

APPROVED 1/23/13

City of Boston Conservation Commission
Public Hearing Meeting Minutes
Boston City Hall, Hearing Room 801
Boston, Massachusetts, 02201

May 2, 2012

Commissioners Present: Charles Button- Chairman, Stephen Kunian John Lewis, Vivien Li, Antonia Pollak

Commissioners Not Present: John Sullivan, Jeanne McHallam

Staff Present: Chris Busch, Executive Director

6:00 PM

Request to amend Order of Conditions for **DEP File No. 006-1244** from Boston Boat Basin LLC, to replace existing floats and remove and install existing and new piles at 87 Commercial Wharf, North End, Boston Inner Harbor (Land Under Ocean, Fish Run). *Continued from the April 4, 2012 Public Hearing*

Representatives: Jamie Fay, Fort Point Associates; Charles Lagasse, Boston Yacht Haven

V. Li stated that Fort Point Associates is a dues paying member of her employer, The Boston Harbor Association.

C. Busch reported that the DEP Waterways Marine Manager noted that the matter is being handled at the Deputy Commissioner's level and that they are looking to schedule a meeting among all interested parties to specifically discuss the development of the Harborwalk on the south side of the property.

J. Fay described the project, which involves reconfiguring the floats at the end of the dock at Commercial Wharf to enhance the marina. There will be a decrease in the total number of piles.

A. Pollak commented that her interest is in finding a permanent solution to the problem of locating the Harborwalk on the pier. She admitted that much of the decision making regarding this issue is done by DEP, and believes they have taken a huge step forward in resolving this issue. However, it would be premature for the Commission to make a decision.

Ms. Li asked for a timeframe for the DEP meeting. Mr. Busch could not confirm a timeframe. An RDA has been filed under the DEP regulations involving the Commercial Wharf Condominium Association.

Ms. Li discussed things she had seen on a site visit including trash in the area, accessibility-related repairs and a fenced area containing trash and transformers that had not been reviewed by the Commission. C. Lagasse indicated that the area had been enclosed with a potentially removable fenced to contain the dumpsters and transformer. Ms. Li and Mr. Busch took issue with the height of the fence. Mr. Kunian did not find the fence height problematic. Ms. Li asked if the enclosure could be made smaller in area and lower in height so that it can serve its purpose without blocking views.

Mr. Kunian believes that this is an unfortunate situation in a very contentious area. He commended Mr. Lagasse for running a good establishment. Mr. Kunian understands that Mr. Legasse objects to the Harborwalk, and after a site visit he is not clear as to why this should be the case. He understands the proponent's concerns regarding trash, safety and access to the water, but he wishes that the proponent could find some way to make the Harborwalk work.

Mr. Lagasse declared that he supports the Harborwalk, but does not understand why it should be on his land when his land is water.

Mr. Kunian brought up the Board of Appeals decision, and would like Conservation Commission approval to be contingent upon a certification from the proponent the he will comply with the BOA decision. Mr. Lagasse agreed to provide such a certification.

Mr. Busch noted that there has not been discussion of any action by DEP. Mr. Fay confirmed Mr. Busch's report regarding DEP activities.

Ms. Li is not comfortable moving forward with this application. She recounted the recent history of activity at Commercial Wharf. Mr. Fay confirmed that the Harborwalk that the Commercial Wharf Condominium Association agreed to provide was on the proponent's land. Ms. Li noted the long and complicated history of legal issues at Commercial Wharf related to the Harborwalk.

Mr. Button asked for clarification regarding the proposed location of the Harborwalk. Ms. Li reiterated the complicated situation resulting from frequent change of ownership of the project property.

Mr. Fay noted that whatever concessions other applicants may have made regarding the Harborwalk on their properties, they did so without giving anything up. He speculated that if the Condo Association had been asked to move their parking lot back to accommodate the Harborwalk they would not have agreed to that condition. He noted that in Mr. Lagasse's case accommodating the Harborwalk has very real impacts on his business.

Mr. Kunian did not agree that there would be impacts to the proponent's business. He thinks that Commercial Wharf (Condo Association) could benefit by working with Mr. Lagasse to create the Harborwalk.

Mr. Lagasse noted that he had reached out to Commercial Wharf and received no response.

Mr. Kunian noted that everyone needs to get over their animosity toward each other; otherwise the issue will never be resolved.

Dick Mulligan is bewildered as to why a decent marina owner who wants to make improvements is being held up on this issue. He believes that removal of a few parking spaces at the Commercial Wharf condominium could allow for installation of the Harborwalk. He noted the public safety issue at Shipyard Quarters Marina in Charlestown to juxtapose the two situations, noting the enforcement constraints in that situation. He noted that it's best to have the Harborwalk on terra firma whenever possible. Cantilevered structures make it difficult and expensive to make repairs to underlying seawalls.

C. Button described two simple configurations for the Harborwalk: Plan "A" would consist of an 8 foot-wide cantilevered walkway, and plan "B" would consist of an 8 foot-wide Harborwalk located within the existing parking area. He suggested the proponent consider a plan "C" with 4 feet of cantilevered walkway and 4 feet of walkway within the parking area. Such a plan could alleviate a number of problems.

Ms. Li requested a continuance of the hearing of one month to allow time for the proponent to consider all of the possibilities that were presented this evening.

- **Motion made by S. Kunian and seconded by V. Li to continue the request to the June 6, 2012 hearing (5/0/0 6:25PM)**

6:25 PM

Notice of Intent from the Massachusetts Department of Conservation and Recreation for the removal of existing piers and docks and installation of new fixed piers, floating docks and wave screens at Georges Island, Boston Harbor (Land Under Ocean, Coastal Beach, Coastal Bank, Land Containing Shellfish, Land Subject to Coastal Storm Flowage).

Representatives: Jack Murray, Deputy Commissioner DCR; Daniel Padien, VHB, Mike Driscoll, DCR

V. Li stated that DCR and VHB are dues paying members of her employer, The Boston Harbor Association.

C. Busch noted that this is the 3rd filing the Commission has reviewed in the past year for this location. He requested a review of previous filings.

Mr. Murray explained how a marine survey identified the need for rehabilitation to the area. The proponent has been working with the Boston Harbor Island Alliance on their \$1.5 M plan. The project being presented today is a joint effort between the National Parks Service (which is providing design funds) and the City of Boston Department of Parks and Recreation. The repair project is scheduled to be completed by May 31, 2012. Georges Island will open May 5, 2012. There were 80,000 visitors last year. This proposal addresses long term needs, providing an additional life cycle of 10 years. Funding has not yet been identified for the permanent plan. Getting the plans and permits in place will make the project shovel-ready, thereby making it more attractive to funders.

D. Padien provided a brief overview of the project, including a description of existing facilities and resource areas. The project is designed to be removed and constructed in up to three phases to accommodate potential funding allocations. As compared to existing conditions, the proposed design is smaller, has fewer piles supporting the structure, and has two pile supported wave screens. The dock will be functional throughout the project. There will be an additional 216 feet of docking area. All existing piles will be pulled with the exception of those that must remain present to protect the historic seawall (as determined in the field). The proponent has been consulting with virtually every agency to develop this environmentally-sensitive design, which does not impede the natural movement of sand and water along the shoreline.

A. Pollak asked if there has been a recent history of dredging in this area. Mr. Murray replied that there had not been dredging in this location in a while due to the unknowns related to the historic sea wall and the lack of need for deeper waters. No dredging would be required to accommodate the proposed design. The Division of Marine Fisheries and the Natural Heritage Program have been notified of the project.

Ms. Li asked if a marina had been considered for the area. Mr. Murray has received comments regarding the need for access for recreational vessels. He believes that the additional 216 feet of dock space, the 25 additional moorings to which they've committed creating, and the existing public moorings and dinghies on each of the islands adequately meets this need. DCR does not have a lot of experience running commercial marinas, and such facilities have not been envisioned in the long range plan. There is not likely space to accommodate a marina.

Ms. Li also inquired about DCR's commitment to identify a new dock, or a way to return the existing dock, to Lovejoy Wharf. Mr. Murray reiterated the State DCR's commitment to provide a floating dock at Lovejoy Wharf as part of the Chapter 91 license. They plan to meet with Lovejoy Wharf developers within six months to finalize such plans.

Mr. Button noted a typo on page A7. Mr. Padien clarified that the sentence referred to minor pavement excavation work in the buffer zone.

Ms. Li referred to TBHA's comment letter regarding alternatives to the wave screen. Mr. Padien noted that several wave screens were considered as part of the design process. The proposed design was chosen to protect the inner basin from wind as well as waves.

Mr. Murray noted that part of the funding for the design is meant to go to obtaining permits through the environmental review process. It will go through ConCom, Chapter 91, Army Corp of Engineers, and CZM review, which will make the project eligible for federal funds.

A recreational boater [name unintelligible] asked for clarification regarding facilities for recreational vessels, particularly designated dinghy areas.

Ms. Li moved to issue the Order with the additional condition that DCR will report before the end of the year on its progress for satisfying Chapter 91 license requirements at Lovejoy Wharf.

- **Motion made by V. Li and seconded by S. Kunian to issue the Order of Conditions as amended (4/0/0 6:50 PM)**
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6:50 PM

Notice of Intent for **DEP File No. 006-1302** from the Massachusetts Port Authority for the installation of an electrical duct bank at Logan International Airport, East Boston, Boston Harbor (100-foot Buffer Zone to Coastal Bank).

Representatives: Jim Stolecki, MassPort

V. Li stated that MassPort is a dues paying member of her employer, The Boston Harbor Association.

Mr. Stolecki described a straight-forward project affecting 3,600 linear feet within a buffer zone to coastal bank. A 3.5' X 4.5' trench will be dug to accommodate a PVC conduit. It will then be surrounded by poured concrete, backfilled, and loamed and seeded to restore it to its original grassy condition. Erosion and sedimentation control measures will be utilized during the work. The total cost of the project is \$2.5M and it will take a couple of months over the summer to complete.

Ms. Li asked Mr. Stolecki about an unrelated project involving a presentation by MassPort of the East Boston Greenway extension. Mr. Stolecki confirmed that an update would be provided in June.

A. Pollak confirmed that the replacement vegetation would consist of turf.

C. Button confirmed that the proponent has read the proposed conditions and has no questions.

- **Motion made by S. Kunian and seconded by A. Pollak to issue the Order of Conditions as written (4/0/0 7:00 PM)**
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7:00 PM

Enforcement Order issued to Leo Buk Lhu, Barnacle Marina, for the alteration of wetland resource areas without a valid Order of Conditions, Atlantic Avenue, North End, Boston Inner Harbor.

Representatives: George Hailer, Lawson & Weitzen, LLP

V. Li stated that Lawson & Weitzen is a dues paying member of her employer, The Boston Harbor Association.

Mr. Lhu's attorney relayed that he intends to remove the submerged and sunken sections of the floating dock and timbers. Boston Boat Basin, LLC, the new owner of the abutting property, has offered to take care of the removal within the next 7 to 14 days, weather permitting.

Ms. Li brought up the previous violation issued by ISD regarding an access gate in 2005/2006. C. Busch believes that ISD has not taken an action at this location since that time.

Ms. Li confirmed that Mr. Legasse agrees to dispose of all collected materials in a safe, certified manner. Mr. Hailer noted that he had a past experience with Mr. Lagasse in which Mr. Lagasse did a phenomenal job cleaning up a wharf in another city. Mr. Hailer's past dealings with Mr. Lagasse have always met a high standard.

A. Pollak asked for clarification regarding a remark by Mr. Hailer referring to the claim that Mr. Lhu has no assets. Although he owns the property, it is not currently operating or income-producing.

S. Kunian asked Mr. Hailer to inform his client of his regulatory obligations.

Mr. Busch reported that during his site visit he witnessed the submerged dock sections and listing piles. The Coast Guard issued a warning to the property owner and notified him that there would be fines if the structures were to migrate off the site into navigable waters.

Ms. Li asked if the existing gate would remain. Mr. Hailer reiterated that he was only able to comment on the Enforcement Order and not other aspects of the marina.

Mr. Kunian moved that the issue be continued for one month until the situation is remedied. Ms. Li added that the property owner also provide certification of proper disposal of collected materials.

Mr. Lagasse confirmed that he intends to perform the required actions.

Ms. Li wondered if issuance of fines was necessary at this point. Mr. Button stated that fines would only be issued if the situation were not remedied.

Ms. Li reminded the proponent that any work at this site in the future would need to get the required local and state permits.

- **Motion made by S. Kunian and seconded by V. Li to ratify the Enforcement Order as amended (4/0/0 7:10 PM)**

7:30 PM Updates and General Business

Meeting minutes from November 2, 2011 and November 16, 2011 were reviewed and amended as needed.

- **Motion made by V. Li and seconded by A. Pollak to approve the minutes of the November 2, 2011 meeting as amended (4/0/0 7:10PM)**
- **Motion made by V. Li and seconded S. Kunian by to approve the minutes of the November 16, 2011 meeting as written (4/0/0 7:10PM)**

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- **Motion made V. Li and seconded by A. Pollak to adjourn the meeting (4/0/0 7:10pm)**

Respectfully submitted,

Stephanie Krueel

Executive Secretary