

APPROVED 1/9/13

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

December 12, 2012

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

Commissioners Not Present: John Sullivan

Staff Present: Stephanie Krueel, Executive Secretary

6:05 PM

Enforcement Order hearing regarding Order of Conditions **DEP File No. 006-1312** from Shipyard Quarters Marina issued for repair of existing piers, 1 Pier 8, 13th Street, Charlestown, Boston Inner Harbor. *Continued from the November 7, 2012 Public Hearing*

Owner: Shipyard Quarters Marina, LLC c/o Martin Oliner, Manager

Representatives: Asher Herzberg, Tracy Lloyd

Documents: None

S. Krueel provided an update on current actions by other agencies against this property. There will be an internal hearing on the appeal of DEP's Unilateral Administrative Order at the end of February, provided the case cannot be settled prior to that time. Housing Court denied the motion to dismiss the violations issued by ISD. The defendant has since re-filed the motions to dismiss and is scheduled to be heard on January 15, 2013.

A. Herzberg gave a brief progress report on the walkway and marina. Mr. Lloyd, a state government relations specialist representing Mr. Oliner, was added to the team to meet with contractors and engineering firms. He noted that activities at the Marina will not constitute a rehabilitation project; rather, more significant reconstruction is needed. Mr. Oliner is committed to replacing Pier 6 and is looking into doing significant work on or replacing structures at Pier 8 as well. The team will have an engineer's report in 4-6 weeks for this multi-million dollar project. Mr. Oliner has hired an engineer and is in the process of hiring contractors for the Harborwalk with work slated to begin in one month.

V. Li asked Mr. Lloyd if he has walked the Harborwalk, noted that he is not likely familiar with Chapter 91 regulations, pointed out that he does not have a background in Massachusetts law, and cited the need for a local team member. S. Kunian noted that since Mr. Oliner is currently in litigation in Boston that he must have a local attorney and expressed his surprise that such an attorney was not present.

Ms. Li expressed concern that only the only improvements planned by the proponent were tied to long-term repairs, and stated that public safety and access issues must be addressed immediately. Both a short-term and a long-term plan are needed. This Enforcement Order hearing has been postponed twice, and this is the fourth time the applicant has been before the Commission. She was surprised and disappointed that no plan was being presented.

Mr. Lloyd admitted to possessing minimal knowledge of Massachusetts laws. He has met with three contractors and will choose one within an unspecified number of weeks. Engineered plans exist for Pier 6 replacement with permit requests planned for January. Mr. Herzberg noted that he has a signed contract with an engineer for boardwalk repairs and described the process for getting things replaced.

T. Pollak emphasized that with no documents, the Commission has no assurance that anything is being done. Public safety on the waterfront is the number one concern. "Enough is enough." She demanded that by January 9, 2013 a full set of drawings for restoration of the Harborwalk be submitted.

Mr. Herzberg repeated that rebuilding a pier is not a small project and his team is working to develop a scope of work.

Ms. Pollak asserted that public safety should have been addressed six months ago. Mr. Button supported the expectation that specifics on both immediate and long term actions should be submitted by January 9, 2013.

Mr. Kunian expressed his opinion that this was the most egregious violation of the regulations that he has seen, and he anticipates impending accidents. He wants to issue an Enforcement Order with the maximum fine.

Mr. Button requested specifics regarding work that has been done on the walkway and reiterated that plans must be submitted before January 9, 2013 detailing what has already been done and what remains to be done to complete public safety improvements.

Mr. Herzberg described the railing that was put up to block off the inoperative portion of the pier decking, and claimed to have a document from an engineering detailing this. The plan is to return the walkway to full use. He noted that the marina was determined to be safe, that water and electrical systems are in fact safe for marina users, and that all marina users are permitted only in safe portions of the facility.

Mr. Button assured Mr. Herzberg that everyone had been to the site and is familiar with conditions. Verification is needed from contractors and engineers, not Mr. Herzberg. Ms. Pollak interjected that the plans must be prepared by a registered engineer.

Mr. Lloyd agreed, assured the Commission that he understands them, is not arguing, and will take the message back to Mr. Oliner.

Ms. Li suggested that the proponent look around the room and note the atypical number of people attending due to their serious concern about the facility's conditions. Mr. Lloyd acknowledged that he understands.

City Councilor Sal Lamattina professed that his blood was boiling. He wants to see plans. He feels like those concerned are being stonewalled. He pleaded with the Commission to issue an Enforcement Order with a fine. He remarked that the owner does not care about Charlestown, and even recently denied owing the property. The Councilor is extremely frustrated.

Dave Alexander, a marina customer from 2003 to 2009, noted that during that time and since the facilities had deteriorated. The electrical system was faulty and dangerous with blown fuses. The gangway and walkways were in disrepair and he personally knew 5 people who slipped and were injured. The pumpout boat never worked. Although Chapter 91 requires the facility to have a permanent pumpout station, it did not. Pile caps were blown off and piles almost fell over and hit boats. The outer ring float was condemned. The situation is criminal, a travesty. Shipyard Quarters Marina (SQM) is a blight on the waterfront. Mr. Alexander said we should be beyond talking about fines and remediation: the property needs to be taken. He held up Pope's Island Marina in New Bedford as an example of a municipality taking a marina in disrepair. SQM should be a gem and it is an eyesore instead. He suggests the Commission "throw the book" at the marina.

Larry Stevens, a marina customer in a well-maintained marina (Constellation) categorized the manner in which the deterioration issues have been addressed as a business issue as offensive. For 25 years the owner has been taking money out of the marina and sucking money out of the community. It is time for him to put money down and fix it.

Ivy St. John of the Charlestown Waterfront Coalition noted the complete CWC Steering Committee was present tonight. She labeled the proponents actions as delaying and stalling. She noted the superficial nature of existing repairs, also described as nickel & dime band aid repairs, and submitted photos. She claimed that Mr. Oliner is familiar with Chapter 91 and understand DEP regulations. She asserted that Mr. Oliner is part owner of Tavern on the Water, which is a non-licensed non-water dependent use for which DEP issued a cease and desist order in mid-October. In her opinion, it is not acceptable to talk about taking action in January. SQM was once a magnificent facility now suffering from neglect and abuse. She implored the

Commission to cut the process off, issue an Enforcement Order, and impose a fine. She stated that there is a standing offer to purchase the marina by an upstanding operator. She wanted to know what is the action and effect of issuing an Enforcement Order and fine.

S. Kunian replied that he does not know where the money goes because fines have been imposed so rarely. He requested a lien be put on the property and thinks Mr. Oliner has personal liability, and therefore believes the fine should be levied on both the trust and on Mr. Oliner personally. He expects Mr. Oliner's lawyer to appeal and threaten to sue members of the Commission personally.

Pam Daly, a Navy Yard resident for 28 years and wheelchair bound, has not been able to access the Harborwalk for the past five years. She asserts that it is incorrect to say that only the blocked off portion is unsafe. At least 200 yards of the Harborwalk is not accessible by wheelchair. She is embarrassed at the condition of the marina when visitors come to her house and see how the owner from New York thumbs his nose at residents by maintaining such conditions.

Barbara Mackey submitted a photo of a section of railing missing at toddler height. She suspects Mr. Oliner is disingenuous about his commitment to maintaining the facility otherwise he would not be fighting ISD and DEP.

Dick Mulligan of the BRA described a meeting between Mr. Oliner and the BRA that took place on December 6, 2012. He did not bring any plans or documents and instead asked about Section 121A tax credits. The BRA Director ended up storming out of the meeting. Mr. Mulligan asked that the Commission issue fines retroactively. No maintenance has been done at the facility for 25 years, and the owner is asking the City for a tax write-off. His actions speak louder than words. SQM is a public safety hazard and a disgrace. It is an important area in the City and should be treated as such.

Ms. Li interjected that she had to leave the meeting (6:50pm) but indicated that she would have voted for both the enforcement order and the fine.

Dave Perry, a Navy Yard resident, has owned a condominium that overlooks Pier 6 for the last 18 years and noted that the deterioration is stunning: Mr. Oliner's refusal to respond to repair requests is even more stunning. He wants Mr. Oliner to attend the meeting in person to face the angry residents. What he is doing is shameful, and the Commission should not let him buy time. Mr. Perry is relying on the Commission to make this stop.

Lois Siegelman of Friends of the Charlestown Navy Yard discussed her concern about public access and listed items that needed to be taken care of.

Mr. Herzberg clarified that Pier 6 itself is available to the public but some docks are not. He noted that the ownership of two abandoned boats is being transferred to SQM so that they can be disposed of. He also indicated that the dumpster has been removed, but some trash still remained and that repairs are scheduled for the morning of December 13, 2013.

- **Motion made by S. Kunian and seconded by T. Pollak to issue an Enforcement Order and fine Shipyard Quarters Marina, LLC and Mr. Martin Oliner each \$25,000 per day until the piers are put in a safe condition. The proponent may schedule another hearing to reconsider the fine. The Commission instructs the City Attorney to place a lien on the property. The Commission also instructs the Executive Secretary to share this information with the Massachusetts Department of Environmental Protection and the City of Boston Inspectional Services Division (5/5/0, 6:57pm).**

7:00 PM

Notice of Intent for **DEP File No. 006-1325** from Boston Autoport, LLC to construct a new building foundation on Mystic Pier No. 1, 100 Terminal Street, Charlestown, Mystic River (DPA, Buffer to Coastal Bank)

Owner: Boston Autoport, LLC/MassPort

Representatives: John O'Donnell, Diversified Auto; Daniel Padien, VHB

Documents: Plans and photos submitted with NOI

D. Padien described the history of the site and the project. This next phase is the foundation only. The applicant is not ready to submit the full design with the stormwater improvements, but plans to return soon to the Commission with an NOI for the remainder of the work.

Mr. Button asked how the footprint of the new building compares to the footprint of the demolished building. It has been reduced from 5.5 to 3 acres. The new foundation is completely behind the seawall and within the footprint of the old building. The structural supports of the new building will rest on the existing structural supports behind the seawall.

Mr. Button asked if detailed building plans existing. Mr. O'Donnell described an approximately 30-foot high structure for vehicle processing that would be able to support a mezzanine for future office space. Mr. Padien showed the limit of work on the plan and described how the Buffer to Coastal Bank was not affected.

Ms. Pollak asked for clarification regarding why the full plan was not being presented. Mr. Padien explained that the stormwater issue was difficult to work out, but that building construction needed to move forward to meet the owner's timeline. He has reached out to John Sullivan (BWSC) and MassPort to explore stormwater management options, including a installing a canopy to create clean run-off.

Ms. Pollak asked if the applicant was intending to park vehicles on the foundation. Mr. O'Donnell assured the Commission that he is not. Operations will continue to take place at an alternate location until the building is constructed.

Mr. Padien affirmed that all runoff will be collected and treated on-site: there will be no connection to the City's stormwater infrastructure. As a redevelopment site, performance standards must be met to the extent practicable. The applicant is even exploring a solar installation on a canopy, based on structural considerations.

Mr. Kunian inquired about public access. Since this is a working pier, none is required.

The proposed special conditions are acceptable to the proponent.

- **Motion made by S. Kunian and seconded by J. Lewis to issue the Order of Conditions as written (5/0/0, 7:15pm).**

7:15 PM

Notice of Intent for **DEP File No. 006-1323** from Lafarge North America, Inc. for repairs to an existing bulkhead at 285 Medford St, Charlestown, Mystic River (DPA, Coastal Beaches, Land Subject to Coastal Storm Flowage)

Owner: Lafarge North America, Inc.

Representatives: Briscoe Lang and Ryan McCoy, Pare Corporation

Documents: Plans and photos submitted with NOI

B. Lang described the site and the proposed project, and noted that it is exempt from the Rivers Protection Act. It is being filed as a limited project.

Ms. Pollak asked the age of the bulkhead. It was built in the early 1900's. Mr. Land noted that the project was straightforward with no adverse resource impacts.

Mr. Button asked that the proponent submit final plans and specs signed and stamped by the engineer (special condition #37).

Mr. Lewis asked for details about the activities at the pier.

The proponent has read and agreed with the proposed special conditions.

- **Motion made by S. Kunian and seconded by J. Lewis to issue the Order of Conditions as written (5/0/0, 7:23pm)**
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7:25 PM

Notice of Intent for **DEP File No. 006-1324** from Boston Harbor Shipyard & Marina, LLC for replacement of a collapsed pier at 233 Marginal Street, East Boston, Boston Inner Harbor (DPA, Land Under the Ocean, Fish Run)

Owner: Boston Harbor Shipyard & Marina, LLC/MassPort

Representatives: Richard Jabba, Fort Point Associates; Joe Sugar and Dan Neumann, BHSM; Janeen Hansen, MassPort

Documents: Plans and photos submitted with NOI

R. Jabba described the location and the project. 1,800 square feet of pier deck collapsed over the summer. The proponent performed emergency repairs including the driving of 23 new piles to protect the Harborwalk and Harbor Arts installation. Mr. Sugar gave more details about the collapse. He noted that he did not follow the correct process involving requesting an Emergency Certification from the Commission. He assured the Commission that the pier is designed well and done right and that he plans to do engineering studies to check the integrity of the remainder of the pier. Mr. Neumann described the underside of the Pier in more detail.

J. McHallam asked for the work schedule. The proponent plans to complete work this month and acknowledged that he will come before the Commission prior to any new work being done.

- **Motion made by S. Kunian and seconded by J. Lewis to issue the Order of Conditions as written (5/0/0, 7:30pm)**
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7:30 PM Updates and General Business

- Requests for Certificate of Compliance
 - **DEP File No. 006-1222** MBTA Fairmount Line Bridge Reconstruction: Ms. Krueel gave a brief report on the status of the project and the request submitted.
 - **Motion made by T. Pollak and seconded by S. Kunian to issue the Certificate of Compliance (5/0/0, 7:35pm)**
 - **DEP File No. 006-1294** Boston Autoport LLC Demolition of Warehouse Building: Ms. Krueel gave a brief report on the status of the project and the request submitted.
 - **Motion made by T. Pollak and seconded by S. Kunian to issue the Certificate of Compliance (5/0/0, 7:36pm)**
 - Meeting Minutes
 - **Motion made by S. Kunian and seconded by J. Lewis to accept the November 7, 2012 and June 6, 2012 minutes as amended and the March 7, 2012, February 15, 2012 and February 1, 2012 minutes as written (5/0/0, 7:50pm)**
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- **Motion made by J. Lewis and seconded by S. Kunian to adjourn the meeting (7:50pm)**

Respectfully submitted,

Stephanie Krueel

Executive Secretary