

APPROVED 2/5/14

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

January 8, 2014

Commissioners Present: Jacob Kritzer, Stephen Kunian, Vivien Li, Antonia Pollak, Michael Wilson

Commissioners Not Present: Charles Button, John Sullivan

Staff Present: Stephanie Krueel, Executive Secretary

6:05 PM Notice of Intent from Boston Autoport for Seawall Repair, 100 Terminal Street, Charlestown, Boston Harbor/Mouth of Mystic River (Coastal Bank, Designated Port Area, Land Under Ocean)

Representatives: Tim Carpenter, GHD; John O'Donnell, Boston Autoport

V. Li stated that GHD and Boston Autoport are dues-paying members of her employer, The Boston Harbor Association.

T. Carpenter described the project, which entails the re-installation of harvested stones.

Ms. Li asked how the repair takes sea level rise into account. Mr. Carpenter responded that there is 3-4 feet of seawall above the current high tide line. If water should overtop the seawall during a storm event, it would encounter asphalt pavement.

Ms. Li asked the proponent when repairs to the seawall last occurred, and wondered how long the current repair was expected to last. Mr. Carpenter replied that the seawalls in this area are over 100 years old, and most are in fantastic shape. J. O'Donnell added that in his 15 years of managing of Autoport at this location, this stretch of seawall is the only one needing any repairs.

Ms. Pollak inquired about the material behind the wall. Mr. Carpenter replied that it has been completely washed out, and the project proposes to add fill with drainage to prevent future erosion. Ms. Pollak asked if the breach had created any sinkholes. Mr. Carpenter characterized the wash-out as a large sink hole.

M. Wilson requested more information on the cause of the seawall failure. Mr. O'Donnell ventured that 15 years ago there was a small eroded area for which he does not know the cause. Since that time Boston Harbor Cruise boats have been jetting water from their engines in the direction of the seawall, which he believes has contributed to the failure. Now the boats are required to enter bow first and leave stern first.

Mr. Wilson asked what activities would be occurring landside. Mr. Carpenter replied that it is used for auto and marine storage.

S. Kunian asked if there is a lot of boat activity at this location. Mr. O'Donnell replied that six or seven vessels may be docked for maintenance at any one time during the off season. It is not generally utilized in the summer months. There is no daily traffic. Mr. Kunian requested that the proponent erect signage instructing boars how to enter and exit. Mr. O'Donnell agreed to do so.

Mr. Kunian asked if the stones located below mean low water indicated on the plans are a navigational hazard. Mr. Carpenter replied that the 100-year old stone pier bases that were identified by divers are not in a navigation lane.

J. Kritzer wondered if the construction work itself would release any sediment into the river. Mr. Carpenter replied that potential sediment release was considered during the design process, resulting in a strategy that includes erecting a platform for the excavator to prevent any erosion during construction.

Mr. Wilson asked if the seawall could be made higher in the future if necessary. Mr. Carpenter replied that it could: however, all the other adjacent seawalls would also have to increase in height for it to be effective.

Mr. Wilson asked how the existing storm sewer outfall would be addressed. Mr. Carpenter noted that it is outside the project area and would not be touched.

Jim Stolecki of Massport stated that Massport, which is the property owner, did not sign the NOI. However, it is currently being reviewed. When the tenant permit is issued, he suggested that it be submitted to the Commission. Mr. Kunian suggested that the work be made subject to the permit. Ms. Li suggested that Massport's tenants should be getting Massport's sign-off prior to coming before the Commission. Mr. Stolecki replied that the reviews often take place concurrently. In this case, he does not expect Massport's review to result in any substantial changes to the plans. However, if it does, the applicant would of course return to the Commission. Ms. Li asked if Massport's review could be completed within the 21 *[sic]* day appeal period. Mr. Stolecki replied that it should be enough time.

Ms. Pollak asked if Massport wants to the Commission to approve the application. Mr. Stolecki replied that yes, Massport supports approval with the condition that the tenant permit be submitted to the Commission when executed. He stated that in the future Massport plans to advance review of projects so that the NOIs can be signed prior to submission to the Commission.

Ms. Li acknowledged that this is the second time recently that an application has come before the Commission prior to Massport's approval. She stated that it is better for the property owner to sign off on tenants' projects prior to Commission review in order to use the Commission's time efficiently. Mr. Kunian added that this applies to all property owners, not just Massport. He suggested that no application should be accepted without the property owner's signature. Ms. Pollak concurred and proposed that a continuance be issued to give Massport time to review the proposal.

Mr. Stolecki agreed, noting that the delay would not change the proponent's schedule.

Ms. Li noted that the Commission would be taking action later this evening on the minutes of the November 6, 2013 meeting, which details the last occurrence of this same problem. She reiterated that it is not a good use of the Commission's time.

Ms. Pollak suggested a 30 day continuance, and that Massport send a letter stating its support of the project as submitted.

Mr. Kritzer wondered if in the end Massport approves this project as-is, would the issuance of a continuation end up wasting the Commission's time? Ms. Pollak assured him that at the next hearing, this item would only take a few minutes to consider, since it has been thoroughly discussed already.

Mr. O'Donnell requested that the next agenda item also be continued, as it presents the same situation.

- **Motion made by A. Pollak and seconded by V. Li to continue the hearing to February 19, 2014 (5/0/0 6:28 PM)**

6:15 PM Notice of Intent from Boston Autoport for Paving at Medford Street Terminal, Charlestown, Mystic River (Buffer to River Bank, Designated Port Area)

Representatives: Tim Carpenter, GHD; John O'Donnell, Boston Autoport

V. Li stated that GHD and Boston Autoport are dues-paying members of her employer, The Boston Harbor Association.

- **Motion made by A. Pollak and seconded by V. Li to continue the hearing to February 19, 2014 (5/0/0 6:32 PM)**

6:30 PM Notice of Intent for **DEP File No. 006-1370** from Sterling Suffolk Racecourse, LLC for Boardwalk Construction at Belle Isle Marsh Reservation, East Boston, Boston Harbor (LSCSF, BVW)

Representative: Sean Reardon, Tetra Tech

V. Li stated that Tetra Tech and Sterling Suffolk Racecourse, LLC are dues-paying members of her employer, The Boston Harbor Association.

S. Kunian asked if this application is at all related to the casino.

Mr. Reardon affirmed that it is completely unrelated. It is mitigation for a stormwater issue, and is the outcome of a consent decree with the EPA. Ms. Krueel added that the NOI was signed by the land owner, DCR. Mr. Reardon added that the project has already been through the public hearing process with DCR. The violation

of the Clean Water Act resulted in monetary fines, remediation, and mitigation in the form of community projects, including this boardwalk. Ms. Li added that consent decree is very detailed.

Mr. Reardon described the violation in more detail.

Mr. Kunian asked if the Belle Isle Marsh interest groups support this project and requested a letter to that effect.

S. Reardon described the location and the proposed project. Highlights include no light impact to the marsh below the boardwalk and the use of helical piles, which reduce impacts. The 90 foot boardwalk will end in a viewing platform, and no trees will be disturbed to construct it.

Ms. Li asked if DCR would maintain the boardwalk. Mr. Reardon replied that DCR would maintain the boardwalk using funds furnished by Sterling Suffolk Racecourse, which is outlined in an agreement between the two entities.

Mr. Kritzer asked if there is currently access into the marsh. Mr. Reardon replied that there is currently no other access into the marsh, which is huge and extends to the ocean.

Ms. Li added that the Belle Isle Marsh is accessible from the MBTA Blue Line, and it is the only salt marsh available to Boston residents. Mr. Reardon noted that this portion is in fact fresh water marsh that leads into the salt marsh.

Ms. Li asked about construction timing. Mr. Reardon replied that construction should take two months. The boardwalk should be open for the 2014 season.

Ms. Li asked if a contractor has been selected. Mr. Reardon replied that a contractor has not yet been selected, but will be by Sterling Suffolk Racecourse.

Ms. Pollak asked if a laydown area has been identified. Mr. Reardon drew the Commission's attention to figure 2, which indicated a fenced in area adjacent to the project site that will be repaired at construction completion. The existing paths and parking lot will be maintained during construction.

Mr. Wilson asked how the piles will be driven. Mr. Reardon replied that no heavy equipment would be needed, and the auger piles would likely be installed with use of a bob cat. Mr. Wilson asked if there is any danger of debris entrapment. Mr. Reardon replied that due to their small 2-inch diameter and spacing over 15-feet, there is very little impact.

Mr. Kritzer asked if trees would be protected. Mr. Reardon reiterated that no trees would be displaced, and all trees within the project and laydown areas will be protected.

Mr. Kunian requested that condition #46 be changed to require injury to any wildlife, not just fish, be reported.

Ms. Li asked what the budget for this project is. Mr. Reardon replied uncertainly that it was about \$100,000, plus the money deposited into the maintenance fund. Mr. Kunian requested evidence that the maintenance fund would be funded. Ms. Li suggested that this would be managed in the consent decree.

Mr. Kunian suggested requiring a maintenance plan. Ms. Pollak stated that the Commission could rely on DCR's maintenance plan for Belle Isle Marsh.

Mr. Kunian asked what type of signage would be installed. Mr. Reardon replied that interpretive signage is included, but viewing devices are not. Ms. Li noted that there is already a tower at the marsh that supplies raised viewing opportunities, so devices are not necessary.

Mr. Kritzer asked if there is a phragmites eradication plan for this location. Mr. Reardon replied that there is not. Mr. Kunian suggested we have already been defeated by phragmites. Mr. Reardon offered that perhaps "phragmites" is Latin for "uneradicatable!"

Ms. Li noted that Ethan Hoag, who recently passed away, had been a significant open space advocate for East Boston and the Belle Isle Marsh.

Barbara Bishop, the Vice President of the Friends of Belle Isle Marsh, stated that the group is very happy with the project. This is the backyard for East Boston residents, and presents a fantastic educational opportunity.

Mr. Kunian asked if there are any other unfinished mitigation projects related to this decree. Mr. Reardon replied that this is the last one.

- **Motion made by A. Pollak and seconded by M. Wilson to issue the Order of Conditions with the following amendment: (5/0/0 6:55 PM)**
 - **Insert “wildlife” into condition #46**

6:45 PM Updates and General Business

- Request for Certificate of Compliance for DEP File No. 006-1279 from Boston Trailer Park Tenants Association, Inc. for Water, Sewer Drainage & Roadway Improvements at 1515 VFW Parkway, West Roxbury, Charles River:

S. Krueel explained that all conditions had been met. She was unable to conduct a final site visit to verify the complete removal of all erosion and sediment control devices due to two snow storms. However, the project engineer submitted a statement certifying as much. Ms. Krueel recommended approval.

- **Motion made by A. Pollak and seconded by M. Wilson to issue the Certificate of Compliance (5/0/0 6:55 PM)**
- Update: MBCR VMP Right Of Way Appeal:
Ms. Krueel brought the Commission up to date on the issue and noted that a Superseding Determination of Applicability had been issued by MassDEP on January 6, 2014.
- Policy Discussion: Use of preliminary, final, and effective FIRMs:

Ms. Krueel explained that since the release in November of the Preliminary Maps, the City has hired a third-party consultant to review FEMA's work, with the potential to revise the maps. DEP's current policy is to utilize the preliminary maps as the best available knowledge for application of the Wetlands Protection Act. In Boston, we don't feel we can claim that these maps represent the best available knowledge until our review is complete. We believe that due to application of outdated methodology, they may not be accurate. Other affected communities in Massachusetts are in fact appealing FEMA's maps.

Mr. Kritzer asked if Boston is concerned that the floodplain is too big or too small. Ms. Krueel responded that Boston is concerned that they are inaccurate, which may be too big in some places and too small in others. On the state level there is concern that the incorrect model of wave set up was used (west coast instead of east coast), resulting in incorrect 100-year floodplain delineation. It is likely that 2-dimensional modeling will result in a smaller floodplain, but this is not a guaranteed outcome. The goal is to map the true risk of flooding without overstating that risk, because to do so would have negative implications regarding insurance premiums for many property owners.

Mr. Kunian wondered whether FEMA is more interested in expanding their pool of insurance policy holders.

Ms. Krueel noted that the remapping project began before the more recent major hurricanes.

Mr. Wilson asked if the maps created for New Jersey and New York in Region 2 were done using 1-dimensional or 2-dimensional modeling. Ms. Krueel was not certain.

Ms. Krueel is also hesitant to begin using the preliminary maps as the delineation for LSCSF because the area quite large, and the Commission and staff need to determine how the potential increase in filings will be handled. There are approximately 8,000 residential units in the current floodplain: the preliminary map adds 17,000 more units. Thus far, Ms. Krueel has not considered projects outside of the current floodplain as within the Commission's jurisdiction. For those in the current floodplain, she provides the new base flood elevation information to proponents and suggests that their projects be designed based on the BFEs even though they are not yet required by law to do so. Ms. Krueel stated that the Commission needs to decide whether it will take DEP's advice and use the preliminary maps for jurisdictional purposes, or if it will continue to utilize the current FIRMs until the preliminary map is finalized, while providing the revised BFEs indicated on the preliminary maps to current applicants.

Ms. Pollak asked if there are regional or national organizations that are looking at the issue of challenging the FEMA maps. Ms. Krueel replied that Marshfield has begun the appeal project. On the federal level,

there is a bill in play to put the Biggert Waters Insurance Reform Act of 2012 on hold, and to require that FEMA certify that its maps are accurate. Ms. Pollak wondered how FEMA could certify accuracy of its maps. Ms. Krueel does not know: perhaps they will need to hire consultants to sample and analyze their maps. Boston's consultant, the Woods Hole Group, will be doing just that.

Ms. Li summarized the situation: The City of Boston has agreed to pay a consultant \$90,000 to review the maps and determine whether the maps are valid. There will then be a 90 day appeal period. It seems that, as part of the City, we should be using the maps that it deems accurate.

Mr. Kritzer stated that he's under the impression that the City is reviewing the map because it is sensitive to the insurance issue, which is the major implication. But for our purposes, we consider environmental risk. If we were to impose conditions based on the preliminary maps, what would that mean from a cost perspective for developers of new buildings? Ms. Krueel agreed that for new projects the cost would not be great: However, the projects that we are concerned about are alterations to existing buildings, especially residential buildings in areas that have not previously been within the floodplain. Hopefully flooding issues in the larger new construction projects will be addressed through BRA processes.

Mr. Kritzer stated that what the Commission has been doing recently, that is, considering projects within the existing floodplain to be within our jurisdiction, but asking those proponents to design their projects as if the preliminary maps had been adopted, is a reasonable interim solution.

Ms. Krueel clarified that the Environment department initially advocated for the review of FEMA's maps due to concerns about the accuracy of the map based on problems other municipalities have been experiencing as well as knowledge of FEMA's modeling techniques.

Mr. Kunian agreed that it would be improper to impose regulations that have not been thoroughly vetted by the City regarding jurisdiction, but that advising applicants of the changes to BFEs is prudent. Ms. Krueel noted that if a proponent were to not build according to the revised BFEs the impact would be reflected in their insurance premiums. Mr. Wilson added that they would also experience more damage if a storm surge were to reach the BFE, which is what we are trying to guard against.

Ms. Krueel explained that the Commission is not deciding where the floodplain is: Mother Nature determines that. We are just trying to recognize the location.

Ms. Pollak asked how long it will take to review & revise the maps. Ms. Krueel replied that she will be working with the consultant to determine whether a technical or scientific appeal of the maps would be warranted. The work plan extends over a three- to four-month period, during which a new model may be applied. The appeal period may begin during this review process or after it.

With agreement from the Commission, Ms. Krueel stated that the policy going forward is to use the current FIRMS for delineation of LSCSF, and thus, jurisdiction, and to use the base flood elevation information on the preliminary maps in their review of project submissions to evaluate risks until such time as a preliminary map is finalized.

- DEP File No. 006-1360 Notice of Intent for work at Spring Pond, Jamaica Plain: Discussion regarding implications of historic information related to stones at the neck of the pond.

Ms. Krueel reminded the Commission that an OOC had been issued in the fall for DCR to remediate a stormwater infrastructure failure by removing eroded material from the pond and repairing the channel. During project review, a question was raised about some stones at the neck of the pond, to which DCR replied that the stones did not seem to be part of Olmstead's original design. Since that time, it has been brought to our attention that the stones were part of the original design, and the pond was actually 8 feet deep at one point in time. The discussion today is about two issues: 1) should this project be redesigned? And 2) how does the Commission handle new information revealed after permit issuance?

Ms. Pollak asked what the Landmarks Commission had to say since this is a designated landmark. Ms. Krueel had not conferred with the Landmarks Commission. Ms. Pollak suggested contacting DCR to determine next steps. She then asked what the function of the stones had been. Ms. Krueel replied that they were part of a dam. Mr. Kritzer expanded on the issue, as he had spoken directly with Mr. Rudyakov, who had brought this issue to the Commission's attention. Spring Pond exists because of the dam. It was the only water body actually constructed from the original plans for a series of ponds adjacent to a natural

history museum. Over time the three spine sticklebacks took up residence in the pond, became isolated, and lost their armor. Combined with a drainage issue resulting in additional sediment, the breach of the dam has resulted in less pond area for the fish.

Mr. Kunian stated that since the pond was created, is part of original Olmstead design, and as such should be restored. Mr. Kritzer wondered why DCR might object to rebuilding the dam. Ms. Kruel pointed out that they probably didn't know there was anything to be restored.

Ms. Pollak asked Ms. Kruel to contact Patrice Kish at DCR and Margaret Dyson at the Parks Department to determine next steps.

Mr. Kritzer asked how we will deal with late-breaking information in the future. Ms. Kruel said she will simply consult the applicant and determine appropriate actions on a case-by-case basis.

- Review of Minutes:
 - **Motion made by V. Li and seconded by S. Kunian to approve the minutes of the December 11, 2013 meeting as corrected (5/0/0 7:30 PM)**
 - **Motion made by V. Li and seconded by S. Kunian to approve the minutes of the November 6, 2013 meeting as corrected (5/0/0 7:30 PM)**
 - General Business: The Commission discussed hosting a party in honor of the service provided by former Commissioners John Lewis and Jeanne McHallum, and writing a letter to the Sierra Club in honor of Mr. Lewis' service.
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- **Motion made by J. Kritzer and seconded by M. Wilson to adjourn the meeting (5/0/0 7:40 PM).**

Respectfully submitted,

Stephanie Kruel

Stephanie Kruel
Executive Secretary