



Commonwealth of Pennsylvania
Pennsylvania Historical and Museum Commission
Bureau for Historic Preservation
Commonwealth Keystone Building, 2nd Floor
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Harrisburg, PA 17120-0093
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June 16, 2010

Ms. Mary Conturo, Executive Director
Sports and Exhibition Authority of
Pittsburgh and Allegheny County
Regional Enterprise Tower
425 Sixth Avenue, Suite 2750
Pittsburgh, PA 15219

RE: Pennsylvania History Code process, Pittsburgh Civic Auditorium (Mellon Arena) and Lower Hill
Redevelopment project

Dear Ms. Conturo:

We have received both the economic analysis and the draft alternatives report completed as part of SEA's Mellon Arena project. We received documentation of the economic analysis via email on May 20 and received the draft alternatives report June 4th. Thank you for providing us an opportunity to review these documents. We are also aware that Save the Igloo and Preservation Pittsburgh are undertaking a separate economic analysis of the project. In order to adequately understand the issues at hand and to assist the SEA in their efforts to assess the project's effects and assess alternatives to any adverse effects we will withhold formal comment until the SEA issues a preliminary finding on the project with supporting documentation, including the economic analysis, alternatives report, the Save the Igloo/Preservation Pittsburgh analysis, any additional supporting documentation and all public comment on the project to date. This package should be assembled with a cover letter that provides a summary of the process and SEA's documented finding.

Over the past few months we have received a great deal of information from SEA and SEA's consultants via email, in telephone conversations and through public meetings. We appreciate the level of communication SEA has provided; however our immediate concern is that much of this information has come to us piecemeal and in what appears to be a somewhat haphazard fashion in an attempt to move the project forward as quickly as possible. We are sympathetic with the need to move quickly, however we also want to ensure that we have received all crucial information in a fashion that allows us to fully understand both the process and the project's effects on historic resources.

As you know, the Arena project is currently required to follow the Pennsylvania History Code for state undertakings, as there is no known federal involvement which would invoke Section 106 of the National Historic Preservation Act at this time. The State History Code is often referred to as an analogue to Section 106. Although perhaps true in principle, the major difference is in implementation. Section 106 has clearly defined procedures for the consultation process, which are found at 36 CFR Part 800. The State History Code requires consultation with the PHMC, but has no clearly defined procedures.

While we commend the SEA for attempting to follow the Section 106 process as may be possible without a formal declaration of a federal undertaking, make no mistake: the process to date should not be construed as a substitute for an actual Section 106 consultation. As we stated in our January 25 letter, "*By following the Section 106 template, SEA could reduce or avoid potentially significant project delays should federal assistance become available...*" But we also stated that the Section 106 process would require "*...participation by the Advisory Council on Historic Preservation or a Federal agency that*

would be responsible for oversight of the process." Insofar as using the Section 106 regulations as a template for complying with the state history code, the SEA has done well. However it is impossible to anticipate how a federal agency would view the current process and its findings, and whether the Advisory Council would choose to participate and what their views might be.


As we have stated several times, both in writing and verbally, the SEA has undertaken an extremely aggressive schedule to attempt to complete a cultural resources review process for the Arena. In so doing, the SEA has overlapped a number of elements the Section 106 process would require. For instance, as we have stated previously, the public participation process and alternatives analysis process have been conflated into one parallel, overlapping process. In skimming the draft alternatives report, we note the report includes preliminary suggestions of mitigation strategies for adverse effects before consultation about effects has been completed. Additionally, as we have mentioned both in writing and verbally, the "purpose and need" exercise and its accompanying arbitrary evaluation system as it was developed and has been instituted in this process is not something we would recommend as an appropriate method of evaluating alternatives.

These issues and the "overlapping" of processes are not, in our opinion, necessarily "wrong." However, they are also not what we would consider a "best practice" in terms of Section 106 review. Given the PHMC's role in both the History Code and Section 106, we feel it is important for us to remind SEA about the significant differences between the two processes. On the one hand SEA has fulfilled the consultation requirements of the History Code. On the other hand, at this time there is no way to anticipate what the outcome of a possible Section 106 consultation may be. *The process has to be conducted appropriately to be valid.*

Among the issues that we initially discussed about the Mellon Arena project was the MOU among the Commonwealth of PA, the County of Allegheny, the City of Pittsburgh, Lemieux Group LP, and SEA which, in Section 2.iii., calls for the demolition of the Arena by the SEA once the new Sports Exhibition Center is open for business. As stated in the MOU, the purpose of the demolition is to create a parking lot. At some point in our consultation, you informed me that the SEA did not have funding to demolish the Arena. If this condition has changed, I need to know about it; otherwise, I am of the opinion that there should be no rush to make a decision about the future of the Arena, and a final decision about its future should wait until it is clear whether the SEA is going to receive federal funding or not. To proceed with demolition of the Arena prior to notification of federal funding and a completion of the Section 106 process, could create a problem. Our purpose in conveying these concerns is to ensure that if a federal undertaking is identified, project consultation will proceed as efficiently as possible.

Thank you once again for the opportunity to comment on this project. If you have any questions please do not hesitate to call Ann Safley at 717-787-9121 or Bill Callahan at 412-565-3575.

Yours Truly,


Jean Cutler, Director
Bureau for Historic Preservation
Deputy State Historic Preservation Officer
Pennsylvania Historical and Museum Commission

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