

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

June 6, 2012

Commissioners Present: Charles Button- Chairman, John Lewis, Vivien Li, John Sullivan

Commissioners Not Present: Stephen Kunian, Jeanne McHallam, Antonia Pollak,

Staff Present: Chris Busch, Executive Director

6:00 PM

Request to Amend Order of Conditions 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 May 2, 2012 Public Hearing*

Representatives: Jamie Fay, Fort Point Associates; Chuck Lagasse, Boston Boat Basin, LLC

C. Busch spoke to Ben Lynch, DEP Waterways Program Chief, who sent a written request to Alicia McDevitt, Deputy Commissioner for Policy at DEP, requesting a meeting with the property owners at Commercial Wharf, which has not yet been scheduled.

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

Mr. Fay provided an update: The principal property owners met with Ben Lynch and others at DEP met for an adjudicatory hearing relating to an unrelated matter.

A discussion commenced regarding the timeframe for dealing with the issue. The applicant asserted that the project only involved relocating piles, and that the issue of public access and the Harborwalk falls under the jurisdiction of the Chapter 91 license and it would be addressed during that process.

Ms. Li is actually encouraged by the process as it has come to the attention of Ms. McDevitt, whom she believes is interested from an attorney's perspective in resolving the issue quickly.

Richard Mulligan discussed the occurrence of astronomical high tides and is concerned about the runoff at Commercial Wharf. He is concerned about placing the Harborwalk cantilevered over the edge of the wharf as it relates to stormwater runoff. He is upset that the condo association is able to block public access to the waterfront with the result that the applicant is being held-up from making needed improvements to his marina. He does not believe the issue will be resolved any time soon unless the Commission steps in. The applicant is amenable to continuing the hearing for one additional month.

- **Motion made by V. Li and seconded by J. Lewis to continue to the July 11, 2012 public hearing and to instruct staff to send a formal letter to the DEP Commissioner urging them to move forward on this matter (4/0/0 6:10pm).**
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6:15 PM

Notice of Intent for DEP File No. 006-1304 from Boston National Historic Park for the stabilization of Pier 2, including repairs to steel sheet pile and timber bulkheads, installation of stone riprap, timber pile repair, repaving of areas adjacent to Pier 2, and repairs to concrete along the adjacent Dry Dock 1 abutment, 65 Chelsea Street, Charlestown Navy Yard, Boston Inner Harbor (Land Under Ocean, Coastal Bank, Land Subject to Coastal Storm Flowage).

Representative: Rebecca Skalaski, Childs Engineering

V. Li stated that the Boston National Historic Park and Childs Engineering are dues-paying members of her employer, The Boston Harbor Association.

R. Skalaski described the project. The method of stabilization was successful with a nearly identical project. Stamped drawings will be provided.

Ms. Li confirmed with the representative that the floating debris will be cleaned up. This project includes cleanup of all debris. The funding for the project is not currently secured.

C. Busch read a letter from the Division of Marine Fisheries, which recommended that the project avoid seaward encroachment. Installation of riprap may require mitigation if it is found to cause a habitat conversion. Ms. Skalaski confirmed that the 600 square foot area intended for formed riprap is under the pier in a currently rocky area, mostly above the mean low water line. Mr. Busch believes this type of treatment is allowed for stabilization purposes. Ms. Skalaski will provide the Commission with detail beyond what is shown on sheets 4 and 5 of the submitted plans. The applicant has no questions regarding the Order of Conditions.

Ms. Li requested that under Special Condition #40 be changed to include both project-related and other debris.

- **Motion made by V. Li and seconded by J. Lewis to approve the Order of Conditions as amended (4/0/0 6:25pm).**

6:30 PM

Notice of Intent for **DEP File No. 006-1305** from Boston Towing and Transportation Company for the demolition of a warehouse building and accessory buildings, site paving and the installation of stormwater infrastructure, at 34-40 New Street, East Boston, Boston Inner Harbor (Designated Port Area, Land Under Ocean, Land Subject to Coastal Storm Flowage).

Representatives: Richard Jabba and Jamie Fay, Fort Point Associates; Bill Skinner, BTT

V. Li stated that BTT and Fort Point Associates are dues-paying members of her employer, The Boston Harbor Association.

C. Busch asked the proponent to outline what is needed in the process (Landmarks Commission hearing next week?).

R. Jabba described the site and the project. The Landmarks Commission approved the demolition of six of the seven buildings including the smaller sheds and the silo. The larger 3-story building is considered significant and the applicant must go through the Article 85 process.

Ms. Li asked why the buildings are being demolished. The applicant responded that the Fire Department is requiring their demolition because they are a risk to the neighborhood due to lack of adequate fire suppression systems. J. Lewis noted that during his site visit he didn't see anything flammable. The applicant noted that the roof is made of wood, and portions of the walls are wood.

C. Button asked the applicant whether he had reviewed the stormwater plans with BWSC and if there is a maintenance plan. The applicant explained that the catch basins will capture sheet flow from the surface and send it to a new outfall that will be above the mean high water line. J. Sullivan pointed out that the plans say the stormwater system will be designed by others. He confirmed with the applicant that the project would come back to the Commission when that occurs.

J. Fay clarified that the site currently has no stormwater management system- it is entirely sheet flow. The applicant wanted to provide some level of treatment, and included two catch basins to serve almost the entire site. Upcoming repairs to the adjacent bulkhead, as a separate project, will incorporate the outfall. Mr. Sullivan requested that the sediment and erosion control measures remain in place until a more formal stormwater system proposal is approved by the Commission.

Ms. Li asked for clarification about demolition. Mr. Button clarified that tonight's approval from the Commission would be subject to approval of demolition of the final building by the Landmarks Commission.

Mr. Lewis asked about site contamination. There is asbestos in the silo and the main building which will be handled by a licensed contractor. No lead abatement is required. The ground will not be disturbed, so no soil testing has been done.

Mr. Sullivan confirmed that none of the out buildings had water and sewer services.

This site is a DPA, and there are no current plans to construct anything at this point in time. Any future development would come before the Commission.

Ms. Li confirmed that this valuable waterfront property is anticipated to be utilized for maritime industrial purposes in the future. Boston Harbor Sailing Center is the anchor and only tenant currently on-site. The entire property is currently for sale. It could be used for laydown space until a new use is identified.

The applicant provided the letter from the fire department that requires demolition: this is the only reason the applicant has submitted an NOI.

Ms. Li discussed the Mayor's interest in climate action, sea level rise, tree planting. She asked if there was any opportunity to add vegetation to the site to address runoff, etc. The applicant cited issues with homelessness and trash and inferred that any property improvements would increase these problems, but he said he would consider adding vegetation. The applicant received the draft conditions, but had not yet reviewed them. Mr. Busch discussed proposed changes to the conditions. The applicant agreed to the conditions.

Ms. Li requested the addition of several conditions: A statement that the NOI was submitted in accordance with a request from the Boston Fire Department; The applicant is willing to consider adding vegetation to the site in the vicinity of the street; No demolition of the buildings that are under review by the Landmarks Commission may begin until approved by that agency.

Mr. Lewis asked about soil contamination. The applicant discussed a study that had been done previously. The report will be submitted with any future NOI.

- **Motion made by V. Li and seconded by J. Lewis to approve the Order of Conditions as amended (4/0/0 6:35pm).**

6:45 PM

Request for Determination of Applicability from the Massachusetts Department of Conservation and Recreation for the removal of existing culverts and installation of two temporary pedestrian bridges at the Brook Farm Historic Site, 300 Baker Street, West Roxbury.

Representative: Alexandra Echandi., DCR Field Staff

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

C. Busch surveyed the area with Ally & Kevin Hollenback, District supervisor. The two temporary pedestrian bridges are inundated and impassable during times of heavier water. The intent of this project is to provide temporary bridges in place until funding is in place for more formal box culverts. At that time an NOI will be filed.

Ms. Echandi described the Brook Farm as having National Landmark Registry status as well as a habitat management plan approved by National Heritage Endangered Species Program, which allows them to more easily engage in trail maintenance (including culvert replacement) activities. The two subject areas seem to be part of a BVW, Land Subject to Flooding, and a Riverfront Area for Sawmill Brook. Gravel roads had previously been constructed on the site. One of the culverts had washed out in 2009, and then someone built a pass over the culvert with granite blocks. The Student Conservation Association Group is available to do some work, including installation of two temporary pedestrian bridges to allow crossing. All materials are already available on site and no concrete footings will be used. The three culverts impeding water flow need to be removed. The applicant plans to apply to the recreational trails grant program for permanent work.

J. Sullivan confirmed that the applicant will be digging up the two existing plastic corrugated culverts by hand. No heavy equipment will be brought to the resource area; however a brick hoist will be utilized. The existing bank and granite pieces will be utilized as supports for the span, which will be embedded in the bank and anchored by granite. Each bridge will be 27 feet long. The steel beams will be hand carried from the Millennial Park side over the first bridge to the second bridge location. Photos were provided.

C. Button noted that the written calculations were submitted in lieu of plans. The full NOI must have all the details.

Mr. Busch indicated that the project was temporary in nature and low impact, and recommended that a Negative Determination of Applicability with conditions be made. The applicant has reviewed and approved of the conditions.

The Commission expressed some doubt that the work could be done by hand, and J. Lewis noted that just because work was being done by hand did not guarantee that it would be done properly. Ms. Echandi assured the Commission that the group had done similar work by hand in the past.

Mr. Sullivan asked Mr. Busch if he thought the work could be done as planned. He suggested that the excavation of the in-ground culverts should be done from the middle out to reduce turbidity. The work needs to be done to improve passibility and safety. He is confident that the work will be done competently.

Mr. Button asked if some sort of sediment control should be installed down-stream. Mr. Busch suggested stretching geo-tech filter fabric across the stream and/or utilizing hay bales to contain any turbidity.

Ms. Li asked the Commission if plan submission should be a condition of approval. The Commission agreed that it wasn't necessary at this point in time. The calculations provided are from a similar project that the applicant completed and are only an example of what will be done at the subject site.

- **Motion made by V. Li and seconded by J. Lewis to issue a Negative Determination of Applicability with Conditions (4/0/0 7:00PM).**

7:00 PM

Notice of Intent for **DEP File No. 006-1310** from the Massachusetts Department of Transportation for a Vegetation Management Plan for the cutting of vegetation at four locations along I-93, Southeast Expressway, from the Neponset River to Playstead Road, Dorchester (100-foot Buffer Zone). *The Notice of Intent has been submitted per the requirements of a prior Enforcement Order.*

Representatives: Ron Killian, MassDOT Highway Division District 6; Matthew Creighton, BSC Group
Documents: Vegetation Management Plan (VMP) with photos of existing conditions

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

C. Busch explained the reason for submission of the NOI and described the project location. He conducted a site visit after receiving complaints from neighbors in April and from Chief Jim Hunt and found that almost all of the trees had been cut down to grade elevation. The roots were not removed therefor the ground is in stable condition. Mr. Busch met with R. Killian and determined that a VMP was necessary. In 2011 MassDOT had submitted an RDA for spraying, which is covered under a VMP from the Department of Agricultural Resources; however, manual cutting and mowing was not part of the VMP and permission was never sought from the Commission.

Mr. Button noted an apparent communication gap between MassDOT management and field staff.

Mr. Killian complimented the Commission on the way they have dealt with MassDOT. He described the current situation wherein District 6 has been playing catch-up regarding deferred maintenance over the past three years, especially along I-93. In March and April 2012 a maintenance crew had cleared away ailanthus ("Tree of Heaven") that had been growing on the steep embankment near Morrissey Blvd, unbeknownst to MassDOT management. The first they had heard about it was from Mr. Busch. Mr. Killian then directed the crew to cease all further vegetation management activities until a plan could be created. Future cuttings along medians, shoulders

and embankments will be necessary to ensure vehicular and pedestrian safety. These areas used to be maintained by regular annual cutting, but in the absence of that, weeds and invasives have established themselves and need to be removed. The operations and maintenance crews are much more aware of the situation now. No cutting will commence until next year, giving MassDOT enough time to develop a VMP.

Ms. Li inquired as to why Mr. Killian had not brought the individual responsible for maintenance to this Commission hearing, and was displeased that the Commission had not received submitted materials in advance so as to have time to thoroughly review it. She noted that Mr. Creighton's presence was not necessary. Mr. Killian replied that that individual was not able to attend. Ms. Li expressed interest in engaging in a discussion regarding mitigation. Mr. Killian maintained that the ailanthus that had been removed would have had to come down anyway since they were not supposed to be there in the first place, so no mitigation is necessary. Ms. Li insisted on off-site mitigation and cited the Mayor's interest in planting more trees city-wide. Mr. Killian agreed that such plantings could be [and are?] part of the VMP.

Ms. Li questioned the purpose of the Enforcement Order. Mr. Busch explained that the purpose is to examine the impacts of the non-permitted activity and determine if any containment or mitigation needs to occur. In this case, with an ongoing activity that needs to occur, a VMP would accomplish the goal of protecting the resources. Ms. Li asked if the tree removal was done in a manner consistent with the way the Commission has permitted other tree removal activities in the past. Mr. Busch responded that it had been done properly, it just hadn't been permitted.

Mr. Killian drew the Commission's attention to the photos included with the submitted materials. He noted that there was no erosion or scarification, and that all debris had been removed at the time of the cutting.

Mr. Sullivan had visited the site and expressed his amazement at the clean job that the MassDOT crew had done and noted that there was in fact no damage to the embankment. Mr. Busch confirmed this. He explained that the applicant needs to come back to the Commission to request approval of the NOI and the VMP, and to determine how updates and extensions would be handled. The Commission has handled the Charles River VMP in a similar manner.

Ms. Li wants to understand how projects like these relate to Mayor Menino's goal of planting 100,000 trees. She wants to figure out how off-site tree replacement can prevent a net-loss of trees.

- **Motion made by V. Li and seconded by J. Lewis to continue the meeting to June 20, 2012 (4/4/0 7:15PM)**

7:15 PM

Enforcement Order issued to 479 Meridian Street LLC, for the alteration of wetland resource areas and 100-foot Buffer Zone without a valid Order of Conditions, 479 Meridian Street, East Boston, Chelsea Creek.

Representative: Chip Nysten, Lynch, DeSimone & Nysten, LLP; Kevin Burns, facility operator

C. Busch described the property and prior issues that came to the Commission. The property is under new ownership since 2011. Mr. Busch met with the new owners in early March when he became aware of potentially problematic operations on the site. Current operations involve dismantling steel barges both water side and land side. These activities are impacting resource areas subject to the Commission's jurisdiction including tidal flats, coastal banks, and coastal flood zones. Newer grading prevents, for the most part, direct discharges of stormwater into the waterway. Mr. Busch asked the owners to submit an NOI outlining the scope of operations and obtain a permit governing the work to place environmental controls on the site. In May 2012 the City's Inspectional Services and the Public Health Departments initiated Environmental Strike Force activity on the property, which raised issues regarding the consistency of current activities with the zoning code. Mr. Busch participated in these activities, and since he had not been in communication with the property owner since his site visit, he decided to issue an Enforcement Order.

C. Nysten became involved when the Strike Force got involved in late May 2012. Mr. Nysten then sent a letter to the Commission reporting that an Engineer had been retained to draft an NOI, which will be submitted within the next thirty days. He described the property as a working waterfront area. It has been utilized for marine salvage work for one hundred years. Current operations include a marine chemist boarding and testing vessels

to ensure that no gasoline, fuels or hazardous waste is present (which would be dangerous for the workers using flames). If they are found they are removed prior to dismantling work taking place. In response to the meeting with the Strike Force, a containment boom was placed around the barge being dismantled, and hay bales are situated on the seawall. There is no stormwater management system on Nay Street, which is a private street, so the subject property receives the stormwater from that street. As part of the NOI filing the property owner would like to address stormwater on both his property and the adjacent street via an extension of the infrastructure from Meridian Street. The property owner is interested in covering existing dirt with stone to prevent sediment from entering Chelsea Creek. This is also a degraded Riverfront Resource Area, so conditions need to be improved.

Mr. Busch noted that the Coast Guard periodically inspects the site.

Ms. Li asked Mr. Busch why the Environmental Strike Force was involved. He noted that there were concerns about the zoning compliance of the marine operations, as well as the potential presence of hazardous materials. This is a Designated Port Area, and as such the operations provided needed jobs. He wants to ensure that the operations are done in a way that protects the resources.

Mr. Nysten noted that the ZBA issued a decision in 2003 that this was a pre-existing non-conforming use.

Ms. Li clarified that Nay Street is private and that residents had lodged the complaint that resulted in the departmental actions. Mr. Nysten agreed and indicated that there had been previous issues in the area. The neighboring business, which is also a marine use, begins work earlier in the morning, eliciting complaints from neighbors. When the City responded to those complaints, it also inspected the subject property.

Mr. Button inquired as to next steps. Mr. Busch noted the current control measures, and believes that this is adequate for the present time, although future work needs to be done to improve the property.

According to Mr. Nysten, considerable cleanup efforts have taken place over the past month. He does not believe there is currently a threat to the environmental resources. Mr. Busch noted that the property was not currently in the dilapidated state it was twelve years ago. It is a fairly efficient operation, but wet muddy conditions exist. Mr. Lewis asked the proponent to clarify the steps involved in the dismantling operations.

Ms. Li described her organizations activity of regularly going out on the Chelsea Creek water sheet. In the past she has observed an oil sheen on the waterway, however she has not been out recently and will not go out again until June 28, 2012. She noted that she has never observed oil originating from the subject property. Mr. Busch concurred.

- **Motion made by V. Li and seconded by J. Lewis to continue the hearing to July 11, 2012 (4/0/0 7:40PM)**

7:30 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. *Continued from the May 2, 2012 Public Hearing.*

Representative: Chuck Lagasse, Boston Boat Basin, LLC; Jamie Fay, Fort Point Associates

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

Mr. Legasse reported that the docks have been cleaned out and scrapped properly as of June 1, 2012. All floating floats have been removed, and a dive team has removed all sunken floats. The project is now complete.

Mr. Busch noticed new dock sections that have replaced the old ones attached to existing piles and moorings. No new piles have been or will be driven. The water sheet is not a resource area, so this activity is not under the Commission's jurisdiction. The floats are licensed under Chapter 91.

Boston Boat Basin manages and controls the marina, but does not own it.

Mr. Busch noted that the situation has been adequately resolved.

- **Motion made by V. Li and seconded by J. Lewis to close the Enforcement action (4/0/0 7:55PM)**

7:45 PM *Updates and General Business*

- **Motion made by V. Li and seconded by J. Lewis to approve the January 4, 2012 minutes (3/0/1, C. Button abstained)**
- **Motion made by V. Li and seconded by J. Lewis to approve the January 18, 2012 minutes (4/0/0)**
- **Motion made by V. Li and seconded by everyone to adjourn the meeting.**

Respectfully submitted,

Stephanie Kruel
Executive Secretary