

APPROVED 2/5/14

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

October 16, 2013

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

Commissioners Not Present: Jeanne McHallam, John Sullivan

Staff Present: Stephanie Krueel, Executive Secretary

6:10 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) Continued from September 18, 2013

Representatives: Martin Oliner & Christopher Dirusso, Shipyard Quarters Marina; Ron Bourne & Seth Lattrell, Bourne Engineering; Charles Larner, Pier 6 Restaurant; George Hall, Anderson Krieger; Anthony Fiotto & Paul Ware, Goodwin Proctor

V. Li stated that Bourne Engineering and Goodwin Proctor are dues-paying members of her employer, The Boston Harbor Association. M. Oliner commented that he had once been a dues-paying member of TBHA as well.

Mr. Oliner apologized for his continued absence at ConCom hearings, most recently due to the Jewish Holiday. He noted that he has responded to previous questions, and has worked with DEP and BRA over the last eleven months to have a continuing dialogue regarding Piers 6 and 8. He provided a brief history of the land disposition from the Navy to the BRA to Immobiliari to the current owner. He is proud of his contribution to the development of the Charlestown Navy Yard, including Parris Landing (aka building 42) and Flagship Wharf. He explained that Shipyard Quarters Marina is a 30 year old marina next to Pier 5, all of which need to be replaced. The useful life of a marina is about 25 years. SQM has lasted 32-33 years, and has simply outlived its life. He apologized for not sending articulate spokespeople to past hearings, and for not communicating well with the neighborhood. He emphasized his commitment to replacing the marina in its entirety. He has been negotiating in that regard with DEP over the past eleven months. He has brought Bourne Engineering on to his team as a more local, involved firm than the previous representative. He insists that he is following professional engineering device for the redevelopment of SQM.

S. Kunian added that his only complaint about Mr. Oliner's past representative (referring to Asher Herzberg) is that he was soft-spoken, not inarticulate. His only problem has been with how Mr. Oliner has dealt with the situation.

C. Button explained that usually the Commission is presented with detailed plans. In particular, the engineers on the Commission need time to review the details.

R. Bourne explained that he has attempted to address the questions that have most recently been submitted. His firm, since the last hearing, has reassessed the whole marina. He claimed that a sounding study has shown that there is more than adequate depth in all areas of the marina. Referring to the plan for Pier 6 shown onscreen, he pointed out that the original footprint approved in 1982 under a Chapter 91 license would be replicated. The difference between the existing and proposed marinas is that the existing marina utilizes bottom-moored chains, and the new marina would replace those chains with 34 mooring piles and a wood decking system with rubber bushing, to be further specified by the manufacturer. He then showed on screen a plan for Pier 8 overlaying existing conditions. The new plan would stay within the approved Zone of Reconfiguration and would maintain the same spacing from Pier 7. Any vessels birthing at the sides of the float parallel to Pier 7 would not protrude further into the fairway.

Mr. Button asked for clarification regarding the shading on the plans since no legend was provided. S. Lattrell explained that shaded areas represent proposed conditions, while un-shaded areas represent existing conditions. He reiterated that soundings show adequate draft throughout the marina. Floats adjacent to the Harborwalk are no longer being proposed. The reconfiguration reduces the square footage of the floats. The

piles increase in number from 83 to 84. Land Under Ocean impacts increase at Pier 6 from 7 sf to 112 sf, and from 235 sf to 236 sf at Pier 8.

Mr. Button asked a question regarding page 3 of the narrative. Mr. Bourne replied that he would like to separate the marina from the piers for discussion purposes. He continued to describe the project, which would utilize a phased approach. They would begin with Pier 8 and move north to south according to the schedule provided with the narrative. The start date cannot yet be identified due to the uncertainty regarding overlap with Time Of Year restrictions. The applicant may request relief from those restrictions, but cannot be certain to receive it. The agencies will be concerned about turbidity and impact to anadromous fish runs.

Mr. Kunian asked when all approvals are anticipated. Mr. Bourne noted that the Conservation Commission approval is needed before they can continue on. G. Hall stated that there is a matter in litigation with the AG's office, so an approval timetable cannot be provided. He described reticence on the part of DEP to move forward due to issues regarding requested immediate repairs. Mr. Oliner pointed out that the last draft special condition is a requirement for a Chapter 91 license prior to commencing work. He is still in negotiations with DEP, and they will not review the new application until litigation has ended.

Mr. Hall further explained that in early July 2013 the proponent has attempted to meet with DEP Waterways, but they would not meet until immediate repairs were addressed. Since then, a portion of the marina has closed and several repairs have been made.

Mr. Kunian asked what the timetable would be to make those repairs, and wanted to know if the proponent was contesting those repairs. Mr. Hall responded that no, the repairs were not being contested, and were no longer the subject of disagreement with DEP. Mr. Oliner added that the Unilateral Administrative Order against the proponent related to float repair has since been withdrawn. The position today is that the marina needs to be replaced, not repaired. Mr. Hall added that things have changed since July and there are no remaining issues that would preclude moving forward with the Chapter 91 license.

Mr. Kunian repeated his request for a schedule for repairs. Mr. Oliner explained that Mr. Bourne's report is based on the results of a dive. The Harborwalk pier is separate from the Marina floats. The repairs to the pier are not being contested. The only approval needed to move forward on Harborwalk repairs is from the Conservation Commission. Mr. Kunian referenced the repairs listed on pages 2-3 of the report from Kevin Buruchian to Asher Hertzberg dated September 23, 2014.

Mr. Button clarified that the Conservation Commission's approval is needed for both the repairs to the Harborwalk and the replacement of marina floats, but DEP's approval is also needed for the replacement of the marina floats.

Mr. Kunian expressed his belief that it is valuable to only discuss Pier repairs, and that there is not enough information available to move forward on permitting the marina replacement. He mused that all the AG's office would say is that the proponent needs to do more. He asked the proponent when the pier repairs would start and how long it would take to complete them.

Ms. Li wanted to hear the whole presentation and then vote separately on different aspects of the project. The project is within numerous jurisdictions, and the Commission can only vote on issues within its own jurisdiction.

Mr. Bourne explained that they are already in discussions with marine contractors. Once an actionable order is obtained, the Harborwalk repairs would take 1-2 months to complete.

Mr. Kunian asked if the repairs could be complete within three months of issuance of an Order. Mr. Oliner replied that that was a reasonable time frame. Today he met on-site with the contractor who had done the repairs in the spring. The project still needs ISD approval, and Mr. Oliner hopes that DEP doesn't have any issues with the repairs. Mr. Kunian offered an extension of the time period for a legitimate reason.

Mr. Bourne reiterated the potential uncertainty due to TOY restrictions. The schedule calls for work over 88 weeks to accommodate the manufacturer's timeframe for fabrication. This only means that the last section will be complete in 88 weeks. Slips could start to be opened in 40-48 weeks.

Mr. Oliner would like to start work on Pier 6 first, but is not able to due to the complexity of Chapter 91 license issues. The concept of a Zone of Reconfiguration didn't exist when Pier 6 was first licensed.

Ms. Li referred to the proposed schedule and questioned whether demolition starts at 32 weeks. The Commission had previously discussed with the applicant immediate demolition.

Mr. Bourne explained that because of mobilization, demolition isn't feasible until floats are ready to be installed. Safety at the closed marina can be dealt with on an on-going basis. No one will be permitted to be on the floats, and nothing will be able to float into navigable waters.

Ms. Li expressed that she had a different opinion about that. She asked if demolition requires a Chapter 91 license. Mr. Hall replied that it does not.

Mr. Oliner described how DEP claims it is a violation of the waterways act to do work or maintain the marina. He will not proceed with demolition without approval from Superior Court Judge Fahey.

Mr. Button stated that once this is clarified, he wants demolition done first.

Mr. Oliner replied that it will depend on the licensure resulting from tonight's meeting. The minutes of the 9/18/13 meeting show that Mr. Button himself said it would be more expensive to complete all demolition first rather than in phases with installation. Mr. Oliner stated he is anticipating questions of financial accountability. It takes four to five months to get newly fabricated docks in this post-Sandy environment, but the schedule is at stake if the approval is issued piece-meal.

Mr. Kunian asked Mr. Oliner not to suggest that delays are due to the Conservation Commission. Mr. Oliner responded that he did not mean to imply that the Commission was holding up the process. He was referring to DEP.

Mr. Kunian suggested that if the Attorney General agreed, demolition could start prior to issuance of a Chapter 91 license for Pier 6. Mr. Oliner replied that he would have to give it a lot of thought.

Mr. Button suggested that a reorganization of the schedule would in fact allow early demolition.

Mr. Hall pointed out that the sequence is not related to wetlands jurisdiction.

Mr. Bourne stated that the proposed schedule is the most feasible. Also, pump out facilities at Pier 6 would be replaced, and the pump out boat at Pier 8 would be maintained. He indicated that the plan on-screen represented the planned repairs. No pile driving is necessary for this portion of the project. He identified the plan for the restricted pathway for the Harborwalk during construction. The plan shows the needed immediate repairs.

Ms. Li asked Mr. Bourne to confirm that a Chapter 91 license is not needed to perform this work. Mr. Bourne replied that the planned repairs are considered maintenance activities under the existing license. He only needs to notify DEP and the US Army Corp of Engineers, but does not need to await their approval. He then described the erosion & sedimentation control measures.

Ms. Pollak asked if a revised Operations & Maintenance plan would be submitted. Her concern is that if the marina is re-established, how the proponent will ensure that he will not be before the Commission again in ten years.

Mr. Oliner replied that the minutes show a request that the gazebo be removed. He is awaiting engineering guidance on that request. He is trying to stay ahead of the schedule for anticipated repairs. He will be focused on maintaining the new marina for its next 30 year lifespan. Again, the current situation is due to the arrival of the end of the marina's useful life, not neglect. The marina had previously been well-maintained. He used to have a 25 member maintenance crew.

Ms. Pollak noted that a maintenance protocol is a part of the DEP submission.

Mr. Button asked about pages 1 and 2 of the report, where the text reads "should be considered." He wondered what exactly this means as pertains to suggested repairs. Mr. Bourne explained that the pier was overdesigned, and that structurally, cross-bracing isn't needed, but additional bracing could prolong the pier's life. The redundancy in the structures renders the 3% pile failure rate insignificant.

Mr. Button pointed out that major repairs should have been done 10 years ago, prior to the end of its useful life, and if they had the marina would not currently be in a state of disrepair.

Mr. Bourne noted that the new float system would be modular, making repairs and maintenance much easier.

Ms. Li raised the issue of complaints being voiced against the restaurant. She acknowledged the owner, Charlie Larner, and asked him to address the issues.

Mr. Oliner replied that the issues are his own problems, not Mr. Larner's.

Mr. Button summarized the issue as trash on the pier versus inside the restaurant.

C. Larner stated that he had met with the neighbors, and determined that the trash receptacles had been located on the pier rather than inside the restaurant for the past 30 years. The designated trash space is in his lease. The indoor space that perhaps once held trash now has a walk-in cooler and dish space. The outdoor trash area is missing a door. A contractor is prepared to complete this repair. The receptacles will remain in their current location. Mr. Oliner added that the trash has been outdoors since he has owned the marina.

Mr. Kunian acknowledged the other issues related to the trash, which are regular removal and containment within the dumpster.

Mr. Oliner replied that historically the dumpster has been emptied two times per week. Mr. Larner added that the trash is currently picked up three to four times per week. He noted that the blue barrels on the pier are trash receptacles for the marina, not the restaurant.

Mr. Kunian wondered how the number of slips at Pier 8 could be increased with the square footage of dock was being decreased. Mr. Oliner replied that the design was changing from single berthing to double berthing, so fewer finger floats are required.

Mr. Bourne stressed that the manufacturer will provide the final details, and will have to adhere to the footprint and performance requirements.

Mr. Button requested that stamped plans are provided to Commission staff prior to installation. Mr. Bourne noted that this submission is meant to address the resource impacts.

Mr. Kunian stated that the Commission shares the public's concerns, and asked the audience not to repeat things that have been discussed in the past. Mr. Button supported Mr. Kunian's request for succinct comments from the public.

Norris Strawbridge of Pier 7 asked if the proposed floats extend closer to Pier 7 than the current floats. Mr. Bourne replied that they do not, and that the T-shaped float ends are not designed to serve as slips.

Michael Parker, on behalf of Constellation Wharf, stated that his previous written comments are also applicable to the current revised submission. He noted that it is difficult to determine the setbacks from the abutments as they are not noted on the plans. He asked that the Pier 6 footprint conform to license #752 with a setback of 70 feet from Constellation Wharf (it only appears to be about 50 feet). He asked if the design review process would begin once the regulatory approvals are obtained. Mr. Bourne explained that the design is done, and the contractor bidding process will now proceed. Final plans will be complete about one month after a contractor is selected.

Mr. Parker stated that since BRA owns the watersheet, design review by BRA should be a proviso of the Order of Conditions. Mr. Oliner countered that the BRA does not in fact own the watersheet. Mr. Parker continued that regardless, the BRA should review the proposal. Mr. Oliner replied that the submitted plans were initially sourced from a marine float manufacturer and then refined by Mr. Bourne. The BRA has been involved in the process, but not because it is a requirement for them to do so.

Mr. Parker continued, urging that demolition occur as soon as possible, but knows that the issue may be mooted by the Attorney General. He expressed skepticism that constant awareness would be adequate to prevent demolition by neglect, and is also concerned about financial surety and asked that Mr. Oliner furnish the Commission with the following: 1. A reasonable estimate of the cost of work; 2. A contingency budget; and 3. Affirmation that all DEP requirements will be met. He also noted that page 2 of the NOI refers to 34 new piles, while the narrative describes 38 new piles, and page 3 indicates a total of 170 proposed piles. Mr. Lattrell confirmed that the correct numbers are 38 new piles and 138 total piles. The pile height is at elevation 19.5 MLW datum. Mr. Parker requested that the Zone of Reconfiguration be for maintenance purposes only—not expansion. He asked that the design respect the setbacks appropriate to an urban environment.

Mr. Oliner asked his Dockmaster, Chris Dirusso, to address the issue of flotsam. Mr. Dirusso explained that flotsam debris floats through the harbor and ends up on the historic shipway. He and his crew try to clean the

shipway approximately every two months due to the difficulty of access. Mr. Oliner claimed that the flotsam is not originating from the marina, and strongly emphasized that no part of the marina has ever floated away.

Mr. Kunian suggested that the Commission not get into a debate about the source of the debris. Regardless of the source, it must be cleaned up. Mr. Oliner again confirmed that flotsam is removed from Shipway Quarters Marina and not created there.

Mr. Kunian stated that a maintenance plan shall be enforced. Mr. Oliner expressed his agreement that it should be enforced at SQM and throughout the Navy Yard. He noted that the historic shipway is often the source of the flotsam.

Mr. Kunian acknowledged that poor maintenance of neighboring marinas will have a negative impact on the new marina.

Mr. Dirusso clarified that he cleans up the marina daily: Only the shipway is cleaned up less often. Mr. Parker agreed that the shipway is in need of repair and restoration.

Marion Dancy pointed out that in addition to the marina and Harborwalk, the marina buildings, namely the bath house and office at Pier 8, are in need of repair as well, although they are not the subject of this filing. She described her personal experience with inadequate water depth at Pier 8: In the past her boat had hit bottom with a 5-foot draft. She asked for more information regarding boat capacity, and wanted to know how many boats and what sizes could be accommodated in the proposed design. She also urged the proponent to consider fiberglass pilings due to their aesthetic appeal and longer life.

Mr. Button added that due to the cleanliness of Boston Harbor, the increased robustness of marine life leads to more rapid erosion of wood pilings.

Mr. Bourne explained that he appreciates other alternatives; however constraints regarding loads and driving depths make fiberglass pilings inappropriate at this location. Piles need to be 50 feet long. The steel pilings will be filled with concrete and coated with epoxy similar to that used by Mass DOT for their road rebar, which will prolong the life and long-term appearance of the piles.

Richard Mulligan of the BRA stated that his immediate concern is repairs to the Harborwalk, much of which can be done without permission from DEP. He noted that marinas can and do have lives longer than 30 years when they are properly repaired and maintained (for example, the marina where he keeps his boat is over 100 years old). BRA has been forced to undertake snow removal for this property in the past, and the proponent has not paid his bills. He offered the idea that perhaps a marina is no longer needed in this location, and it might be better suited to another purpose. He supports streamlining of approvals, but is not confident that the proponent has the financial wherewithal to complete the project. Ms. Li asked Mr. Mulligan if he thought the Commission should approve the project. He replied that the Commission should absolutely approve the project. The Attorney General's office has hired its own engineer to review conditions from a safety perspective, and the concern is that the marina could break apart in a storm and become a navigational hazard.

Mr. Oliner claimed that he has never received a bill for snow removal from the BRA, and asked that Mr. Mulligan send the bill to Ms. Krueel, and she forward it to him.

Barbara Mackey noted that the shipway is not identified on-site as a historic structure, so people tend to think it is just an ordinary dilapidated structure. She noted that the condition of the Harborwalk decking is still very bad and has been repaired inconsistently. The maintenance plan related to the Chapter 91 license has not been followed. She asked if the Conservation Commission or the DEP is responsible for enforcing it.

Lois Siegelman advocated for the immediate removal of the floats. The excessive bird dropping are creating a sanitary problem, and the floats are still being used even though they are officially not in service. She expressed concern that the broken pieces of finger floats between Piers 6 & 7 won't be removed until Phase III. She also highlighted the problem of the hole in Pier 6 in the dumpster area. She has met with Mr. Lerner to address concerns because he is more likely than the marina owner to actually deal with the issues, which include repairs and maintenance, lighting, trash removal and dumpster maintenance, and snow removal.

Mr. Oliner confirmed that these issues are not Mr. Lerner's responsibility. The Dockmaster and three others are providing maintenance. The lights on the historic structures need to be fixed. Snow removal is the subject of a revised disposition agreement among SQM, Parris Landing, and the BRA, which is under litigation. He

stated that Ms. Krueel has records on these seven parcels with differing responsible parties. Parris Landing pays the BRA for snow removal. Mr. Oliner pays for sweeping to be done on a daily basis. As for the unauthorized docking at Pier 8, the court ordered Pier 8 to be closed and Pier 6 to remain open until October 31st. At that time the restaurant will not be accessible from the floats. Ms. Siegelman pointed out that Pier 6 can easily be accessed from the floats at high tide.

Ms. Li reminded everyone that we are already 2 hours into this hearing, and the Commission has already heard 10 to 15 hours on this issue. She asked the Commission to make a motion.

Mr. Oliner had comments on the draft conditions. He asked if condition #63 is a normal standard. Mr. Bourne stated that the marina is designed to survive a 100 year storm in survival mode (with no boats present), but only a 50 year storm in under normal stress conditions/in operational mode (when fully occupied), which is the current industry standard. Mr. Oliner asked for clarification on this condition. Ms. Krueel offered to look into this.

Mr. Kunian moved that “repairs as set forth in the Bourne Memo dated 9/23/13 commence forthwith and be completed within three months. The Commission reserves the right to make additional repair requirements.”

Mr. Hall stated that such a motion has nothing to do with the application of the wetland regulations, and the Commission cannot require repairs. The Commission’s function is to determine if work conforms to resource area performance standards. The proponent has already committed to carrying out the necessary repairs within the requested time frame.

V. Li suggested that the Commission move to approve the work described as “immediate repairs” on pages 1-3 of the memo from Kevin Buruchian to Asher Hertzberg dated September 23, 2014, and that work is to be completed within three months.

A. Pollak added that a caveat should be that in the interest of public safety as of October 31st, marina closure signs be posted.

Mr. Oliner agreed to post the signs as requested. He wants to get the necessary approvals related to wetland protection so as to avoid further delays.

Mr. Button requested that the Commission make a viable motion.

- **Motion made by V. Li and seconded by J. Lewis to approve the work described as “immediate repairs” on pages 1-3 of the memo from Kevin Buruchian to Asher Hertzberg dated September 23, 2014. This work shall be completed within three months. In addition, in the interest of public safety as of October 31st, marina closure signs must be posted (5/0/0 8:27PM).**

Mr. Kunian moved to amend the Order of Conditions to provide a maintenance plan for the proposed repairs. Mr. Button suggested that the Commission move on and make a motion regarding the marina configuration.

- **Motion made by A. Pollak and seconded by J. Lewis for conceptual approval of the special conditions for the demolition which should occur first. A final plan with details from the dock manufacturer shall be submitted and presented to the Commission for final approval. Plans must show the Harborwalk and abutting properties (5/0/0 8:30PM)**

Ms. Li expressed hope that progress is made on this property, and that the Commission does not have to continue hosting long discussions about the marina’s condition. She hopes that improvements are made in a timely fashion.

Mr. Kunian wanted to reserve the right to require the proponent to provide evidence of his financial ability to carry out the project. There was some question as to whether the Commission has the authority to require this, as it has never been done. Mr. Hall believes that such authority is not granted through the Wetlands Protection Act or 310 CMR 10. Mr. Oliner wanted to know, for the purposes of discussion, if he were to make this information available to the Commission how it would be presented and considered. He would not want his financial records open to the public.

Ms. Li reminded the group that the Commission gives permission to do work, but cannot require that the work be done. Often financing falls through and Orders need to be extended or re-issued.

Mr. Oliner would like to demonstrate his financial ability to complete the project. He appreciates his need to fill the credibility gap.

Mr. Button noted that contractors are often bonded for all kinds of public work. We will research this concept for the next hearing.

Ms. Kruel confirmed that the Commission does not currently have the authority to require performance bonds.

Larry Stevens asked if a new owner would be subject to the Order of Conditions. The Commission confirmed that anyone wishing to complete the project as described in the NOI would be subject to the Order.

Ms. Li asked to hold off voting on the minutes of the October 2, 2013 meeting.

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- **Motion made by V. Li and seconded by S. Kunian to adjourn the meeting (5/0/0 8:35 PM).**

Respectfully submitted,

Stephanie Kruel

Stephanie Kruel
Executive Secretary