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COVER STORY

Towering Fiasco

Ray King's Philadelphia Beacons were supposed to be the Avenue of the Arts' crowning glory. Four years after they were commissioned, they're still just ugly stumps.

How a legal wrangle has prevented the construction of one of the city's most anticipated pieces of public art.

By [Brian Howard](#)

Photographs by
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Ray King had a grand vision for the crossroads of Broad Street and Washington Avenue: 40-foot-tall torches blazing from each corner of the giant intersection.

Not actual torches, mind you. King is an artist, and his medium is light. The torches, which he calls *Philadelphia Beacons*, were to be constructed of concrete, glass, cable and stainless steel. The glass, treated with special holographic film, would reflect and refract light—from the sun during the day and from light sources in the bases of the towers after dark—to create the illusion of giant signal flares.

The proposition was big, ambitious and monumental. But the City of Philadelphia was thinking big, ambitious and monumental when a jury of public art experts chose the proposal, from a field of 476 entrants, to be the gateway of the much celebrated Avenue of the Arts.

King was granted the commission in March 1994 by the city's Office of Arts and Culture, which administered the competition and marshaled city and private funding for the streetscape project. For a while, things proceeded according to schedule. Then a small change in plans threw the whole process into chaos.

The Streets Department, without consulting King, made a slight shift in two of the beacons' footings due to utility lines under the sidewalk. The shift would result, he says, in a potential conflict with the Americans with Disabilities Act (ADA): the towers as placed would partially block ramps that permit handicapped access from the sidewalk to the street.

King insists that the placement of the beacons would create a dangerous situation, putting him at risk of a lawsuit over a situation he didn't create.

"I would not have bid or participated in this job if I had known this was the situation," says King in retrospect.

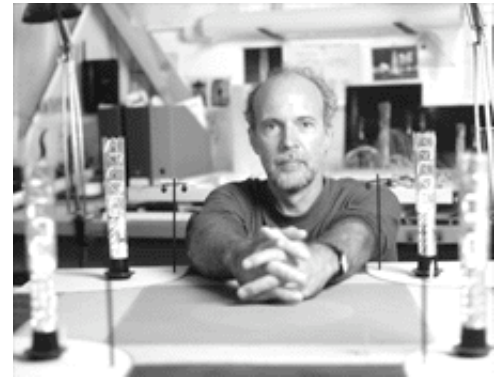
King would like to see new ramps constructed or for the city to indemnify him from future legal responsibility. The city has proposed widening the ramps but says it doesn't grant indemnification to contractors. Neither side has arrived at a mutually acceptable compromise.

Furthermore, King feels that instead of working with him, the Office of Arts and Culture is giving him the runaround, functioning as adversary rather than advocate, echoing the complaints of other artists who have had frustrating experiences in creating public works for the city.

Communication between King and the city over the course of the project has gone from cordial person-to-person meetings to guarded letters between King's lawyer and the city's Law Department. The city is understandably hesitant to discuss the issue in detail; King will discuss it all day.

As a result, one of Philadelphia's most ambitious public art projects, the crowning jewel of the Avenue of the Arts streetscape, hangs in limbo. The ensuing gridlock over an unprecedented legal fiasco has gone on for the last three years, and the footings remain in place, covered by wooden boxes.

For Ray King, the dispute has become a kind of personal crusade.



Sculptor Ray King sits in his Northern Liberties studio with a model of *Philadelphia Beacons*.

"I'm not the first thinker/inventor/doer to challenge a decision by the government in power who walked the streets of Philadelphia," muses King. "I love to think of myself aligning with the noble group of gentlemen who first put this place on the map."

For the arts community, city officials and anyone who has passed the ugly stumps at Broad and Washington, the question persists: Will *Philadelphia Beacons* ever see the light?

At first glance there's nothing inside Ray King's Northern Liberties studio that would tip you off to the fact that a rather large fraction of that space is used to house the component pieces of a monumental public art project. With windows facing west onto Third Street and south onto a small courtyard, light bounces and bends on all manner of glass and wirework hanging from ceilings and walls. Completed work and parts of work in progress take up most of the floor space.

King is a tall man with a scraggly growth of a beard, receding hairline, sturdy build and work-hardened hands. He maneuvers about, giving instructions and pointers to his two assistants, his son Julian and local artist Steve Wolff, who are busy cutting, cleaning, smoothing and polishing glass for newer projects.

"I've put the plans away and moved onto other things," says King calmly, straight-faced, trying to mask the monumental frustration the situation has caused him.

He's had to move on. Though King is based in Philadelphia, he has shown his work all over the world, from exhibitions in Barcelona and Sapporo to commissioned pieces at the University of Alaska in Fairbanks and Orlando International Airport, to name but a few. At present he's busy on two projects. One is *Light Cascade*, a three-story glass-and-wire installation made to resemble a waterfall to be installed at the AIG Regional Headquarters in Center City. The other is *Neon Light Drawings*, which will make up the facades of three New Jersey Transit stations for which he'll also serve as a consultant for future art projects.

But if you look around his display shelves where he keeps small-scale models of projects in various stages of completion, you'll find a 10-inch-tall model of one of the beacons. On his desk is a larger, nearly 2-foot-tall model of the same piece. And if you really snoop around you'll come across stacks of stainless steel, cable, holographic glass and steel reinforcement bars that would be used to install the concrete bases—about 60,000 pounds in all.

The steel reinforcement bars had been trucked down to Broad and Washington to use in building the bases. It was only then that King noticed the conflict with the ramps. The bars were moved over to the grounds of the High School of Creative and Performing Arts, which was then under construction at Broad and Christian. When the school project was finished, King had to haul them all back to his studio in his pickup truck where they sit in an unwieldy pile in the basement.

"The sheer effort to move it is phenomenal," notes King as if it weren't self-evident. The stuff takes up nearly one third of the usable area in his 7,500-square-foot space.

Taking up a considerably smaller portion of his studio is a three-ring binder marked with the word "Beacons" which bears a computer-generated image of what Broad and Washington might look like one day if Ray King ever agrees to build his torches there. He keeps a binder for each of his projects, but this one—about 3 inches thick—is considerably larger than the rest.

Inside is page-by-page documentation of the saga, starting with the original application form postmarked July 1, 1993, continuing with genial letters to and from the Office of Arts and Culture, communiqués between King and his engineers, and culminating with the icier missives exchanged most recently between his lawyer and the city's Law Department.

It all began as a chance for King, born in Philadelphia on the Fourth of July, 1950, to produce his most visible piece of art yet in his home town. King and California artist Robert Coburn were chosen from among 11 semifinalists—narrowed down from 476 entrants—to realize their visions.

On March 3, 1994, Coburn was informed that his series of bells was chosen as the project to span the avenue. King was notified that he had been selected for the gateway project, the original allotted budget for which was \$350,000. King's proposal came in slightly over, at \$360,000, which apparently wouldn't be a problem: Percent for Art coordinator Joan MacKeith said the \$10,000 would be tacked onto his contract as an amendment. She was the first of three coordinators of that office King would deal with. Percent for Art, a program of the Office of Arts and Culture, oversees enactment of the 1959 municipal ordinance that 1 percent of money spent on city construction projects be devoted to public art. (There is a sister program in the Redevelopment Authority.) Philadelphia's ordinance was the first such law in the country, and the program has since been used as a model by other cities.

The contract issue, says King, was perhaps the first signal that this project might not run so smoothly. One month later, on April 13, he received a copy of the standard contract, but not a contract specifically tailored for the project. It would be exactly six months later, on Sept. 13, that he would receive the final version of the contract, still without the \$10,000 amendment. Much to his shock, he was also informed he would need to pay a \$400 fee for the preparation of the contract. (Public art coordinators in New York, Phoenix, Vancouver and Houston said that their offices do not charge artists for contract preparation; they ask only that an artist creating a public work have an attorney look over the agreement.)

Sculptor Ray King: "I just want to finish this thing up and not work for these people ever again. If I could sell it to another city and just give the money back, I would."

In the meantime, confusion developed over the materials King would be using. He was asked during the initial presentation of his piece whether concrete was his first choice for the bases of the towers. King explained that he'd rather the bases be made of black granite, but due to budget constraints he had chosen concrete. He was then asked to devise a budget incorporating the more expensive material, yet still without a working contract.

During the process, MacKeith left her position. She was replaced by her assistant Barbara Russell, who had been given the impression that King's additional costs for the granite bases would be around \$50,000. The estimate was off by over \$100,000. King eventually arrived at an estimated budget of \$164,920.

City Council approved an extra \$80,000 toward the granite bases, to be added in an amendment to the contract. Ten thousand dollars of that amount would go to make up the difference between the \$350,000 originally budgeted for the project and King's \$360,000 proposal. This left \$94,920 that King was responsible for raising privately. King would later be informed that the \$80,000 would not be released until he submitted a plan for raising the rest of the money.

It's this kind of miscommunication, compounded by shifts in leadership (Russell would leave shortly after taking over and was replaced by current director Carol Lawrence), that King points to when describing "the letter run-around." He claims that calls made to the Office of Arts and Culture requesting information about his payment schedule were met with curt "It's none of your business" replies.

"The whole fucking thing is like swimming upstream," says King in an unguarded moment.

King is not alone in finding fault with the system that administers public art in Philadelphia.

Take video artist Peter Rose, for instance. The office awarded him a high-profile commission for the Philadelphia International Airport but then gave him little support, he says, in his dealings with the Philadelphia Art Commission, which voiced numerous objections to his proposal for a video installation in the airport concourse. Later, because USAir required space for terminal expansion, the project was canceled shortly after fabrication had begun, and Rose was reimbursed for his work up to that point.

"The general sense of contempt I felt as an artist working for the city was not negligible," says Rose. "I felt I was lied to.... One thing you should do when you bring an artist into a process is have someone take them through the political procedures. But when I made a presentation to the Art Commission, I was thrown to the wolves. The Office [of Arts and Culture] should serve as advocate for the artist and should be proactive rather than see the artists as adversary."

Michele Oka Doner, a New York artist who was commissioned to create cast bronze elements for the floor of the lobby of the Criminal Justice Center at 1301 Filbert St., agrees that there are problems with the process, though she doesn't feel any malice was involved.

"I just don't think the position [Percent for Art's public art director] is empowered. I didn't feel I had an advocate to speak on my behalf," says Oka Doner. "When you're dealing with a client and architects and the city and then the artist, you need someone who has muscle. They seem to have made it a position without muscle or power."

Oka Doner's problem was a dispute with the architect over the color of the terrazzo flooring which would serve as the background for her work. "Carol was new, the building was late.... I'm not holding her responsible; I found her generally sympathetic.... I didn't find any intention to deceive or fraud."

"It takes years," Oka Doner says of the time necessary for an arts administrator to be really effective. She points to Miami's Vivian Rodriguez, who's been executive director of Miami-Dade Art in Public Places for nearly 10 years. Miami-Dade commissioned Oka Doner's half-mile-long floor of bronze and terrazzo, *A Walk on the Beach*, at Miami International Airport.

Oka Doner says that although her bronze castings were installed at the Justice Center without any major difficulties, she feels the piece would have been more effective had the terrazzo been darker. She says her contract granted her a say in such decisions. "It would have been and could have been much better and much stronger. You're talking about a legacy of leaving a city better for generations. For me these details are crucial. It's a qualitative difference. It's hard for me to understand why I couldn't pick up the phone and say, 'Look, I'm supposed to have a say in this and this is what I want.' I couldn't take the project from golden to platinum."

Two other artists engaged for Avenue of the Arts and Justice Center projects speak highly of the administrators they worked with.

"My experience with the Arts and Culture office was wonderful," says Robert Coburn, the California sound artist who created the Avenue bells. "I was working long distance so my dealings were probably different than [King's], but many times I had to



The intersection of Broad and Washington as it looks today.

rely on them to get things done, especially Carol Lawrence. They were helpful and cooperative."

New York artist Ming Fay worked on his project for the Justice Center, *Spiral Ears*, over a period of years. "During that time there were two changes of administrators. The last one was Carol Lawrence and I finished with her. It was a long kind of process, but in this kind of project there are always unknowns and you deal with them as it evolves. We worked it out."

Lawrence acknowledges that there were difficulties with Rose's and Oka Doner's projects, and that—like any complicated arts endeavor—each involved its own particular set of troublesome issues. "All those projects could take a number of years to complete," explains Lawrence, "and there were a number of different coordinators" during that time.

"I don't know of any artist or architect dealing with construction who has not had any problems. What we assume is that we have to work to resolve it," continues Lawrence.

In response to King's claims about the office being difficult to deal with, she points out that "he made the decision that he only wanted to interact through attorneys. And now it is in the hands of the attorneys."

First Deputy City Representative Diane Dalto, who oversees the Office of Arts and Culture, says, "Right now we'd love to hear back from Ray and his attorney" regarding a letter sent from her office about the proposed ramp fanning.

She maintains that "we have always done everything we can to keep this thing moving. It seems that every time we get a response it's just another list of demands... Very few artists decide to deal through lawyers. There is no working with the artist when the artist has chosen to use a lawyer as his spokesperson."

The major bone of contention with the beacons remains the ramp issue. King noticed the problem for the first time on Feb. 15, 1995. Since then, save for the shuffling of letters and faxes between King and the city's Law Department, very little has actually happened with the site.

King's original plans placed the beacons about 5 feet from the curb and access ramps. But when the Streets Department arrived to install the footings upon which King would anchor the beacons, it became apparent that due to the location of utility lines below the sidewalk, two of the footings would need to be moved closer to the curb. The footings were moved, but without consulting King. As it turns out, according to King, if he were to install the Beacon bases now, the bases on the northeast corner would hang over the ramp by about 13 inches. The base on the southeast corner would overhang the ramp there by 3 inches.

Depending upon how you read section A117.1 of CABO/ANSI regulations, which the City of Philadelphia uses as the building code for ramp specifications, the site may or may not be to code. The code calls for "A clear width of minimum 36 inches," "Level landings at the bottom and top of each run," "Landings at least as wide as the widest ramp run leading to it," and "A landing length of at least 60 inches clear."

Whether or not the placement is up to code, King sees a disaster waiting to happen. He envisions a wheelchair-bound person attempting a move up the ramp, only to get knocked back into the street when a wheel strikes the base. Or he can imagine someone in a chair looking up at the tower from the sidewalk, then suddenly finding himself on a ramp and rolling down into traffic.

The Streets Department has proposed a flaring of the ramps, which would more than double the access to level landings. It would not, however, change the fact that the towers still block some access. King is insisting one of two things happen before he'll install his beacons. One is that the ramps on the problematic corners be rebuilt so that they lead away from the bases of the beacons rather than toward them. The other alternative: he would be officially indemnified of legal responsibility for any accident that may arise from the bases impeding upon the ramps.

Altering the ramps is an option, the city says. Rebuilding them is not.

In a letter dated Sept. 13, 1996, King wrote to Joseph R. Syrnick, chief engineer and surveyor at the Streets Department: "I am writing to request a letter acknowledging responsibility for the handicap ramp locations at the intersection of Avenue of the Arts and Washington Avenue that I have been discussing with the Streets Department and the Office of Arts and Culture for the past 18 months. Each time I have had the opportunity to discuss my concerns I am told that it is either not a problem or it will be dealt with later."

Syrnick responded on Sept. 17, 1996: "When the intersection improvements were being designed, we took particular care to locate the Beacon foundations so they would be symmetric around all four corners. During construction, we found it necessary to adjust two of the foundations slightly due to underground utility conflicts. These adjustments placed these two beacons closer to the sidewalk ramps than had originally been planned. At that time you were made aware of the situation so that any required modifications to the beacons could be handled.

"While we agree that the Beacons are an important element of the Avenue of the Arts project, the function of the street for users must be our first priority. Artwork cannot inhibit pedestrian or traffic flow, compromise sight distances, or in general, negatively impact public use.

Public art authority Penny Balkin Bach: "At a time when the city seems to be losing major pieces of public art, it would be a good time to be mindful of having an addition of one that's already promised."

"[O]ur position is that the curb cuts have been constructed. They line up with the crosswalk as they should and they are not going to be moved. If the Beacons do not work with the ramps situated as they are, my advice to you is to not construct them until we can reach some resolution as to what to do."

The issue of indemnity also seems to be set in stone.

According to City Solicitor Stephanie L. Franklin-Suber, it is not the city's policy to indemnify an artist, or any contractor doing work for the city.

"We ask contractors to indemnify and defend the city against 100 percent of the risk," says Franklin-Suber. "When we enter into a contract with a contractor, we are paying with public funds. We are spending taxpayer dollars."

She stresses that the policy is in place to protect the taxpayers.

She notes that on rare occasions there are certain exceptions: "We may take a certain amount of responsibility for the city's actions. But generally speaking we don't make any exceptions at all. In Mr. King's case, in a sign of good faith and the spirit of cooperation, we did offer a compromise that departs from general policy in an attempt to try to resolve the issues. We have not applied a different policy, but we've actually tried to treat him a bit more favorably than other contractors."

The compromise was to provide legal representation from its legal department for King should a suit arise. King balked, reasoning that the situation could lead to a conflict of interest since the city would most likely be defending itself in the suit as well and that he might not be getting the same quality of representation as if he had his own lawyer defending him. He countered with a proposal that would have the city pay for his own third-party counsel. The city offered to pay for an attorney contracted outside of the Law Department, one that they commonly use in cases of conflict of interest, but would not allow him to choose his own attorney.

"I haven't asked them for any money," contends King. "I haven't sued, but they continued to defend the situation. It's like they're dancing around the bonfire saying, 'We gave you the site and it meets code.'... Everyone can see [that there's a problem.]"

And gridlock remains.

The whole issue has become a political hot potato. The only thing anyone can agree upon is that they'd like to see the towers go up.

Kevin Feeley, the mayor's spokesperson, says the city is concerned about the situation. "We would like the artwork to be installed. It is unfortunate that everyone seems to want the same thing. It is not for lack of trying. We will continue to try to work with him to see the process through, so that the head of the Avenue of the Arts can be completed."

Ellen B. Solms, executive director of Avenue of the Arts, Inc., is anxious to see the project completed, though Avenue of the Arts, Inc. has no involvement in the actual execution of the project. "We'd be really happy if the problem could be resolved on what promises to be a really exciting project. I would love to see the towers up and I'm sure they're going to be spectacular. I'm waiting like everybody else."

Roxanne D. Galeota, King's attorney, says that the amount of time and money spent on legal counsel alone has been "substantial, and because of circumstances not caused by him. That's what's unfair. He's a very thorough and careful contractor and the city should consider themselves very fortunate to have a Ray King within its city limits and working on a project like this. I'm not really sure that Ray King is being appreciated. I'm not sure his work is being appreciated or valued, gauged by the city's response to this issue. If the city thinks that it's legal and fine to eliminate a landing, then kindly indemnify Ray King should a claim arise. If you say it's legal, back it up, stand by your position."

Penny Balkin Bach, executive director of the Fairmount Park Art Association, is an authority on Philadelphia's public art heritage. The FPAA handles a number of major commissions, and Bach can't recall a single situation as bizarre as this one. She adds that the FPAA handles issues of indemnity, and all other issues for that matter, case by case. "[Situations like King's] make me nervous sometimes. They encourage people to figure out ways to bring a suit. The next thing you know, people will be going out and falling down in front of sculptures."

The author of *Public Art In Philadelphia*, a comprehensive guide to public works by artists ranging from the Algonquin Indians to the Anti-Graffiti Network, Bach feels that "at a time when the city seems to be losing major pieces of public art it would be a good time to be mindful of having an addition of one that's already promised." She lists the near departure of the Curtis Center's Maxfield Parrish mural and the Ellsworth Kelly mural that used to adorn the transportation building.

"I don't know what to say. If you're baffled, so am I," laments Bach. "I would like to see the city resolve the issue with Ray. I give the city a lot of credit for having commissioned such a major work. So having made that step, the next step would be to have the piece installed so that everyone can appreciate it and to find a way to overcome some difficult legal issues. There has to be a way to address them without putting the artist and his career at risk."

Recently King submitted a finding to the Department of Justice, which administers the ADA. Even if the finding comes back stating that the site complies with the ADA, it would not indemnify King should problems arise.

Department of Justice spokespersons said that as a general rule, any obstruction of a ramp would pose a problem. They noted that moving the ramps would be one possible solution, but would not rule out the possibility that the fanning of the ramps would provide acceptable additional access. But since they had not seen the site, they could not make a definitive judgment.

"I just want to finish this thing up and not work for these people ever again," laments King. "If I could sell it to another city and just give the money back, I would. But I'm not permitted to sell it or a reproduction or like image of it.

"I feel like even if I came to them with a solution and said I have a pot of gold to pay for it with, they won't listen to me straight.

Legalities aside, King emphasizes that if the beacons go up on the site as is, the bases will hang over the ramps—and that's not just dangerous, he says, it's displeasing to him aesthetically. "People who see it will know it's not right. It's a mistake and [if it goes up like this] it will always be a mistake."

Additional reporting by Amy Choi