on the waterfront but some affordable units have been made available for neighborhood residents in the San Marco development (the previous Lincoln Power plant), when it finally opens.

**Homogeneity** - a majority of the redeveloped properties along the North End waterfront consist of exclusive condominiums interspersed with professional offices, but the quality and character of the old warehouse buildings do seem to prevent a feeling of "deja-vu".

**Quality of space** - this varies from site to site but there are few well-thought out, planned spaces. Benches placed along the sidewalk, purportedly to allow people to sit and enjoy the view, have railings placed right at eye-level (see fig. 3-6). Overall there are few places to sit comfortably except for the Waterfront Park. This park has a wonderful playground sculpture in the form of a ship where children, and those who are children at heart, can climb, slide, and play (see fig. 3-7).

What can the developers of the individual wharves do to improve psychological access to the waterfront? Obviously each developer cannot embark upon major public work schemes like changing the appearance of Atlantic Avenue, but under the careful guidance of public agencies each developer can see to it that their development avoids
The evolution of Boston's waterfront as a result of infill (from *Finding Lost Space* by Roger Trancik).

Fig. 3-3
Physical barrier -- the wide and undefined Atlantic Avenue/Commercial Street that traces the North End waterfront.
Physical barrier -- the elevated Central Artery that severs the North End from downtown Boston.

Aura of privacy -- a gate at Commercial Wharf that clearly keeps the public out.
Fig. 3-6
Quality of space -- benches placed along Atlantic Avenue/Commercial Street where the railings are placed at eye-level.

Fig. 3-7
Quality of space -- the popular ship-inspired sculpture at the Waterfront Park.
erecting barriers to psychological access. If they all provide their piece of "good" access the waterfront as a whole will be greatly enhanced to the benefit of everyone involved.

The case studies will look at some of the limitations (physical, financial, and societal) to the development of public access on the waterfront. I will examine the forces that come into play with respect to the provision of public access and what the views of the different actors in the process are. The first case study looks at a development that was started in 1978 before public access became a "hot" issue and the ensuing result. I will then examine a project which still has a long way to go before being built but which has been through some radical design changes due to the increased awareness of the community, the general public, and the planning agencies involved.
CHAPTER 4 -- UNION WHARF

Union Wharf is an excellent example of the most privatized and least publicly accessible stretch of waterfront in the North End/Downtown area. As such, Union Wharf lends itself well to a discussion of psychological barriers to access. I begin this case study by describing the development in terms of its accessibility to the public using the barrier typology developed in Chapter Two. To gain an understanding of how the public access components evolved I then look at the interaction between the developer and the Boston Redevelopment Authority (the city planning agency). My observations are based on written documents and interviews with BRA staff and the developer Jim Craig.

PUBLIC ACCESS AT UNION WHARF

Union Wharf is located on a 2.6-acre site on the North End waterfront between Lincoln Wharf and the yet undeveloped Sargent's Wharf (see fig. 4-1). The parcel contains an historic granite warehouse built in the 1840's which has been converted to 64 residential and office units, an old tin shed structure which has been converted to two office units, and 23 new townhouses (see fig. 4-2, 4-3). The development is characterised by the existence of physical barriers and a strong aura of privacy.

Physical barriers - Apart from the poor linkages with the rest of the city, due in part to the width of Atlantic Avenue, there are actual on-site barriers. The northern-most entryway to the wharf can be completely cordoned off by a solid, ten foot high, iron gate (see fig. 4-6) hindering all forms of vehicular and pedestrian traffic to that side of the wharf. I have found this gate closed repeatedly on weekends. The layout of the structures on the site is also such that the majority of the perimeter is inaccessible, due to the placement of the townhouses along the edges of the pier (see fig. 4-4) and the positioning of the fenced-in outdoor pool at the end of the pier (see fig. 4-5).
Fig. 4-1  The North End waterfront.
Fig. 4-2  Union Wharf site plan including the proposed four townhouse units displaced by the park area.

Fig. 4-3  A model of the Union Wharf development.
Fig. 4-4  Physical barrier -- Union Wharf townhouses placed on the edge of the wharf impeding access along the water's edge.

Fig. 4-5  Physical barrier/aura of privacy -- the fenced-off Union Wharf swimming pool at the end of the wharf impeding access to the water's edge.
Aura of Privacy - Physical declarations of privacy in the Union Wharf development are numerous. There are two entryways to the wharf, both of which have a guardhouse with a parking attendant and a car barrier restricting vehicular traffic that carries a sign calling for no unauthorized vehicles or persons (see fig. 4-6, 4-7). When the northern-most entry is closed, pedestrians may enter by a sidewalk off the street on the southern entrance, but for people unfamiliar with the area it is not obvious that the public is allowed on the premises.

The types of uses that exist in the structures further contribute to the strong aura of privacy. The site is predominantly luxury condominiums, interspersed with small professional offices. The granite building has some offices on the first floor but it is hard to tell what kind as no signs are obvious. The rest of the building consists of condominiums with private balconies dotting the facade. The townhouse units, which each have their own separate entryway right off the walkway, consist of a mixture of private residences and small professional firms, although they were originally developed as private residences. The latter activity does not encourage any more activity than the residences because the exclusive nature of the firms attract a very limited clientele. Finally, the fenced-in pool adds to the feeling of privacy as one approaches the end of the pier.

Quality of space - Upon entering the site the pedestrian is faced with a parking lot that stretches nearly the entire length of the wharf. There is a small space located off to the right which has some limited seating arrangements and paths leading to the edge of the wharf, overlooking some mooring facilities (see fig. 4-8). With its southern exposure this is quite a pleasant area but its lack of use can be attributed to the public's unawareness of its availability -- either because they cannot see it or because when they can see it, it is through a ten foot high chain link fence (see fig. 4-9) from the sidewalk, or through the rather foreboding entrance with the parking attendant.

The rest of the site has walkways that terminate in a three foot wide opening at the end of the wharf where one can contemplate the harbor (see fig. 4-10). The walkways are
Fig. 4-6  Physical barrier -- northern entry to Union Wharf with the gate closed on a Sunday.

Fig. 4-7  Aura of privacy -- southern entry to Union Wharf with the guardhouse and car barriers.
Quality of space -- the public space with southern exposure provided at Union Wharf.

Fig. 4-8

Quality of space -- a view of the public space at Union Wharf through a chain link fence.

Fig. 4-9
Fig. 4-10  Quality of space -- the three foot opening at the end of Union Wharf next to the swimming pool.

Fig. 4-11  Quality of space -- the shadowed, poorly maintained spaces between the townhouses at Union Wharf.
narrow and lead people onto the front steps of the townhouses and virtually into people's living rooms. The small spaces between the townhouse structures are poorly maintained, look directly into resident's living rooms, and are shadowed most of the day (see fig. 4-11).

**ACTORS IN THE REHABILITATION PROCESS**

What forces shaped this public access result? To trace the evolution of the public access component on Union Wharf, it is necessary to first delineate the actors and the permitting processes at the time. The main actor is obviously the developer, in this case the Union Wharf Development Associates (UWDA), who bought the site from a private owner in July, 1977. The other major actor in this process is the Boston Redevelopment Authority (BRA) who had specific interests in the planning of waterfront area through the 1964 Downtown Waterfront-Faneuil Hall Urban Renewal Plan.

In today's situation the community and the state would be an integral part of the planning process, but in the case of Union Wharf they played only minor roles. There were informal dialogues between the developer and the North End community but the community was not actively involved in any planning on the waterfront as the political leadership of the North End had not agreed to participate in the Urban Renewal Project Controls established in 1964. In addition, no formal Project Area Committee needed to be formed because no community was being displaced, as virtually all the waterfront land was non-residential.

At the time, the Commonwealth of Massachusetts had two vehicles for participating in the planning process. First, the Chapter 91 licensing procedure requires the Department of Environmental Quality and Engineering to review and license activity in state waterways. Prior to 1983, however, this procedure served principally to protect navigation and to insure the engineering integrity of licensed structures, and did not codify the Public Trust Doctrine. Second, the Commonwealth would normally be involved in the Massachusetts
Environmental Protection Act (MEPA) review process. However, since the Urban Renewal Plan, of which Union Wharf was a part, had already been through public hearings as an entity in itself and because it was passed before MEPA was enacted it was in fact "grandfathered". In addition, federal regulations did not require Environmental Impact Statements for Urban Renewal projects once they had been approved provided there were no major deviations from the plans. Thus, any negotiations pertaining to urban design and public benefits fell between the BRA and the developer exclusively.

**The BRA and Public Access**

One of the developers, Jim Craig, claims that the rehabilitation of Union Wharf was no pioneering effort; the waterfront had already been established as "hot" and "marketable" by the redevelopment of Lewis Wharf, Commercial Wharf, the Custom House block on Long Wharf, the building of the aquarium, and the raising of I.M. Pei's Harbor Towers on India Wharf. These projects all came about as a part of the previously mentioned 1964 Downtown Waterfront-Faneuil Hall Urban Renewal Plan, of which Union Wharf was also a part. Thus, the following planning objectives pertaining to public access that were established by the BRA in the Urban Renewal Plan also applied to the Union Wharf development:

- To create opportunities for development of a Downtown residential community offering a range of housing types and rentals.
- To create an area for the development of marine or marine-oriented activities designed to stimulate tourism and symbolize the importance of Boston's historic relationship to the sea.
- To provide public ways, parks, and plazas which encourage the pedestrian to enjoy the Harbor and its activities.

Certain of the general design principles were also significant in their attention to public access:

- To mitigate the effect of the elevated expressway and the surface roadway beneath as a physical and psychological barrier to effective connections and linkages between the Downtown and the Waterfront.
- To provide maximum opportunity for pedestrian access to water's edge.
To establish a relationship between buildings, open spaces, and public ways which provides maximum protection to the pedestrian during unfavorable weather conditions.

To establish a continuity of scale between the existing North End residential community and the new development to take place adjacent to the North End and along the water’s edge, north of Commercial Wharf.

A Rehabilitation agreement (signed December, 1977) between the BRA and UWDA came about because Union Wharf was a part of the designated "Downtown-Waterfront-Faneuil Hall Urban Renewal Project". The agreement addresses the issue of public access in the following manner:

(a) Redeveloper agrees to provide public access to the Premises in accordance with the plan therefore approved by the Authority and as follows:
Subject to the provisions of subparagraph (d) of this section, and the following completion of construction, pedestrian traffic shall be permitted between the hours of 9:00 a.m. and sunset to the accessible water's edge of the Premises, excluding the marina float areas.

(d) Notwithstanding the provisions of Subsection (a) of this Section, the parties hereto agree that public access to the Premises shall at all times be consistent with the security of the Premises and that Redeveloper may take such reasonable steps as may be necessary to insure that access does not jeopardize security or impose upon Redeveloper an undue burden with respect to insurable risks, and impose reasonable regulations with respect thereto.

(e) It is further agreed that the access permitted pursuant to Subsection (a) hereof is a license from Redeveloper and in no manner or means may be deemed to be dedication or conveyance of the Premises or any part thereof, and that Redeveloper may, at its sole discretion, close the premises from time to time as required by law to maintain the quality of title in Redeveloper.

The tone of the above agreement is clearly one in which the rights of the developer and ownership are carefully protected and problems of security are recognized. Public access is couched in terms of minimizing any inconvenience or difficulty to the property owner. However, the document proceeds to outline several general design objectives and parcel requirements for the waterfront that put more specific responsibility on the developer and also indirectly address some of the concerns of barriers to psychological access.

Any effect of "walling off" the residential North End community from the harbor should be kept to a minimum, and pedestrian access to the ends of the wharf is mandatory.

Ground floor facades should be "live" with active uses, especially along Commercial Street and eastern Avenue.
Maximum possible pedestrian access must be maintained around the perimeter of the wharf.

No open parking is permitted.

The site should be primarily used for housing (with required parking of one space per dwelling unit).

It becomes clear from the above excerpts that public access was in fact one of the goals of the Urban Renewal Plans laid out in the early sixties, and the rehabilitation agreement formally embedded these in a contractual agreement. How can one then go about explaining the discrepancies between the intent of the written documents and the result we see today?

WHAT HAPPENED?

Through my conversations with James Craig (the developer), John Sayers (a former BRA staff member who dealt specifically with the Downtown Waterfront-Faneuil Hall Urban Renewal area) and Paul MCann (special assistant to the Director of the BRA) I have managed to piece together what I believe are some of the explanations for the poor public access on Union Wharf.

There is a general agreement on part of both the actors involved that much of what happened can be attributed to the time period in question, the late seventies. When the Urban Renewal Plans were drawn up in the early sixties, the waterfront was a desolate landscape and the BRA had a difficult time convincing developers to engage in projects there, as they had no faith in its marketability. Although the plans reflect a concern for public access, there was no clamour for people to live on or to go out to the waterfront in the sixties, and the demands for public access were therefore not as rigorous as today where 24-hour access is the goal. This lack of public concern over the waterfront also explains the lack of involvement on behalf of the North End community -- no one could foresee the tremendous ease and popularity with which the waterfront would be developed.
in the late seventies, and the impact this development would have on waterfront accessibility.

By the time the Union Wharf development was initiated the circumstances had already changed but the guidelines from the sixties were still in place. However, federal funds for these Urban Renewal projects were drying out leaving the public agencies implementing them with less leverage on the developers. In addition, Sayers emphasized the difficult position the BRA was in because Union Wharf was privately owned and as long as the developers met the general objectives of the plan the BRA had, legally, only a limited say.

Internal Uses at Union Wharf

One of the inherent conflicts that arises over public access is the threat to the marketability of the projects perceived by the developer. This was the case at Union Wharf where the developers did not have "deep pockets" and were under the constraint of having to finish the development in the shortest possible time to avoid having attributed earnings in one year with no money to pay the taxes. The developers had to buy the property at market price ($1.3 million) in as is condition. The bulkhead on the narrow pier was deteriorating and there would be severe structural constraints on any new construction on the narrow pier because of the existence of the Callahan Tunnel directly underneath.

The aforementioned limitations to the developer had definite impacts on the public access component and the barriers to psychological access that developed. Why, for example, was there not more of a mix of uses on the site? James Craig said that there was talk of copying the success of the Pilot House on Lewis Wharf which houses a restaurant and some office development but for various reasons this scheme did not prevail. Craig claims that UWDA felt that this kind of use would be overusing the site and there would be a problem with parking (underground parking was not even a consideration then, but the Callahan Tunnel would also have made this a virtual impossibility). Although Craig admits that a scheme incorporating a restaurant and some commercial uses would have been easier
to implement than the existing townhouse structures, there was also concern over possible conflicts with the residents in the renovated granite warehouse building, and the effect this might have had on the marketability of those units. Finally, there was never talk of widespread retail for two reasons. First, the retail on the neighboring Lewis Wharf had never proved successful causing many of the ground floor spaces to be converted into offices and, second, Faneuil Hall Marketplace had just come into being. In other words, the developers felt it would be too risky and were satisfied to work with a mix of office and residential as this would also pose less of a problem in selling and renting up their project.

**External Uses and Layout**

What happened to the statements demanding public access to the perimeter and the end of the wharf? There were several complications regarding this issue. Once the scheme of townhouses had been established for the narrow wharf there were engineering difficulties that had to be overcome: new piles could not be driven due to the Callahan Tunnel and the nature of the fill material. Then there was the narrowness of the wharf -- according to Craig, the BRA realized that there were not a lot of options regarding the placement of the townhouses and thus the perimeter access had to be overlooked. This is not to say that the BRA was powerless in the review process.

Craig gives the BRA urban design team great credit for their reworking of several aspects of the plans. The original scheme submitted to the BRA had town house units lining the whole pier. The BRA urban design staff objected to the group of four units that obstructed the view of the granite building and pushed for moving that section to the opposite part of the site onto pilings. The reasoning was that they wanted to see some open space that would at the same time provide more of a focus on the granite building. This was implemented in the final scheme (see fig. 4-2). In fact, the townhouse section that was removed never did get built anywhere else on the site, something which Craig partly attributes to the feeling on behalf of the developers that "enough was enough" and that "the incremental profit from that section would have ruined the whole development".
Conclusions

Reviewing the Union Wharf development and its public access components, including the many obvious psychological barriers to access, three factors stand out. First, the definition of public access and what public access involved was understandably more limited than today because no one could ever have foreseen the tremendous boom in waterfront development and all the rewards the waterfront could bring to city living. The second factor, partially related to the first one, is that because of the unseen potential of the waterfront and the dormancy of the Public Trust Doctrine, there was little community or state involvement on the public amenity aspects of waterfront developments. Finally, the power that the BRA could have over waterfront developments was in part compromised because of the lack of enforcement possibilities and the concern over repelling developers from revitalizing the waterfront.

Looking back on the Union Wharf development, Craig recognizes the fact that many of the results cannot be defended in light of what is done and known about public access today. He feels that many of the criticisms that have been voiced over the years are valid and that to the extent that it has turned into a "luxury enclave" the project loses as a whole. Interestingly, the BRA never did give the project final certificate of compliance. Some condominium owners have been able to receive individual certificates after pleading hardship because of difficulties in obtaining bank financed loans for their units, but the project as a whole is still uncertified. This may have some interesting consequences when the BRA decides to implement the public access components of Harborpark (see next chapter).

Now that we are aware of some of the circumstances and forces that shaped Union Wharf it is necessary to trace the changes that have taken place in the thinking on public access since then. The next chapter will outline some of these changes that have taken place in Boston which have strongly influenced the whole concept of development on the
waterfront. Following this I will focus on a development project which is presently being taken through the permitting process and see how the developers are being forced to accommodate much more stringent public access guidelines.
CHAPTER 5 -- BOSTON'S CHANGING ATTITUDE TO PUBLIC ACCESS

Substantial changes have taken place in the thinking on public access since the Union Wharf development. Before I go on to analyze Lewis Wharf, with respect to public access, it is necessary to look at the role of the actors and processes involved in today's waterfront development. The changes that I believe have been instrumental in raising awareness and sensitizing the permitting and planning processes to public access needs and concerns have occurred on two levels. On a state level there are three major changes: 1) the landmark ruling by the Massachusetts Supreme Judicial Court in 1979 that breathed new life into the Public Trust Doctrine, 2) the 1983 amendment of the Chapter 91 waterways licensing procedure, and 3) the establishment of a permanent Office of Massachusetts Coastal Zone Management in 1983. On a more local level, in Boston, there are: 1) the 1984 Harborpark initiative by the Boston Redevelopment Authority (BRA) and 2) the formation of the North End/Waterfront Neighborhood Council in 1985.

CHANGES AT STATE LEVEL

Revival of the Public Trust Doctrine

Massachusetts towns were aided in their efforts to secure public access to urban waterfront developments by a landmark ruling of the Supreme Judicial Court in 1979. As I mentioned previously in my discussion on the Public Trust Doctrine, private tidelands in Massachusetts extend to the extreme low water line. The lands seawards of this extreme low water line are owned exclusively by the Commonwealth and are called Commonwealth tidelands (see fig. 5-1). The Supreme Court decision basically upheld the common law doctrine that artificial alterations of tidelands, such as those caused by the filling of Commonwealth tidelands, does not alter ownership boundaries (see fig. 5-2). Thus, "lands seaward of the historic extreme low water mark (such as certain filled lands and
Land ownership in undeveloped tidelands. Private tidelands extend from the mean high tide to the extreme low tide mark. Commonwealth tidelands extend seaward from the extreme low water mark.

Fig. 5-1

Land ownership in developed tidelands showing filled submerged lands extending beyond the extreme low water mark and into the Commonwealth tidelands.

Fig. 5-2
wharfs) can be held by private parties "only to fulfill a public purpose, and that the rights of
the grantee to that land are ended when the purpose is extinguished" (Brautigam + Robin,
1986:7). Furthermore

the court ruled that "economic benefit" generally is not sufficient to satisfy the
"public purpose" test. This is so because the public purpose has to be specifically
in the tidelands. Public access, on the other hand, is likely to be viewed favorably
as a legitimate public purpose (Bratigam + Robin, 1986: 7,8).

The case in question, Boston Waterfront Development Corp. (BWDC) v.
Commonwealth, was raised by the owners of a parcel of land at the end of a filled wharf in
Boston, namely Lewis Wharf, which is the focus of my next case study. The owners
sought to register their title in the Land Court and asserted fee simple ownership of the
filled tidelands based on a series of wharfing statutes from the 1800's. The outcome was
as stated above but, in addition, the court "indicated that if the current use did not comport
with [the] public purpose the state could reclaim the land" (Lahey, 1985:59). The possible
threat of state take-over of waterfront properties in filled Commonwealth tidelands added to
the uncertainty and confusion connected to waterfront property ownership and future
development. Some of these uncertainties, however, were addressed in the 1983
amendment to Chapter 91.

Chapter 91 (Waterways) Licensing

The Massachusetts waterways licensing program, the oldest regulatory program in
the country, regulates all activity below the high water mark. This includes both the private
tidelands (between the mean high water line and extreme low water) and Commonwealth
tidelands (the lands seaward of the extreme low water line) (see fig. 5-1). Activities which
require Chapter 91 licenses include the placement of piers, wharves, and other structures or
fill, and dredging.

The 1983 amendment to Massachusetts General Law Chapter 91, brought about
two significant changes. First, it sought to remove some of the uncertainties to developers
mentioned earlier. Two concerns to developers are addressed specifically. First, the
amendment required the payment of a compensation "when a license is revoked for any other reason than non-compliance" (CZM, 1985). Second,

the requirement that all subsequent Chapter 91 licenses specify the permitted use(s) coupled with the written finding by DEQE that non-water dependent projects serve a public purpose eliminates the need to guess at the original purpose for which the license was granted [as in the Boston Waterfront decision](CZM, 1985)

Second, and most importantly, the amendments codify the Public Trust Doctrine. The amendment has given public officials an effective tool for acquiring public access, especially in urban areas.

Following the 1979 Court ruling on tidelands ownership, the new legislation requires that development on Commonwealth tidelands must not only "serve a proper public purpose," but the purpose "shall provide a greater public benefit than public detriment to the rights of the public in said lands." This legislation provides towns with a powerful tool to encourage developers of waterfront property -- much of which consists of filled tidelands -- to provide public benefits, chief among which can be public access (Brautigam + Robin, 1986:8).

At the moment, new regulations for Chapter 91 have been drafted and are out to hearings. The most important implication of these regulations is that public access would be a mandatory amenity in connection with waterfront development, even in private tidelands. More specifically, the draft regulations address the issue of public access quite extensively under the "Proper Public Purpose Determination". For example:

The Department shall take into account the extent to which the fill or structures to be licensed, as a result of their use and physical attributes will:
- promote or impair the public's physical and visual access to the water from the land, along the shore, or from the water to the land;
- result in shadow, wind, noise, or other adverse effects that would significantly impair public use or enjoyment of trustlands.

There is also a 25 foot waterfront setback zone required for non-water dependent uses for private tenancy and a CZM Consistency Determination which can provide another forum for public access concerns.

**Massachusetts Coastal Zone Management Office (MCZM)**

This state agency exists within the Executive Office of Environmental Affairs and was the first such program on the eastern seaboard to be granted federal approval, in 1978. In 1983 the Massachusetts legislature recognized the success of the program and
guaranteed state support by establishing a permanent CZM office. The purpose of the Massachusetts CZM program is to protect and carefully manage the development and use of the Commonwealth's coastal zone. While MCZM is primarily a planning and policy agency, it does review and comment on proposals for coastal development, including the Chapter 91 licensing process and any projects undergoing the Massachusetts Environmental Policy Act (MEPA) review.

None of MCZM's regulatory policies directly address public access. Most of the policies focus on environmental concerns and only one policy hints at public amenities by mandating that MCZM "review developments proposed near existing public recreation sites in order to minimize their adverse impacts". MCZM's non-regulatory policies address the public access components of waterfront development more specifically.

**Policy 18** - Encourage, through technical assistance and review of publicly funded development, compatibility of proposed development with local community character and scenic resources.

**Policy 20** - Encourage, through technical and financial assistance, expansion of water dependent uses in designated ports and developed harbors, redevelopment of urban waterfronts, and expansion of visual access.

**Policy 21** - Improve public access to coastal recreational facilities, and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians and via river for boaters.

**Policy 23** - Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.

**Policy 24** - Expand existing recreational facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansion or new acquisition in regions of high need or where site availability is now limited. Assure that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities.

These policies show concern over many aspects of public waterfront access but meaningful access is only vaguely referenced through such phrases as "compatible with social and environmental characteristics of surrounding communities", "compatibility of proposed development with local community character and scenic resources", and the development and linking of coastal recreational areas. According to Dennis Ducsik of
MCZM, however, these policies are somewhat outdated and current projects are scrutinized much more closely with respect to meaningful public access. This is evidenced by MCZM's comments to the recent Lincoln Wharf development where such issues as "destination value", the socioeconomic difference between the "modest housing stock of the abutting neighborhood" and the luxurious residential accommodations to be developed, and the design and wind conditions of the public open spaces are raised.

The state is not alone in its waterfront concerns. The city of Boston has also taken major steps towards improving the urban waterfront and making it more accessible to the public.

**CHANGES AT THE LOCAL LEVEL**

**Harborpark**

Harborpark is a comprehensive initiative taken by the BRA to address a "planning program for the balanced development and continued revitalization of Boston's waterfront". Simon Mintz, in his recent report to the BRA entitled *Boston Harbor Pier Study* (1987), views Harborpark as an important step towards overcoming the shortcomings of the 1964 Urban Renewal Plan:

Probably the greatest error we made in that 1964 plan for the Waterfront was our failure to take a more comprehensive view of Boston Harbor, and not just to confine our planning efforts to the Urban Renewal boundary (from the Northern Avenue Bridge to the US Coast Guard at Constitution Wharf...). We should have better recognized the fragility of this precious and unique waterfront resource, and the perils of planning within a small geographical sub-area, an area entrusted to the present and future citizens of Boston, the Commonwealth, and the Nation (Mintz, 1987:6).

The Harborpark initiative dates back to October 1984 when the three major objectives were outlined in the cover letter of a document entitled *Harborpark: A Framework for Planning Discussion*:

First and foremost, Harborpark is designed to guarantee public access to the unique environment along the Boston Harbor, while encouraging balanced growth along the entire waterfront.
Second, the Harborpark concept brings rationality and a sense of public purpose to the process of growth. Each pier and wharf retains its own identity, yet each area has been integrated into an uninterrupted walkway that extends from Charlestown to South Boston.

Third, it combines public access to the water's edge with a diversity of uses: maritime and commercial activity which creates jobs, new housing for every income and household group, and the creation of areas for arts facilities.

Shortly afterwards, the "Harborpark: Interim Design Standards for the Inner Harbor" was released. The aim of these standards was to:

challenge developers and architects to create new buildings and spaces that reflect and enhance the past while meeting the needs of future uses and lifestyles. They aim to promote a waterfront that is inviting to all of Boston's residents and visitors, a waterfront that is accessible, safe, comfortable, exciting, and respectful of Boston's heritage. In short, these design standards aim to ensure that Boston's waterfront once again regains the vitality it once possessed within the city.

The Harborpark initiative obviously embodies some concerns for psychological access, including an emphasis on a diversity of uses, housing for all income groups, and promoting an inviting waterfront for both residents and visitors. The language is rather vague though, and the question of how these standards can be implemented is left unanswered. To address this in part, several efforts have been made to formalize the Harborpark initiative.

The BRA has acquired its own Harborpark staff working specifically on this project. A Harborpark Advisory Committee was also established and it meets three times a month. On this committee are representatives from the five neighborhoods affected by Harborpark, representatives from other neighborhood groups and non-profit organizations like the Boston Harbor Associates and the Boston Shipping Society, and finally, representatives from the BRA, Massport and other city agencies. This committee reviews waterfront related projects and comments actively in the Environmental Impact Review process under MEPA.

Attempts are also being made to make the Harborpark planning process more official. The Harborpark Interim Planning Overlay District (IPOD), first approved by the Zoning Commission, was recently voted as a temporary set of regulations by the BRA
Board after more than two years of study. The BRA Board has also approved a Waterfront Public Access Zone which would be a landscaped area and walkway requiring a 35 feet setback from the end of piers and 12 feet on both sides of piers. However, the Interim Design Standards have yet to be amended to include the recommendations by the Mintz Associates report which places great emphasis on improving physical and visual access to the waterfront.

**The North End/Waterfront Neighborhood Council**

As of this writing, the North End Waterfront Council has been in existence for a little over a year. The council members were appointed by the Mayor but the intent is to have the members elected by the community. The council has open monthly meetings and the different sub-committees have additional meetings as necessary. Although the council carries no official power the decisions reached by the council are taken upon advisement by the BRA.

With regard to waterfront development, the overiding concern of the Council members appears to be the provision of affordable housing, parking, and maintaining the 55 feet building height restriction to avoid a "walling-off" effect from the rest of the neighborhood. Their concerns are linked to the general pattern of gentrification of the North End. As the remaining parcels in the area are developed, one by one, into luxury condominiums way beyond the financial reach of a majority of the neighborhood residents, many of them view the few remaining waterfront parcels as the community's last chance for low income housing and parking. Thus, any new proposals by developers are scrutinized for housing opportunities or possible linkage payments that can allow the community to develop housing for residents elsewhere, and affordable parking spaces.

**THE MEPA PROCESS**

Any development, whether waterfront or not, must go through a MEPA review. This process provides a forum for both state and local concerns and it gives organizations
like the Harborpark Advisory Committee and other individuals or groups the opportunity to voice their opinions within a formal process. A bulletin published by the Massachusetts Office of Coastal Zone Management (MCZM) summarizes this process as follows:

MEPA action begins with the Environmental Notification Form (ENF), a document filed on behalf of the project proponent which describes the proposed development. ENF's are circulated to state agencies for review [but ENF's are also available for public comment] ... If under MEPA review, a project seems likely to have significant environmental impacts, the Secretary of Environmental Affairs will request more information in the form of an Environmental Impact Report (EIR). The EIR must describe the project in greater detail, present alternative development strategies and measures to mitigate environmental impacts.

A draft EIR is circulated for agency and public comments. These are then summarized by the MEPA unit and must be addressed by the proponent in a final EIR. When it is finally determined that a project meets all necessary environmental and planning criteria, the Secretary of Environmental Affairs issues a certificate of MEPA compliance. After an appeal period, state agencies are then eligible to take action on permitting or funding the project.

Obviously, any waterfront development taking place in this complex arena of multiple actors and permits will be a time-consuming process. Impacts on all scales are being carefully evaluated and all developments are being scrutinized to see what they can contribute to the overall amenity of the waterfront. Do all these changes serve to bring about better results in terms of public access and avoiding the erection of barriers to psychological access? No development has been completed that has been through this whole process successfully, but the Lewis Wharf development should shed some light on some of the issues.
CHAPTER 6 -- LEWIS WHARF PHASE II

The redevelopment of Lewis Wharf makes an interesting case study because it is the first waterfront development that has really been through the rigours of the processes described in the previous chapter. As such, it provides useful insights into the current thinking on public access in Boston. The choice is interesting for three other reasons. First, the original Lewis Wharf rehabilitation, started in 1968, was a pioneering effort on the Boston waterfront. The old granite warehouse building was converted into condominiums, offices, and retail space in 1973. Second, Lewis Wharf was the focus for the Massachusetts Supreme Judicial Court decision in 1979 which renewed emphasis on the public's right to the waterfront. Finally, James Craig, a member of the present development team at Lewis Wharf, was also a part of the Union Wharf development team and the president, from 1972 to 1975, of Boston Waterfront Development Corp. (BWDC), which undertook the original Lewis Wharf rehabilitation. His experience with waterfront development in Boston over the past 15 years provides him with a unique perspective on the evolution of the planning process and the actors involved.

This case study examines the changes in the public access components, with particular emphasis on psychological access using my "barrier" typology, from the initial redevelopment to the current plan for the entire Lewis Wharf site, and considers the actors who have been instrumental in the process. The major vehicle for this planning process is the MEPA review.

THE EVOLUTION OF THE PUBLIC ACCESS COMPONENTS

Lewis Wharf today consists of three renovated structures, the Granite Building, the Pilot House, One Lewis Wharf, and three dilapidated, mostly vacant structures: the Atwood and Towboat buildings, and the Steel Shed (see fig. 6-1). The six-story Granite Building houses commercial activities, primarily offices, on the first two floors, and 93
Fig. 6-1  Site plan of existing features at Lewis Wharf.
residential condominiums on the third through sixth floors. The five-story Pilot House has a restaurant on the ground floor while the rest is devoted to offices. All three floors of One Lewis Wharf are dedicated to offices. Of the three dilapidated structures, only the two-story Towboat building has two remaining tenants: the Boston Sailing Center and a small architectural firm.

**Existing Public Access Situation**

The existing structures and lay-out of Lewis Wharf (from the first redevelopment, see fig. 6-1) are not particularly conducive to public access but the situation is better than at Union Wharf.

**Physical barriers** - As at Union Wharf, the site is poorly linked to the rest of the city -- Atlantic Avenue is wide and amorphous. On the site itself, the eastern tips of the northern piers are inaccessible because of structures that cover most of the pier (Atwood and Tow Boat buildings, see fig. 6-2). The southern pier with the Steel Shed building is cordoned off for safety reasons (the pier is caving in! see fig. 6-3). The residents' swimming pool also hinders physical access to the edge of the pier.

**Aura of privacy** - The northern side of the site has a parking lot with an attendant in a guardhouse with a car barrier (see fig. 6-4). The southern entry to the site is open but the first view in is of a very private, fenced-in bowling green that is rented and used by the Boston Croquet Club (see fig. 6-5). A dense hedge behind the lawn obscures the view of the Steel Shed structure and the water. The swimming pool is visually screened-off with a tall fence.

The internal uses are more mixed than at Union Wharf. The retail, offices, and main entrance (for the condominiums and first floor offices) all face onto the parking lot on the northern side, making this the most obviously public side of the granite building. Conversely, the southern side becomes more private because there is little to do there unless one is a marina user or a Boston Croquet Club member. The ground floor retail uses were in many cases financially unfeasible and have since been converted into office
Physical barrier -- the deteriorating Steel Shed structure on Lewis Wharf which currently renders that pier inaccessible.

Physical barrier -- the Atwood and Tow Boat buildings that cover most of the other pier at Lewis Wharf, hindering access to the water's edge.
Aura of privacy -- the northern entry to Lewis Wharf with the guardhouse and car barrier.

Aura of privacy -- the southern entry to Lewis Wharf where the first view for a pedestrian coming from the street is the fenced-in bowling green.
space. As a result, the windows have been covered to afford privacy to the office workers, making the ground floor boring and uninteresting to the passing public. The Tow Boat building presently houses the Boston Sailing Center, which runs a sailing school and operates the marina there. This is one of the few opportunities for the public to sail in the Boston Harbor.

**Quality of space** - The north side of the development is presently dominated by surface parking. However, the landscaping on the southern has a pleasant feel and there is a small fountain in a hedged, protected area that is open to the public (see fig. 6-6).

In the site's presently unfinished state (the pier ends are decrepit and unattractive) there are great public access opportunities that could be created but these are not realized in the draft EIR.

**Public Access in the draft EIR**

The present redevelopment phase consists of three projects, two located east of the granite Lewis Wharf building (the Steel Shed project and the Towboat project) and one north of the granite building (Pilot House extension and Stepped Building project, see fig. 6-7). The ownership of the original parcels was split up when the BWDC was dissolved upon completion of the initial Lewis Wharf project due to financial difficulties and internal friction. In 1984, Carl Koch (one of the original development team members) submitted a development proposal for one of the parcels which became known as the Towboat project. During the ENF review period, however, proposals were submitted for the development of the two other sites as well. The Secretary of Environmental Affairs concluded that a "segmentation would impede a comprehensive review of the issues raised by Chapter 91 and it will be in the best interest of the state, the proponent, and the environment to consider all aspects of this project in a single environmental impact report". The Lewis Wharf Joint Venture Limited Partnership (LWJV) was thus formed and a single draft EIR was submitted in January 1986.
Fig. 6-6  Quality of space -- the small protected public space on the southern side of Lewis Wharf with a fountain and some benches.
Fig. 6-7  The siteplan for Lewis Wharf presented in the draft EIR. Note the large building footprints and poor attempts at landscaping.
According to Jim Craig, the development team was not particularly satisfied with the initial development proposal presented in the DEIR. The plan reflected the original BWDC strategy for the development of the wharf and was a remnant from the seventies. The aim of BWDC had been to pay off the huge debts incurred by the first rehabilitation (of the granite building) by creating a massive development of luxury condominiums on the present Steel Shed site.

The major elements of the project proposed in the DEIR can be seen in fig. 6-7. The Towboat project remained relatively unchanged from the earlier ENF submission. The Towboat building would be renovated, while a new, two-story building would be constructed in the existing footprint to replace the Atwood building. The space would be leased primarily as offices, and, where possible, to water-dependent concerns such as ocean research organizations, marine architects, yacht brokers, chandleries etc.. There was to be a restaurant on the first floor. Luxury condominiums would cover the Steel Shed pier virtually from edge to edge, in a three-story building with some unspecified amount of commercial space, a restaurant, and enclosed parking on the ground floor. Large amounts of space would still be devoted to surface parking despite the construction of a five-story underground garage. Two new buildings, one behind the Pilot House named the Pilot House Extension, and one between this and the granite building, called the Stepped building, were also to be built.

The DEIR was rejected in March, 1986 on the grounds that it did not "adequately and properly comply with the Massachusetts Environmental Policy Act and with its implementing regulations". Since then the entire project has undergone significant changes in response to many of the comments on the DEIR.

**Public Access in the Re-shaped Project**

The current plan is a major improvement and bears little resemblance to the original proposal that was discussed in the EIR. Changes in land use, the reduced size of the Stepped building, now renamed the Atlantic Avenue building, the redesign of the public
open spaces, and the removal of most surface parking are some of the most apparent changes that will affect the quality of public access at the site (see fig. 6-8).

**Physical barriers** - The present plans open up walkways all along the water's edge in accordance with the Harborpark standards -- 2,060 feet of walkways will be furnished as a segment of Harborwalk which will eventually rim the inner harbor. A new deck area south of the swimming pool allows for access to the water's edge, where they could not get past the swimming pool previously. The condominiums, originally on the water's edge, have now been pulled back.

**Aura of Privacy** - It is unclear whether the gate on the north side of the property will remain but, in any case, there appears to be a more inviting entry for the public in the form of a long public space that leads all the way to the water's edge just north of the gate. Internal uses have also undergone significant changes, most noticeably office space has been excluded from the site altogether.

In the Steel Shed portion of the site, all private residence and office uses have been removed and substituted by more maritime and public uses. A chandlery, a ground floor restaurant, a marine educational exhibit, where one of the ideas is to have a "living" display of all possibly collectible weather information, and a marine inn where customers can moor their boats right outside, are some of the new uses. Facilities for a future water shuttle terminal, including a waiting area and docking facilities are also included in the plan. This pier is primarily aimed at visitors/tourists.

Jim Craig points out that the marine inn on the end of the pier, which is the highest economic use, is far enough removed from the public and the residents for it to give too much of a sense of privacy. The condominiums originally planned for the Steel Shed site were removed because the developers felt that it would have been difficult to marry the heavy public use with private uses like a resident's front door or balcony. The two types of uses merit very different treatments and Craig feels that the current, more public uses are a better concept.
Fig. 6-8  The current site plan (March 1987) for the Lewis Wharf redevelopment. Note the smaller building footprints, the new shape of the buildings to accommodate view corridors, and the increased emphasis on open space.
The Towboat project still accommodates the Boston Sailing Center, a restaurant, and a chandlery, but this pier is aimed more for day-users as opposed to the overnight visitors who may be staying at the marine inn.

The plans also incorporate the possibility for 18 low-to moderate-income units under the Massachusetts Housing Partnership Home Ownership Program (HOP). This is a little over 25% of all the units being built (70 units total). Alternatively, the developer is willing to provide a linkage payment of $1.2 million. This is at least a step in the right direction in opening up the waterfront to more of a mix of income groups.

Finally, the shape of the buildings at the end of the piers were radically changed to open up two view corridors that had not existed for a long time -- one from Commercial Street along the south side of the granite building and another from Fleet Street on the north side. This gives both the pedestrian and the motorist the opportunity to actually see the water and what lies beyond.

**Quality of Space** - The view corridors mentioned above greatly enhance the visual experience of pedestrians within the site and thus contribute to better public spaces. In addition, the total density has been reduced, the height of the Pilot House extension has been reduced, and open spaces, to be landscaped and maintained at the developer's cost, will be provided. Seventy nine percent of the site is given over to open space. The decrease in height will reduce the shadows produced by the new buildings.

**THE ACTORS AND PROCESSES**

As I have tried to demonstrate, the current proposal shows real improvement in terms of public access and in overcoming some of the barriers to psychological access. How did all these changes come about? Who were the actors instrumental in this process? I have used correspondence from the MEPA process, my observations from the North End/Waterfront Neighborhood Council and Harborpark Advisory Committee meetings,
and conversations with developers and BRA staff to trace the public access concerns and changes that have taken place in the design and redesign of Lewis Wharf.

**The MEPA Process - A Comprehensive Development Approach**

The call for a comprehensive EIR for Lewis Wharf (rather than doing the three projects separately), opened the possibility for achieving a more carefully planned project with a cohesive public access component. The decision was based on the understanding that one of the major purposes of an EIR is to develop information necessary for the Chapter 91 licensing process. Accordingly, the development team had to demonstrate how each non-water dependent use meets the requirements for Chapter 91 licensing, i.e. that it:

1. serves a proper public purpose,
2. provides a greater public benefit than detriment to the public's rights in tidelands,
3. and is consistent with the policies of the Office of Coastal Zone Management (MCZM)

Thus, the public access concerns of both the Department of Environmental Quality and Engineering (DEQE) (who oversee Chapter 91) and MCZM can be addressed through the MEPA process. In addition, the developers were required to explain how the public access plan meets the objectives of the Boston Harborpark plan and to consider the shadow effects on the quality of public access.

The responses to the draft EIR were negative. In general, the EIR was seen as being unclear, leaving many impacts unaddressed or intentionally vague. The decision making process within the MEPA unit, after all the comments of an EIR have been received, is not clear but obviously there were enough concerns and criticisms voiced to make the Secretary of Environmental Affairs reject the DEIR for Lewis Wharf.

**Massachusetts Coastal Zone Management Office**

As I explained in the previous chapter, MCZM is primarily a planning and policy agency but it does review projects having to undergo the MEPA review and Chapter 91 licensing. The office is particularly concerned with public access and seems to be aware of
psychological access issues although these are not explicitly stated in their policies (see Chapter 5). Their reactions to the original Towboat project ENF included the following:

At this time, we believe that little public access has been provided and that much of that is in areas that do not directly front on the water. An increase in public space on the waterfront and a firm commitment to a specific amount of office space for water-related non-profit organizations may be necessary to demonstrate that this proposal serves a proper public purpose.

MCZM also perceived of many public access problems with the proposal presented in the DEIR: there were conflicts with both MCZM policies and Chapter 91 licensing standards. The following two excerpts from MCZM's response to the DEIR reflects concern over private uses and the appeal of the entrance to the public:

We believe that this proposal may contain many strictly private elements that do not serve a public purpose. For example, the continued construction of private residences and businesses in areas of high demand for public open space may not serve a proper public purpose.

The newly proposed extension to the Pilot House and the Stepped building are severe intrusions into previously filled Commonwealth tidelands that, taken together, act to make the entrance to this site considerably less inviting to the public at large through shadowing, reducing views of the water, and by narrowing the public accessway.

MCZM goes on to criticize the type of waterside public access, claiming that the narrow 10 foot wide walkway is inadequate.

From the above excerpts it appears that MCZM's public access concerns are couched in the framework of the Chapter 91 requirements for non-water dependent uses. For example, the "aura of privacy" barrier is indirectly addressed by looking at what kind of uses serve a proper public purpose. This may be a matter of necessity as MCZM's policies on public access are more general and rather non-site specific (see Chapter 5).

The BRA

The BRA played numerous roles in influencing the public access components at Lewis Wharf. First, the site, like Union Wharf, is within the boundaries of the Downtown-Waterfront Urban Renewal Area. This gives the BRA design review authority over the proposed development and an opportunity to see that the objectives of the Harborpark plan are fulfilled. Second, one of the parcels necessary for the Lewis Wharf
redevelopment is owned by the BRA. To acquire the right to buy and use that site the developers have to receive tentative designation from the BRA before they can proceed any further towards a final EIR and the balance of the permits required. The BRA-owned parcel is presently being used as a parking lot. In the proposed redevelopment this parcel is necessary for the underground parking solution demanded by the BRA.

In response to the ENF for the Towboat proposal the BRA expressed concern over the amount of space devoted to surface parking while there were no proposals for public park spaces or landscaping. The BRA also indirectly addressed possible barriers to psychological access by commenting on the blocking of view corridors and the lack of uses that would welcome the public:

public access is prohibited at the north pier head and elsewhere and where provided is inadequately accommodated on floating docks. Views of the water from Atlantic Avenue and from the wharf are obstructed by buildings, decks, and parked vehicles. Except for a restaurant proposal, no retail or other active use of the Tow Boat building, which would welcome the public, is proposed. Rather, marine shops and other facilities are proposed on barges located at the bulkhead line, which are inadequately connected to the wharf area by long, narrow floating docks.

In addition, the BRA voiced concern over the public safety aspect of the floating docks and barges.

I could find no formal correspondence from the BRA with regard to the DEIR, but I feel that many of the agency's concerns were addressed through conversations the developers had with the Harborpark staff and with the BRA staff regarding the parcel owned by the BRA, and finally through the findings of a consultant to the BRA (Simon Mintz Associates), who just completed the "Boston Harbor Pier Study' in March, 1987. It was Mintz's recommendations that caused the developers to change the form of the buildings to open up the two view corridors that had not existed for a long time.

The BRA looked to the Harborpark Committee and the North End/Waterfront Neighborhood Council for input that could affect a designation position on behalf of the city, and both organizations took up the challenge in providing recommendations.
The Harborpark Advisory Committee

This committee had extensive comments on the draft EIR. Two of the points they made are of particular interest with respect to avoiding barriers to psychological access:

The use of any portion of the Lewis Wharf site for office space given area traffic problems may well be opposed by the committee. Housing, which is desperately needed by city residents, and especially low and moderate income housing which HPAC, and the Flynn Administration are committed to, will likely be our preferred land use for this area.

To the limited degree to which we can understand the assertions of the proponent regarding public purpose and benefits/detriments tests, they do not sustain a justification for the project. The legislature granted this tidelands license for water-dependent general public purposes, general wharfage and dockage. The developer proposed marginal public access and other extremely limited benefits balanced in return for an extremely dense luxury housing, retail, and office space development. HPAC view these benefits as scant offerings.

The committee's response ends with some concrete suggestions for improvements, including using the top of the Towboat Building for a viewing platform, and substituting commercial office space with affordable housing.

After the submission of the DEIR and the ensuing commentaries, LWJV met with the Harborpark Advisory Committee and the North End/Waterfront Neighborhood Council over a period of eighteen months during which the project was totally reshaped. Plans were worked and reworked in a continual process of response to concerns. The incentive for LWJV to go through with these discussions was their need to obtain tentative designation as developer for the BRA parcel so the final EIR could be done, the property purchased, and the redevelopment begun. LWJV knew that they needed the support of these organizations to get the BRA approval. After this year and a half time period, the Harborpark Advisory Committee voted to lend their support to the developers' current plan.

The North End/Waterfront Neighborhood Council

As I mentioned earlier, one of the issues of waterfront development is the socioeconomic split that can occur because of the type of residential development that is built on the waterfront. This has also been a key issue in the Lewis Wharf project. The
North End’s major concern in terms of psychological access, as expressed by the Neighborhood Council, seems to be with affordable housing. The North End has been undergoing gentrification and the development of Lewis Wharf and the neighboring Sargent's Wharf are seen as some of the last opportunities for getting anything to benefit the community. They want access, in the form of housing, to what has been predominantly a private amenity. They have communicated this to both the developers and the BRA.

Despite the changes that have been made in the plans and the inclusion of affordable housing units, the Neighborhood Council is not satisfied with the development package as it stands now. It does not consider the 18 HOP units as affordable to working class people who have traditionally lived in the neighborhood. They are primarily interested in rental units which the Lewis Wharf development can obviously not provide. In addition, the Council were opposed to the units having a separate entryway and elevator -- they would prefer to see the units integrated throughout the development. The Neighborhood Council, therefore, voted against the tentative designation of LWJV as developers fo the BRA property until a firm committment is made by the city to develop affordable housing for the community on Sargent’s Wharf (which is owned by the city).

REVIEWING THE PROCESS

The process has clearly been a time-consuming one for all the parties involved, particularly for the developers, the Neighborhood Council, and the Harborpark Advisory Committee. At a BRA board meeting in March, 1987, LWJV did not receive tentative designation as developer, in large part due to the Neighborhood Council’s vote. It seems unfortunate if all this work should go to waste, especially when the final design incorporates so many sensitivities to public accesss. It is ironic that once LWJV incorporated underground parking, in keeping with everyone’s wishes to remove surface
parking, they could no longer go ahead with their plan because the property needed to implement this parking is controlled by the BRA.

As might be expected, the process has been one fraught with frustration for the developers. Craig attributes much of this to Lewis Wharf being the first development to go through this rigorous and time-consuming process, while earlier, larger projects such as Rowes Wharf just "sailed through". Many developers may well have been discouraged and be tempted to give up after the criticisms from the DEIR came in. The developers, however, had one advantage: they had purchased the site a long time ago and could therefore afford to be more patient in their dealings with the public processes. Although the current plan is much better, Craig admits that the process has been "murder". He emphasizes that this does not mean he is against the idea or process of public participation; he probably just wishes that LWJV had not been the ones to break new ground!

Commenting on the affordable housing provision and the extensive dialogues with the North End/Waterfront Neighborhood Council, Craig admits that the idea of being forced to provide affordable housing is not a totally negative thing -- he views affordable housing as a good way of maintaining some vitality and diversity on the waterfront. Although it would be economically preferable for LWJV to just make the $1.2 million linkage payment they are willing to provide the 18 units as long as they can get started on the project.

The future of the Lewis Wharf development is presently in the hands of the BRA. A lot has been learned from the whole process and it is clear that public access has become one of the major issues facing waterfront developers in Boston today. It seems everyone has at least become sensitized to public access issues and that we can hope to avoid disasters like Union Wharf in the future.
CHAPTER 7 -- CONSTRAINING FACTORS IN THE PROVISION OF PUBLIC ACCESS

In his book Good City Form, Kevin Lynch views access as "a matter of potential reach, and the obstacles to it may be physical, financial, social, or psychological" (1981:203). I have discussed the issue of psychological access quite extensively throughout the case studies but I would like to synthesize the experiences from the two case studies by first looking at some of the constraining factors to the provision of meaningful public access from the developer's perspective. These factors fall into Lynch's categories of physical, financial, and social obstacles. I then turn to look at some of the constraints seen from the city and public's perspective.

THE DEVELOPER'S PERSPECTIVE

Physical/Structural Constraints

As the Union Wharf case study showed, there can be many physical difficulties in dealing with a waterfront site. The buildings themselves may be structurally unsound. The bulkheads may be deteriorated and the existence of underwater structures, like the tunnel in the Union Wharf case, may pose unique engineering challenges. The size and configuration of the site can impose constraints on the layout of structures and outdoor spaces. These types of physical constraints can translate directly into financial considerations.

Financial Constraints

Not only are waterfront properties expensive to purchase but developers may have to make sizeable investments to improve the physical conditions of the piers, wharves, and bulkheads before construction can even begin. These outlays will inevitably affect the asking prices and, as a result, the type of development to take place on the waterfront. Lincoln Wharf, which is just north of Union Wharf, provides a good example of the costs that a developer may have to face. The wharf used to house a coal storage building in
conjunction with the Lincoln Power Station. The plans call for a luxury waterfront condominium complex to be built on the footprint of the coal pocket structure. The old building is still standing but the piles supporting it are in poor condition and there is the additional complication of the harbor tunnel close by. The developer estimates a cost of $150,000 per unit (a total of 68 units are planned) to cover the expense of constructing new underpinnings, a new wharf deck, landscaping, and public access in the form of walkways along the perimeter in accordance with the Harborpark Design Guidelines.

Without going into detail, the Lincoln Wharf project came under a lot of criticism for its private nature and lack of public amenities. Many of these concerns were rectified or addressed in the final EIR with the result that the plan has better public access in the sense of walkways and public spaces, but the internal uses, such as residences on the ground floor, have remained unchanged. Ultimately, it becomes a matter of trade-offs between what the developer feels he can go along with financially and what the city can hope to get. The developers' concerns are often related to the marketability of their projects.

As Craig pointed out in his discussion of Lewis Wharf, it is hard to "marry" heavy public uses with private uses like somebody's front door or terrace. Many developers fear the "intrusion" of the public -- the perception is that future residents will somehow feel threatened by the openness and accessibility of the site to the general public, and will, as a result, find the project less appealing. Surprisingly, none of the two developers I spoke with were persuaded by these arguments. Craig tended believe that the attitude of people who move to the waterfront is that to live there one has to put up with the public. Jamie Fay, who represents the Lincoln Wharf developers, agrees with the concept of public access, explaining that people living in cities are used to the openness and have different attitudes than their suburban counterparts who may emphasize privacy. He also claims that concern over the possible privacy statement that balconies may make is a "fear of the unknown" -- public walkways are no different than any street. His viewpoint does not
reflect on how members of the public may feel about the balconies but it does show that not all developers view public access as a threat to the marketability to their project.

Vandalism has also been an issue of concern in connection with providing public access. Craig recounted stories of plantings and flowers disappearing overnight from the original Lewis Wharf development -- presumably to end up in somebody's flower boxes! But this occurred while the waterfront was still fairly desolate and the problem has diminished greatly over the years.

Finally, there is the issue of "time is money". As the Lewis Wharf case clearly demonstrated, the MEPA process can be very time-consuming and, after this is completed, the developer still has to obtain other permits etc. The developers were fortunate in that they already owned the land and did not have any costs associated with the holding period, but they have been working on the project for over a year and a half. With Lincoln Wharf, the land was city-owned so, similarly, the developers did not have to pay for holding the land while the plans were finalized. Land is not the only consideration however. The enormous amount of time and effort expended on public meetings, planning, and redesigning can be very taxing. Although the MEPA process has taken over a year for the Lincoln Wharf project, Fay claims the process has not been a bad one to date as the developers' objectives have been in concert with the city and state objectives for the site.

But the developers still have to obtain the actual permits before the development can begin. Thus, the financial constraints on the developers tie in closely with the regulatory process and societal concerns.

**Societal/Regulatory Constraints**

The open process described in Chapters 5 and 6 through the Lewis Wharf case study is obviously time-consuming, and quite often frustrating, for all the actors involved. The process, however, is one which has evolved over the ten years separating the Union Wharf and Lewis Wharf developments and it reflects the marked change in the thinking on public access as an issue in waterfront development. The fact that the process is still
complicated and fraught with frustrations is, as Craig pointed out, in part because it is still so new. Despite the progress and the time needed to get acquainted with the process, there are several things, particularly within the Harborpark guidelines, which can act as constraints in the provision of meaningful public access.

First, there is a limit to how much a developer can spend on public amenities and still make a project work financially. The more amenities that are demanded by the city, state, or public, whether it is infrastructure improvements, landscaped public spaces, affordable housing, or underground parking, the more the developer is going look for ways of recouping those costs in other ways. As Fay pointed out, the only reason the developers can afford to spend $150,000 per unit before the building is even built is that the development is luxury housing and they can demand extravagant prices. It is important to strike some balance between what can reasonably be expected from the developer and what the priorities of the city are. The way the guidelines are currently written, it may be hard for the developer to provide for all aspects of good public access.

Second, the guidelines themselves may be too rigid in focusing on a narrow definition of public access. As I mentioned earlier, the provision of physical access along the water, in the form of a walkway or esplanade, is only a step in the right direction for providing meaningful public access, it is not an end in itself. It is important to avoid a boring sameness along the waterfront. This applies not only to the uses but also to the treatment of that edge between land and water.

Jim Craig commented that the rigidity of the Harborpark guidelines rules out creative uses of a waterfront site. He views the Harborwalk requirement (a continuous walkway along the water's edge) as akin to a fixed height limit (55 feet in the case of the North End) noting that it may easily seem artificial and somewhat sanitized. Using the Lewis Wharf redevelopment (phase II) as an example, he speaks of all the space that had to be "killed" to provide the continuous walkway because of the piers' unique configuration. Craig subscribes to the approach of setting some minimum standard for public access.
unless the developer can convince the authorities of something better. He sees this as a way of breaking the monotony and bringing about more meaningful places -- if it were not automatic, developers could be challenged to provide something more interesting and perhaps more usable.

There is also the issue of "program". The Harborpark design guidelines call for "active" first floor use in developments along the waterfront but this may not always be equally desirable or feasible. Lincoln Wharf is in a very residential location with no parking and little visibility from the street. Fay noted that not only did the surrounding residents object to ground floor retail activity because it did not respect the neighborhood but it would have been very difficult financially to get anything started there. Lewis Wharf's difficulties in leasing the ground floor for retail testify to that fact. According to Fay, the concept of active first floor uses is "great" but it is not something that can be automatically required for every single site. However, retail activity is only one of many possible options and thought should be given to what other facilities of public accommodation might be feasible.

Finally, implicit with the developer's provision of public access is the understanding by the city that maintenance and liability are also to be covered by the developer. According to Craig, liability is a concern that should not only be the burden of the developer -- there should be some way in which the community at large could help. He suggested that the city (or state) could participate in covering liability if there is some continuous monitoring or review that determines whether the public access being provided is safe, accessible and "worth it". He believes this would foster a more continual or "real" involvement than just calling for public space in a document -- it would be a continuous "marriage" or partnership with benefits for both parties. I think this is an admirable notion but it is probably unrealistic to expect more city involvement judging from the lengthy planning processes which currently exist.
These physical, financial, and regulatory constraints vary from city to city and from site to site, making each waterfront development process unique and posing new challenges to developing meaningful public access.

THE CITY AND COMMUNITY'S PERSPECTIVE

The initiative for providing meaningful public access must come from society or there will be little incentive for developers not to design their projects as if the waterfront belonged to the buyers of their condominiums -- such as what happened at Union Wharf. From the above analysis, however, it seems that developers are not necessarily averse to providing public access -- they just want the process streamlined and some of the uncertainties removed.

As the Lewis Wharf case study demonstrates, the initiative to address public access is there on both a state and local level. Many new groups and agencies now have the opportunity to express themselves but, as I mentioned in my introduction, public access is just one of many issues raised in conjunction with waterfront development. Although the quality of public access is no longer overlooked -- for example, if Union Wharf was redeveloped today the public access components would probably be quite different due to the reviews and regulatory processes that exist -- it may be compromised amongst other issues as a part of the bargaining process that takes place between the city and the developer.

From my review of the planning processes and regulatory network in Boston it is clear that the opinions of all the actors who have the opportunity to express themselves do no carry equal weight. The process is now more open but many of the actors are only in an advisory capacity and the final decisions on what gets built rests mainly with DEQE, in their Chapter 91 licensing process, and the BRA. As a result, the decisions may carry a hidden political agenda which can confound good intentions of providing meaningful public access.
In the boom era of the 1980's the BRA has relied upon the "hot" real estate market as a strong negotiating factor in their dealings with the developers. Other cities, that cannot rely on such mechanisms due to "soft" real estate markets, have taken more drastic approaches to bring about public access. In Miami, a developer does not get an occupancy permit unless the public access plans, that were designed with city planning staff and according to the city zoning code, are completed as originally intended. This makes the process less susceptible to personal favors and political games which creates the uncertainties for developers mentioned earlier.

The Commonwealth and the City can remove some of the vagaries of a negotiating process by embodying standards for public access within a legal framework and defining this as the minimum of what may be done but encouraging more creative solutions if the developer is willing to take the challenge. The Commonwealth and Boston are working towards firming up the legal requirements -- for example, in the pending Chapter 91 amendments a waterfront setback zone for non-water dependent uses for private tenancy has been created. The Harborpark Interim Planning Overlay District and a Waterfront Access Zone, both passed by the BRA Board and the Zoning Commission, also mandate certain standards for public access (see Chapter 5). Psychological access concerns are currently being addressed indirectly by numerous actors but there is no overall strategy as of yet. The BRA Harborpark initiative could play an important role in designing this. These are all steps in the right direction but we have to be careful to avoid a rigidity that excludes more creative but unusual public access options.
CHAPTER 8 -- CONCLUSIONS

Although the scale of the projects in the case studies I have presented are small in comparison to many larger waterfront developments such as Battery Park City in New York or the proposed Fan Pier development in Boston, the Lewis Wharf redevelopment illustrates the possibilities that exist for achieving meaningful public access through public input (if, and when, it ever gets built!) Clearly, each individual waterfront property to be developed faces certain unique limitations or constraints by nature of its size, location, and ownership. The constraints faced by a developer (outlined in the previous chapter) are more universal, while city and societal constraints will vary from place to place depending on the public sector's commitment to securing meaningful public access. However, if it is possible to gain meaningful public access in small scale waterfront developments like Lewis Wharf, where the constraints are more severe due to size and density limitations, surely it will be possible to demand even more of larger scale developments. But, ultimately, the quality of the public access components will depend on society's identifying public goals regarding public access, and the institutionalization of procedures to implement them.

Before society can demand meaningful public access to urban waterfront developments it is necessary to clarify what constitutes meaningful access. My typology of potential barriers to psychological access provides a useful framework for this clarification. To briefly recap my typology, I discussed five barriers -- physical barriers, institutional barriers, aura of privacy, homogeneity, and the quality of space -- and they operate on two different scales. On a larger scale, a stretch of waterfront can be evaluated for potential barriers to public access using all five barrier types, much like what I did for the North End waterfront in Chapter 3. On a more site-specific scale, individual developments can be analyzed for their contribution to meaningful public access by looking at physical barriers, aura of privacy, and the quality of space. On this parcel by parcel scale, homogeneity and
institutional barriers to psychological are less valid as these relate better to the waterfront in its entirety.

RECOMMENDATIONS

Once a community has assessed the quality of public access to their urban waterfront the question becomes either how to improve the public access situation or, less likely, how to continue implementing meaningful public access. There are numerous ways of implementing meaningful public access, many of which I have mentioned in earlier chapters.

The city can regulate the developer through zoning and licensing procedures, similar to some of the steps taken in Boston, and in this way mandate formal public access requirements such as walkways and public spaces. This is probably the easiest step to take towards providing public access, but by itself it does not guarantee meaningful public access. As I mentioned earlier, a beautiful esplanade along the water’s edge means little if it is not well integrated and connected to the rest of the city so people are encouraged to use it. Public access can also be discouraged through homogeneity and auras of privacy. To address these concerns there needs to be more effort and work focused on the type of uses that are being incorporated in waterfront developments.

The building of such public attractions as aquariums are excellent uses because they encourage and attract people to the urban waterfront, but these uses are major public investments and cannot be duplicated within the same city. On a more moderate scale, cities can address concerns over the exclusive commercial, retail, and residential development taking place on the waterfront by influencing the type of uses in order to also cater for moderate income groups. Using Boston as an example, the BRA could play a much stronger role in regulating the type of uses that are developed on city-owned waterfront land -- for example, the BRA could demand that a moderately priced restaurant be given priority over more exclusive uses as a condition of allowing private developers to
use the land. Cities can also look into the possibilities of subsidizing certain activities along the waterfront to allow for a diversity of uses. For example, businesses and stores that may have been displaced by gentrification in the North End could be given priority in new waterfront developments at affordable rents. This would be strategy similar to that employed in the Pike Place Market in Seattle where individual leases were worked out with the original tenants who wanted to stay but who could not afford the higher rents resulting from the redevelopment of the market.

There is also a need for some creative thinking on the role of cultural diversity as a way of integrating the surrounding neighborhoods with the waterfront. In the case of the North End, the BRA could demand that the pattern of development capture the flavor of the surrounding neighborhood. The benefits from this are twofold. Not only can ethnicity create a unique atmosphere along the waterfront but it can ease the distinction between the waterfront and the neighborhood and thus diminish feelings of alienation between the two.

Finally, cities can play an important role in preserving water-dependent activities along the urban waterfront as a means of avoiding homogeneity. For example, the BRA is looking at the concept of special zoning districts named Marine Economy Reserve Zones (MERs) to prevent the disappearance of such uses from Boston's inner harbor. Experience has shown that maritime and non-maritime uses can co-exist and, as Breen and Rigby pointed out, the working waterfront can be made accessible in unique ways through interpretive and visual access if actual physical access is infeasible.

The initiatives I have outlined above are all important steps towards providing meaningful public access to our urban waterfronts. The course of action pursued by different cities will obviously have to be tailored to the individual contexts and priorities of each, but the barrier typology can provide a useful starting point for a self-analysis and discussion of priorities. Although I speak of the role of the city in implementing meaningful public access, inherent in this process is a dialogue with the community, non-
profit organizations, and other interest groups that are involved with the waterfront. Meaningful public access cannot come about without the involvement of the public, who is the ultimate user.
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