

APPROVED 10/2/13

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

September 18, 2013

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

Commissioners Not Present: Jeanne McHallam

Staff Present: Stephanie Krueel, Executive Secretary

6:00 PM Review of the Draft Boston Hazard Mitigation Plan

Representatives: Martin Pillsbury, MAPC; Elaine Sudanowicz, City of Boston Office of Emergency Management

M. Pillsbury led a PowerPoint presentation outlining the components of the Draft Boston Hazard Mitigation Plan.

C. Button noted that in the mid 1980's the building code changed to incorporate seismic loading standards. This is an example of taking unlikely events into account.

S. Kunian noted that generators in hospitals may be at risk. Is a vulnerability survey of emergency systems being conducted? Mr. Pillsbury replied that such a survey to be performed by the City is a recommendation within the plan.

V. Li asked under which administration the plan would be admitted to City Council. Mr. Pillsbury explained that public comments are due by October 31st. E. Sudanowicz explained that MEMA and REMA reviews would take the process into the next administration.

Ms. Li noted that portions of the plan seem outdated, because some of the recommendations were already completed or are underway. She suggested that the document be brought up to date as much as possible within the next 30 days, noting in particular which projects already have funding, so that the new administration would be aware. Ms. Li acknowledged the good work that OEM has done.

Judy Kolligan from the Boston Climate Action Network asked that the priority of recommendation #41 be raised from medium to high. She also requested that the city reach out to linguistic minority communities, and not just provide a translate button on the website.

7:00 PM Notice of Intent for **DEP File No. 006-1359** from Shipyard Quarters Marina, Rehabilitation and Reconfiguration of berth slips, access docks and wave attenuators, 1 13th St, Piers 6 & 8, Charlestown, Boston Harbor (Land Under Ocean)

Representatives: Ron Bourne & Seth Lattrell, Bourne Consulting Engineers

S. Krueel read a summary of eight letters from the public.

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

S. Kunian pointed out that the applicant, Martin Oliner, did not accept the Commission's offer to move the hearing to October 2nd in recognition of the Sukkot holiday to allow him to attend.

R. Bourne described the project as a plan to replace Piers 6 and 8 in their totality utilizing a phased approach. Changes to the project since submission of the NOI include that all work will be within the zone of reconfiguration consistent with the Chapter 91 licenses for both piers. The number of slips at Pier 8 will be increased from 172 to 215. He drew the Commission's attention to the chart included in the revised narrative that shows existing conditions (those present in the historic footprint of the marina) versus proposed conditions (referencing the plan submitted on September 17, 2013). At Pier 6 all the floats will be pile moored versus the existing chain mooring system. There are 126 slips currently at Pier 6 (a misprint on the narrative reads "216"). 121 slips are proposed for a reduction of 5 slips. The fairway on the west side of Pier 7 will be maintained. Floats will be constructed out of aluminum, but will have composite wood tops and rubber connectors between the floats to eliminate potential noise from

aluminum contact. Mooring piles will be fitted with high density polyethylene (HDPE) contact strips for noise reduction as well.

C. Button noted that the Commission only received the plans today: usually plans are received in advance and much more detail is provided. Mr. Bourne replied that the application was not as complete as they would have liked it to be. They know that they haven't submitted stamped drawings. He relayed that the owner had indicated his commitment and wherewithal to complete the \$3.4 to \$4.0 million project. They need additional regulatory approvals, namely a Chapter 91 license. Pier 8 could be fast-tracked, but full review for Pier 6 and other portions of the marina could take five to six months.

Mr. Button requested a schedule of phases. Mr. Bourne replied that there is a Time of Year restriction from February 15th through June 30th, and he will be seeking a waiver supported by the Division of Marine Fisheries. He expects that the project will utilize one contractor for continuous operation to be completed in five phases wherein the removal of a portion of the marina would be immediately followed by replacement.

J. Lewis asked how long the project would take. Mr. Bourne could not say for sure. The materials and labor contracts cannot be secured until all the approvals are in place.

A. Pollak asked if removal would take place by land or by sea. Mr. Bourne responded that 99% of removal and replacement activities would occur by sea given the lack of land side staging area.

Ms. Pollak also noted that the Harborwalk is in poor condition, and asked about the restoration plan. Mr. Bourne indicated that he has not been directed by his client to create such a plan yet, but his firm has examined the Harborwalk and identified areas needing work. He anticipates creating such a plan for his client. The underside of the Harborwalk is in better shape than Mr. Bourne thought it might be because it was designed to carry greater loads than it currently carries.

Ms. Li noted that with regard to the demolition/installation phases, there seem to be safety issues, and asked Commissioners Button and Sullivan if they thought all the demolition could be completely prior to completing the regulatory process for the installation of the new marina, or if it would be too expensive. Mr. Button replied that it could be more expensive to do all the demolition first.

Mr. Kunian declared that the Commission would require that the Harborwalk be restored. He would like to require a report from Mr. Bourne on the interim rectification of safety issues by the October 2nd or 16th BCC meeting. He expects a detailed outline of all phases and time periods. He intends to hold the proponent to a strict time table.

Ms. Li asked S. Krueel to follow up with DEP. Ms. Krueel replied that DEP will not review the application while the property and the proponent are still the subject of an active lawsuit. Mr. Bourne concurred that the DEP cannot yet review the submittal, and noted that the Chapter 91 license application would have to be resubmitted due to woeful inadequacy.

Mr. Button indicated that submissions to the Conservation Commission needed to be complete and correct.

Ms. Pollak asked if the AG's office has a timeline for wrapping up the lawsuit. Ms. Krueel replied that she was not aware of any such timeline.

Mr. Kunian reminded the applicant that there is still an Enforcement Order from the Commission active on the property.

Ms. Li expressed concern about the hurricane season and the potential impact of storm damage on the facility. She would like to require immediate removal. Ms. Krueel stated that the court has not yet ruled on that aspect of the case.

Michael Parker, a resident and attorney for several abutters expressed his surprise at the fact that Mr. Oliner did not choose a later hearing date and allowed his contractor to present a skeleton plan. He noted that the expanded configuration, while perhaps constituting less float space, would cover a larger portion of the watersheet. He would like the new marina to be restricted to occupying the same footprint as the present marina. Removal of the existing marina should be performed as soon as possible. He also wants financial assurance that construction related work, such as installation of pilings utilizing the vibration method, would not cause damage to adjacent properties. It should be monitored and the proponent should be required to post a bond. He dislikes the fact that there is no timetable for the phases, and

reminded everyone that the lack of teeth in enforcement options is what brought us all to this point. He urged the Commission to collaborate with the BRA to create a fund for Harborwalk maintenance, requiring the proponent to contribute to it. He requested that the gazebo at Pier 8 be removed and that the historic shipways and timbers that are in a state of disrepair and are a source of debris be cleaned up by the proponent. Until now, it has been cleaned up by the adjacent property owners (Shipway Condo) at their expense.

Marion Dancy, a resident of Constellation Wharf and a representative of the Friends of the Charlestown Navy Yard noted that the expanded configuration places slips directly adjacent to the Harborwalk. The plan reduces the number of slips available to larger ships and increases the number available to smaller vessels. At high tide, boats will block the view from the Harborwalk. She also disapproves of the use of steel pilings, suggesting that fiberglass pilings, which are better-made and in fact made locally, would be longer lasting and more attractive. She supports the immediate removal of the current marina, and wants to require that the proponent submit to the Charlestown Neighborhood Council's review process.

Mr. Button noted that there are pros and cons to the different methods of pile driving.

Ivy St. John provided photos of trash storage for the restaurant at Pier 6. She is not comfortable with the planned proximity of the boats to the Harborwalk, noting it will necessitate a fence for security purposes, which is at odds with having a waterfront that is accessible to the public. She noted that trash is swept into the water through a hole in the deck (shown as the green square in the photograph). The restaurant building is owned by Mr. Oliner, but leased to the restaurant operator. She does not want the restaurant to be closed; she only wants the trash treated appropriately. She has called the City's Inspectional Services Division three times, and there has been no improvement as a result. Within the restaurant, the bar on the west side has been extended into the already narrow Harborwalk. There now remains an approximately 7-foot wide path. Mr. Kunian asked if there are actually tables in the Harborwalk. Ms. St. John replied that there are not. The restaurant is lovely and she is fine with the patrons, but she would like the trash to be addressed.

Ms. Dancy remarked that the trash used to be kept inside the building; then the fenced area was created. There needs to be more frequent trash pick-up, perhaps every other day.

Mr. Kunian suggested that the Commission write to the restaurant owner.

Ms. Pollak asked Ms. Krueel to inspect the facility in the company of an ISD inspector.

Ms. St. John remarked that the corner where the dumpsters are currently located should be kept clean and made accessible to the Harborwalk sign. There are currently no Harborwalk signs posted, and although the restaurant operator agreed to post them, he has not yet done so.

Chris Dewey, a resident of Constitution Wharf, noted that 121 slips are proposed at Pier 6. He asked Mr. Bourne if there would be two vessels per slip. Mr. Bourne confirmed that there would be one vessel per slip. Mr. Dewey noted that the original one-vessel slip allowed four-point docking. Mr. Bourne said that the new configuration would allow three-point docking with the use of spring lines, which allow two points on the side with one stern line tie-back. This arrangement is actually traditional- the existing two-decks per boat configuration is non-traditional. Mr. Dewey highlighted the fact the fishing currently occurs from the Harborwalk between Piers 6 & 7, and the new configuration would constrain this activity.

Larry Steven asked Mr. Bourne to confirm that the reconfiguration with 121 slips means a maximum of 121 boats. This was confirmed.

Jack Boyle, a resident of Flagship Wharf, stated that Mr. Oliner's properties are the worst he's ever seen. He noted that he knows two people who have fallen next to building 224 (the Bath house landside of Pier 8). He thought the hearing would address what would happen after Mr. Oliner no longer owned the Marina. He has no expectation of a positive result.

Barbara Mackey of Shipway Place stated she had read the August Bourne report that identified safety hazards on the Harborwalk. In reality, she claims conditions are worse. She referenced the September 17th meeting with the Attorney General's Office at Suffolk Superior Court, and pointed out that the two processes (AG's lawsuit and the ConCom's review of the present NOI) are unrelated, and the court process should not hold up the Commission. She asked the name of the firm that submitted the NOI this past August. She asked what the implication to a new buyer would be if Mr. Oliner were to sell the marina.

Ms. Kruel stated that Ocean Coastal Management was replaced by Bourne Engineering as the consultant for this project. She reminded the audience that an OOC does not require the proponent to build anything; it only allows the project to be built. A new owner would have the same rights to build or not build the proposed (or any) project as the present owner.

Kathy Becker of Constitution Wharf emphasized the need to remove the old marina in total, not in phases. Currently the fairway between Piers 6 & 7 is used by restaurant customers. She wanted to know the proposed distance between the slips and Pier 7. She is concerned about safe passage.

Mr. Button reiterated that the Commission needs detailed plans.

Mr. Bourne asserted that his firm was trying to prepare plans wherein new floats would not be closer to Pier 7 than are the existing floats.

Ms. Dancy replied that this appears to be true for Pier 6, but at Pier 8 there are “T” ends where boats could tie up, interfering with navigation in the fairway.

Lois Siegelman, a resident of Constellation Wharf, is concerned about trash generated by the restaurant. She has met with the owner (Charlie). Although she is in favor of the marina being shut down, she is concerned about the impact of not having any marina staff on the premises. She wanted to know who would clean up the debris from the torqued slips. Charlie is refusing to perform the services that are actually the responsibility of Mr. Oliner as the owner of the marina. Ms. Siegelman claimed that all Harborwalk lighting between Piers 6 & 8 was non-functioning (or actually removed). She also wanted to know who would perform the required snow removal this winter.

Sherry Grancey of Flagship Wharf asked Mr. Bourne to ask Mr. Oliner to immediately repair the Harborwalk. She asked the Commission who enforces Harborwalk Maintenance. Mr. Button replied that he didn't have an answer. Ms. Li articulated that the liability lies with the property owners. The Commission does not have jurisdiction over many of these issues- it is not the Liquor License Board, it does not perform trash removal, etc.

Kip Becker, representing the “Abutters to Shipyard Quarters Marina Committee” or ASQMC, read a letter regarding the deterioration of the marina and pollution of Boston Harbor. He noted that the proposal is full of pilings, not slips. The proposed configuration is not typical of nearby marina. He wondered how a decrease in square footage could result in an increase in the number of pilings. He claimed the design does not meet the standards for work in LSCSF. The increased density on the watersheet will have negative impacts on the nesting and feeding activities of wildlife. It does not take sea level rise into effect. There is a lack of clarity project-wide. He requested that the Commission require a security bond. He urged the Commission not to allow Mr. Oliner to benefit at the expense of long term residents.

Ms. Li asked Ms. Siegelman if the boats have vacated the marina. She replied that Pier 8 is not empty, but of the remaining boats only 2-3 are in use, while the rest appear to be abandoned. There are still boats at Pier 6, as permitted by the court.

Bill Rogerson of Pier 7 proposed a technical argument: The applicant is a DBA (doing business as) and not a person: without a proper applicant, the Commission cannot grant approval. Also, the NOI requires abutter notification of the hearing and he, as an abutter, did not receive such a notification. Mr. Bourne supplied proof of mailing to nine abutters. There was some question about the requirements to notify individual condominium owners versus notifying the condominium associations. Ms. Pollak noted that the notification process had been performed by the previously-employed firm, and that when the NOI is resubmitted the notification requirement must be met.

Mr. Rogerson noted that the square footage of the boats, not just the float decks, should be considered. He also noted that pump out facilities are inadequate, and the OOC should require a working pump out facility. This shows that Mr. Oliner is not being environmentally friendly.

Ms. Li and Mr. Kunian confirmed that all of these issues are already known to the Commission, which is why the enforcement order was issued and the legal process is underway. Mr. Kunian reiterated that the Commission does not currently have adequate plans.

Mr. Becker is concerned that Mr. Oliner will fight the battle of attrition. Ms. Pollak explained that that is why the AG's office is involved. There is no plan for the Commission to approve tonight, but the public comments are insightful.

Janet Knott, Chief of Staff for Councilor LaMattina, expressed the Councilor's support of his constituents and promised to bring all comments back to him.

Chris Nicodemus of Flagship Wharf suggested that changes to the NOI guarantee that nothing will happen for years. There is a shoal under one of the proposed floats at Pier 8 that will require dredging.

Mr. Button thanked the audience for their comments.

Ms. Li asked Ms. Krueel to contact the appropriate agencies for complaints not within the Commission's jurisdiction. In light of the lack of stamped plans and inadequate notice, she queried the Commission as to the date to which they would like to continue the hearing. She asked Mr. Bourne for a realistic time frame for gathering the requested information. He indicated that four weeks should be enough time.

- **Motion made by V. Li and seconded by A. Pollak to continue the hearing to October 16, 2013, at which time the proponent's representative shall supply a demolition plan for the immediate removal of all dock structures as well as stamped plans reflecting the public's comments (6/0/0, 8:43 PM)**

7:30 PM Request for Extension of OOC for **DEP File No. 006-0971**, Charles River Basin Shoreline Vegetation Management Plan

Representative: Richard Corsi, DCR

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

S. Krueel explained that the proponent was requesting an extension until the spring of 2014, when a new VMP would be presented to the Commission. Her last site visit took place on April 5, 2013, which resulted in the continuation of the 2011 "no-cut" policy. This season's cutting operations include hand pruning only between the Western Ave and JFK/Anderson bridges.

R. Corsi noted that DCR is planning to submit an NOI for the VMP to the Commission in the spring.

Ms. Li asked Mr. Corsi if a 1-year extension would be adequate. He agreed.

- **Motion made by V. Li and seconded by A. Pollak to grant a one-year extension (6/0/0, 8:45 PM)**

7:35 PM *Updates and General Business*

- Requests for Certificates of Compliance
 - S. Krueel confirmed that all conditions had been met, with the exception of confirmation of Harborwalk Signs at Fish Pier. She suggested that the Commission might prefer to consider the COCs in one batch.
 - DEP File No. 006-1185 from Massport for Boston Fish Pier Parking Modifications, 212 Northern Ave
 - DEP File No. 006-1194 from Massport for Electrification of Berths at Fish Pier, 212 Northern Ave
 - DEP File No. 006-1217 from Massport for Cruiseport Terminal Interior Enhancements, One Black Falcon Ave
 - DEP File No. 006-1226 from Massport for Conley Terminal Electrical Infrastructure Modernization and Expansion
 - DEP File No. 006-1242 from Massport for Castle Island Shoreline Improvements
 - DEP File No. 006-1270 from Massport for Fish Pier Repairs, 212 Northern Ave (fenders, bollards, & ladders)
 - DEP File No. 006-1272 from Massport for Seafarer's Way Project, Conley Terminal
 - DEP File No. 006-1319 from Massport for State Police Trailer Installation, Fish Pier, 212 Northern Ave
 - DEP File No. 006-1327 from United States Postal Service for Loading Dock Improvements at 25 Dorchester Ave
 - DEP File No. 006-1245 from Harbor Towers Trustees, Seawall Repairs & Maintenance, 85 East India Row
- **Motion made by V. Li and seconded by S. Kunian to issue Certificates of Compliance for the following DEP file numbers: 006-1194, 006-1217, 006-1226, 006-1242, 006-1270, 006-1272, 006-1319. The following DEP Files are continued to the October 2, 2013 hearing for further review: 006-1185, 006-1327, 006-1245 (6/0/0 8:50 PM)**

- **Motion made by V. Li and seconded by S. Kunian to approve the meeting minutes from August 7, 2013 as amended (6/0/0, 8:51 PM)**
-
- **Motion made by V. Li and seconded by S. Kunian to adjourn the meeting (6/0/0 8:52 PM).**

Respectfully submitted,

Stephanie Kruel

Stephanie Kruel
Executive Secretary